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Cook County Recorder 37.50

This document was prepared by and after recording should be returned to:

Bank of America National Trust and Savings Association
231 South LaSalle Street -0255
Chicago, Illinois 60697

Attn: Jean M. Lamberth
#3043247

917758

MORTGAGE

THIS MORTGAGE is made this 16th. day of January, 1998, between Kevin Evanich and Joan Keller-Evanich, his wife not as joint tenants or tenants in common but as tenants by the entirety

as Mortgagor, and **BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION**, 231 South LaSalle Street, Chicago, Illinois 60697, as Mortgagee. As used in this document the words "you" and "your" refer to the persons signing this instrument and the word "Lender" refers to Bank of America National Trust and Savings Association and its successors and assigns.

Indebtedness Being Secured You are signing this Mortgage to secure to Lender (i) repayment of amounts outstanding under a certain variable-rate Private Equity Line Agreement (the "Agreement") dated the same date as this Mortgage in the amount of \$ 150,000.00 ("Credit Limit") or so much thereof as may be outstanding from time to time under the Agreement plus accrued interest (Finance Charges), fees, charges and other amounts that may be owing under the Agreement providing for monthly payments of interest (Finance Charges) and providing for all sums owing to Lender hereunder and under the Agreement if not paid earlier either voluntarily or required to be paid on January 16, 1999 ("Maturity Date"), and all renewals, extensions or modifications of the Agreement, (ii) any amounts advanced to protect the security of this Mortgage, (iii) the performance of the parties signing the Agreement and (iv) your performance of covenants and agreements contained in this Mortgage. The total indebtedness secured by this Mortgage including, without limitation, the Credit Limit, Finance Charges, protective advances and all other amounts that may be owing to Lender, shall at no time exceed five hundred percent (500%) of the Credit Limit. The Agreement sets forth terms under which the rate (Annual Percentage Rate) at which the Finance Charge is computed may change over the term of the Agreement. The Annual Percentage Rate may vary each month if the Prime Rate used to determine the Annual Percentage Rate changes. The Prime Rate shall mean the highest of the Prime Rates, as reported in the Money Rates Section of the *Wall Street Journal* on the last business day of the month before the Billing Period in which it is to be applied. The effect of an increase in the Annual Percentage Rate will be an increase in the scheduled minimum monthly payment of the Finance Charge. The Agreement states that the interest rate component of the Annual Percentage Rate will never exceed 18%.

Security. You hereby mortgage, grant and convey to Lender the following described real estate located in the County of Cook, State of Illinois, subject only to prior encumbrances, restrictions of record and the lien of this Mortgage:

Tax. #05-17-409-009-0000

See legal description attached hereto and made a part hereof

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having an address of 779 Bryant; Winnetka, Il. 60093.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold), are hereinafter referred to as the "Property."

You covenant that you are lawfully seised of the estate hereby conveyed and have the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. You covenant that you warrant and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

Promises and Agreements. You agree with Lender as follows:

1. **Payment of Principal and Interest.** You shall promptly pay or cause to be paid, as and when required by the Agreement, the principal and interest due under the Agreement together with all other charges imposed under the Agreement.

2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender will be applied first to billed but unpaid finance charges, then to any "other charges," then to principal, and then to accrued but unbilled finance charges.

3. **Prior Encumbrances; Liens.** You shall perform all of your obligations under any mortgage, deed of trust or other security agreement with a lien that has priority over this Mortgage (Prior Encumbrance), including your covenants to make payments when due. You shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property that may attain a priority over this Mortgage and leasehold payments or ground rents, if any.

You shall keep the Property free from mechanic's or other liens not expressly subordinated to the lien hereof.

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4. **Taxes and Assessments; Rents.** You shall pay or cause to be paid when due all general and special taxes and assessments and water, sewer and other charges, fines and impositions attributable to the Property that may attain priority over this Mortgage, and leasehold payments or ground rents, if any, and all other sums due under any said ground lease. You shall provide evidence satisfactory to Lender of said payments promptly after the respective due dates thereof. You shall pay in full, under protest in the manner provided by statute, any tax or assessment you desire to contest.

5. **Hazard Insurance.** You shall keep all buildings and improvements now existing or hereafter situated on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards as Lender may require (including but not limited to insurance against flood damage) in amounts sufficient either to pay the cost of replacing the Property in full or to pay in full the indebtedness secured hereby, together with the amount of indebtedness secured by any Prior Encumbrances.

The insurance carriers providing said insurance shall be selected by you, subject to Lender's approval, which shall not be unreasonably withheld. All policies and renewals thereof shall be in form acceptable to Lender, shall include a standard mortgagee clause with loss payable to and in form otherwise acceptable to Lender, and further shall provide for 30 days' written notice to Lender prior to cancellation or material change in coverage. Subject to the terms of any Prior Encumbrance, Lender shall have the right to hold the policies and renewals thereof, which policies and renewals (stamped "Paid") shall be delivered to Lender no later than 10 banking days before expiration of any of said policies. You shall give prompt notice of any loss or damage to the insurance carrier(s) and to Lender. Lender may make proof of loss if not made promptly by you.

If the Property is abandoned by you, or if you fail to respond to Lender within 30 days from the date notice is mailed by Lender to you that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds, at Lender's sole option and discretion, either to restoration or repair of the Property or to the payment of the sums secured by this Mortgage. You hereby direct any insurance companies to pay directly to Lender, as its interest may appear, any proceeds in the event of any loss or damage.

6. **Use, Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** You shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. You shall promptly restore or rebuild any buildings and improvements now or hereafter on the Property that may become damaged or destroyed. You shall comply with all requirements of law or municipal ordinances with respect to use, operation and maintenance of the Property, and shall make no material alterations in said Property, except as required by law or municipal ordinance, without the prior written consent of Lender. If this Mortgage is on a unit in a condominium or planned unit development, you shall perform all of your obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations

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of the condominium or planned unit development and constituent documents. If this Mortgage is on a leasehold, you shall perform or cause to be performed all obligations of lessee under said lease.

7. Protection of Lender's Security. If you fail to perform any of the covenants and agreements contained in this Mortgage, or if any action or proceeding is threatened or commenced that materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to you, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest, including but not limited to making repairs, full or partial payment or discharge of Prior Encumbrances, payment, settling or discharge of tax liens, payment of ground rents (if any) and procurement of insurance. Lender, in making said authorized payments of taxes and assessments, may do so in accordance with any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 7, with interest thereon at the rate then applicable under the Agreement, shall become additional indebtedness secured by this Mortgage. Unless you and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to you requesting payment thereof. Nothing contained in this Paragraph 7 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of any provision in this Paragraph 7.

If Lender required private mortgage insurance as a condition of making the loan secured by this Mortgage, you shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with your and Lender's written agreement or applicable law.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give you notice prior to any such inspections.

9. Condemnation. Subject to the terms of any Prior Encumbrance, the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Lender is authorized to collect the proceeds and, at Lender's sole option and discretion, to apply said proceeds either to restoration or repair of the Property or to the payment of the sums secured by this Mortgage.

10. Continuation of Your Obligation; Forbearance by Lender Not a Waiver; Remedies Cumulative. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to you or any of your successors in interest shall not operate to release, in any manner, your liability. Lender shall not be required to commence proceedings against such successor or to extend time for payment or otherwise

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modify amortization of the sums secured by this Mortgage by reason of any demand made by you or your successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers.

Subject to the provisions of Paragraph 16 hereof, the covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and you. All covenants and agreements of yours shall be joint and several. Each of you who co-signs this Mortgage, but does not execute the Agreement: (a) is co-signing this Mortgage only to mortgage and warrant your interest in the Property to Lender under the terms of this Mortgage and to release homestead rights; (b) is not personally liable on the Agreement or under this Mortgage, and (c) agrees that Lender and any other Mortgagor hereunder may agree to extend, modify, forbear or make any other accommodations with regard to the terms of this Mortgage or the Agreement without your consent and without releasing the Mortgagor or modifying this Mortgage as to that Mortgagor's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, any notices required to be given under this Mortgage shall be served by hand delivery or by certified mail, return receipt requested. Notices shall be served upon you at the Property address and upon Lender at Lender's address stated herein. Notices shall be deemed to have been served and effective on the date of delivery, if hand-delivered, or three days after the date of mailing shown on the certified receipt, if mailed. Any party hereto may change the address to which notices are sent by notice as provided herein.

13. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In event that any provision or clause of this Mortgage or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Agreement that can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Agreement are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. Your Copy. You shall be furnished a conformed copy of the Agreement and of this Mortgage at the time of execution or after recordation thereof.

15. Rehabilitation Loan Agreement. You shall fulfill all of your obligations under any home rehabilitation, improvement, repair or other loan agreement that you enter into with Lender. Lender, at Lender's option, may require you to execute and deliver to Lender, in form acceptable to Lender, an assignment of any rights, claims or defenses that you may have against parties who supply labor, materials or services in connection with improvements made to the Property.

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16. **Transfer of the Property or of a Beneficial Interest in Mortgagor.** It shall be an immediate default hereunder if, without the prior written consent of Lender, which consent shall be granted or withheld at Lender's sole discretion, you shall create, effect or consent to or shall suffer or permit any conveyance, sale (including installment sale), assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (collectively, "transfer") of the Property or any part thereof or interest therein (or if all or a portion of the beneficial interest of Mortgagor is transferred, where Mortgagor is not a natural person). In the event of such default, Lender may declare the entire unpaid balance, including interest, immediately due and payable; provided, however, the foregoing provisions of this Paragraph 16 shall not apply to the lien of current taxes and assessments not yet due and payable. This option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

If Lender exercises this option, Lender shall give you notice of acceleration. The notice shall provide a period of not less than 30 days from the date of service of the notice (as defined in Paragraph 12 hereon) within which you must pay or cause to be paid all sums secured by this Mortgage. If you fail to pay or cause to be paid said sums prior to the expiration of said 30 day period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on you.

17. **Acceleration; Remedies.** Except as provided in Paragraph 16 of this Mortgage, upon your breach of any of the termination or acceleration covenants listed in the paragraph entitled "Events of Default" in the Agreement as events of default, including the covenants to pay when due any sums secured by this Mortgage, Lender shall, prior to such acceleration, give you notice as provided in the paragraph entitled "Declaration of Event of Default; Remedies" in the Agreement, specifying (i) the particular termination covenant that has been breached; (ii) the action, if any, required to cure such breach; (iii) a date, not less than 10 days from the date the notice is mailed to you, by which such breach must be cured; and (iv) 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 Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform you of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of yours to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender may, at Lender's option, declare all sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceedings. Lender shall be entitled to collect on such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees and cost of documentary evidence, abstracts, and title reports.

Lender may also exercise all remedies available to it under the Agreement, including suspension of future credit privileges and decreasing the Credit Limit.

18. **Right to Reinstate.** Notwithstanding Lender's acceleration of the payment of the sums secured by this Mortgage due to your breach, you shall have the right to have any

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proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) you pay Lender all sums that would be then due under this Mortgage and the Agreement as if no acceleration occurred; (b) you cure all breaches of any other covenants or agreements contained in this Mortgage; (c) you pay all reasonable expenses incurred by Lender in enforcing the covenants and agreements contained in this Mortgage, and in enforcing Lender's remedies as provided in Paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) you take such action as Lender may reasonably require to assure that the lien of this obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by you, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

19. Revolving Loan. This Mortgage secures all Loans made and indebtedness outstanding under the Agreement from time to time (whether such Loans or indebtedness represent obligatory or discretionary advances) within 20 years from the date of this Mortgage. The Loans outstanding shall be secured to the same extent as if each were made on the date of this Mortgage, and the fact that there is no outstanding indebtedness under the Agreement shall not affect the priority of the lien of this Mortgage as it exists on the date of the Mortgage. This Mortgage shall be prior to all subsequent liens and encumbrances (except for tax liens and assessments levied on the Property) even if there is no indebtedness owing under the Agreement, to the extent of the Credit Limit shown in the Agreement and on the first page hereof, plus all other amounts owing under the Agreement and/or secured by or that may be secured by this Mortgage.

20. Assignments of Rents; Appointment of Receiver. As additional security hereunder, you hereby assign to Lender the rents of the Property, provided that you shall, prior to acceleration under Paragraphs 16 and 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraphs 16 and 17 hereof or abandonment of the Property, and further notice to you, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. Said receiver shall have the power to collect said rents from time of acceleration through the pendency of any foreclosure proceeding and during the full statutory period of redemption, if any. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the payment of the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

21. Release. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage upon your payment of all costs and fees to release same, if any. You shall also pay all costs of recordation, if any.

22. Homestead Waiver. By signing below, you waive all rights of Homestead exemption in the Property.

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23. Authority to Sign, if Corporation. The execution of this Mortgage has been duly authorized by our Board of Directors.

24. Riders. The Condominium Rider attached hereto, if any, is incorporated herein and made a part hereof.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER PRIOR ENCUMBRANCES

You and Lender request the holder of any Prior Encumbrance or other encumbrance with a lien that has priority over this Mortgage to give notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the Prior Encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage.

Kevin Evanich (signature)
Kevin Evanich Mortgagor
Joan C. Keller-Evanich (signature)
Joan Keller-Evanich Mortgagor

SPACE BELOW THIS LINE FOR ACKNOWLEDGMENT

STATE OF ILLINOIS)
COUNTY OF COOK) SS

I, Jacqueline Zittig, a Notary Public in and for said county and state, do hereby certify that Kevin Evanich and Joan Keller-Evanich, his wife not as joint tenants or ten. in common but as tenants by the entirety, personally known to be the same person(s) are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth

Given under my hand and official seal, this 27th day of January, 19 98

Jacqueline Zittig (signature)
Notary Public

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Legal Description attached hereto and made a part hereof that certain mortgage dated January 16, 1998 to Kevin Evanich and Joan Keller-Evanich, his wife not as joint tenants or tenants in common but as tenants by the entirety.

Parcel 1: The South 35 feet of Lot 4, Lot 5 except that part thereof described as follows: Beginning at the Southeast corner of said Lot 5: thence Southwesterly along the Southerly Line of Lot 5 (being also a division line between said Lots 5 and 7) 47.5 feet; thence Northeasterly along a straight Line 1.29 feet to a point on the east Line of said Lot 5, 12 feet North of the Southeast Corner of said Lot 5; thence South along the East Line of said Lot 5, 12 feet to the point of beginning.

Parcel 2: That part of Lot 7 described as follows: Beginning at a point in the Southerly line of Lot 5 of said Subdivision of Blocks 26 and 41 (being also a division line between said Lots 5 and 7), 47.5 feet Westerly of the Southeast corner of said Lot 5 thence Westerly along the Southerly line of said Lot 5, 47.5 feet to the Westerly Line of said Lot 7, thence South along the Westerly line of said Lot 7, 12 feet; thence Northeasterly along a straight Line 51.29 feet to the point of beginning all in the Subdivision of Blocks 26 and 41 in Lake View Subdivision (Lake View Subdivision begin a subdivision of the Southeast 1/4 of Section 17 and the Southwest 1/4 of Section 16, Township 42 North, Range 13 East of the Third Principal Meridian, according to the Plat recorded July 13, 1857 in Book 133 Page 76 as Document No. 889987) in Cook County, Illinois.

PTN: 05-17-409-009-0000

Common Address: 779 Bryant; Winnetka, Il. 60093

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