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95598337

ILP 42292

MAIL TO & PREPARED BY:

TCF BANK ILLINOIS, FSB
1420 KENSINGTON RD, STE 300
OAK BROOK, IL 60521

DEPT-01 RECORDING \$27.50
T90009 TRAN 9199 09/07/95 15:15:00
6215 4 AH *-95-598337
COOK COUNTY RECORDER

ILLINOIS - VARIABLE RATE (OPEN-END)

092 - 226 - 6310819

MORTGAGE

State of Illinois
County of COOK

AUGUST 25, 1995

THIS MORTGAGE SECURES A REVOLVING LINE OF CREDIT UNDER WHICH ADVANCES, PAYMENTS, AND READVANCES MAY BE MADE FROM TIME TO TIME. THE MAXIMUM AMOUNT OF THE LINE OF CREDIT WHICH MAY BE SECURED AT ANY ONE TIME IS \$25,000.00

1. Legal Description. This document is a mortgage on real estate located in COOK County, State of Illinois (called the "Land"). The Land's legal description is:

LOT 3 IN GILBERT AND WOLF'S 35TH STREET APARTMENTS, A SUBDIVISION OF THE EAST 7 ACRES (EXCEPT THE SOUTH 300 FEET) OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PN # 24-08-310-003-0000

NOTICE: See pages 2, 3 and 4 for more mortgage terms. The Borrower agrees that pages 2, 3 and 4 are a part of this Mortgage. By signing this Mortgage, Borrower agrees to all of its terms.

Michael Kearney
Borrower MICHAEL KEARNEY

Catherine Kearney
Borrower CATHERINE KEARNEY

Borrower

Borrower

STATE OF ILLINOIS
COUNTY OF COOK

The foregoing instrument was acknowledged before me this 25th day of AUGUST, 1995, by MICHAEL KEARNEY AND CATHERINE KEARNEY

"OFFICIAL SEAL"
LAURA C. DANTUMA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11/16/96

Laura C. Dantuma
Notary Public

92266, page 1 of 4

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2. **Definitions.** In this document, the following definitions apply.

"Mortgage": This document will be called the "Mortgage".

"Borrower": MICHAEL KEARNEY AND CATHERINE KEARNEY
HUSBAND AND WIFE will be called "Borrower".

Borrower's address is shown below.

"Lender": TCF Bank Illinois fsb will be called "Lender". Lender is a federal savings bank which was formed and which exists under the laws of the United States of America. Lender's address for the purpose of receiving notices and making payments is 1420 Kensington, Suite 320, Oak Brook, IL 60521-2147.

"Agreement": The CommandCredit Plus Agreement signed by one or more Borrower and dated the same date as this Mortgage will be called the "Agreement". Under the Agreement, any Borrower signing the Agreement has a revolving line of credit called the "Account". The Agreement allows Borrower to obtain Loan Advances from the Account, make payments, and obtain readvances. Under the Agreement, Borrower may request Loan Advances from the Lender at any time until the final due date, shown in section 3 below.

"Property": The property that is described in section 5 is called the "Property".

3. **Final Due Date.** The scheduled date for final payment of what Borrower owes under the Agreement is 08-30-10 .

4. **Variable Annual Percentage Rate.** The Annual Percentage Rate is the cost of Borrower's credit as a yearly rate. The Annual Percentage Rate Lender uses to figure Finance Charges will go up and down, based on the highest U.S. prime rate published daily in *The Wall Street Journal* under "Money Rates" (the "Index"). The index is not the lowest or best rate offered by Lender or other lenders. If the index becomes unavailable, Lender will select, to the extent permitted by applicable laws and regulations, some other interest rate index that is comparable to the index and notify Borrower. If the Annual Percentage Rate goes up or down, the Daily Periodic Rate will also go up or down. To figure the ANNUAL PERCENTAGE RATE, we add 2.40 percentage points to the index rate in effect the previous business day. ("business day" does not include Saturdays, Sundays and legal holidays.) On each business day we will recalculate the ANNUAL PERCENTAGE RATE for this loan so that it is 2.40 % (2.40 percentage points) above the index published the previous business day. If the index rate changes, however, the ANNUAL PERCENTAGE RATE for this loan will change the next business day. The beginning index rate for this loan is 8.75 % per year. The beginning ANNUAL PERCENTAGE RATE for this loan is therefore 11.15 % per year, which is a Daily Periodic Rate of .030547 %.

The maximum ANNUAL PERCENTAGE RATE is 19.00 %. The minimum ANNUAL PERCENTAGE RATE is 9.50 %.

5. **Description of the Property.** Borrower gives Lender rights in the following Property:

a. The Land, which is located at (address)

9316 S SAYRE AV, OAKLAWN, IL 60453

The Land has the legal description shown above in section 1.

b. All buildings and all other improvements and fixtures (such as plumbing and electrical equipment) that are now or will in the future be located on the Land.

c. All "easements, rights, hereditaments, appurtenances, rents, royalties, and profits" that go along the Land. These are rights in other property that Borrower has as owner of the Land.

6. **Notice of Variable Rate of Interest.** This Mortgage secures a line of credit that has a variable rate of interest. This means that the interest rate may increase or decrease from time to time, as explained in paragraph 4.

7. **Finance Charge.** Borrower will pay a Finance Charge until Borrower has repaid everything owed under the Agreement. Lender figures the Finance Charge at the end of every monthly billing cycle. The monthly billing cycle runs from and including the first day of a month to and including the last day of that month. To figure the Finance Charge for a monthly billing cycle, Lender adds up the Finance Charges for each day in the billing cycle. To figure the Finance Charge for each day, Lender multiplies the Daily Periodic Rate times the Daily Balance of Borrower's Account on that day (for each day in the monthly billing cycle). Lender figures the Daily Periodic Rate by dividing the Annual Percentage Rate by 365 (or 366, in any leap year). Lender determines the Daily Balance by first taking the beginning balance of Borrower's Account each day, adding any new Loan Advances, and subtracting any payments or other credits to the Account, and subtracting any unpaid Finance Charges and Other Charges. Borrower pays a Finance Charge on Loan Advances beginning with the day they are made.

8. **Transfer of Rights in the Property.** Borrower mortgages, grants and conveys the Property to Lender subject to the terms of this Mortgage. This means that, by signing this Mortgage, Borrower is giving Lender those rights that are stated in this Mortgage and also those rights that the law gives to lenders who have taken mortgages on land. Borrower is giving Lender these rights to protect Lender from possible losses that might result if Borrower fails to keep the promises made in this Mortgage and in the Agreement.

9. **Termination of the Mortgage.** Lender's rights in the Property will end when the Agreement has been terminated and Borrower has paid all amounts owed to Lender under the Agreement and this Mortgage. Lender will send Borrower a document stating this and Borrower can file it with the County in which the Property is located.

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10. Promises of Borrower -- Borrower represents and warrants that:

- a. Borrower owns the Property;
- b. Borrower has the right to mortgage, grant, and convey the Property to Lender; and
- c. There are no claims or charges outstanding against the Property except any mortgages that are currently shown in the office where real estate records are filed for the County where the Property is located.

Borrower gives a general warranty of title to Lender. This means that Borrower will be fully responsible for any losses which Lender suffers because someone other than Borrower has some of the rights in the Property that Borrower represents and warrants to have. Borrower will defend ownership of the Property against any claims of such rights.

11. Borrower's Promise to Pay -- The Agreement. Borrower promises to promptly pay all amounts due on the Agreement except as explained in paragraph 18.

12. Borrower's Promise to Pay -- Charges and Assessment. Borrower promises to pay all present and future liens, taxes, assessments, utility bills, and other charges on the Property, including any amounts on any prior mortgage, as they become due.

13. Borrower's Promise to Buy Hazard Insurance. Borrower promises to obtain a hazard insurance policy naming Lender as mortgagee, and which covers all buildings on the Property. The insurance must be satisfactory to Lender and must cover loss or damage caused by fire and hazards normally covered by "extended coverage" hazard insurance policies. The insurance must be in the amounts and for the periods of time required by Lender. Borrower will notify Lender promptly if there is any loss or damage to the Property. Lender may file a "Proof of Loss" form with the insurance company. Borrower directs the insurance company to pay all "proceeds" to Lender. "Proceeds" are any money that the insurance company owes to the Borrower under the policy. Unless Lender agrees in writing that the Proceeds can be used differently, the Proceeds will be applied to pay the amount Borrower owes Lender.

If any Proceeds are used to reduce the amount which Borrower owes Lender under the Agreement, Borrower will still have to make the regular payments under the Agreement until the entire amount Borrower owes is paid in full.

If Lender forecloses this Mortgage, anyone who buys the Property at the foreclosure sale will have all the rights under the insurance policy.

14. Borrower's Promise to Buy Flood Insurance. If the Land or any part of the Land is located in a designated official flood-hazardous area, Borrower promises to buy flood insurance in the maximum amount available or the amount secured by this Mortgage, whichever is less. Borrower agrees to direct that any money payable under the flood insurance will be paid to Lender, but Borrower will still have to make regular payments under the Agreement until the entire amount Borrower owes is paid in full.

15. Borrower's Promise to Maintain the Property. Borrower promises that Borrower won't damage or destroy the Property. Borrower also promises to keep the Property in good repair. If any improvements are made to the Property, Borrower promises that they won't be removed from the Property.

16. Lender's Right to Take Action to Protect the Property. If (1) Borrower does not keep Borrower's promises and agreements made in this Mortgage, or (2) someone (Borrower or anyone else) begins a legal proceeding that may significantly affect Lender's rights in the Property (such as, for example, a legal proceeding in bankruptcy, or to condemn the Property), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions under this section may include, for example, paying any amount due under any prior mortgage, appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs.

Borrower promises to pay Lender all amounts that Lender pays under this section. If Lender pays an obligation, Lender will have all of the rights that the person Lender paid would have had against Borrower. This Mortgage covers all these amounts that Lender pays, plus interest, at the rate that is figured as if the money had been given under the Agreement, or if that rate violates the law, then at the highest rate that the law allows.

If Borrower fails to maintain insurance on the Property as required in paragraph 13, Lender may purchase insurance on the Property and charge Borrower for the cost as provided in this Mortgage. If Lender purchases this insurance, it will have the right to select the agent. Lender is not required to obtain the lowest cost insurance that might be available.

17. Lender's Rights. Any failure or delay by Lender in enforcing the rights that this Mortgage or the law give it, will not cause Lender to give up those rights. Lender may exercise and enforce any of its rights until its rights under the Mortgage end. Each right that this Mortgage gives to Lender is separate. Lender may enforce and exercise them one at a time or all at once.

18. Joint Borrowers. Each person that signs this Mortgage is responsible for keeping all of the promises made by "Borrower". Lender may choose to enforce its rights against anyone signing the Mortgage as an individual or against all of them. However, if someone signed this Mortgage, but did not sign the Agreement, then that person will not be required to pay any amount under the Agreement, but will have signed only to give Lender the rights that person has in the Property under the terms of this Mortgage.

19. Notices. Unless the law requires differently, or unless Borrower tells Lender differently, any notice that must be given to Borrower will be delivered or mailed to Borrower at the address shown in section 5. Notices that must be sent to Lender will be given by mailing them to Lender's address shown in section 2. Any notice will be "given" when it is mailed, or when it is delivered according to this paragraph.

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20. **Selling the Property.** Borrower agrees not to sell or transfer all or any part of the Property, or any rights in the Property, without the Lender's written consent. This includes sale by *Contract for Deed*

21. **No Defaults Under Prior Mortgages.** If there is already a mortgage against the Property, the Borrower promises that there will never be a default under that mortgage.

22. **No Other Mortgages.** Borrower agrees not to mortgage all or any part of the Property or allow anyone else to have a lien on the Property without the Lender's written consent.

23. **Lender's Remedies - Foreclosure.** If Lender requires Borrower to pay the entire outstanding balance under the Agreement in one payment (called "acceleration") and Borrower fails to make the payment when due, then Lender may foreclose this mortgage as provided below. However, before accelerating, Lender will send Borrower a written notice by certified mail which states:

a. The promise that Borrower failed to keep or the representation or warranty that Borrower breached;

b. The action Borrower must take to correct that failure;

c. The date, at least 30 days away, by which the failure must be corrected;

d. That if Borrower doesn't correct the failure or the representation or warranty that Borrower breached, Lender will accelerate, and if Borrower doesn't pay, Lender or another person may buy the Property at a foreclosure sale;

e. That Minnesota law allows Borrower to reinstate the Mortgage after acceleration; and

f. That Borrower may bring suit in court to argue that all promises were kept and to present any other defenses Borrower has to acceleration.

Lender need not send the notice if the promise Borrower failed to keep consists of Borrower's sale or transfer of all or a part of the Property or any rights in the Property without Lender's written consent. If Borrower does not correct the failure by the date stated in the notice, Lender may accelerate. If Lender accelerates, Lender may foreclose this Mortgage according to the Minnesota Statutes. Borrower gives Lender a power to sell the Property at a public auction. Borrower also agrees to pay Lender's attorneys' fees for the foreclosure in the maximum amount allowed by law. Lender will apply the proceeds of the foreclosure sale to the amount Borrower owes under this Mortgage, and to the costs of the foreclosure and Lender's attorneys' fees.

24. **Obligations After Assignment.** Any person who takes over Borrower's right or obligations under this Mortgage with Lender's consent will have Borrower's rights and will be obligated to keep all of the promises Borrower made in this Mortgage. If another person takes over Borrower's rights or obligations under this Mortgage, Borrower will not be released. Any person or organization who takes over Lender's rights or obligations under this Mortgage will have all of Lender's rights and must keep all of Lender's obligations under this Mortgage.

25. **Waiver of Homestead.** Under the homestead exemption law, Borrower's homestead is usually free from the claims of creditors. Borrower gives up the homestead exemption right for all claims arising out of this Mortgage. This includes Borrower's right to demand that property other than Borrower's homestead that has been mortgaged to Lender be foreclosed, before the homestead is foreclosed.

26. **Condemnation.** If all or part of the Property is condemned, Borrower directs the party condemning the Property to pay all of the money to Lender. Lender will apply the money to pay the amount Borrower owes Lender, unless Lender agrees in writing that the proceeds can be used differently. If Lender uses the money to reduce the amount Borrower owes under the Agreement, Borrower will still have to make regular monthly payments until everything Borrower owes is paid.

27. **Paragraph Headings.** The headings of the paragraphs are for convenience only, and are not a part of this Mortgage.

This instrument was drafted by: TCF BANK ILLINOIS fsb, 801 Marquette Avenue, Minneapolis, Minnesota 55402

92268, page 4 of 4 6/95

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