
SAMPLE MORTGAGE

***NOTE: Using a competent local attorney to customize any loan documents is a vital part of making a good loan.**

MORTGAGE

John Doe a divorced and not remarried man of Cleveland Heights, OH 44121, hereinafter called "Borrower", for good and valuable consideration paid Joe Average Investor of _____, hereinafter called "Lender", the receipt and sufficiency of which are hereby acknowledged, does hereby MORTGAGE, GRANT, BARGAIN, SELL and CONVEY to Lender the real estate commonly known as _____ OH ____, and more fully described in Exhibit "A" attached hereto, together with all privileges, easements, appurtenances, and other rights now or hereafter located thereon, all fixtures and equipment now or hereafter attached thereto or used in connection therewith, and all rents and profits therefrom, all of which are hereinafter called the "Premises".

TO HAVE AND TO HOLD the Premises to Lender, Lender's personal representatives, heirs, successors and assigns, forever, subject to the conditions hereinafter set forth.

This Mortgage is given to secure payment of money as evidenced by a certain promissory note (the "Note") of even date in which Borrower is the maker and Lender is the payee, and which is in the principal amount of **\$300,500.00**, with interest, if any, at the rate to be paid as provided for in the Note; provided, however, that if not sooner paid, the entire balance of the Note shall be due and payable as set forth in the Note and in any subsequent modifications thereto.

Borrower, jointly and severally, if more than one, hereby covenants and agrees with Lender as follows:

1. PAYMENT OF DEBT. Borrower shall pay when due the principal of and interest on the indebtedness evidenced by the Note in accordance with the terms thereof.

2. STATE OF TITLE; WARRANTY. Borrower is lawfully seized of the Premises and the Premises are free and clear of all encumbrances whatsoever except: (a) the lien of real property taxes and assessments not yet due or payable; (b) legal highways; (c) zoning ordinances; (d) restrictions, conditions, covenants and utility easements of record. Borrower will forever warrant and defend the Premises except as provided in this Section 2.

3. REAL PROPERTY TAXES; ASSESSMENTS; LIENS AND CHARGES. Borrower, when the same shall become due and payable, shall pay all real property taxes and installments of assessments, which are a lien on the Premises and, upon Lender's request, shall promptly provide Lender with proof of payment for the same. Borrower shall also pay, when the same shall become due and payable, any other governmental (Federal, State or local) levy or other charge which is or may become a lien against the Premises superior to this Mortgage and shall promptly discharge any lien which has or may have priority over this Mortgage except as to any mortgage lien set forth in Section 2, above, which Borrower shall not permit to be in default.

4. INSURANCE. At borrower's expense, Borrower shall obtain and maintain in full force and effect at all times during the continuance of this Mortgage fire and extended coverage insurance in an amount sufficient to prevent Borrower from being a co-insurer under said policy of insurance, but in no event less than the aggregate unpaid balance of the Note and of all obligations secured by mortgages encumbering the Premises which have priority over this Mortgage. All such insurance policies or renewals thereof shall include a standard mortgage clause in favor of and in the form acceptable to Lender. Borrower shall promptly furnish Lender with a copy of said policies and all receipts of paid premiums. The policies of insurance shall provide for written notice to Lender at least 30 days prior to any cancellation, modification or lapse thereof. In the event of a loss, Borrower shall give prompt written notice to Lender and Lender may make proof of loss if not promptly made by Borrower.

5. MAINTENANCE OF PREMISES. Borrower shall keep the Premises in good repair and shall not commit waste or permit deterioration to the premises, reasonable wear and tear excepted, and shall comply with all governmental (Federal, State and local) regulations concerning the Premises. If this Mortgage is on a unit in a condominium, Borrower shall perform all of Borrower's obligations under the constituent condominium documents.

Without Lender's prior consent, Borrower shall not grant any easements affecting the Premises, apply for any change in the current zoning designation for the Premises, change the use of the Premises other than what is being utilized for as of the date hereof, create or change or modify any existing restrictions, conditions or covenants affecting the Premises, subdivide the Premises, or construct or make any structural or substantial improvements, alterations or modifications to the Premises.

6. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which Lender in Lender's reasonable judgment believes is detrimental to or impairs Lender's security in the Premises, including but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option and upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Premises to make repairs.

Any amounts disbursed by Lender pursuant to this Section 6 or for advances made for the payment of real property taxes, or insurance premiums, with interest thereon as hereinafter provided, shall become additional amounts owed by Borrower which are secured by this Mortgage. Such amounts shall be payable upon notice to Borrower from Lender requesting payment thereof and shall bear interest from the date of disbursement at the rate payable from time to time on the unpaid principal under the Note. Nothing contained herein shall require Lender to incur any expense or take any action hereunder, and Borrower hereby waives any and all claims or right against Lender to any payment on, or offset against, the indebtedness secured by reason of any such payment by Lender.

Lender, or Lender's agents, shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting the same, provided Lender shall give Borrower adequate and reasonable notice under the circumstances prior to any such entry. The notice provided for herein need not conform with the provisions of Section 14 below.

7. EMINENT DOMAIN. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation proceedings or other taking of the Premises, or a part thereof, or for conveyances in lieu of condemnation, are hereby assigned to Lender and shall be paid to Lender. When there is a total taking of the Premises, the proceeds shall be applied to the sums secured by this Mortgage, and the balance, if any, shall be paid to Borrower. When there is a partial taking of the Premises, unless Lender and Borrower otherwise agree in writing, the proceeds paid for such taking shall be applied to the sums secured by this Mortgage in the proportion which the unpaid principal amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Premises immediately prior to the date of taking, and the balance of such proceeds shall be paid to Borrower.

If (a) the Premises are abandoned, or (b) after notice by Lender to Borrower that the condemning authority offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is hereby authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Premises or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of the payment of the Note or change the amount of any installment due under the Note.

8. TRANSFER OF THE PREMISES. If all or any part of the Premises or any interest therein is sold or transferred by Borrower without Lender's prior written consent, Lender may, at Lender's option, declare all sums secured by this Mortgage to be immediately due and payable; provided, however, that the following transfers or conveyances shall not accelerate the indebtedness secured hereby: (a) the creation of a lien or encumbrance subordinate to this Mortgage, excluding, however, a conveyance by a Land Installment Contract or the granting of a leasehold interest containing an option to purchase, either of which shall require the prior written consent of Lender; (b) the creation of a purchase money security interest for personal property; and (c) a transfer by devise or descent or a transfer by operation of law upon the death of a co-owner.

9. SECURITY AGREEMENT; ASSIGNMENT OF RENTS. This Mortgage shall act as and constitute a Security Agreement under the Uniform Commercial Code. Upon Lender's request, Borrower shall execute and deliver to Lender financing statements and other documents required to perfect a security interest in Borrower's personal property located on premises. The cost of recording such documents shall be paid by Borrower.

As part of the security granted by this Mortgage, Borrower hereby assigns to Lender the rents of the Premises, provided that Borrower shall, prior to any acceleration of the amounts secured by this Mortgage, have the right to collect and retain said rents. All rents collected by Lender or Lender's agent shall be applied first to the payment of costs of operation and management of the Premises and collection of rents, including but not limited to, receiver's bonds and fees, reasonable attorney fees, and then to the sums secured by this Mortgage.

10. DEFAULT; REMEDIES. The entire unpaid amount of the Note, together with all unpaid and accrued interest and all other charges and amounts payable to Lender under the Note or this Mortgage, shall, at Lender's Option, become immediately due and payable: (a) if Borrower does not promptly pay and fully pay when due the amounts owed Lender under the Note in accordance with the terms and tenor of the Note; (b) if the Premises or any part thereof or an interest thereon are sold or transferred except as permitted under the provisions of Section 8 of this Mortgage; (c) if Borrower fails to observe or perform any other provision, covenant or condition required of Borrower under the Note or this Mortgage within 30 days after Lender gives notice to Borrower of Borrower's failure to observe or perform such provision, covenant or condition; (d) if the Premises are abandoned; (e) if an order for relief under any bankruptcy laws of the United States is issued naming Borrower as debtor or if Borrower makes an assignment for the benefit of creditors or enters into a composition agreement with Borrower's creditors; (f) if the interest of Borrower in the Premises is attached, levied upon, or seized by legal process; or (g) if a trustee, receiver or liquidator is appointed on behalf of Borrower. Upon an acceleration of the amounts secured by this Mortgage as provided for in this Section 10, Lender shall have the right to foreclose this Mortgage lien, have a receiver appointed, take possession of and manage the Premises, collect the rents derived from the Premises, and take any and all other action available to Lender under law.

11. APPLICATION OF PAYMENTS. All payments received by Lender under the Note or this Mortgage, unless otherwise stated in this Mortgage, shall be applied by Lender first to the payment of any amounts advanced or paid by Lender for the protection of the security granted by this Mortgage, then

expenses incurred by Lender by reason of Borrower's default under this Mortgage, then as interest payable on the Note, and then on the principal of the Note.

12. FORBEARANCE; REMEDIES CUMULATIVE. If Lender (a) grants any extension of time or forbearance with respect to the payment of any sums secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted in this Mortgage or in the Note; (d) grants any release with or without consideration of the whole or part of the security granted by this Mortgage; or (e) amends or modifies in any respect any of the terms and provisions of this Mortgage or the Note, any such act or omission shall not release Borrower of any obligations under this Mortgage or under the Note, nor preclude Lender from exercising any right granted in this Mortgage or under law for a default by Borrower or for any subsequent default.

Lender's procurement and payment of fire and casualty insurance and Lender's payment of real property taxes and assessments and other governmental charges and liens after Borrower has failed to pay same shall not be a waiver of Borrower's default or Lender's right to accelerate the indebtedness secured thereby.

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or which are afforded under law and may be exercised concurrently, independently and successively.

13. SUCCESSORS AND ASSIGNS; JOINT AND SEVERAL LIABILITY; CAPTIONS; GOVERNING LAW; SEVERABILITY. Subject to the provisions of Section 8 above, the covenants and agreements of this Mortgage shall bind, and the rights hereunder shall inure to the respective successors and assigns, personal representatives and heirs of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and section headings of this Mortgage are for convenience only and shall not be used to interpret or define the provisions of this Mortgage. The Mortgage shall be governed by the laws of the State of Ohio, and, if any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. The provisions of this Mortgage and the Note are severable.

14. ENVIRONMENTAL COMPLIANCE. Borrower represents, to the best of its knowledge that the Mortgaged Property is in compliance with all applicable Environmental Laws (as hereinafter defined) and that the Mortgaged Property does not contain any Hazardous Materials (as hereinafter defined) except as previously disclosed in writing to Lender. Upon the request of Lender, following an Event of Default, Borrower covenants and agrees that Borrower, at Lender's request, shall deliver and pay for an environmental audit prepared by an engineer acceptable to Lender which discloses no evidence of the existence of any other Hazardous Materials on or in the Mortgaged Property. Borrower covenants and agrees that such environmental audit does not relieve Borrower from performing its own environmental audit or complying with Environmental Laws. Borrower represents and warrants that it has not caused or permitted any Hazardous Material to be placed on or in the Mortgaged Property in violation of any Environmental Laws and that to the best of its knowledge, there are no conditions currently existing or with the passage of time which would require or are likely to require clean-up, removal, remedial action, or other response pursuant to the Environmental Laws except as previously disclosed in writing to Lender. Borrower represents and warrants that to the best of its knowledge the Mortgaged Property has not been used as a dump site or storage site for Hazardous Materials and Borrower will not cause or permit the use of the Mortgaged Property or cause the use of any parcel adjacent thereto as a dump site or storage site for Hazardous Materials other than in compliance with applicable Environmental Laws, nor will Borrower cause or permit any contamination on any part of the Mortgaged Property or cause the contamination of any adjacent parcel. Borrower represents and warrants that all Hazardous Materials (other than cleaning materials and other products customarily utilized in the maintenance and operation of the Mortgaged Property) which may be used by any person for any purpose upon the Mortgaged Property will be disclosed in writing to Lender and shall be used and stored thereon only in a safe manner, and in

accordance with all industrial standards and Environmental Laws. Borrower represents and warrants that Borrower is not a party to any litigation or administrative proceeding, nor, to the best of its knowledge, is any litigation or administrative proceeding threatened against it: which asserts or alleges that there is any violation of Environmental Laws with respect to the Mortgaged Property, nor is the Property subject to any judgment, decree, order or citation relating to or arising out of Environmental Laws and no permits or licenses are required under Environmental Laws relating to the Mortgaged Property. Borrower covenants and agrees to provide to Lender, immediately upon receipt by Borrower, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree or other document from any source asserting or alleging a circumstance or condition which requires or may require a clean-up, removal, remedial action, or other response by or on the part of Borrower under the Environmental Laws or which seeks criminal or punitive penalties from Borrower for an alleged violation of Environmental Laws. Borrower further covenants and agrees to advise Lender as soon as Borrower becomes aware of any condition or circumstance which makes the covenants and warranties contained herein or in any other loan document incomplete or inaccurate.

For purposes of this Instrument, the term "Environmental Laws" shall mean and refer to all federal, state and local laws relating to environmental matters, including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, permits, cost recovery compensation, losses or injuries resulting from the release or threatened release of hazardous materials and the generation, use, storage, transportation or disposal of hazardous materials in any manner applicable to Borrower or the Mortgaged Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Super Fund Amendments and Reauthorization Act (42 U.S.C. § 9601 *et. seq.*), the Hazardous Materials Transportation Act (49 1J.S.C. 5 1801 *et. seq.*), the Resource Conservation and Recovery Act of 1976 (42 17.S.C. 8 6901 *et. seq.*), the Federal Water Pollution Control Act (33 V.S.C. 5 1251 *et. seq.*), the Clean Air Act (42 J.S.C. 5 7401 *et. seq.*), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et. seq.*), the Safe Drinking Water Act (42 U.S.C. § 300F-300J-11 *et. seq.*), the Occupational Safety and Health Act of 1970 (29 U.S.C. 5 651 *et. seq.*) and the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et. seq.*), each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health, or safety issues of or by the federal government, any state or any political subdivision thereof, or any agency, court, or body of the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions which are applicable to the Mortgaged Property.

In addition, for purposes of this Instrument, the term "Hazardous Materials" shall mean and refer to (a) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "-hazardous materials," "-extremely hazardous waste," "restricted hazardous waste," "toxic pollutants," "contaminants," "pollutants," "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, without limitation, Environmental Laws, (b) any oil, petroleum or petroleum derived substance, any drilling fluids, produced waters or other wastes associated with the exploration, development or production of crude oil, any flammable substances or explosives, any radioactive materials, any hazardous wastes or substances, any toxic wastes or substances or (c) other materials or pollutants which (i) pose a hazard to the Mortgaged Property or to persons on or about the Mortgaged Property), or (ii) cause the Mortgaged Property to be in violation of any Environmental Laws, (d) asbestos and asbestos-containing materials, radon gas, urea formaldehyde, or transformers or other electrical equipment which contain any oil or dielectric fluid containing polychlorinated biphenyls, and (e) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

15. NOTICES. Except as otherwise set forth in this Mortgage or as may be otherwise required by applicable law, any notice to be given under this Mortgage shall be in writing and mailed with postage

