

202

Prepared by:

Donna B. Rutledge, Esq.  
Phelps Dunbar, L.L.P.,  
365 Canal Street, Suite 2000  
New Orleans, Louisiana 70130-6534

0010506238

8/27/03 07:00:01 Page 1 of 19  
2001-06-11 15:58:16  
Cook County Recorder 57.00



0010506238

Mail after recording to: Donna B. Rutledge,  
Phelps Dunbar, L.L.P.,  
365 Canal Street, Suite 2000  
New Orleans, Louisiana 70130-6534

Property of Cook County Clerk's Office

MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT  
(Illinois)

109

D1 79 20 054

J. Byrn

THIS MORTGAGE SECURES FUTURE OBLIGATIONS AND ADVANCES PURSUANT TO 205 ILLINOIS  
COMPILED STATUTES 5/5d.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage")  
is made and entered into this 21st day of May, 2001, by HHP-SCHAUMBURG, L.L.C., a Delaware limited liability  
company, having an address c/o Burrus Investment Group, Inc., 401 Veterans Boulevard, Suite 102, Metairie, LA 70005  
("Borrower") in favor of HIBERNIA NATIONAL BANK, a national banking association, having an address at 313  
Carondelet Street, New Orleans, Louisiana 70130 ("Lender").

WITNESSETH:

A. GRANT

FOR AND IN CONSIDERATION of the premises, the sum of Ten and No/100 (\$10.00) and other good and  
valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure indebtedness  
hereinafter described, Borrower has granted, bargained, mortgaged, warranted, assigned, transferred, sold and conveyed,  
and by these presents does grant, bargain, mortgage, warrant, assign, transfer, sell and convey, unto Lender and unto  
Lender's successors and assigns, forever, all and singular the property hereinafter described, whether now existing or  
hereafter arising or now owned or hereafter acquired, to-wit:

# UNOFFICIAL COPY

CERTAIN REAL PROPERTY located in Schaumburg, Illinois, more particularly described in Exhibit A attached hereto and made a part hereof (the "Land").

TOGETHER WITH all rights, titles, interests, estates, reversions and remainders now owned or hereafter acquired by Borrower in and to the Land;

TOGETHER WITH all improvements now or hereafter situated on the Land and in and to the properties covered hereby;

TOGETHER WITH all rights, titles and interests now owned or hereafter acquired by Borrower in and to all easements, streets and rights-of-way of every kind and nature next to or adjoining the Land and all public or private utility connections thereto and all hereditaments, appurtenances, servitudes, rights, ways, privileges and prescriptions thereto, and all waste water capacity and water rights reservations relative to the Land;

TOGETHER WITH all goods, equipment, fixtures and other personal property (herein called the "Goods") now owned or hereafter acquired by Borrower and now or hereafter affixed to, or located on or within, the Land or improvements, including without limitation, all rights, titles and interests of Borrower now owned or hereafter acquired in and to any of the Goods that may be subject to any title retention or security agreement superior in lien or security interest to the lien or security interest of this Mortgage;

TOGETHER WITH all rights and interests of Borrower now owned or hereafter acquired in and to all (i) contracts, subcontracts and plans and specifications relating to the improvements and all deposits, funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), notes or chattel paper arising from or by virtue of any of the transactions relating to the Land or the improvements, (ii) all permits, licenses, franchises (including hotel license and/or franchise agreements), certificates and other rights and privileges obtained in connection with the Land and the improvements; (iii) all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein; (iv) all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Land or the improvements or the Goods; and (v) all proceeds arising from the taking of all or any part of the Land or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by right of eminent domain, or by private or other purchase in lieu thereof;

TOGETHER WITH all books and records of Borrower relative to the other Mortgaged Property (hereinafter defined) (including without limitation customer lists, credit files, computer programs, disks, tapes, punch cards, data processing software, transaction files, master files, printouts, and other computer materials and records);

TOGETHER WITH without limiting the foregoing, any and all rights, royalties, rents, revenues, benefits, leases, contracts, accounts, general intangibles, money, instruments, insurance proceeds, documents, tenements, hereditaments and appurtenances now owned or hereafter acquired by Borrower and appertaining to, generated from, arising out of or belonging to any of the foregoing;

TOGETHER WITH all proceeds and products of all or any of the foregoing.

All of the foregoing (together with the Leases, Rents and Profits and the Collateral, as such terms are hereinafter defined) is herein called the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property unto Lender, and Lender's successors and assigns, forever, and Borrower does hereby bind Borrower, and Borrower's respective heirs, personal representatives, successors and assigns to warrant and forever defend the Mortgaged Property unto Lender, and Lender's successors and assigns, forever, against the claim or claims of all persons whomsoever claiming or to claim the same, or any part thereof, subject however to encumbrances permitted by the Loan Agreement.

This conveyance is made for the following uses:

# UNOFFICIAL COPY

- (a) To secure the payment of all (i) indebtedness for borrowed money evidenced by a promissory note of even date herewith, executed by the Borrower as maker, in the original principal amount of \$6,094,411.00 (as renewed, modified, extended or replaced, the "Note"), with interest thereon from date at the rate set forth therein, payable according to the terms and conditions set forth therein to the order of Lender at its office at New Orleans, Louisiana, or at such other place as Lender may designate from time to time, with an initial maturity date of May 24, 2004, and (ii) indebtedness evidenced by the Aggregate Loans, as defined more particularly in the Loan Agreement (as hereinafter defined). This instrument secures the Note and the Aggregate Loans in the total original principal amount of \$35,000,000 and interest, and any extensions, modifications, and/or renewals and substitutions thereof, and notes given in payment of principal or interest, and all reasonable attorneys' fees, court costs, and reasonable expenses of whatever kind incident to the collection of said indebtedness and/or the enforcement and/or protection of the lien of this Mortgage.
- (b) To secure the performance of all obligations of Borrower under that certain Loan Agreement entered into between Borrower and Lender, dated as of the date hereof (as amended, supplemented or restated from time to time, the "Loan Agreement").
- (c) To secure the payment of all sums advanced by Lender after the occurrence of any event of default under the terms of any of the Loan Documents to protect the Mortgaged Property, with interest thereon at the rate set forth in the Note.
- (d) To secure the performance of all obligations of any guarantor of any of the obligations of Borrower contained in the Loan Documents or any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby.
- (e) To secure the payment of any and all Advances, if any, made by Lender as set forth in Section 1.15 hereof.
- (f) To secure the payment of all other present and future indebtedness, amounts and liabilities of Borrower to Lender, whether incurred pursuant to the Loan Agreement or otherwise, liquidated or unliquidated, now existing or hereafter arising, in principal, interest, deferral and delinquency charges, prepayment premiums, costs and attorney's fees.

All of the foregoing indebtedness and obligations collectively referred to herein as the "Indebtedness."

The Indebtedness shall be payable at the address as specified in the Loan Agreement or such other place as Lender may from time to time hereafter designate in writing; and unless otherwise expressly provided in the instruments evidencing the Indebtedness, all portions of the Indebtedness shall bear interest from the due date thereof until paid at the same rate per annum as provided in the Loan Agreement for interest accruing on past due amounts.

All payments received by Lender whether designated as payments of principal or interest, shall be applied to the principal or interest of the Indebtedness or to expenses provided for herein, or any combination of the foregoing, as directed by Lender at Lender's option, exercised in its sole discretion.

This Mortgage, the Loan Agreement and any guaranty thereof, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to individually or collectively as the "Loan Documents."

All capitalized terms used in this Mortgage (and not otherwise defined herein) shall have the meanings defined in the Loan Agreement.

# UNOFFICIAL COPY

## B. ASSIGNMENT OF RENTS

Borrower hereby absolutely assigns, transfers and conveys to Lender all the leases, rents, issues and profits (the "Leases, Rents and Profits") of the Mortgaged Property, and hereby gives to and confers upon Lender the right, power and authority to collect such Leases, Rents and Profits. Prior to the occurrence of any Event of Default, or the exercise by Lender of the option granted below, Borrower shall collect and receive all Leases, Rents and Profits as the Lender for the benefit of Lender and Borrower, and Borrower shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Indebtedness and thereafter, so long as no Event of Default has occurred, the balance shall be distributed to the account of Borrower. Borrower will not (i) execute an assignment of any of its right, title or interest in the Leases, Rents and Profits, (ii) except in the ordinary course of business and absent any Event of Default, amend or modify any lease in excess of 10,000 square feet of the Mortgaged Property in any material respect or permit the surrender or termination thereof, (iii) accept prepayment of any installments of rent to become due under any of such leases in excess of one month, or (iv) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage. Borrower will not execute any lease of all or any substantial portion of the Mortgaged Property except for actual occupancy by a lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and agreement in each lease of the Mortgaged Property now or hereafter existing, on the part of lessor thereunder to be kept and performed. Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, a written statement containing the names of all lessees of the Mortgaged Property, the terms of their respective leases, the space occupied and the rentals payable thereunder together with copies of any and all written leases then existing which affect or pertain to the Mortgaged Property.

Borrower hereby authorizes Lender, if and whenever Lender shall desire following an Event of Default, to demand and receive, in Borrower's right, all sums that may become due under any and all leases or occupancy agreements, including without limitation oil, gas and mineral leases, rent or contracts or easements pertaining to all or any part of the Mortgaged Property, and when received to apply the same on the Indebtedness in such order as the Lender, in its sole discretion, shall determine. No demand for, nor receipt or application of, any such sum shall be deemed to minimize, subordinate or affect in any way the lien, security interest or rights hereunder of Lender, or any rights of a purchaser of the Mortgaged Property at a Lender's or foreclosure sale hereunder.

## C. SECURITY INTERESTS

To further secure the Indebtedness, the Borrower hereby grants to the Lender a continuing security interest in and to all right, title and interest of the Borrower in, to or under the following property, whether now owned or existing or hereafter acquired or arising and regardless of where located: (i) the Accounts; (ii) the Equipment; (iii) the General Intangibles; (iv) all books and records (including, without limitation, customer lists, credit files, computer programs, tapes, disks, punch cards, data processing software, transaction files, master files, printouts and other computer materials and records) of the Borrower pertaining to any of the Mortgaged Property; and (v) all Proceeds and products of all or any of the foregoing. For purposes of this Article C., the following terms shall have the meanings indicated:

"Accounts" shall mean all "accounts" (as defined in the UCC) now owned or hereafter acquired by Borrower, and shall also mean and include all accounts receivable, notes, note receivable, drafts, acceptances, book debts and similar documents and other monies, obligations or indebtedness owing or to become owing to Borrower arising from the sale, lease or exchange of goods or other property by Borrower or the performance of services by Borrower or under any contracts for any of the foregoing (whether or not yet earned by performance on the part of Borrower), whether now in existence or hereafter arising or acquired.

"Collateral Account" shall mean the demand deposit or time deposit account of Borrower maintained (now or in the future) with Lender or a bank satisfactory to Lender.

"Equipment" shall mean all "equipment" (as defined in the UCC, including, without limitation, all furniture and furnishings) now owned or hereafter acquired by the Borrower and located on or relating to the Land and the improvements thereon, together with all additions, accessories, parts, attachments,

# UNOFFICIAL COPY

special tools and accessions now and hereafter affixed thereto or used in connection therewith, and all replacements thereof and substitutions therefor.

"General Intangibles" shall mean all "general intangibles" (as defined in the UCC) now owned or hereafter acquired by Borrower, including without limitation (i) all contractual rights of, and obligations or indebtedness owing to, Borrower (other than Accounts) from whatever source arising, including without limitation all contract rights of, and obligations or indebtedness owing to, Borrower under any construction contracts to which Borrower is a party, any management, franchise or licensing agreement regarding the conduct of Borrower's business, options or agreements to acquire the Mortgaged Property or any interest therein and all permits and licenses relative to the operation of Borrower's business, (ii) all things in action, rights represented by judgments, awards of damages, settlements and claims arising out of tort, warranty or contract, whether relating to the Mortgaged Property or otherwise (including without limitation the right to assert and otherwise be the proper party of interest to commence, control, prosecute and/or settle such actions, whether as claims, counterclaims or otherwise, and whether involving matters arising from casualty, condemnation, indemnification, negligence, strict liability, other tort, contract, warranty or in any other manner), (iii) rights under service, maintenance or warranty contracts, operating agreements and other warranties, guaranties and bonds, (iv) the right to receive proceeds attributable to insurance loss of the Mortgaged Property, (v) all goodwill, patents, patent licenses, trademarks, trademark licenses, trade names, service marks, trade secrets, rights in intellectual property, copyrights, permits and licenses, (vi) all rights or claims in respect of refunds for taxes paid and (vii) all deposit accounts of Borrower with Lender, including the Collateral Account.

"Proceeds" shall mean all cash and non-cash proceeds of, and all other profits, rentals or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment, licensing or other disposition of, or realization upon, the Mortgaged Property, including, without limitation, all claims of the Borrower against third parties for loss of, damage to or destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of the Mortgaged Property, and any condemnation or requisition payments with respect to any Mortgaged Property, and including proceeds of all such proceeds, in each case whether now existing or hereafter arising.

"UCC" shall mean the Uniform Commercial Code in the State of Illinois, as amended from time to time; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than Illinois, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

## ARTICLE 1. COVENANTS AND AGREEMENTS OF BORROWER

Section 1.1 Performance of Indebtedness. The Borrower will repay its Indebtedness according to the reading, tenor and effect of the Loan Agreement, other documents evidencing such obligations and this Mortgage. The Borrower will do and perform every act required of it by the Loan Agreement, other documents evidencing its obligations and this Mortgage at the time or times and in the manner specified.

Section 1.2 Title to Collateral; Compliance with Leases. The Borrower represents and warrants that it has good and merchantable title to the Mortgaged Property (except the portion thereof consisting of after-acquired property), free of all liens and encumbrances, except as permitted by the Loan Agreement. Furthermore, the Borrower has not heretofore conveyed or agreed to convey or encumber the Mortgaged Property in any way, except in favor of the Lender or as permitted by the Loan Agreement.

Section 1.3 Taxes and Other Liens. The Borrower will pay and discharge (or bond over) promptly when due all taxes, assessments and governmental charges or levies imposed upon it or upon its income or upon the Mortgaged Property as well as all claims of any kind (including claims for labor, materials, supplies and rent) which, if unpaid, might

# UNOFFICIAL COPY

become a lien upon any or all of the Mortgaged Property; provided, however, the Borrower shall not be required to pay any such tax, assessment, charge, levy or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings diligently conducted and if the contesting party shall have set up reserves therefor adequate under generally accepted accounting principles (provided that such reserves may be set up under generally accepted accounting principles).

Section 1.4 Insurance. The Borrower shall procure and maintain for the benefit of the Lender, or cause to be so procured and maintained, original paid up insurance policies from companies licensed in the state where the Mortgaged Property is located and having a Best's rating of A or better, in amounts, in form and substance, and with expiration dates acceptable to the Lender, and containing a non-contributory standard Lender clause or its equivalent in a form satisfactory to the Lender, or the statutory Lender clause, if any, required in the state where the Mortgaged Property is located, or a Lender's loss payable endorsement, in favor of the Lender. All of such policies shall contain an agreement by the insurer not to cancel or amend the policies without giving the Lender at least 30 days' prior written notice of its intention to do so. The Borrower shall deliver original or certified policies (or, insurance certificates from the Borrower's insurance agent) to the Lender, and the Borrower shall deliver original or certified renewal policies (or, insurance certificates from the Borrower's insurance agent) with satisfactory evidence of payment not less than 15 days in advance of the expiration date of the existing policy or policies. In the event the Borrower should, for any reason whatsoever, fail to keep the Mortgaged Property or any part thereof so insured, or to keep said policies so payable, or fail to deliver to the Lender the original or certified policies of insurance (or, insurance certificates from the Borrower's insurance agent) and the renewals thereof upon demand, then the Lender, if it so elects, may itself have such insurance effected in such amounts and in such companies as it may deem proper and may pay the premiums therefor. The Borrower shall reimburse the Lender upon demand for the amount of premium paid, together with interest thereon at 10% percent per annum from date until paid. The Borrower agrees to notify the Lender immediately in writing of any material fire or other casualty to or accident involving the Mortgaged Property, whether or not such fire, casualty or accident is covered by insurance. The Borrower further agrees to notify promptly the Borrower's insurance company and to submit an appropriate claim and proof of claim to the insurance company if the Mortgaged Property is damaged or destroyed by fire or other casualty. Subject to the terms of the Loan Agreement, the Lender is hereby authorized and empowered, at its option, to collect and receive the proceeds from any policy or policies of insurance and each insurance company is hereby authorized and directed to make payments of all such losses directly to the Lender instead of to the Borrower, and Lender jointly. The Lender shall apply the net proceeds thereof in accordance with the Loan Agreement. The Borrower will not do or permit anything to be done to the Mortgaged Property that may violate the terms of any insurance covering the Mortgaged Property or any part thereof.

Section 1.5 Condemnation. If any legally constituted authority condemns, expropriates or otherwise takes the Mortgaged Property, or any part thereof, under power of eminent domain, the Lender may, at its election, either pay the net proceeds thereof toward the payment of the Indebtedness or pay the net proceeds thereof to the Borrower.

Section 1.6 Right of Inspection. The Borrower will permit any officer, employee or agent of the Lender to visit and inspect the Mortgaged Property, examine the books of record and accounts of the Borrower, take copies and extracts therefrom, and discuss the affairs, finances and accounts of the Borrower with the Borrower's officers, accountants and auditors, all at such reasonable times and on reasonable notice and as often as the Lender may reasonably desire.

Section 1.7 Compliance with Laws and Covenants. The Borrower will observe and comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers domestic or foreign, applicable to the Borrower or to the Mortgaged Property. Without limiting the generality of the foregoing, the Borrower will comply with the Illinois Responsible Property Transfer Disclosure Act ("IRPTDA").

Section 1.8 Maintenance of the Mortgaged Property. The Borrower will maintain, preserve and keep the Mortgaged Property at all times in thorough repair, good working order and good condition, ordinary wear and tear excepted, and will, from time to time, make all necessary repairs and improvements so that the security of this Mortgage shall at no time become impaired.

Section 1.9 Environmental Indemnity. The Borrower will defend, indemnify and hold Lender and its directors, officers, agents and employees harmless from and against all claims, demands, causes of action, liabilities, losses, costs and

# UNOFFICIAL COPY

expenses (including, without limitation, costs of suit, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with (i) the presence in, on or under or the removal from the Mortgaged Property of any hazardous substances or solid wastes (as hereafter defined) in violation of applicable environmental law, or any releases or discharges of any hazardous substances or solid wastes on, under or from such property in violation of applicable environmental law, (ii) any activity carried on or undertaken on or off the Mortgaged Property, whether prior to or during the term of this Mortgage, and whether by the Borrower or any predecessor in title or any officers, employees, agents, contractors or subcontractors of Borrower or any predecessor in title, or any third persons at any time occupying or present on the Mortgaged Property, in connection with the handling, use, generation, manufacture, treatment, removal, storage, decontamination, clean-up, transport or disposal of any hazardous substances or solid wastes at any time located or present on or under the Mortgaged Property, in violation of applicable environmental law, or (iii) any breach of any environmental representation, warranty or covenant under the terms of this Mortgage (including, without limitation, failure of the Borrower to comply with IRPTDA). The foregoing indemnity shall further apply to any residual contamination on or under the Mortgaged Property, or affecting any natural resources, and to any contamination of the Mortgaged Property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such hazardous substances or solid wastes, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. The terms "hazardous substance" and "release" as used in this Mortgage shall have the meanings specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, "CERCLA"), and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 (as amended, "RCRA"); provided, in the event that the laws of the state where the Mortgaged Property is located establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply. Without prejudice to the survival of any other agreements of the Borrower hereunder, the provisions of this Section shall survive the final payment of all Indebtedness and the termination of this Mortgage and shall continue thereafter in full force and effect.

Section 1.10 Further Assurances. The Borrower will keep the lien of this Mortgage valid and unimpaired. The Borrower will promptly (and in no event later than 30 days after written notice from the Lender is received) cure any defects in the creation, execution and delivery of this Mortgage and the Loan Agreement. The Borrower at its expense will promptly execute and deliver to the Lender upon request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of the Borrower in this Mortgage and the Loan Agreement or to further evidence and more fully describe the Mortgaged Property or more fully state the security obligations set out herein, or to perfect, protect or preserve any liens created pursuant to this Mortgage (including the priority of such liens), or to make any recordings, to file any notices, or obtain any consents as may be necessary or appropriate in connection with the transactions contemplated by this Mortgage.

Section 1.11 Reimbursement of Expenses. Subject to the terms of the Loan Agreement, the Borrower will pay all legal fees and fees of Lender's counsel, title insurance premiums, brokerage fees, appraisal fees, surveying fees and inspection fees, travel and other expenses reasonably incurred by the Lender in connection with the preparation of this Mortgage (including any amendments). The Borrower will, upon request, promptly reimburse the Lender for all payments expended, advanced or incurred by the Lender to satisfy any obligation of the Borrower under this Mortgage, or to protect the property or business of the Borrower, or to collect the Indebtedness, or to enforce the rights of the Lender under this Mortgage, which amounts will include all court costs, attorneys' fees, fees of auditors and accountants, and investigation expenses reasonably incurred by the Lender in connection with any such matters, together with interest at the interest rate set forth in the Loan Agreement on each such amount from the date that the same is expended, advanced or incurred by the Lender until the date of reimbursement to the Lender.

Section 1.12 Liens. The Borrower will not create, incur, assume or permit to exist any judgment, lien or other encumbrance against all or any portion of the Mortgaged Property, except for (a) liens in favor of the Lender to secure the Indebtedness; (b) liens for taxes, assessments, or other governmental charges not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted, if such reserve as shall be required by generally accepted accounting principles shall have been made therefor; (c) liens of vendors, carriers, warehousemen, mechanics, laborers and materialmen arising by law in the ordinary course of business for sums either not yet due or being contested in good faith by appropriate action promptly initiated and diligently conducted, if such reserve as shall be required

# UNOFFICIAL COPY

by generally accepted accounting principles shall have been made therefor; and (d) any other liens specifically permitted by the Lender in writing (including without limitation under the Loan Agreement).

Section 1.13 Sale or Encumbrance. The Borrower will not sell, assign, lease, exchange, transfer, convey or otherwise dispose of (whether in one transaction or in a series of transactions) any portion of the Mortgaged Property, except as may be permitted in the Loan Agreement.

Section 1.14 Release of Property. The Lender may at any time and without notice to the Borrower, release any part of the Mortgaged Property from the effect of this Mortgage, or grant an extension or deferment of time for the discharge of any obligation hereunder, without affecting the liability of the Borrower hereunder.

Section 1.15 Advances by Lender. The Borrower authorizes the Lender to advance any sums necessary, limited only as hereinafter set forth, for the purpose of paying (i) insurance premiums, (ii) taxes, forced contributions, service charges, local assessments and governmental charges, (iii) any liens or encumbrances affecting the Mortgaged Property (whether superior or subordinate to the lien of this Mortgage) not permitted by this Mortgage, (iv) necessary repairs and maintenance expenses or (v) any other amounts which the Lender reasonably deems necessary and appropriate to preserve the validity and ranking of this Mortgage, to cure any Event of Default or to prevent the occurrence of any Event of Default (collectively, the "Advances") of whatever kind; provided, however, that nothing herein contained shall be construed as making such Advances obligatory upon Lender, or as making Lender liable for any loss, damage, or injury resulting from the nonpayment thereof. The Borrower covenants and agrees that within five (5) days after demand therefor by the Lender, the Borrower will repay the Advances to the Lender, together with interest thereon at the rate of 10% per annum, and in addition will repay any other reasonable costs, attorneys' fees and expenses, charges and expenses of any and every kind for the full protection and preservation of the Mortgaged Property or this Mortgage, including payments required in respect to any lien, privilege or mortgage affecting the Mortgaged Property, together with interest thereon at the rate of 10% per annum, and which amount shall be included in the Indebtedness secured hereby.

Section 1.16 Taxation of Mortgage. In the event that any governmental authority shall impose any taxation of mortgages or the indebtedness they secure (other than with respect to income earned by Lender as a result of interest or fees received in connection with the Indebtedness), the Borrower agrees to pay such governmental taxes, assessments or charges either to the governmental authority or to the Lender, as provided by law.

Section 1.17 Notice of Changes. The Borrower will not change its name, identity, federal tax identification number, structure, location of chief executive office or chief place of business, or location where it keeps or holds any Goods or Collateral (hereinafter defined) or any records relating thereto unless it shall have given the Lender at least 30 days prior written notice thereof.

Section 1.18 Substitute and Successor Lender. If the Lender shall die or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by Lender so to do, or if, for any reason, Lender shall prefer to appoint a substitute Lender to act instead of the herein named Lender, Lender shall have full power to appoint, at any time by written instrument, a substitute Lender, and, if necessary, several substitute Lenders in succession, who shall succeed to all the estate, rights, powers and duties of Lender named herein, and no notice of such appointment need be given to Borrower or to any other person or filed for record in any public office. Such appointment may be executed by any agent of Lender and, if Lender is a corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any executive officer of the corporation.

## ARTICLE 2 EVENTS OF DEFAULT; REMEDIES

Section 2.1 Events of Default. Any of the events constituting an Event of Default under the Loan Agreement shall be considered an "Event of Default" as that term is used herein.

Section 2.2 Remedies. (a) Upon the happening of any Event of Default specified in Section 8.01 of the Loan Agreement (other than subsections (g) or (h) thereof), the Lender may by written notice to the Borrower declare the entire



# UNOFFICIAL COPY

principal amount of all Indebtedness then outstanding including interest accrued thereon to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor or other notice of default of any kind, all of which are hereby expressly waived by the Borrower.

(b) Upon the happening of any Event of Default specified in Subsections (g) or (h) of Section 8.01 of the Loan Agreement, the entire principal amount of all Indebtedness then outstanding including interest accrued thereon shall, without notice or action by the Lender, be immediately due and payable without presentment, demand, protest, notice of protest or dishonor or other notice of default of any kind, all of which are hereby expressly waived by the Borrower.

(c) Upon the occurrence of any Event of Default, the Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Borrower and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Lender: (i) commence an action to foreclose this Mortgage; or (ii) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in this Mortgage or the Loan Agreement; or (iii) recover judgment on the Loan Agreement either before, during or after any proceedings for the enforcement of this Mortgage; or (iv) apply to any court having jurisdiction to appoint a Lender, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of the Borrower or of any person, firm or other entity liable for the payment of the Indebtedness (Borrower hereby irrevocably consenting to such appointment and waiving notice of any application thereof and any such receiver or receivers having the usual powers and duties of receivers in like or similar cases and all powers and duties of Lender in case of entry as provided in this Mortgage and continuing as such and exercising all such powers until the date of confirmation of the sale of the Mortgaged Property unless such receivership is sooner terminated).

(d) The proceeds or avails of any sale made under or by virtue of this Section, together with any other sums which then may be held by the Lender or Lender under this Mortgage, whether under the provisions of this Section or otherwise, shall be applied to the Indebtedness in such manner as the Lender, in its sole discretion, shall determine.

(e) Upon the occurrence of any Event of Default, the Lender may additionally take any one or more of the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Lender: (i) the Lender may notify any and all tenants to pay all rents due thereafter directly to the Lender at the address set forth in the Lender's notice to such tenants; the Borrower irrevocably agrees that all such Tenants shall be authorized to pay the rents directly to the Lender without liability of such tenants for the determination of the actual existence of any default by the Borrower claimed by the Lender, and the tenants shall be expressly relieved of any and all duty, liability and obligation to the Borrower in connection with any and all rents so paid; or (ii) the Lender may, without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Indebtedness, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon the Indebtedness, and in such order as Lender may determine; or (iii) the Lender may alter, modify, amend, terminate or permit the surrender of any or all leases (and other agreements concerning the occupancy of the Mortgaged Property), and the Lender may execute new leases of any part of the Mortgaged Property (and other agreements concerning the occupancy of the Mortgaged Property), including leases that extend beyond the maturity date of the Loan Agreement. The enforcement of any and all such rights available to the Lender hereunder shall continue for so long as the Lender shall elect, notwithstanding that the collection and application of the rents may have cured the original default. Following the exercise of any of the foregoing rights, the Lender may, at its sole option, through written notice to the Borrower, permit the Borrower to reenter and take possession of the Mortgaged Property or any part thereof, and to perform all acts necessary for the operation and maintenance of the Mortgaged Property, including the right to collect the rents, but the Lender shall nevertheless have the right, effective upon written notice, to demand, sue for possession of and collect the rents under the leases (and other agreements concerning the occupancy of the Mortgaged Property) and otherwise exercise its rights under this Mortgage again.

(f) In addition, upon the occurrence of an Event of Default, Lender shall have the option, without declaring the entire Indebtedness due, to proceed with judicial foreclosure and sale pursuant to a judgment of foreclosure in satisfaction of such Event of Default. Such sale may be made subject to the unmaturing part of the Loan Agreement or other

# UNOFFICIAL COPY

Indebtedness without any effect on the unmatured portion of the Indebtedness, but as to such unmatured portion of the Indebtedness, this Mortgage shall remain in full force and effect such as though no sale had been made under the provisions of this paragraph. In addition, several sales may be made hereunder without exhausting the right of sale for any unmatured portion of the Indebtedness, it being the intention of the parties hereto to provide for a foreclosure and sale of the security for any matured portion of the Indebtedness without exhausting the power to foreclose and to sell the security for any other portion of the Indebtedness whether matured at the time or subsequently maturing. An assignee holding any installments or part of any installment of the Loan Agreement or other portion of the Indebtedness shall have the same powers as are hereby conferred on the Lender to proceed with foreclosure on a matured installment or installments; but if said assignee forecloses or causes a sale to be made to satisfy any installment, part of that installment, or installments, then such foreclosure for sale shall be made subject to all of the terms and provisions hereof with respect to the unmatured part of the Loan Agreement and other portions of the Indebtedness owned by Lender.

(g) If at any foreclosure proceeding the Mortgaged Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Borrower and against the Mortgaged Property of Borrower for the amount of such deficiency, and Borrower does hereby irrevocably consent to the appointment of a receiver for the Mortgaged Property and the other Mortgaged Property (real and personal) of Borrower and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

Section 2.3 Foreclosure by Power of Sale. (a) Upon the occurrence of an Event of Default, Borrower hereby authorizes and empowers Lender and each and all of Lender's successors in this trust, at any time thereafter, at the request of Lender (which request is hereby conclusively presumed), to sell at public sale the Mortgaged Property or any part thereof, or any interest therein, to the highest bidder, for cash, in the manner provided by applicable law, as an entirety or in parcels, by one sale or by several sales held at one time or at different times as the Lender shall deem advisable at the time of sale, and to execute and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds of conveyance thereof and bills of sale with covenants of general warranty binding on Borrower and Borrower's heirs, personal representatives, successors and assigns, free of any equity of redemption, homestead, dower, curtesy or other state or federal exemption. Lender making such sale shall receive the proceeds hereof and shall apply the same as follows: (i) Lender shall pay, in addition to the attorneys' fees authorized in the Loan Agreement and herein, the reasonable expense of executing this trust, including a commission to Lender of five (5%) percent of the gross proceeds of the sale; (ii) after paying such expenses, Lender shall pay so far as may be possible the Indebtedness, discharging first that portion of the Indebtedness arising under the covenants or agreements herein contained and not evidenced by the Loan Agreement; and (iii) Lender shall pay the residue, if any, to whomsoever shall be entitled thereto. Payment of the purchase price to Lender shall satisfy the obligation of the purchaser at such sale therefore and such purchaser shall not be bound to look after the application thereof.

(b) Borrower hereby ratifies and confirms any and all acts that Lender and Lender's successor or successors in this trust, shall do lawfully by virtue hereof. Borrower hereby agrees, on behalf of Borrower and of Borrower's respective heirs, personal representatives, successors and assigns, with the recitals contained in any deed or deeds or other instrument executed in due form by any Lender or substitute Lender, acting under the provisions of this instrument, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds or other instrument and the passing of title thereby, and all prerequisites and requirements of any sale or sales shall be conclusively presumed to have been performed, and all persons subsequently dealing with the Mortgaged Property purported to be conveyed by such deed or deeds or other instrument, including without limitation, the purchaser or purchasers thereof shall be fully protected in relying upon the truthfulness of such recitals. Lender or any successor Lender acting in accordance with the terms hereof shall not be personally liable for any action taken pursuant hereto.

(c) Lender may bid and being the highest bidder therefore, become the purchaser of any or all of the Mortgaged Property at any Lender's or foreclosure sale hereunder and shall have the right to credit the amount of the bid upon the amount of the Indebtedness, in lieu of cash payment.

(d) The purchaser at any Lender's or foreclosure sale hereunder may disaffirm any easement granted, or lease, or agreement made, in violation of any provision of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and lease or agreement.

# UNOFFICIAL COPY

(e) In the event of Event of Default, Lender may, at Lender's option, enter upon and take exclusive possession of Mortgaged Property and thereafter manage, use, lease or otherwise operate same in such manner and by and through such persons, objects or employees as it may deem proper or necessary. Lender shall be likewise entitled to possession of all books and records of Borrower that relate to the Mortgaged Property. The rights of Lender under this subsection may be enforced through an action for forcible entry and detainer or any other means authorized by law. Any and all rents or other issues or profits received by Lender shall be accounted for in the manner provided for in Subsection 2.2(d) above.

(f) The sale or sales by Lender of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Lender is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Mortgaged Property shall be less than the aggregate of the Indebtedness and the expense of executing this Mortgage and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Borrower shall never have the right to require sale or sales of less than the whole of the Mortgaged Property, but Lender shall have the right, at its sole election, to require Lender to sell less than the whole of the Mortgaged Property. If default is made hereunder, the holder of the Indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing Lender to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire Indebtedness due, and if sale is made because of default on an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Indebtedness; and it is agreed that such sale if so made, shall not in any manner affect the unmatured part, but as to such unmatured part, this Mortgage shall remain in full force and effect as though no sale had been made hereunder. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness.

(g) In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's successors or assigns or any other persons claiming any interest in the Mortgaged Property by, through or under Borrower are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of said Mortgaged Property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of said Mortgaged Property in the Justice of the Peace Court in the Justice Precinct in which such Mortgaged Property, or any part thereof, is situated.

**Section 2.4 Sale of Personal Property.** The following applies with respect to all personal property covered by this Mortgage (collectively, the "Collateral"), including without limitation that which is described in Section C above:

(a) In addition to and cumulative of any other remedies granted in this Mortgage to Lender, Lender may, upon default hereunder, proceed under the UCC as to all or any part of the Collateral and shall have and may exercise with respect to all or any part of the Collateral all of the rights, remedies and powers of a secured party under the UCC, including without limitation, the right and power to repossess, retain and sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Collateral or any part thereof and to dispose of the proceeds in any manner authorized or permitted under the applicable provisions of the UCC, and to apply the proceeds thereof toward payment of Lender's attorneys' fees and other expenses and costs of pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the Collateral thereby incurred by Lender, and toward payment of the Indebtedness in such order and manner as Lender may elect consistent with the provisions of the UCC. Nothing in this Section shall be construed to impair or limit any other right or power to which Lender may be entitled hereunder, at law or in equity.

(b) Among the rights of Lender upon default and acceleration of the Indebtedness pursuant to the provisions hereof, and without limitation, Lender shall have the right, but not the obligation, without being deemed guilty of trespass and without liability for damages thereby occasioned (i) to enter upon any premises where any Collateral may be situated and take possession of the Collateral, or render it unusable, or dispose of the Collateral on Borrower's premises, and Borrower agrees not resist or interfere, and (ii) to take any action deemed necessary or appropriate or desirable by Lender at Lender's option and in Lender's discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition as herein authorized. Lender may, at Lender's discretion, require Borrower to assemble the Collateral and make it available to Lender at a place designated by Lender that is reasonably convenient to both parties.

# UNOFFICIAL COPY

(c) Lender shall give Borrower notice, by certified mail, postage prepaid, of the time and place of any public sale of any of the Collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to Borrower at the address of Borrower as specified below at least five (5) days before the time of the sale or other disposition, which provisions for notice Borrower and Lender agree are reasonable; provided, however, that nothing herein shall preclude Lender from proceeding as to both real and personal property in accordance with Lender's rights and remedies in respect to real property as provided in the UCC, and without any notice to Borrower except for the notices provided in Section 2.3 above.

(d) To the extent such may now or hereafter be permitted under applicable law, Lender is authorized to execute and file financing statements and continuation statements under the UCC with respect to the Collateral without joinder of Borrower in such execution or filing. Borrower shall execute and deliver to Lender such financing statements, continuation statements and other documents relating to the Collateral or any portion thereof as Lender may reasonably request from time to time to preserve and maintain the priority of the security interest created by this Mortgage and shall pay to Lender on demand any expenses and attorneys' fees reasonably incurred by Lender in connection with the preparation, execution, filing and perfection and continuation of the liens and security interest of this Mortgage and of any financing statements, continuation statements, partial releases, termination statements or other documents necessary or desirable to continue or confirm Lender's security interest, or any modification thereof and in connection with any UCC searches performed by Lender. This document, and any carbon, photographic or other reproduction of this document may be filed by Lender and shall be sufficient as a financing statement. All or part of the Collateral is or is to become fixtures on the real estate constituting a portion of the Mortgaged Property. But this statement shall not impair or limit the effectiveness of this document as a security agreement or financing statement for other purposes, and, without limitation of any other provision hereof, this Mortgage shall constitute a fixture financing statement and, as such, shall be filed for record in the real estate records of the county in which the Land is located. Borrower shall not change Borrower's name or address without the prior written consent of Lender. The name and address of the record owner of the Land is the party or parties defined herein as Borrower.

(e) Borrower agrees that, except for the security interest granted hereby in the Collateral and as otherwise permitted in the Loan Agreement, Borrower is the owner of the Collateral free of any adverse claim, security interest or encumbrance, and Borrower shall defend the Collateral against all claims and demands of any person at any time claiming the same or any interest therein. Borrower has not heretofore signed any financing statement and no financing statement signed by Borrower is now on file in any public office except those statements, true and correct copies of which have been delivered to Lender. So long as any amount remains unpaid on the Indebtedness, Borrower shall not execute and there shall not be filed in any public office any such financing statement or statements affecting the Collateral other than the financing statements in favor of Lender hereunder and financing statements for equipment leases and loans in the ordinary course of Borrower's business to the extent, if any, permitted under the Loan Agreement.

(f) The security interest granted herein shall not be construed or deemed to constitute Lender or Lender as a Lender or Lender in possession of the Mortgaged Property so to obligate Lender or Lender to lease the Mortgaged Property or attempt to do the same, or to take any action, incur any expenses or perform or discharge any obligation, duty or liability with respect to the Mortgaged Property or any part thereof or otherwise.

(g) In addition to, and concurrently or otherwise with, the remedies set forth above upon the occurrence of any Event of Default, Lender may require Borrower (i) to establish a cash collateral account (the "Collateral Account") in the name and under the control of Lender at Lender or a bank satisfactory to Lender, which shall be subject to access and withdrawal by Lender only, and (ii) to deposit into the Collateral Account all payments received by Borrower in satisfaction, in whole or in part of any accounts or general intangibles (or proceeds therefrom) within two (2) business days of the receipt thereof, such items of payment and remittances to not be commingled with any of Borrower's other property. The funds in the Collateral Account are and shall be subject to a security interest in favor of Lender to secure the Indebtedness.

(h) Borrower hereby irrevocably appoints Lender its agent and attorney-in-fact, with full power of substitution, in the name of Borrower or Lender, for the sole use and benefit of Lender, but at Borrower's expense, to exercise, at any time and from time to time while an Event of Default has occurred and is continuing, all or any of the following powers with respect to all or any of the Mortgaged Property: (i) to endorse the name of Borrower upon any check, draft, note or other instrument payable to Borrower evidencing payment upon any accounts or general intangibles, (ii) to notify postal service authorities to change the address for delivery of Borrower's mail to a "lockbox" address designated and controlled

# UNOFFICIAL COPY

by Lender, and to receive, open and dispose of all mail addressed to Borrower, (iii) to demand, sue for, collect, receive and give acquittance for any and all accounts and other monies due or to become due for or as Mortgaged Property or by virtue thereof, (iv) to settle, compromise, compound, prosecute or defend any action or proceeding with respect to any of the Mortgaged Property, and (v) to extend the time of payment of any or all of the Mortgaged Property and to make any allowance and other adjustments with reference thereto. The aforesaid mandate and power of attorney, being coupled with an interest, is irrevocable so long as any of the Indebtedness remains outstanding.

(i) While an Event of Default has occurred and is continuing, Borrower will make no material change to the terms of any account without the prior written permission of Lender. Upon the occurrence of an Event of Default, and at any time thereafter, Borrower upon request of Lender will promptly notify (and Borrower hereby authorizes Lender so to notify) each account debtor in respect of any account or general intangible that such Mortgaged Property has been assigned to Lender hereunder, and that any payments due or to become due in respect of such Mortgaged Property are to be made directly to Lender or its designee.

Section 2.5 Set-Off. Upon the occurrence of any Event of Default, the Lender shall have the right to set-off any funds of the Borrower in the possession of the Lender (other than tenant security deposits under leases) against any amounts then due by the Borrower to the Lender pursuant to this Mortgage.

Section 2.6 Defeasance. All of the covenants and agreements of Borrower herein shall survive the execution and delivery of this document and shall continue in force until the Indebtedness is paid in full and a written release hereof is executed by Lender. Accordingly, if Borrower shall perform faithfully each and all of the covenants and agreements herein contained and if the Indebtedness shall be fully paid and satisfied, then, and then only this conveyance shall become null and void and shall be released in the form upon Borrower's written request and at Borrower's expense. No release of this conveyance or the lien thereof shall be valid unless executed by Lender.

## ARTICLE 3 MISCELLANEOUS

Section 3.1 Notices. Any notice or demand which, by provision of this Mortgage, is required or permitted to be given or served by the Lender to or on the Borrower shall be deemed to have been sufficiently given and served for all purposes (if mailed) three calendar days after being deposited, postage prepaid, in the United States mail, registered or certified mail, or (if delivered by express courier) one business day after being delivered to such courier, or (if delivered in person) the same day as delivery, in each case addressed (until another address or addresses is given in writing by the Borrower to the Lender) to the Borrower at the address set forth below. Any notice or demand which, by any provision of this Mortgage, is required or permitted to be given or served by the Borrower to or on the Lender shall be deemed to have been sufficiently given and served for all purposes (if mailed) three calendar days after being deposited, postage prepaid, in the United States mail, registered or certified mail, or (if delivered by express courier) one business day after being delivered to such courier, or (if delivered in person) the same day as delivery, in each case addressed (until another address or addresses are given in writing by the Lender to the Borrower) to the Lender at the address set forth on as follows:

As to Borrower:

HHP-Schaumburg, L.L.C.  
c/o Burrus Investment Group, Inc.  
401 Veterans Boulevard, Suite 102  
Metairie, LA 70005  
Attention: Christopher D. Schott  
Fax: (504) 455-7605

# UNOFFICIAL COPY

with a copy to:

Sher Garner Cahill Richter Klein McAlister & Hilbert, L.L.C.  
909 Poydras Street, 28<sup>th</sup> Floor  
New Orleans, LA 70112  
Attention: Leopold Z. Sher  
Fax: (504) 299-2300

As to Lender:

Hibernia National Bank  
313 Carondelet Street  
New Orleans, Louisiana 70130  
Attention: Manager, Commercial Real Estate  
Fax: (504) 533-2042

or

P. O. Box 61540  
New Orleans, Louisiana 70161  
Attention: Manager, Commercial Real Estate  
Fax: (504) 533-2042

Section 3.2 Amendment. Neither this Mortgage nor any provisions hereof may be changed, waived, discharged or terminated orally or in any manner other than by an authentic instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought

Section 3.3 Invalidity; Conflicts. If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage. In the event of any conflict between any provisions of this mortgage and any provision in the Loan Agreement, the Loan Agreement shall control.

Section 3.4 Governing Law. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 3.5 Limitation of Interest. Lender and Borrower stipulate and agree that, notwithstanding any choice of law therein, none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the applicable laws of the State of Illinois. Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note, and shall never be required to pay interest on the Note, at a rate in excess of the maximum interest that may be lawfully charged under the applicable laws of the State of Illinois, and the provisions of this Section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the Note to a rate in excess of that deemed to constitute interest in excess of the maximum permissible rate, then such excess interest shall be immediately returned to the Borrower upon such determination.

Section 3.6 Non-Waiver. The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby accrued or to declare a default as herein

# UNOFFICIAL COPY

provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and Borrower's failure to pay said entire sum shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Lender or Lender shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Lender thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them, or either of them, upon the occurrence of a default, and the right to proceed with a sale under any notice of default, and election to sell, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Lender to any transaction or action of Borrower which is subject to consent or approval of Lender hereunder shall not be deemed a waiver of right to require such consent or approval to future or successive transactions or actions.

Section 3.7 Release. Upon full payment of all sums secured hereby, Lender shall return all notes covered under the Loan Agreement to the Borrower and shall release the lien of this Mortgage by executing a full release of lien in recordable form and delivering it to Borrower.

Section 3.8 Acceptance by Lender. Lender accepts this Mortgage when, duly executed and acknowledged, it is made a public record as provided by law.

Section 3.9 Lender. The term "Lender" shall be deemed to include the owner and holder of any note covered under the Loan Agreement, from time to time, whether or not named as Lender herein.

Section 3.10 Attorney Fees. In case the Loan Agreement or any other Indebtedness is placed in the hands of attorneys at law for the filing of foreclosure proceedings, to protect the rights of Lender or Lender, on behalf of Lender, or to enforce any of the agreements contained in this Mortgage, Borrower will pay all costs of collection, including but not limited to reasonable attorneys' fees, incurred in connection with the protection of or realization of collateral or in connection with any of Lender's or Lender's collection efforts, whether or not suit on the Indebtedness or any foreclosure proceedings are filed. Borrower further agrees that the Indebtedness shall be increased by the amount of said costs and fees.

Section 3.11 Business Purposes. Borrower represents and agrees that the proceeds of the indebtedness secured by this Mortgage and any future advances made by Lender to Borrower and secured by this Mortgage will be used for "business purposes" as that term is defined in 815 ILCS 205/4(1)(c).

Section 3.12 Future Advances. If, at any time prior to the payment in full of the indebtedness secured by this Mortgage, Lender shall advance additional funds to or for the benefit of Borrower, such advance together with applicable interest thereon shall be secured by this Mortgage in accordance with all covenants, conditions and agreements herein contained and, to the extent permitted by law, shall be on a parity with and not subordinate to the indebtedness evidenced by the Note; provided, however, that the indebtedness secured by this Mortgage and from time to time remaining unpaid shall not, after including the amount of all such advances, exceed two (2) times the original principal indebtedness secured by this Mortgage.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the date first written above.

HHP-SCHAUMBURG, L.L.C., a Delaware limited liability company

By: *Christopher D. Schott*  
Name: Christopher D. Schott  
Its: Manager

IN THE PRESENCE OF

*[Signature]*

*Mary P. Cassina*

HIBERNIA NATIONAL BANK

By: *Samantha Whitehead*  
Name: SAMANTHA WHITEHEAD  
Title: BANKING OFFICER

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

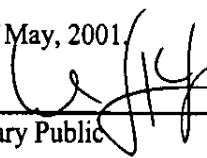
## ACKNOWLEDGMENT

STATE OF LOUISIANA

PARISH OF ORLEANS

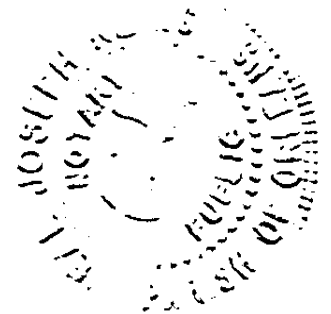
I, the undersigned, a Notary Public in and for the said Parish, in the State aforesaid, do hereby certify that Christopher D. Schott, the Manager of HHP-Schaumburg, L.L.C., a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as such Manager and as his free and voluntary act and on behalf of such company for the purposes therein set forth.

Given under my hand and notarial seal this 24<sup>th</sup> day of May, 2001.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: at death  
[SEAL]

NEAL J. KLING  
NOTARY PUBLIC  
State of Louisiana, Parish of Orleans  
My commission is issued for life



Property of Cook County Clerk's Office

10506238

# UNOFFICIAL COPY

## LEGAL DESCRIPTION

EXHIBIT A  
(Page 1 of 2)

### SCHAUMBURG, IL

#### **PARCEL 1 (FEE):**

Lot 1 in the Resubdivision of Lots 1 and 2 in WALDEN INTERNATIONAL, being a Subdivision of part of Fractional Section 1 and part of the North ½ of Section 12, in Township 41 North, Range 10, East of the Third Principal Meridian, according to the plat of Resubdivision recorded October 6, 1982 as Document No. 26374113, (less and except that part taken through Condemnation Case 89L50751) in Cook County, Illinois.

#### **PARCEL 2 (EASEMENT):**

Perpetual and non-exclusive easements appurtenant to and for the benefit of Parcel 1 as created by Article IV of the Declaration of Protective Covenants, recorded March 28, 1980 as Document No. 25406331, for Ingress and Egress and Utilities upon, over, along, and across "Drummer Drive" as depicted on Exhibit "3" of Document No. 25406331.

#### **PARCEL 3 (EASEMENT):**

Perpetual and non-exclusive easements appurtenant to and for the benefit of Parcel 1 as set forth in paragraph 1 of the Declaration of Easements for Resubdivision of Lots 1 and 2 in WALDEN INTERNATIONAL, for the purpose of Ingress and Egress upon, over, along and across the areas designated as "Access and Circulation Roads and Sidewalks" on Exhibit "B" of Document No. 26442124 and created by deed recorded December 17, 1982 as Document No. 26442125.

#### **PARCEL 4 (EASEMENT):**

Perpetual and non-exclusive easements appurtenant to and for the benefit of Parcel 1 as created by Article IV of the Declaration of Protective Covenants recorded March 28, 1980 as Document No. 25406331 for Drainage over and upon the "Storm Water Detention Areas" as depicted on Exhibit "3" of Document No. 25406331.

#### **PARCEL 5 (EASEMENT):**

Easements appurtenant to and for the benefit of Parcel 1 upon, over, under, along and across those parts of Lots 3, 4, 5, and 6 as set forth on the Plat of Subdivision of WALDEN INTERNATIONAL, recorded January 30, 1980 as Document No. 25342431, within the areas marked "Utility Easements" and upon, over, under, along and across those parts of Lots 2 and 3 as set forth on the Plat of Resubdivision of Lots 1 and 2 of WALDEN INTERNATIONAL, recorded October 6, 1982 as Document No. 26374113, within the areas marked "Utility Easements Hereby Dedicated" and "Existing Utility Easements", for the purposes of sewer, gas and water services.

#### **PARCEL 6 (EASEMENT):**

Perpetual and non-exclusive easements appurtenant to and for the benefit of Parcel 1 upon, over, under, along and across those parts of Lots 2 and 3 of the Resubdivision of Lots 1 and 2 in WALDEN INTERNATIONAL, as set forth in the Declaration of Easements for Resubdivision of Lots 1 and 2 in WALDEN INTERNATIONAL, for constructing, utilizing, repairing, maintaining

# UNOFFICIAL COPY

and reconstructing "Utility Lines" as depicted in Exhibit "C" of said Declaration recorded December 17, 1982 as Document No. 26442124 and as created by deed recorded December 17, 1982 as Document No. 26442125, all in Cook County, Illinois.

## PARCEL 7 (EASEMENT):

Non-exclusive and perpetual easement for ingress and egress for the use of the Office Parking Area for the parking of motor vehicles and for ingress and egress for motor vehicles and pedestrians to and from the Hotel Parcel from and to the Office Parcel Parking Area in order to use the Office Parcel Parking Area as set forth in Parking Easement Agreement dated November 17, 1995 and recorded December 29, 1995 as Document 95908016 made by American National Bank and Trust Company as Trustee under Trust Number 107177-00 and Quebec Street Investments Inc. over portions of the following land:

Lots 2 and 3 in the resubdivision of Lots 1 and 2 in Walden International, being a subdivision of part of fractional Section 1 and part of the North ½ of Section 12, both in Township 41 North, Range 10 East of the Third Principal Meridian, according to the Plat of Resubdivision recorded as Document 26374113.

Address of Property: 1939 Meachum Rd., Schaumburg, Illinois  
Permanent Index Numbers: 07-01-007-0000 and  
07-12-101-022-0000