

# UNOFFICIAL COPY

REAL ESTATE MORTGAGE

88-487910

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THIS AGREEMENT (the "Mortgage") made as of this 30th day of September, 1988, between SERGIO ARLANDIZ, SR. and ELIZABETH ARLANDIZ, his wife, jointly and severally (collectively the "Mortgagor"), and PIONEER BANK & TRUST COMPANY (the "Mortgagee").

WITNESSETH: That to secure the payment of Mortgagor's Note in the original principal amount of Seventy-Five Thousand Dollars (\$75,000.00) together with interest thereon at a per annum rate of eleven and one-quarter percent (11¼%) and the payment of any and all sums heretofore or hereafter loaned and advanced by Mortgagee to Mortgagor; all of which sums together with the amount owing on the aforesaid Note shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) and the performance and observance by the Mortgagor, and any guarantors of any indebtedness secured hereby, of all of the covenants, agreements, and conditions contained in said Note, this Mortgage, in all other instruments pertaining to the repayment of any indebtedness secured hereby (including any Guaranty thereof) and in any other security agreement relating to sums secured hereby, the Mortgagor hereby mortgages and conveys to the Mortgagee:

All those certain lots, pieces, or parcels of land with the buildings and improvements thereon situated, lying and being in the County of Cook in the State of Illinois, as set forth in Exhibit A, attached hereto and made a part hereof.

TOGETHER with all improvements, tenements, hereditaments, gas, oil, minerals, easements, fixtures and appurtenances thereunto belonging or pertaining; all apparatus, equipment and appliances now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, ventilation and refrigeration; all machinery and other equipment of every nature and kind used or useful in connection with the maintenance and operation of the premises and intended for the use of tenants or occupants; (all of the foregoing whether now on the premises or hereafter erected, installed or placed thereon or therein, or whether physically attached thereto or not, are and shall be deemed a part of said real estate as between the parties hereto and all persons claiming by, through or under them, and a portion of the security for said indebtedness); and also all the estate, right, title and interest of the Mortgagor in and to the premises. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the real estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is

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defined in the Uniform Commercial Code), securing said indebtedness and obligations. Mortgagor represents and warrants that it is lawfully seized of the premises, that the same are unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and covenants that it will warrant and forever defend said premises and the quiet and peaceful possession of the same against any and all claims of all persons whomsoever;

TO HAVE AND HOLD the premises unto mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, free from all rights and benefits under the Homestead Exemption Laws of the State of Illinois, which said rights and benefits Mortgagee does hereby expressly release and waive.

Mortgagor covenants and agrees:

1. To pay, when due, all sums secured hereby.
2. Not to abandon the premises; to keep the premises in good condition and repair and not to commit or suffer waste; to pay for and complete within a reasonable time any building at any time in the process of erection upon the premises; to promptly repair, restore, or rebuild any building or improvement now or hereafter on the premises which may become damaged or destroyed; to refrain from impairing or diminishing the value of the security and to make no material alterations of the premises.
3. To comply with all requirements of law or municipal ordinances governing the premises and the use thereof; and to permit mortgagee to inspect the premises at all reasonable times.
4. To keep the premises free from mechanics or other liens or claims for liens of any kind; to pay when due any indebtedness which may be secured by a lien or charge on the premises, including, without limitation, any condominium association assessments, dues or charges, and, upon request, to exhibit to mortgagee satisfactory evidence of the payment and discharge of such liens or claims.
5. To pay, ten days before any penalty attaches, all general taxes and to pay, when due, all special taxes, special assessments, water charges, drainage charges, sewer service charges and other charges against the premises, of any kind whatsoever, which may be levied, assessed, charged or imposed on the premises or any part thereof.
6. To promptly pay all taxes and assessments assessed or levied under or by virtue of any state, federal or municipal law or regulation now existing or hereafter adopted against mortgagee upon this mortgage, or the debt hereby secured, or upon mortgagee's interest under this mortgage, provided however, that the total amount so paid

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for any such taxes pursuant to this paragraph together with the interest payable on said indebtedness shall not exceed the highest lawful rate of interest in the State of Illinois for commercial business loans of this type and provided further that in the event of the adoption of any law or regulation affecting such highest lawful rate of interest, the entire indebtedness secured by this mortgage shall thereupon become immediately due and payable at the option of Mortgagee.

7. To exhibit to Mortgagee, at least annually and at any time upon request, official receipts showing full payment of all taxes, assessments and charges which Mortgagor is required or shall elect to pay hereunder.

8. To keep the premises continuously insured, until the indebtedness secured hereby is fully paid (or in case of foreclosure until expiration of the period of redemption, if any) against loss or damage under such types of hazard and liability insurance, in such forms and amounts and written by such companies as may be approved or reasonably required from time to time by Mortgagee; all policies whether or not required by the terms of this mortgage, shall contain loss payable clauses in favor of the Mortgagee (or, in case of foreclosure sale, in favor of the owner of the certificate of sale); in the event of loss, Mortgagor shall immediately notify Mortgagee in writing and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss jointly to Mortgagor and Mortgagee, and the insurance proceeds or any part thereof may be applied by Mortgagee, at its option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged, and any application thereof to the indebtedness shall not relieve Mortgagor from making any payments herein required until the indebtedness is paid in full.

9. To deliver to Mortgagee all policies of insurance, with evidence of premiums prepaid for one (1) year (renewal policies to be delivered not less than ten days prior to the respective dates of expiration), and all abstracts of title, title guarantee policies, Torrens certificates of title and other evidence of title to the premises, all of which shall be held by Mortgagee without liability, and in the event of foreclosure of this mortgage or transfer of title to the premises in extinguishment of said indebtedness, shall become the absolute property of Mortgagee. Mortgagee may, from time to time, at its option, waive, and after any such waiver, reinstate, any or all provisions hereof requiring deposit of insurance policies, by notice to Mortgagor in writing.

10. To make monthly deposits with Mortgagee, in addition to any other payments required to be made hereunder of a sum equal to one-twelfth (1/12th) of the yearly taxes and assessments which may be levied against the premises and one-twelfth (1/12th) of the yearly premiums for insurance on

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the premises. The amount of such taxes, assessments and premiums, when unknown, shall be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such taxes, assessments and premiums when due. Notwithstanding the foregoing, Mortgagee may elect to pay any insurance premiums on an installment basis. Any insufficiency of such deposits to pay such taxes, assessments or premiums when due shall be paid by Mortgagor to Mortgagee on demand. Upon any default under this mortgage, Mortgagee may apply any such deposits to any obligation secured hereby or due hereunder. The enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as the obligations thereunder have been actually met by compliance with this paragraph. Mortgagee may from time to time at its option waive, and after any such waiver reinstate, any or all provisions hereof requiring deposits for taxes, assessments or insurance premiums, by notice to Mortgagor in writing. While any such waiver is in effect, Mortgagor shall pay taxes, assessments and insurance premiums as herein elsewhere provided.

11. To pay to Mortgagee any awards of damage resulting from condemnation proceedings or the taking or injury of the premises for public use, less reasonable costs and associated attorneys' fees and expenses of Mortgagor and the proceeds or any part thereof shall be applied by Mortgagee, at its option, after the payment of all of its expenses, including costs and attorneys' fees, to the reduction of the indebtedness hereby secured.

12. To deliver to the Mortgagee monthly reports of the rental income and expenses of the premises in such reasonable detail as the Mortgagee may require signed by the responsible operating official of the premises. Any detail needed to explain said reports shall be furnished on request from the Mortgagee including but not limited to copies of any subleases of the premises.

13. To furnish to the Mortgagee financial statements in a form satisfactory to Mortgagee, within ten (10) days of its request from time to time during the term of the loan.

14. In the event of default in performance of any of the covenants or agreements herein contained, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, title or claim therefor, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof shall be so much

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additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the rate set forth in the note described above. Mortgagee, making any payment hereby authorized relating to taxes or assessments, shall be the sole judge of the legality and validity thereof and of the amount necessary to be paid in satisfaction thereof.

15. If (a) default be made in payment, when due, of any sum secured hereby, or in any of the other covenants or agreements herein contained to be performed by Mortgagor or, (b) if there be a default in the terms and/or conditions of any other agreement between the Mortgagor and the Mortgagee relating to the sum hereby secured or to any other indebtedness of the Mortgagor to Mortgagee or, (c) if any proceedings be instituted or process issued (i) to enforce any other lien, charge, or encumbrance against the premises, or (ii) against Mortgagor or any guarantor under any bankruptcy or insolvency laws, or (iii) to place the premises or any part thereof in the custody or control of any court through its receiver or other officer, and such proceedings are not dismissed or stayed on appeal or such process withdrawn within ten days after written notice to Mortgagor, or (d) in the event the Mortgagor shall create or permit to exist any mortgage, lien or other encumbrance on the premises other than the encumbrance represented by this Mortgage, or (e) in the event the Mortgagor shall convey title to any person or persons other than the Mortgagor, enter in any lease with a term, including renewal options exercisable at lessee's discretion, in excess of one year, enter into any lease or other agreement containing an option to purchase or receive title to the premises, or shall suffer or permit Mortgagor's equity of redemption to become vested in any person or persons other than the Mortgagor; or (f) if Mortgagor or any guarantor makes any assignment for the benefit of creditors, or is at any time insolvent, or, (g) if by or with the consent or at the instance of Mortgagor or any guarantor proceedings to extend the time of payment of any sums secured hereby or to change the terms of this mortgage be instituted; then,

- I. All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without notice, with interest thereon,
- II. Mortgagee may immediately foreclose this mortgage. The Court in which any proceeding is pending for that purpose may, at once or at any time thereafter, either before or after sale, and without regard to the solvency or insolvency of any person liable for payment of the indebtedness secured hereby, and without regard to the then value of the premises, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made), for the benefit

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of Mortgagee, with power to collect the rents, issues and profits of the premises, due and to become due during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and subordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the premises, and may pay all or any part of the indebtedness secured hereby or any deficiency decree, and Mortgagor hereby grants to Mortgagee the right, acting through itself, its agents or attorneys, either with or without process of law, forcibly or otherwise, to enter upon and take possession of the premises and property, expel and remove any persons, goods or chattels, occupying or upon the same, and to collect or receive all the rents, issues and profits thereof, and to manage and control the same, and to lease the same or any part thereof from time to time, and after deducting all reasonable attorneys' fees, and all expenses incurred in the protection, care, maintenance, management and operation of the premises, apply the remaining net income upon the indebtedness secured hereby, or upon any deficiency decree entered by virtue of any sale held pursuant to a decree of foreclosure.

hereby; 16. To further secure the indebtedness secured

(a) Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for, the use or occupancy of the premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements, and all the avails thereunder, to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the premises as provided in Paragraph 14 hereof) to rent, lease or let all or any portion of the premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or

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accruing at any time hereafter, and all now due or that may hereafter become due under each and every lease and agreement, written or verbal, or other tenancy existing, or which may hereafter exist on the premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Paragraph 14 hereof.

(b) Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the premises for more than thirty (30) days in advance and that the payment of none of the rents to accrue for any portion of the said premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set off against any person in possession of any portion of the premises. If any lease provides for the abatement of rent during repair of the premises demised thereunder by reason of fire or other casualty, Mortgagor shall furnish to Mortgagee rental insurance, the policies to be in an amount and form and written by such insurance companies as shall be satisfactory to Mortgagee. Mortgagor agrees that it will not assign any of the rents or profits of the premises without the prior written consent of Mortgagee.

(c) Nothing herein contained shall be construed as constituting Mortgagee a Mortgagee in possession in the absence of the taking of actual possession of the premises by Mortgagee pursuant to Paragraph 14 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(d) Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the premises as Mortgagee shall from time to time require.

(e) Nothing herein contained shall be construed to impose upon Mortgagee any of the obligations of Mortgagor under any leases or subleases of the premises now existing or which may hereafter exist, other than the collection of avails, rents, issues and profits thereunder.

(f) Although it is the intention of the parties that the assignment contained in this Paragraph 15 shall be a present assignment, it is expressly understood and agreed, anything herein contained to

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the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section until a default shall exist under this Mortgage, any indebtedness secured hereby or any other agreement between Mortgagor and Mortgagee.

17. In any foreclosure of this mortgage there shall be allowed and included in the decree for sale, to be paid out of the rents or proceeds of such sale:

(a) All sums secured hereby and remaining unpaid,

(b) All sums advanced or paid by Mortgagee pursuant to this mortgage with interest,

(c) All court costs, attorneys' fees, appraisers' fees, expenditures for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, Torrens certificates and similar data with respect to title, as Mortgagee may deem necessary in connection with (i) any proceeding, including probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage or any indebtedness hereby secured; or (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (iii) preparations for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced. All expenditures and expenses of this type mentioned in this subparagraph (c) shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon. The proceeds of any foreclosure sale shall be distributed and applied to the items described in subparagraphs (a), (b), and (c) in order of priority inversely to the manner in which said subparagraphs are above listed and any surplus of the proceeds of such sale shall be paid to Mortgagor.

18. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on their own behalf and on behalf of each and every person, except decree or judgment creditors of the Mortgagor, acquiring any interest in the title to the Premises subsequent to the date of this Mortgage.

19. No remedy or right of Mortgagee shall be exclusive of but shall be in addition to every other remedy of right now, or hereafter, existing at law or in equity.

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No delay in exercising, or omission to exercise, any remedy or right, accruing on any default shall impair any such remedy or right, or shall be construed to be a waiver of any such default, or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

20. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent:

(a) release any person liable for payment of all or any part of the indebtedness or for performance of any obligation,

(b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof,

(c) exercise or refrain from exercising or waive any right Mortgagee may have,

(d) accept additional security of any kind,

(e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

Upon full payment of all sums secured hereby at the time and in the manner provided, then this conveyance shall be null and void and a reconveyance or release of the premises shall be made by Mortgagee to Mortgagor.

21. All provisions hereof shall inure to and bind the respective heirs, executors, administrators, successors, vendees and assigns of the parties hereto, and the word Mortgagor shall include all persons claiming under or through Mortgagor (including, if this Mortgage is executed by a trust or trustee, any beneficiary thereof) and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note, any guaranty or this mortgage. Wherever used, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders.

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IN WITNESS WHEREOF, the undersigned have executed this Mortgage as of the day and year first written above.

MORTGAGOR:

  
SERGIO ARLANDIZ, SR.

  
ELIZABETH ARLANDIZ

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BOX 200

This instrument was prepared by:

Susan E. Thrower  
Hurley & Kallick, Ltd.  
500 Lake Cook Road  
Suite 250  
Deerfield, Illinois 60015

Mail To:

Susan E. Thrower  
Hurley & Kallick, Ltd.  
500 Lake Cook Road  
Suite 250  
Deerfield, Illinois 60015

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ACKNOWLEDGMENT 88487910

STATE OF ILLINOIS )  
                              )  
COUNTY OF C O O K )

I, MICHAEL HIRSCHTICK, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that SERGIO ARLANDIZ, SR. and ELIZABETH ARLANDIZ, 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 said instrument as his own free and voluntary act for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 19 day of October, 1988.



Michael Hirschtick  
Notary Public

My commission expires:  
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