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MORTGAGE NOTE

Doc#: 0327531111
Eugene "Gene" Moore Fee: \$70.50
Cook County Recorder of Deeds
Date: 10/02/2003 01:12 PM Pg: 1 of 8

199991
\$2,400,000.00

MAIL TO: MIDWEST BANK & TRUST
501 W. NORTH AVE
MELROSE PARK, IL 60160
ATTN: JAMES WASSON, SVP

Chicago, Illinois
August 16, 2002

THIS MORTGAGE NOTE ("Note") is made and delivered in Chicago, Illinois, by 1550 FOREST L. P., an Illinois limited partnership ("Borrower"), to the order of MIDWEST BANK AND TRUST COMPANY, an Illinois banking corporation ("Lender"). This Note is the note referred to in the Construction Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"). The Loan Agreement among other things contains provisions for the acceleration of the maturity of this Note upon the happening of certain stated events and also for prepayments on account of the principal of this Note prior to the maturity upon the terms and conditions specified in the Loan Agreement.

RE-Recording to perfect interest

I.

Definitions

Borrower agrees that, for the purpose of this Note, the following terms shall have the following meanings:

1.1 "Default Rate" shall mean four percent (4%) per annum in excess of the Interest Rate, but not greater than the highest amount permitted by law.

1.2 "Disbursement Date" shall mean the date when funds are disbursed to Borrower in connection with the closing of the Loan from Lender to Borrower.

1.3 "Extended Maturity Date" shall mean February 16, 2004 or such earlier date the entire Outstanding Principal Balance and accrued and unpaid interest thereon, and any other sums which are due and payable pursuant to the terms and provisions of this Note are due and payable by reason of the acceleration of the maturity of this Note.

1.4 "Interest Rate" shall mean the daily rate equivalent (computed on the basis of a 360 day year and actual days elapsed) of the per annum rate of interest announced or published publicly from time to time by Lender as its prime or base rate of interest (the "Base Rate") plus 50 basis points, but in no event shall interest exceed the maximum lawful rate under applicable law. Anything herein to the contrary notwithstanding, the Interest Rate shall have a floor minimum rate of six percent (6%) per annum. Changes in the Interest Rate shall take effect immediately upon the occurrence of any change in the Base Rate. A certificate made by an officer of Lender stating the Base Rate in effect on any given day shall for the purposes hereof, be conclusive evidence of the Base Rate in effect on such day. The Base Rate is a base reference rate of interest adopted by Lender as a benchmark from which Lender determines the floating

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interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and Borrower acknowledges and agrees that the Base Rate is not the lowest rate of interest charged by Lender on commercial loans and that Lender has made no representations whatsoever that the Base Rate is the interest rate actually offered by Lender to borrowers of any particular creditworthiness.

1.5 "Loan Documents" shall mean those documents enumerated in Section 3.1 hereof.

1.6 "Maturity Date" shall mean August 16, 2003, or such earlier date the entire Outstanding Principal Balance and accrued and unpaid interest thereon, and any other sums which are due and payable pursuant to the terms and provisions of this Note are due and payable by reason of the acceleration of the maturity of this Note.

1.7 "Original Principal Amount" shall mean TWO MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,400,000.00).

1.8 "Outstanding Principal Balance" shall mean the aggregate of all sums advanced by Lender to or for the benefit of Borrower hereunder from time to time and not repaid.

1.9 "Payment Date" shall mean September 16, 2002 and the same day of each month thereafter during the term hereof prior to and including the Maturity Date or the Extended Maturity Date, as the case may be.

1.10 "Premises" shall mean the single family residence to be built on the property commonly known as 1550 Forest, Highland Park, Illinois 60035.

II.

Payment of Interest and Principal

For Value Received, Borrower, jointly and severally if more than one, hereby promises to pay to the order of Lender, in lawful currency of the United States of America, the principal amount of Two Million Four Hundred Thousand and NO/100 Dollars (\$2,400,000.00) (the "Loan") or so much thereof as may now or hereafter be disbursed by Lender for the benefit of Borrower, together with interest as provided herein below as follows:

2.1 Interest. Interest shall accrue on the Outstanding Principal Balance, at the Interest Rate prior to Default. On each Payment Date there shall be due and payable monthly payments of accrued interest at the Interest Rate.

2.2 Payment of Principal. The entire Outstanding Principal Balance of this Note and any accrued and unpaid interest thereon and all other sums which are due and payable pursuant to this Note or the Loan Documents shall be due and payable on the Maturity Date; provided, however, that not less than sixty (60) days prior to the Maturity Date, Borrower shall have the option to extend the Maturity Date to the Extended Maturity Date upon written notice to Lender,

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which shall be granted provided that there has been no Event of Default under the Note, and provided further that Borrower shall have paid to Lender in connection with such extension option the sum of one-half of one percent (0.5%) of the Outstanding Principal Balance of the Loan plus any undisbursed portion of the Loan available for disbursement on such date. In the event the option to extend is exercised, the entire Outstanding Principal Balance of this Note and any accrued and unpaid interest thereon and all other sums which are due and payable pursuant to this Note or the Loan Documents shall be due and payable on the Extended Maturity Date.

2.3 Prepayment Privileges. This Note may be prepaid, in whole or from time to time in part, upon any Payment Date, without any premium, penalty, fee or charge to Borrower.

2.4 Default Interest or Late Payment Charge. Subsequent to an Event of Default until cured, interest shall accrue on the Outstanding Principal Balance at the Default Rate. At Lender's option, in its sole discretion, in lieu of applying the Default Rate, Lender may impose a late payment charge equal to four percent (4%) of the amount of such delinquent payment each month until such payment is made.

2.5 Calculation of Interest. All interest on this Note shall be calculated on the basis of a three hundred sixty (360) day year and the actual number of days elapsed.

2.6 Loan Origination Fee. In consideration for making the Loan evidenced by this Note, Borrower has agreed and does hereby agree to pay Lender a loan origination fee of Twelve Thousand and no/100 Dollars (\$12,000.00). If and to the extent not previously paid, the entire loan origination fee shall be due and payable concurrently with the execution and delivery of this Note. Borrower acknowledges and agrees that the fee is fully earned when received by Lender.

2.7 Application of Payments. All payments on account of the indebtedness evidenced by this Note shall be first applied to accrued and unpaid interest on the Outstanding Principal Balance of this Note, secondly, to all other sums then due the Lender hereunder or under any of the Loan Documents, and the remainder, if any, to said Outstanding Principal Balance.

2.8 Place of Payment. Payments and prepayments to be made under this Note are to be made at such place as the legal holder of this Note may from time to time in writing appoint, and, in the absence of such appointment, then at the offices of Lender at 501 West North Avenue, Melrose Park, Illinois 60160, Attention: James G. Wasson, Senior Vice President.

III.

Security, Defaults and Remedies

3.1 Security for Payment. This Note is issued pursuant to the terms of the Loan Agreement of even date herewith between Borrower and Lender. The payment of this Note is secured by, among other things, (i) a Construction Mortgage, Security Agreement and Fixture Financing Statement ("Mortgage") of even date herewith, made by Borrower to Lender, constituting a first lien on the Premises; (ii) an Assignment of Leases and Rents from Borrower

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to Lender; and (iii) certain Guarantees and other documents evidencing or securing the repayment of the Loan (this Note, the Mortgage, the Loan Agreement and all other such documents are sometimes collectively referred to as the "Loan Documents"). All of the terms of the Loan Agreement are hereby made a part of this Note with the same force and effect as if fully set forth herein. Reference is also made to the Mortgage for rights as to acceleration of the indebtedness evidenced by this Note upon the conditions stated in the Mortgage.

3.2 Occurrence of Event of Default; Acceleration of Maturity Date. It is agreed that upon occurrence of any of the following events of default under this Note ("Event of Default"):

- (a) default in the payment of principal or interest when due which shall continue for a period of five (5) days after Borrower has received written notice of such default; or
- (b) an unpermitted transfer of title under the Mortgage; or
- (c) default in the performance or observance of any other covenant or agreement of Borrower contained herein and the failure to cure within the applicable cure period, if any; or
- (d) default under the Mortgage and the failure to cure within the applicable cure period, if any, or if the right to foreclose the Mortgage shall accrue to Lender; or
- (e) default (as defined therein) under any of the other Loan Documents and the failure to cure within the applicable cure period, if any,

then, at any time thereafter, at the election of the holder or holders hereof and without additional notice to Borrower, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall become at once due and payable at the place of payment as aforesaid, and Lender may proceed to foreclose the Mortgage, to exercise any other rights and remedies available to Lender under the Mortgage and the other Loan Documents, and to exercise any other rights and remedies against Borrower or with respect to this Note which Lender may have at law, in equity or otherwise.

3.3 Nature of Remedies. The remedies of Lender as provided herein or in the Mortgage or any of the other Loan Documents, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefor shall arise. Failure of Lender, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date of this Note or the Extended Maturity Date, as the case may be, shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Default. No act of omission or commission of Lender, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Lender and then only to the extent specifically recited therein. A waiver or release in connection with any one event shall not be

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construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Lender's rights or remedies hereunder. Notice of the exercise of any right or remedy granted to Lender by this Note is not required to be given.

3.4 Payment of Attorneys' Fees and Costs. If (i) this Note or any Loan Document is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding; (ii) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note or any of the Loan Documents; (iii) an attorney is retained to protect or enforce the lien of the Mortgage or any of the other Loan Documents; or (iv) an attorney is retained to represent Lender in any other proceedings whatsoever in connection with this Note as a result of the action or inaction of Borrower, the Mortgage, any of the other Loan Documents or any property subject thereto, then Borrower shall pay to Lender all reasonable attorneys' fees, costs and expenses incurred in connection therewith, in addition to all other amounts due hereunder.

IV.

Miscellaneous

4.1 Notices. All notices, demands or other communications required or permitted to be given hereunder shall be (a) in writing and shall be deemed to be given when either (i) personally delivered, (ii) three business days after deposit in a regularly maintained receptacle of the U.S. Mail, postage prepaid, by United States registered or certified mail, return receipt requested, (iii) received if sent by private courier service, (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or private courier service, or (v) received via facsimile with mechanical proof of delivery with copy sent by U.S. Mail, and (b) addressed as follows:

- (a) If to Borrower:
 1550 Forest L. P.
 c/o DiamondSchreiber Holdings LLC
 600 Central Avenue, Suite 325
 Highland Park, Illinois 60035
 Facsimile: _____

With a copy to:
 Neal Gerber & Eisenberg
 2 North LaSalle, Suite 2200
 Chicago, Illinois 60602
 Attention: Robert G. Gerber
 Facsimile: 312/269-1747

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FILED FOR RECORD BY:
 MARY ELLEN VANDERVENTER
 LAKE COUNTY, IL RECORDER
 08/20/2002 - 03:53:24 P.M.
 RECEIPT #: 32595
 DRAWER #: 29

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Mail to:

- (b) If to Lender:
 Midwest Bank and Trust Company
 501 West North Avenue
 Melrose Park, IL 60160
 Attention: James G. Wasson, Senior Vice President
 Facsimile: 708/865-7013

With a copy to:
 Aronberg Goldgehn Davis & Garmisa
 One IBM Plaza, Suite 3000
 Chicago, Illinois 60611
 Attention: Robert N. Sodikoff
 Fax No. 312/828-9635

Any party may designate a different address or facsimile number for notice purposes by giving notice thereof in accordance with this paragraph.

4.2 Governing Law and Other Agreements. Borrower represents, covenants and agrees that (i) this instrument and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Illinois, without reference to the conflict of law principles of such state; (ii) the obligation evidenced by this Note is an exempted transaction under the Truth in Lending Act, 15 U.S.C., Section 1601, et seq.; (iii) said obligation constitutes a business loan within the purview of 815 ILCS 205/4; (iv) the proceeds of the indebtedness evidenced by this Note will not be used for the purchase of registered equity securities within the purview of Regulation "U" issued by the Board of Governors of the Federal Reserve System; and (v) upon the Maturity Date or the Extended Maturity Date, if applicable, Lender shall not have any obligation to refinance the indebtedness evidenced by this Note or to extend further credits to the Borrower except as expressly provided in this Note.

4.3 Interpretation. The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Note, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. All obligations of Borrower hereunder are joint and several. The parties in and believe that each provision in this Note comports with all applicable law. However, if any provision in this Note is found by a court of law to be in violation of any applicable law, and if such court should declare such provision to be unlawful, void or unenforceable as written, then it is the intent of all parties to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Note shall be construed as if such unlawful, void or unenforceable provision were not contained herein, and that the rights, obligations and interests of Borrower and the holder hereof under the remainder of this Note shall continue in full force and effect. Time is of the essence in this Note.

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4.4 Waiver. Borrower and any and all others who are now or may become liable for all or part of the obligations of Borrower under this Note (collectively the "Obligors") agree to be jointly and severally bound hereby and jointly and severally: (i) waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor and notice of protest; (iii) waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of each of the Obligors shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers or modifications that may be granted by Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; (vii) waive any right to trial by jury in any action or proceeding to enforce or defend any rights under or in connection with this Note including any amendment or replacement hereof; and (viii) consent to the addition of any and all other makers, endorsers, guarantors and other Obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such Obligors or security shall not affect the liability of any of the Obligors for the payment hereof.

4.5 Successors, Holders and Assigns. Upon any endorsement, assignment or other transfer of this Note by Lender or by operation of law, the term "Lender," as used herein, shall mean such endorsee, assignee or other transferee or successor to Lender then becoming the holder of this Note. This Note shall inure to the benefit of Lender and its successors and assigns and shall be binding on the Borrower. The terms "Borrower" and "Obligors," as used herein, shall include their respective successors, assigns, personal representatives, devisees, legatees and heirs.

4.6 Consent to Jurisdiction. TO INDUCE LENDER TO ACCEPT THIS NOTE, BORROWER HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY AGREES THAT AT THE ELECTION OF LENDER ALL ACTIONS ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS NOTE, THE MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS SHALL BE INSTITUTED AND LITIGATED IN COURTS HAVING SITUS IN THE CITY OF CHICAGO, ILLINOIS AND/OR IN THE COUNTY WHERE THE PROPERTY SUBJECT TO THE MORTGAGE IS LOCATED, AND BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT LOCATED AND HAVING SITUS IN SAID CITY OF CHICAGO AND/OR IN THE COUNTY WHERE THE PROPERTY SUBJECT TO THE MORTGAGE IS LOCATED, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS.

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4.6 Waiver of Jury Trial. BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the day and year first above written.

1550 FOREST L. P.
an Illinois limited partnership

By DIAMONDSCHREIBLER HOLDINGS LLC,
an Illinois limited liability company, its sole general partner

By: James Diamond, President

Name: James Diamond

Title: President

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