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THIS INSTRUMENT PREPARED BY:
CINDY GREEN

97893235

WHEN RECORDED MAIL TO:
HOME SAVINGS OF AMERICA, FSB
LOAN SERVICE CENTER
P O BOX 60015
CITY OF INDUSTRY, CA 91716-0015

ALL NOTICES TO LENDER SHALL BE MAILED
TO OR DELIVERED TO THE ABOVE ADDRESS.

Loan No. 019241108

. DEPT-01 RECORDING \$47.00
. T#0009 TRAN 0567 11/28/97 12:00:00
. #7353 # CG *-97-893235
COOK COUNTY RECORDER

ADJUSTABLE RATE MORTGAGE

NOTICE: This security instrument secures a Note which contains a provision allowing for changes in the interest rate. Increases in the interest rate may result in higher payments. Decreases in the interest rate may result in lower payments.

49.00

This mortgage (the "Security Instrument"), made this 26TH day of NOVEMBER, 1997, between JAMES H. BENNETT AND GLORIA J. BENNETT HUSBAND AND WIFE JAMES H BENNETT, III AN UNMARRIED MAN, herein called BORROWER, whose address is 4026 DUNDEE ROAD, NORTHBROOK, IL 60062, and HOME SAVINGS OF AMERICA, FSB, A FEDERAL SAVINGS BANK, herein called LENDER, whose address is 4900 RIVERGRADE ROAD, IRWINDALE, CA 91706-1404.

NOW, THEREFORE, Borrower does hereby mortgage grant and convey to Lender the following described property located in Town/Village/City of CHICAGO, County of COOK, State of ILLINOIS:

LOT 40 (EXCEPT THE E 12 1/2 FEET THEREOF) AND ALL OF LOT 39 IN FREDERICK ZAPEL'S SUBDIVISION OF THE NORTH 1/2 OF THE EAST 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPLE MERIDIAN, IN COOK COUNTY, ILLINOIS.

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns forever, together with all interest which Borrower now has or may hereafter acquire in or to said property, and in and to: (a) all easements and rights of way appurtenant thereto; and (b) all buildings, structures, improvements, fixtures and appurtenances now or hereafter placed thereon, including, but not limited to, all apparatus and equipment, whether or not physically affixed

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BOX 333-CTI

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to the land or any building, used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal or other services; and all waste vent systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor covering, awnings, ranges, ovens, water heaters and attached cabinets; it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the real property that is conveyed hereby; and (c) all water and water rights (whether or not appurtenant) and shares of stock, if any, pertaining to such water or water rights, ownership of which affects said property, SUBJECT, HOWEVER, to the assignment to Lender of such rents, income, issues and profits hereinafter set forth. Borrower agrees to execute and deliver, from time to time, such further instruments as may be required by Lender to confirm the lien of this Security Instrument on any such properties. The properties mortgaged, granted, and conveyed to Lender hereunder are hereinafter referred to as "such property."

Borrower absolutely and irrevocably grants, transfers and assigns to Lender the rents, income, issues and profits of such property.

FOR THE PURPOSE OF SECURING:

(1) Payment of the principal sum of \$334,400.00 with interest thereon, according to the terms of a promissory note of even date herewith (herein the "Note") and having a final maturity date of DECEMBER 10, 2027 made by Borrower, payable to Lender or order and all modifications, extensions or renewals thereof. (2) Payment of such additional sums with interest thereon: (a) as may be hereafter borrowed from Lender by the then record owner of such property and evidenced by a promissory note or notes reciting it or they are so secured and all modifications, extensions or renewals thereof; or (b) as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Lender, under any provisions of this Security Instrument and all modifications, extensions or renewals thereof. (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the indebtedness secured hereby. (4) Performance, if the indebtedness secured hereby or any part thereof is for the purpose of constructing improvements on such property, of each provision or agreement of Borrower contained in any construction loan agreement, building loan agreement or other agreement between Borrower and Lender relating to such property. (5) The performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of any lease and any and all other instruments creating Borrower's interest in or defining Borrower's right in respect to such property. (6) Compliance by Borrower, with each and every monetary provision to be performed by Borrower under any declaration of covenants or conditions or restrictions pertaining to such property, or any declaration of condominium ownership and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, if same have not been paid or valid legal steps taken to enforce such payment within 30 days after such written request is made. (7) Performance of all agreements of Borrower to pay fees and charges to the Lender relating to the indebtedness secured hereby whether or not herein set forth.

TO PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, BORROWER AGREES:

(1) **Payment of Debts; Ownership Interest.** To pay all indebtedness secured hereby, when from any cause the same shall become due. Borrower shall keep such property free from statutory and governmental liens of any kind, is possessed of ownership of such property in the manner described in the title report delivered to Lender, and has good, right and lawful authority to convey such property in the manner and form herein provided. Borrower covenants and warrants that such property is free from liens or encumbrances except as indicated in such title report and that Borrower shall defend the same forever against the claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

(2) **Construction of Improvements.** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the indebtedness

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secured hereby, to pay when due all costs and liabilities incurred therefore, and not to permit any mechanic's or construction lien, materialmen's lien or other statutory lien against such property, nor any stop notice against any loan proceeds. Borrower also agrees, anything in this Security Instrument to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed improvements promptly; (b) to complete same in accordance with plans and specifications that Lender at its option may approve; (c) to allow Lender to inspect such property at all times during construction; (d) to replace any work or materials unsatisfactory to Lender, within fifteen (15) days after written notice from Lender of such fact; and (e) to perform all other obligations of Borrower under any building loan agreement relating to such property.

(3) **Repair and Maintenance of Property.** To keep such property in good condition and repair, not to substantially alter, remove or demolish any buildings thereon, including any and all fixtures attached to such property; to restore promptly and in good workmanlike manner any buildings which may be damaged or destroyed, including, but not limited to, damage from termites and earth movement; to pay when due all claims for labor performed and materials furnished in connection with such property and not to permit any mechanic's or construction lien, materialmen's lien, or other statutory lien against such property; to comply with all law affecting such property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer or permit any act upon such property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune; and to do all other acts that from the character or use of such property may be reasonably necessary to keep such property in the same condition (reasonable wear and tear excepted) as at the date of this Security Instrument.

(4) **Fire and Casualty Insurance.** To at all times keep the improvements now existing or hereafter erected on such property insured against loss by fire, hazards included within the term "special form coverage" and such other hazards, including floods and flooding, with respect to such property for which Lender now or hereafter requires insurance (collectively, "required insurance"). Each required insurance policy shall be in an amount, for a term and in form and content and by such companies, as may be satisfactory to Lender, with loss payable to Lender, and shall be delivered to, and remain in possession of, Lender as further security for the faithful performance of this Security Instrument. Borrower shall also furnish Lender with written evidence showing payment of all premiums therefor. At least thirty (30) days prior to the expiration of any required insurance policy, a policy renewing or extending such expiring insurance shall be delivered to Lender with written evidence showing payment of the premium therefor. If any required insurance policy and evidence of payment of the premium are not delivered to Lender within the time period required by Lender, Lender, but without obligation so to do, without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, may, acting solely for its own interest and not as Borrower's agent, obtain such insurance through or from any insurance agency or company acceptable to it, including an affiliate of Lender which will be entitled to receive a commission for its services, and pay the premium therefor. Lender shall be under no obligation to retain in place any insurance policy previously purchased by Borrower. Borrower agrees that any insurance policy purchased by Lender may be "forced order" insurance, and acknowledges that (i) the cost of any insurance policy purchased by Lender may be substantially more than the cost of any policy previously purchased or thereafter available for purchase by Borrower, and (ii) the coverage provided by such insurance policy may be different from the coverage of any policy previously purchased or thereafter available for purchase by Borrower. Lender shall not be chargeable with obtaining or maintaining, or liable for not obtaining or maintaining any required insurance or for the collection of any such insurance monies or for any insolvency of any insurer or insurance underwriter. Borrower hereby assigns to Lender all unearned premiums on any required insurance policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the property conveyed at any judicial sale held hereunder.

In addition to the foregoing, Borrower agrees to cause any voluntary insurance policy (as hereafter defined) covering earthquake, flood, windstorm or any other hazards to such property to name Lender as the loss payee thereof

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and to contain or be subject to a clause providing that the proceeds from any loss covered by any voluntary insurance policy shall be payable, absolutely and irrevocably, to Lender. For purposes of this Security Instrument, a "voluntary insurance policy" shall mean and shall include any insurance policy that covers earthquake, flood, windstorm or any other hazards to such property but which is not required as a condition to the indebtedness secured hereby, and any amendment, endorsement or rider (or any other document by which such insurance coverage is established) to any fire and other insurance policy, which amendment, endorsement or rider (or such other document by which such insurance is established) covers earthquake, flood, windstorm or any other hazards to such property but which is not required as a condition to the indebtedness secured hereby, and regardless of whether any such insurance policy, amendment, endorsement, rider or other document is established before, on or after the date of this Security Instrument.

Lender, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in, extracted from or relating to any required insurance policy theretofore delivered to Lender pursuant hereto or any voluntary insurance policy, and any information concerning the indebtedness secured hereby.

(5) **Assignment and Waiver of Insurance Proceeds, Etc.** Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's rights, title and interest in and to all proceeds from any required insurance policy and any voluntary insurance policy that are due, paid or payable with respect to any damage to such property, regardless of whether the required insurance policy or voluntary insurance policy is established before, on or after the date of this Security Instrument. By absolutely and irrevocably assigning to Lender all of Borrower's rights to receive any and all proceeds from any required insurance policy and any voluntary insurance policy, Borrower hereby waives, to the full extent allowed by law, all of Borrower's rights to receive any and all of such insurance proceeds.

Borrower hereby absolutely and irrevocably assigns to Lender all of Borrower's right, title and interest in and to (a) any and all claims, present and future, known or unknown, absolute or contingent, (b) any and all causes of action, (c) any and all judgments and settlements (whether through litigation, mediation, arbitration or otherwise), (d) any and all funds sought against or from any party or parties whatsoever, and (e) any and all funds received or receivable in connection with any damage to such property, resulting from any cause or causes whatsoever, including but not limited to, land subsidence, landslide, windstorm, earthquake, fire, flood or any other cause.

Borrower agrees to execute, acknowledge if requested, and deliver to Lender, and/or upon notice from Lender shall request any insurance agency or company that has issued any required insurance policy or voluntary insurance policy to execute and deliver to Lender, any additional instruments or documents requested by Lender from time to time to evidence Borrower's absolute and irrevocable assignments set forth in this paragraph.

(6) **Taxes and Other Sums Due.** To pay, satisfy and discharge: (a) before becoming past due, all general and special taxes, and all assessments on water stock, if any, affecting such property; (b) when due, all special assessments for public improvements, without permitting any improvement bond to issue for any special assessment; and (c) on demand of Lender, but in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on such property, or any part thereof, which are, or appear to Lender to be, prior or superior hereto; (2) all costs, fees and expenses of this Security Instrument whether or not described herein; (3) fees, including but not limited to attorneys' fees, charges, costs or expenses to monitor bankruptcy actions directly or indirectly involving Borrower; (4) fees, including but not limited to attorneys' fees, costs or expenses incurred in connection with arrangements to cure any delinquency or breach by Borrower; (5) such other charges as the Lender may deem reasonable for services rendered by Lender and furnished at the request of Borrower, any successor in interest to Borrower or any agent of Borrower or any successor in interest to Borrower; and (6) all payments and monetary obligations required of the owner of such property under any declaration of covenants or conditions or restrictions pertaining to such property or any modification thereof. Should Borrower fail to make any such payment, Lender, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto. Borrower agrees to notify Lender immediately upon receipt by Borrower of

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notice of any increase in the assessed value of such property and agrees that Lender, in the name of Borrower, may contest by appropriate proceedings such increase in assessment. Borrower agrees to notify Lender and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of such property, the assessed value or property tax basis of such property, or the availability of any exemption to which Borrower is or may be entitled.

(7) **Escrow/Impounds.** To pay to Lender, if Lender shall so request, in addition to any other payments required hereunder, monthly advance installments, as estimated by Lender, for taxes, assessments, insurance premiums, ground rents or other obligations relating to such property (hereinafter in this paragraph referred to as "such obligations") for the purpose of establishing a fund to insure payment when due, or before delinquency, of any or all of such obligations required to be paid as to such property. If the amounts paid to Lender under the provisions of this paragraph are insufficient to discharge the obligations of Borrower to pay such obligations as the same become due or delinquent, Borrower shall pay to Lender, upon its demand, such additional sums necessary to discharge Borrower's obligation to pay such obligations. All monies paid to Lender under this paragraph may be intermingled with other monies of Lender and shall not bear interest, except as required by law. Lender may pay such obligations whether before or after they become due and payable. Amounts paid to Lender under the provisions of this paragraph shall constitute additional security for the indebtedness secured by this Security Instrument. In the event of a default in the payment of any monies due on the indebtedness secured hereby, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Security Instrument, then all monies paid to Lender under the provisions of this paragraph may, at the option of Lender, be applied to the payment of any indebtedness or other obligations secured hereby in lieu of being applied to any of the purposes for which the escrow/impound account is established. Lender will make such reports of escrows/impounds as are required by law.

(8) **Condemnation and Injury to Property.** All sums due, paid or payable to Borrower or any successor in interest to Borrower of such property, whether by way of judgment, settlement or otherwise: (a) for injury or damage to such property; or (b) in connection with any condemnation for public use of or injury to such property, or any part thereof, are hereby assigned and shall be paid to Lender. All causes of action of or belonging to Borrower, whether accrued before or after the date of this Security Instrument, for damage or injury to such property, or any part thereof, or in connection with the transaction financed in whole or in part by the funds loaned to Borrower by Lender, or in connection with or affecting said property or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of material fact, are hereby assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all its expenses, including reasonable attorneys' fees, may apply such proceeds to the indebtedness secured by this Security Instrument or to any deficiency under this Security Instrument or may release any monies so received by it or any part thereof, as Lender may elect. Lender may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Borrower agrees to execute any further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

(9) **Disposition of the Proceeds of any Insurance Policies, Condemnation or Other Recovery.** Any amount received or receivable by Lender pursuant to this Security Instrument and any amount received or receivable by Borrower (a) as proceeds of any required insurance policy or voluntary insurance policy relating to such property, regardless of whether the required insurance policy or voluntary insurance policy is established before, on or after the date of this Security Instrument, (b) in connection with any full, partial or temporary condemnation for public use of or injury to such property, (c) for injury or damage to such property or in connection with the transaction financed by the indebtedness secured hereby, without reducing the indebtedness secured hereby, shall be received and controlled solely by Lender, and shall be used to repair, replace, restore, or reconstruct such property to a condition satisfactory to Lender or, at the sole option of Lender, may be released in whole or in part to Borrower, or any such amount may be

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apportioned and applied in any manner by Lender to any one or more of such uses. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding anything contained in this paragraph to the contrary, (x) if the repair, replacement, restoration or reconstruction is not feasible, (y) if Lender determines in good faith that the value of its security interest would remain impaired despite such repair, replacement, restoration or reconstruction, or (z) if a full condemnation of such property has occurred, then Lender, at its sole option, shall have the right to apply any such amount or any part thereof to any indebtedness secured hereby in such order as Lender may determine; and if there be any proceeds remaining after all indebtedness secured hereby is paid in full, then Lender shall distribute such proceeds to the person or persons legally entitled thereto. If such proceeds are used for repair, replacement, restoration or reconstruction of such property, Lender shall have the right to periodically inspect the work done on such property. Lender does not make any warranty or representation regarding, and assumes no responsibility for, the work done on such property, and Borrower shall not have any right to rely in any way on any inspection(s) by or for Lender or its agent. Borrower shall be solely responsible for determining that the work is done in a good, thorough, efficient and workmanlike manner in accordance with all applicable laws.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs (1) and (7) hereof or change the amount of the payments. If under paragraph (35) such property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to such property prior to the acquisition shall pass to Lender to the extent of the indebtedness secured by this Security Instrument immediately prior to the acquisition.

(10) **Litigation.** Borrower shall defend this Security Instrument in any action or proceeding purporting to affect such property whether or not it affects the lien hereof or purporting to affect the lien hereof or purporting to affect the rights or powers of Lender, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of such property; and Lender is hereby authorized, without obligation so to do, to prosecute or defend any such action, whether brought by or against Borrower or Lender, or with or without suit, to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding; and Lender may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein, as either may be deemed necessary or advisable, and may settle, compromise or pay the same or any other claims and, in so doing, may expend and advance such sums of money as either may deem necessary. Whether or not Borrower so appears or defends, Borrower on demand shall pay all costs and expenses of Lender, including but not limited to reasonable attorneys' fees and costs of evidence of title, in any such action or proceeding in which Lender may appear by virtue of being made a party defendant or otherwise, and irrespective of whether the interest of Lender in such property or its rights or powers hereunder may be affected by such action, including, but not limited to, any action for the condemnation or partition of such property and any suit brought by Lender to foreclose this Security Instrument.

(11) **Loan on Leasehold Estate.** If such property includes a leasehold estate, Borrower agrees to comply with all of the terms, conditions and provisions of the instrument or instruments creating such leasehold. Borrower also agrees not to amend, change or modify his leasehold interest, or the terms on which he has such leasehold interest, or to agree to do so, without the written consent of Lender being first obtained.

(12) **Prepayment Charge.** Should any indebtedness secured hereby require Borrower to pay a fee in connection with the prepayment of any of the indebtedness secured hereby, to pay such fee to the extent permitted by applicable law, notwithstanding the fact that Borrower shall have defaulted in any obligation secured hereby and Lender, by reason thereof, shall have declared all indebtedness secured hereby immediately due and payable.

(13) **Failure of Borrower to Comply with Security Instrument.** Should Borrower fail to make any payment, or fail to do any act required by this Security Instrument, or fail to perform any obligation secured by this Security

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Instrument, or fail to perform any agreement of Borrower contained in any papers executed by Borrower relating to the indebtedness secured hereby, or, if the indebtedness secured hereby or any part thereof is for the purpose of constructing improvements on such property, fail to perform each provision or agreement of Borrower contained in any construction loan agreement or other agreement between Borrower and Lender relating to such property, or fail to perform all agreements of Borrower to pay fees and charges to Lender, or do any act Borrower agreed not to do under this Security Instrument, Borrower shall be in default under this Security Instrument. Lender, but without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without contesting the validity or amount of the same, may: (a) pay or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon such property for such purposes; (b) pay, purchase, contest or compromise any encumbrance, charge or lien, which in its judgment is or appears to be prior or superior hereto; and (c) in exercising any such power, pay necessary expenses, including but not limited to reasonable attorneys' fees. Borrower agrees to repay any amount so expended on demand of Lender.

(14) **Sums Advanced to Bear Interest and To Be Added to Indebtedness.** To pay immediately upon demand any sums advanced, paid or incurred by Lender under any clause or provision of this Security Instrument. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced, paid or incurred at the same interest rate, as may be adjusted from time to time, as such indebtedness and such sum and interest thereon shall be secured by this Security Instrument.

(15) **Application of Funds.** Lender shall have the right at its sole discretion to direct the manner in which payments or proceeds shall be applied upon or allocated among the various items constituting Borrower's indebtedness or obligations secured hereby.

(16) **Obligations of Borrower Joint and Several.** If more than one person is named as Borrower, each obligation of Borrower shall be the joint and several obligation of each such person.

(17) **Acceleration Clause: Right of Lender to Declare All Sums Due on any Transfer, Etc.** Lender shall have the right, at its option, to declare any indebtedness and obligations secured by this Security Instrument, irrespective of the maturity date specified in the Note or any note or agreement evidencing the same, due and payable within 30 days after such declaration if: (a) Borrower or any successor in interest to Borrower of such property sells, enters into a contract of sale, conveys or alienates such property or any part thereof; (b) Borrower permits his title or any interest in such property to be divested, whether voluntarily or involuntarily, or leases such property (or any part of such property) for a term of more than 3 years; (c) Borrower changes or permits to be changed the character or use of such property; (d) Borrower drills or extracts or enters into a lease for the drilling for or extracting of oil, gas or other hydrocarbon substances or any mineral of any kind or character in such property; (e) Borrower is a partnership and the interest of a general partner is assigned or transferred; (f) Borrower is a corporation and more than 25% of the corporate stock of that corporation is sold, transferred or assigned during a 12-month period; (g) Borrower is a trust and there is a change of beneficial interest with respect to more than 25% of the trust assets; (h) Borrower is a limited liability company and more than 25% of the limited liability company interests is sold, transferred or assigned during a 12-month period; or (i) Borrower has made any material misrepresentation or failed to disclose any material fact in those certain financial and other written representations and disclosures made by Borrower in order to induce Lender to enter into the transaction evidenced by the Note or notes or agreements which this Security Instrument secures; and Lender may then or thereafter exercise any of the remedies provided by this Security Instrument following a default hereunder.

(18) **No Waiver by Lender.** No waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or of any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any indebtedness secured hereby after its due date, or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder, but failed, to make or

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perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay such other sums or to perform such other acts.

(19) **Acceleration Remedies.** Except as provided in paragraph (17) hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Security Instrument, including the covenants to pay when due any sums secured by this Security Instrument, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph (34) hereof specifying: (a) the breach; (b) the action required to cure such breach; (c) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (d) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Security Instrument to be immediately due and payable without further demand and may foreclose this Security Instrument by judicial proceeding in accordance with paragraph (35) hereof.

(20) **Modification in Writing.** This Security Instrument cannot be changed or modified except as otherwise provided in this Security Instrument or by agreement in writing signed by Borrower, or any successor in interest to Borrower, and Lender.

(21) **Right to Collect and Receive Rents and Profits.** Notwithstanding any other provisions hereof, Lender hereby grants permission to Borrower to collect and retain the rents, income, issues and profits of such property as they become due and payable, but Lender reserves the right to revoke such permission at any time with or without cause by notice in writing to Borrower. In any event, such permission to Borrower automatically shall be revoked upon default by Borrower in payment of any indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Lender may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of such property, or any part thereof; make, cancel, enforce or modify leases; obtain and eject tenants; set or modify rents; in its own name sue for or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, to payment of costs and expenses of operation and collection, including but not limited to receiver's fees, premiums on receiver's bond and reasonable attorney's fees, and then to payment of any indebtedness secured hereby and in such order as Lender may determine; and except for such application, Lender shall not be liable to any person for the collection or non-collection of any rents, income, issues and profits, nor the failure to assert or enforce any of the foregoing rights. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(22) **Remedies.** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Lender or to which it may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by it, and it may pursue inconsistent remedies. If Lender holds any additional security for any indebtedness secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after any exercise of Lender's remedies hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby, and the Lender is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby, any and all sums or money, or credits of or belonging to Borrower and which the Lender may have in its possession or under its control, including, among other things, any escrows/impounds held by Lender under paragraph (7) hereof.

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(23) **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Security Instrument the court in which such complaint is filed shall appoint a receiver of such property or shall appoint Lender as mortgagee in possession. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of such property whether the same shall be then occupied as a homestead or not. Such receiver or mortgagee in possession shall have power to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit, as well as during any further times when Borrower, his successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of such property during the whole said period. The court from time to time may authorize the receiver or mortgagee in possession to apply the net income held by either of them in payment in whole or in part of the indebtedness and other sums secured hereby, or in payment of any tax, special assessment or other lien which may be or become superior to the lien hereof or superior to a decree foreclosing this Security Instrument, provided such application is made prior to foreclosure sale. In case of a judicial sale, such property, or so much thereof as may then be affected by this Security Instrument, may be sold in one parcel.

(24) **Power of Lender.** Without affecting the liability of any person, including Borrower, for the payment of any indebtedness secured hereby, or the lien of this Security Instrument upon any remainder of such property for the full amount of any indebtedness then or thereafter secured hereby, or the rights or powers of Lender with respect to the remainder of such property (other than any person or property specifically released by Lender), Lender from time to time, without liability therefor, and without notice to Borrower, may do any one or more of the following: (a) release any additional security for the indebtedness secured hereby; (b) extend the time or otherwise alter the terms of payment of such indebtedness; (c) accept additional security; (d) substitute or release any property securing such indebtedness; (e) consent to the making of any map, plat or subdivision thereof; (f) join in granting any easement thereon; or (g) join in any extension agreement subordinating or otherwise affecting the lien or charge thereof.

(25) **Offsets.** No indebtedness secured by this Security Instrument shall be offset or compensated or shall be deemed to have been offset or compensated by all or part of any claim, cause of action, counterclaim or part of any claim, cause of action, counterclaim or crossclaim, whether liquidated or unliquidated, which Borrower now or hereafter may have or may claim to have against Lender and in respect to the indebtedness now or hereafter secured hereby. Borrower waives to the fullest extent permitted by law, any and all rights of offset which Borrower now or hereafter may have or claim to have in respect to all or part of the indebtedness secured hereby, and further waives the benefits or any applicable law, regulation or procedure which provides or substantially provides that, where cross-demands for money have existed between persons at any point in time when neither demand was barred by the applicable statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the applicable statute of limitations.

(26) **Misrepresentation or Nondisclosure.** Borrower has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the Note or notes which this Security Instrument secures, and in the event that Borrower has made any misrepresentation of material fact or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this Security Instrument, irrespective of the maturity date specified in the Note or notes, immediately due and payable and Lender may then or thereafter exercise any of the remedies provided by this Security Instrument following a default hereunder.

(27) **Security Agreement.** This Security Instrument shall also constitute and serve as a "Security Agreement" and a fixture filing within the meaning of and shall create a security interest under the Uniform Commercial Code of the

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state in which such property is located, the secured party being herein referred to as "Lender" and Debtor being herein referred to as "Borrower". The Borrower agrees to and shall execute and deliver to the Lender such "Financing Statements" and such further assurances as the Lender may, from time to time, consider necessary to create, perfect and preserve the Lender's liens upon all rents, insurance proceeds, condemnation awards, and other personal property herein described and all additions, substitutions, replacements and accessions thereto, and all proceeds of its or their sale or other disposition. If Lender so elects and if permitted by applicable law, this Security Instrument shall constitute a Financing Statement and Lender shall have the right at any time to file this Security Instrument as a Financing Statement, but the failure of Lender to do so shall not impair the validity and enforceability of this Security Instrument in any respect whatsoever. The Lender, at the expense of the Borrower, may cause such Financing Statements and assurances to be recorded and rerecorded, filed and refiled, and renewed or continued, at such times and places as may be required or permitted by law to create, perfect and preserve such liens. In the event the Borrower fails to promptly execute and return to the Lender such Financing Statements as the Lender may require to create, preserve and perfect its lien, the Borrower shall and does hereby designate the Lender to act as the Borrower's agent for the sole and limited purpose of executing such Financing Statements and any such execution by the Lender pursuant to this Agreement shall be effective and binding upon the Borrower as though executed originally by the Borrower. The Borrower's designation as agent hereunder shall not be subject to revocation until the Note is paid in full and all other indebtedness secured by this Security Instrument has been satisfied in full. The Lender shall have all the rights, with respect to all property encumbered hereby, afforded to the Lender under the Uniform Commercial Code of the state in which the property is located in addition to, but not in limitation of, the other rights, afforded to the Lender by the Security Instrument. Any after-acquired personal property or fixtures used in connection with said property shall be encumbered by the lien of this Security Instrument, and if appropriate or desired by the Lender, new Financing Statements covering the same shall be executed by the Borrower and forwarded to the Lender with the cost of recording same.

(28) **Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Security Instrument, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing. The terms "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos. Borrower represents and warrants to Lender that: (a) During the period of Borrower's ownership of such property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, about or from such property; (b) Borrower has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance on, under, about or from such property by any prior owners or occupants of such property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) except as previously disclosed to and by acknowledged by Lender in writing, (i) neither Borrower nor any tenant, contractor, agent or other authorized user of such property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, about or from such property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Borrower authorizes Lender and its agents to enter upon such property to make such inspections and tests, at Borrower's expense, as Lender may deem appropriate to determine compliance of such property with this section of the Security Instrument. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any

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responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating such property for hazardous waste and hazardous substances. Borrower hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Borrower may directly or indirectly sustain or suffer resulting from a breach of this section of the Security Instrument or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Borrower's ownership or interest in such property, whether or not the same was or should have been known to Borrower. The provisions of this section of the Security Instrument, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Security Instrument and shall not be affected by Lender's acquisition of any interest in such property, whether by foreclosure or otherwise.

(29) **Further Assurances.** At any time, and from time to time, upon request of Lender, Borrower will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such time and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (a) the obligations of Borrower under the Note or this Security Instrument, and (b) the liens and security interests created by this Security Instrument on such property, whether now owned or hereafter acquired by Borrower. Unless prohibited by law or agreed to the contrary by Lender in writing, Borrower shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

(30) **Documentation Correction.** Borrower agrees to cooperate fully with Lender with respect to the correction of any errors contained in the Note, this Security Instrument or any of the documentation relating to the indebtedness secured hereby (altogether the "Documentation") including, without limitation, the execution of any documentation that Lender may request (a) to correct such errors or (b) to create documentation in substitution for Documentation that is affected by such errors. Borrower also agrees to execute substitute documentation in the event that any of the original or previously substituted Documentation shall have been lost or destroyed at any time. If the Borrower fails to execute any such documentation or to take any other action reasonably requested by Lender under this paragraph within fifteen days of such request, Lender may institute an action or proceeding against Borrower to enforce the provisions of this paragraph. In that event, Lender shall be entitled to recover from Borrower its reasonable costs and expenses of such action or proceeding including, without limitation, court costs and attorneys fees.

(31) **Waiver of Statute of Limitations.** Time is of the essence as to all Borrower's obligations hereunder; and to the extent permitted by law, Borrower waives all present or future statutes of limitation with respect to any indebtedness, demand or obligation secured hereby in any action or proceeding for the purpose of enforcing this Security Instrument or any rights or remedies hereunder.

(32) **Inspection; Business Records.** Lender at any time during the continuation of this Security Instrument may enter and inspect such property at any reasonable time. Borrower agrees that in the event that such property is now or hereafter used for commercial or residential income purposes, that when requested by Lender, Borrower will promptly deliver to Lender such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Lender which will be in form and content prepared according to the generally accepted accounting principles and practices, which statements shall cover the financial operations relating to such property, and Borrower further agrees, when requested by Lender, to promptly deliver, in writing, such further additional information as required by lender relating to any such financial statements.

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(33) **Governing Law; Severability.** The loan secured by this Security Instrument is made pursuant to, and shall be construed and governed by, the laws of the United States and the rules and regulations promulgated thereunder, and, to the extent not inconsistent therewith, the laws of the jurisdiction in which such property is located. If any paragraph, clause or provision of this Security Instrument or the Note or any other notes or obligations secured by this Security Instrument is determined by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so determined and shall not affect the remaining paragraphs, clauses and provisions of this Security Instrument or the Note or other notes or obligations secured by this Security Instrument.

(34) **Notice to Borrower.** Except as otherwise required by applicable law, any notice to the Borrower provided for in the Note or this Security Instrument shall be deemed given when it is deposited in the United States mail, postage prepaid, addressed to the Borrower at the address of the Borrower as it appears in Lender's records pertaining to the indebtedness evidenced by the Note at the time notice is given.

(35) **Foreclosure of Security Instrument.** When the indebtedness hereby secured shall become due whether by acceleration or otherwise, the Lender shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree of sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication cost and costs of procuring all abstracts of title or commitments for title insurance. Such fees, charges and costs may be estimated as to items to be expended after entry of the decree as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of such property. All such expenditures and expenses shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Note. Such expenditures and expenses shall include expenditures made in connection with (a) any proceeding to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this Security Instrument or any indebtedness hereby secured; (b) preparation for the commencement of any suit for foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; (c) preparation for the defense of any threatened suit or proceeding which might affect such property or the security hereof, whether or not actually commenced; and (d) any efforts for collection of any past due indebtedness secured hereby. Lender is entitled to accept any partial cure of any default by Borrower without jeopardizing or requiring the postponement of any foreclosure proceeding hereunder. The proceeds of any foreclosure sale of such property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Security Instrument; third, to the person or persons legally entitled thereto.

(36) **Statement of Obligation.** Lender may charge and collect a fee of \$60.00 or such greater amount as is allowed by law for furnishing any statement of obligation, beneficiary's statement, beneficiary's demand or any other statement regarding the condition of or balance owing under the Note or notes secured by this Security Instrument.

(37) **Attorneys' Fees.** As used in this Security Instrument and in the Note "attorneys' fees" shall include attorneys' fees throughout all appeals.

(38) **General Provisions.** (a) This Security Instrument applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Lender" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Lender herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this Security Instrument and shall not be used in construing it.

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(39) **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in such property.

(40) **Adjustable Rate Mortgage Provisions.** The Note which this Security Instrument secures contains provisions which permit: (a) increases and decreases to the rate of interest provided in the Note on a monthly basis; (b) increases and decreases to the monthly payment of principal and interest on a yearly basis; (c) a limitation on increases and decreases to said monthly payment amount; and (d) increases in the outstanding principal amount due on the loan. Reference is made to said Note for a complete description of the adjustable rate terms of the indebtedness secured by this Security Instrument.

(41) **Future Advances.** Upon request of Borrower, Lender at Lender's option prior to release of this Security Instrument, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured by this Security Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Security Instrument, not including sums advanced in accordance herewith to protect the security of this Security Instrument, exceed the original amount of the Note plus \$NONE.

NOTICE

Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interest. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

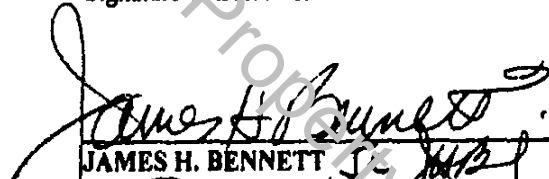
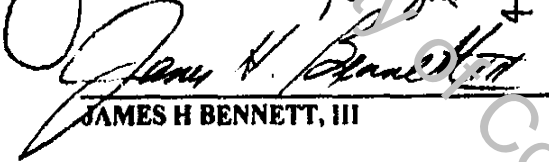
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IN WITNESS WHEREOF, BORROWER has executed this Security Instrument.

NOTICE: THE NAMES OF ALL PERSONS SIGNING SHOULD BE TYPEWRITTEN OR PRINTED BELOW THE SIGNATURE LINE.

Signature of Borrower:


Borrower
JAMES H. BENNETT, III

Borrower
JAMES H BENNETT, III


Borrower
GLORIA J. BENNETT

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Attach Notary Acknowledgments here