

UNOFFICIAL COPY

DOCUMENT NO.

98379875

REAL ESTATE MORTGAGE

(For Consumer or Business Mortgage Transactions)  
JOHN S. KUBICZ AND CAROL A. KUBICZ, HUSBAND AND WIFE AS  
JOINT TENANTS

98379875

Whether one or more mortgages, conveys and warrants to \_\_\_\_\_ ("Mortgagor,"

- DEPT-01 RECORDING \$23.50
- T#0000 TRAN 0142 05/08/98 11:57:00
- 44611 + RC \*-98-379875
- COOK COUNTY RECORDER

M&I HOME EQUITY CORPORATION (IL & WI) ("Lender")  
in consideration of the sum of FIFTY FOUR THOUSAND TWO HUNDRED DOLLARS AND ZERO CENTS

loaned or to be loaned to JOHN KUBICZ AND/OR CAROL A. KUBICZ ("Borrower," whether one or more),  
evidenced by Borrower's note(s) or agreement dated March 23, 1998

DEPT-10 PENALTY \$20.00

Recording Area

Name and Return Address  
M&I HOME EQUITY CORPORATION (IL & W)  
COLLATERAL DEPARTMENT  
401 N EXECUTIVE DR  
BROOKFIELD, WI 53005

the real estate described below, together with all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, and all existing and future improvements and fixtures (all called the "Property") to secure the Obligations described in paragraph 5 on the reverse side, including but not limited to repayment of the sum stated above plus certain future advances made by Lender.

Mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of this state.

1. Description of Property. (This Property is the homestead of Mortgagor.) 02 23 102 020

LOT 20 IN BLOCK 2 IN PRAIRIE VIEW ADDITION TO PALATINE, BEING A SUBDIVISION OF THAT PART OF THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 20 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE CHICAGO AND NORTHWESTERN RAILWAY EXCEPT THE WEST 7 ACRES THEREOF IN COOK COUNTY, ILLINOIS.

- If checked here, description continues or appears on attached sheet.
- If checked here, this Mortgage is a "construction mortgage" under B10 ILCS 65/9-313 (l)(e).
- If checked here, Condominium Rider is attached.

CKA 38 S. Kerkwood  
Palatine, Ill

2. Title. Mortgagor warrants title to the Property, excepting only easements and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and THAT CERTAIN 1ST MORTGAGE TO TCF MORTGAGE

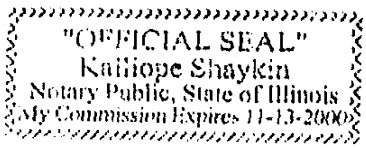
3. Escrow. Interest N/A will be paid on escrowed funds if an escrow is required under paragraph 8(a) on the reverse side.

4. Additional Provisions. Mortgagor agrees to the Additional Provisions on the reverse side, which are incorporated herein. The undersigned acknowledges receipt of an exact copy of this Mortgage.

Signed and Sealed March 23, 1998 (Date)

By: \_\_\_\_\_ (SEAL)  
By: \_\_\_\_\_ (SEAL)  
By: \_\_\_\_\_ (SEAL)  
By: \_\_\_\_\_ (SEAL)

JOHN KUBICZ (SEAL)  
CAROL A KUBICZ (SEAL)



This Instrument was drafted by  
LORRI PICKART  
11320628 / 25514

\*Type or print name signed above.

ACKNOWLEDGEMENT

STATE OF ILLINOIS } ss.  
County of Cook

The foregoing instrument was acknowledged before me on \_\_\_\_\_  
by JOHN KUBICZ  
AND CAROL A KUBICZ  
(Name(s) of person(s))

as HUSBAND AND WIFE  
(Type of authority, e.g., officer, trustee, etc., if any)

of \_\_\_\_\_  
(Name of party in behalf of whom instrument was executed, if any)

a \_\_\_\_\_ on behalf of the \_\_\_\_\_

Notary Public, Illinois  
My Commission (Expires) (is) 11/13/2000

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## ADDITIONAL PROVISIONS

**5. Mortgage as Security.** This Mortgage secures prompt payment to Lender of (a) the sum stated in the first paragraph of this Mortgage, plus interest and charges according to the terms of the promissory notes or agreement of Borrower to Lender identified on the reverse side, and any extensions, renewals or modifications signed by any Borrower of such promissory notes or agreement, (b) to the extent not prohibited by applicable law (i) any additional sums which are in the future located by Lender to any Mortgage, to any other Mortgage and/or another guaranteed or endorsed by any Mortgage primarily for personal, family or household purposes and agreed in documents evidencing the transaction to be secured by this Mortgage, and (ii) all other additional sums which are in the future loaned by Lender to any Mortgage, to any Mortgage and/or to another guaranteed or endorsed by any Mortgage, (c) all interest and charges, and (d) to the extent not prohibited by law, all costs and expenses of collection or enforcement (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage. Unless otherwise required by law, Lender will satisfy this Mortgage upon request by Mortgagee if (a) the Obligations have been paid according to their terms, (b) any commitment to make future advances secured by this Mortgage has terminated, (c) Lender has terminated any line of credit under which advances are to be secured by this Mortgage, and (d) all other payments required under this Mortgage and the Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the documents evidencing the Obligations have been paid and performed.

**6. Taxes.** To the extent not paid to Lender under paragraph 6(a), Mortgagee shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property, or against Lender upon this Mortgage or the Obligations or other debt secured by this Mortgage, upon Lender's interest in the Property, and deliver to Lender receipts showing timely payment.

**7. Insurance.** Mortgagee shall keep the improvements on the Property insured against direct loss or damage occasioned by fire, flood, extended coverage perils and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without co-insurance, not less than the unpaid balance of the Obligations or the full replacement value, whichever is less, and shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of Lender and, unless Lender otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Lender. Subject to Lender's approval, Borrower is free to select the insurance agent or insurer through which insurance is obtained. Mortgagee shall promptly give notice of loss to insurance companies and Lender. All proceeds from such insurance shall be applied, at Lender's option, to the installments of the Obligations in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Property. In the event of foreclosure of this Mortgage or other transfer of title to the Property, in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagee in and to any insurance then in force shall pass to the purchaser or grantee.

### 8. Mortgagee's Covenants. Mortgagee covenants:

- Escrow.** If an escrow is required by Lender, to pay Lender sufficient funds, at such times as Lender designates, to pay when due (1) the estimated annual real estate taxes and assessments on the Property, (2) all property and hazard insurance premiums, (3) flood insurance premiums, if any, (4) if payments owed under the Obligations are guaranteed by mortgage guaranty insurance, the premiums necessary to pay for such insurance, and (5) other items agreed to be included in the escrow. Lender may, at any time, collect and hold such escrow funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Mortgagee's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time. Lender may estimate the amount of escrow funds due on the basis of current data and reasonable estimates of future expenditures of future escrow account funds or as otherwise required by applicable law. Lender shall apply the escrowed funds against taxes, assessments and insurance premiums when due or as otherwise required by law. Escrowed funds may be commingled with Lender's general funds. If the escrowed funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Mortgagee for the excess escrowed funds in a manner determined by Lender or as otherwise required by applicable law. If the escrowed funds held by Lender at any time are not sufficient to pay the escrow account items when due, Lender may notify Mortgagee in writing, and Mortgagee shall pay to Lender the amount necessary to make up the deficiency in a manner determined by Lender or as otherwise required by applicable law.
- Condition and Repair.** To keep the Property in good and tenable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;
- Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not described in paragraph 2 on the reverse side;
- Other Mortgages.** To perform all of Mortgagee's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;
- Waste.** Not to commit waste or permit waste to be committed upon the Property;
- Conveyance.** Not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of Lender and, without notice to Mortgagee, Lender may deal with any transferee as to his interest in the same manner as with Mortgagee, without in any way discharging the liability of Mortgagee under this Mortgage or the Obligations;
- Alteration or Removal.** Not to remove, demolish or materially alter any part of the Property, without Lender's prior written consent, except Mortgagee may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;
- Condemnation.** To pay to Lender all compensation received for the taking of the Property, or any part, by condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as Lender determines to rebuilding of the Property or to the Obligations in the inverse order of their maturities (without penalty for prepayment);
- Inspection.** Lender and its authorized representatives may enter the Property at reasonable times to inspect it, and at Lender's option to repair or restore the Property and to conduct environmental assessments and audits of the Property;
- Ordinances.** To comply with all laws, ordinances and regulations affecting the Property; and
- Subrogation.** That Lender is subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the note(s) or agreement identified on the reverse side.

**9. Environmental Laws.** Mortgagee represents, warrants and covenants to Lender (a) that during the period of Mortgagee's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which is known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) that Mortgagee has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) that, without limiting the generality of the foregoing, Mortgagee has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks; (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagee to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) that Mortgagee is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) that Mortgagee in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagee shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorney's fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagee shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

**10. Authority of Lender to Perform for Mortgagee.** If Mortgagee fails to perform any of Mortgagee's duties set forth in this Mortgage, Lender may after giving Mortgagee any notice and opportunity to perform which are required by law, perform the duties or cause them to be performed, including without limitation signing Mortgagee's name or paying any amount so required, and the cost shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any document evidencing an Obligation, but not in excess of the maximum rate permitted by law, from the date of expenditure by Lender to the date of payment by Mortgagee.

**11. Default; Acceleration; Remedies.** If (a) there is a default under any Obligation secured by this Mortgage, or (b) Mortgagee fails timely to observe or perform any of Mortgagee's covenants or duties contained in this Mortgage, then, at the option of Lender each Obligation will become immediately payable unless notice to Mortgagee or Borrower and an opportunity to cure are required by law, or the document evidencing the Obligation and, in that event, the Obligation will become payable if the default is not cured as provided in the document evidencing the Obligation or as otherwise provided by law. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Obligation, together with all sums paid by Lender as authorized or required under this Mortgage or any Obligation, shall be collectible in full at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity.

**12. Waiver.** Lender may waive any default without waiving any other subsequent or prior default by Mortgagee.

**13. Power of Sale.** In the event of foreclosure, Lender may sell the Property at public sale and execute and deliver to the purchaser deed of conveyance pursuant to statute.

**14. Waiver of Reinstatement and Redemption.** To the extent not prohibited by law, Mortgagee expressly waives any and all rights of reinstatement and redemption with respect to the property.

**15. Possession of Property.** Mortgagee agrees that upon the occurrence of an event of default, Lender shall be entitled, but is not required, to possession of the Property, without bond, subject to applicable law. Lender shall have all of the rights and privileges of a Mortgagee in possession provided by law, and shall be entitled to reimbursement for reasonable costs, expenses and third party management fees incurred in connection with such possession.

**16. Assignment of Rents and Leases.** Mortgagee assigns and transfers to Lender, as additional security for the Obligations, all rents which become or remain due or are paid under any agreement or lease for the use or occupancy of any part or all of the Property. Until the occurrence of an event of default under this Mortgage or any Obligation, Mortgagee shall have the right to collect the rents, issues and profits from the Property, but upon the occurrence of such an event of default, Mortgagee's license to collect is terminated and Lender shall be entitled to such rents, issues and profits and may, after giving Mortgagee any notice and opportunity to perform required by law, notify any or all tenants to pay all such rents directly to Lender. All such payments shall be applied in such manner as Lender determines to payments required under this Mortgage and the Obligations. This assignment shall be enforceable and Lender shall be entitled to take any action to enforce the assignment (including notice to the tenants to pay directly to Lender or the commencement of a foreclosure action) without seeking or obtaining the appointment of a receiver.

**17. Receiver.** Upon the commencement or during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Obligations if the Mortgagee is entitled to possession of the Property pursuant to applicable law, then upon request of the Mortgagee, the court shall appoint a receiver of the Property (including homestead interest) designated by Lender without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale and the expiration of the redemption period, if any, and may order the rents, issues and profits, when so collected, to be held and applied as required by law.

**18. Foreclosure Without Deficiency Judgment.** To the extent that Mortgagee agrees to consent to foreclosure or deed in lieu of foreclosure in mortgagee's

**19. Expenses.** To the extent not prohibited by law, Mortgagee shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees, fees and expenses for environmental assessments, inspections and audits, and fees and expenses for obtaining title evidence incurred by Lender in protecting or enforcing its rights under this Mortgage.

**20. Severability; Governing Law.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision. The validity, construction and enforcement of this Mortgage are governed by the laws of Illinois.

**21. Successors and Assigns.** The obligations of all Mortgagees are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Mortgagee(s) and their respective heirs, personal representatives, successors and assigns.

**22. Entire Agreement.** This Mortgage is intended by the Mortgagee and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.

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