

# UNOFFICIAL COPY

COMMERCIAL,  
LINE OF CREDIT,  
INTEREST ONLY,  
BALLOON,  
VARIABLE RATE

94955440

DEERFIELD FEDERAL SAVINGS AND LOAN ASSOCIATION  
745 Deerfield Road  
Deerfield, Illinois 60015

## MORTGAGE

1. The name and address of the Mortgagor/Grantor is:  
Deerfield Federal Savings and Loan Association, as Trustee Under Trust Agreement dated July 12, 1994 and Known As Trust Number 430  
745 Deerfield Road, Deerfield, IL 60015
2. The Mortgagor/Grantor is: a corporate land trustee
3. The Note secured hereby is of even date herewith, is given for repayment of a loan (herein, the "Loan"), and is described as follows:

- a. Payee/Holder: Deerfield Federal Savings and Loan Association.
- b. Original principal amount: U.S. \$1,000,000.00 (or so much thereof as may, from time to time, be drawn upon (advanced) under the terms of the Note secured by this mortgage).
- c. Amount of each instalment (except the last) of principal and/or interest: Interest only monthly computed from the date of each draw (advance) under the terms of the note secured by this mortgage.
- d. First instalment due: DECEMBER 1, 19 94.
- e. Subsequent instalments due on the first day of each month thereafter.
- f. Entire balance of principal and interest, and all other sums, if any, due and owing to the Mortgagee pursuant to the terms of this Mortgage and the Note it secures) if not sooner paid to be paid in full by DECEMBER 1, 19 95, (the "maturity date").
- g. Instalment payments prior to the final payment:  
11 (or less) consecutive monthly payments of interest only computed from the date of each draw (advance), under the note secured by this mortgage payable on the entire unpaid principal balance from time to time.

4. The existing improvements (if any) on the Premises consist of Parcel 1: A one-story masonry constructed gas station facility, comprising 419 square feet of gross area.  
Parcel 2: A 4,200 square foot, one story brick and masonry constructed convenience store/gasoline station.

8/2/95

94955440

9: NOV -9 PM 12: 57

94955440

75-1-8-1-1-1

L.D. 751877J

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

# UNOFFICIAL COPY

5. The proceeds of the Loan will be used for the following business purposes:  
To provide a line of credit for business purposes.

6. Because goods located or to be located on the Premises also secure the debt secured hereby, the Mortgagor authorizes and directs recording of this Mortgage in the applicable real estate records for the Premises, and the following information concerning such goods is furnished:

a. The goods consist of See paragraph 8b.

b. Such goods are or are to become fixtures on the Premises which are located at \_\_\_\_\_

Parcel 1: 300 West Lake Street, Oak Park, IL 60302 and

Parcel 2: 4701 South Central Avenue, Forest View, IL

c. The record owner of the Premises is the Mortgagor.

7. The Mortgagor/Grantor (herein, the "Mortgagor" or "Grantor" or "Borrower") herewith mortgages, grants, conveys, and warrants to Deerfield Federal Savings and Loan Association (herein, the "Mortgagee" or "Holder") the real estate (which, with the items noted in Sections 5 and 8, is herein referred to as the "Premises"), the legal description of which is given at the end of this Mortgage.

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey, and assign the Premises (and, if this Mortgage is on a leasehold, the ground lease is in full force and effect without modification, except as noted above, and without default on the part of either lessor or lessee thereunder), that the Premises is unencumbered and that Mortgagor will warrant and defend generally the title to the Premises against all claims and demands, subject only to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy or certificate of title insuring Mortgagee's interest in the Premises.

8. The Mortgagor includes in this Mortgage:

a. The benefits of any easements appurtenant to such real estate, and any other rights(s), title(s), or interest(s) benefiting the same.

b. Any improvements and fixtures (including those referred to in Section 6) owned by the Mortgagor and now or hereafter erected or installed on the Premises, including but not limited to: all buildings, improvements, and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances, and goods of every nature whatsoever now or hereafter located in or on, or used, or intended to be used, in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm window, storm and screen doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants; all of which, including substitutions, replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Mortgage, and all of the foregoing together with said property (or the leasehold estate in the event this Mortgage is on a leasehold) are herein referred to as the "Premises".

9. In addition to the payments otherwise called for herein and under the Note, the undersigned will pay to the Holder (herein, the "Holder") of the Note an amount equal to the total of all general and special real estate taxes and assessments, all levies, charges, and assessments by any governmental or municipal entity, the yearly ground rents, if any; the yearly premium instalments for mortgage insurance, if any, and all premiums for insurance of the kinds described herein, relating to the Premises, on the following terms:

- a. At or before disbursement of the Loan, the Mortgagor will pay the accrued (but not yet payable) amounts of such items to the Holder.
- b. With each regular payment under the Note (or monthly, if such payments are required more or less frequently than monthly), the Mortgagor will pay to the Holder one-twelfth of the annual amounts of such items.
- c. If at any time the amount of the funds held by Holder shall be less than the amount deemed necessary by Holder to pay taxes, assessments, insurance premiums, rents, and all other such items as they fall due, Mortgagor shall pay to Holder any amount necessary to make up the deficiency within thirty days after notice from Holder to Mortgagor requesting payment thereof. In any event, the Mortgagor will provide the Holder sufficient funds to pay all such items in full at least ten days before the various instalments thereof first become due.
- d. As such items become due, the Holder is authorized to pay the same; the Holder is not obliged to inquire into the validity or accuracy of the charges made or bills rendered for any of such items; the Holder is not required to advance moneys for the payment of such

94955440

# UNOFFICIAL COPY

items, and the Holder will not incur any liability for anything that the Holder may do or fail to do in connection therewith.

- e. The Holder need not pay interest on any such funds held by the Mortgagor, and any separate accounting thereof by the Holder (through an escrow account or otherwise) will not be deemed to give rise to a trust account for such amounts.
- f. If bills and statements are not available for any such items, the Holder may estimate the same, which estimate will be binding on the Mortgagor for purposes hereof.
- g. Any waiver by Holder of a requirement that Mortgagor pay such items may be revoked by Holder, in Holder's sole discretion, at any time upon notice in writing to Mortgagor.
- h. Holder may require Mortgagor to pay to Holder in advance, such other funds for other taxes, charges, premiums, assessments, and impositions in connection with Mortgagor or the Premises which holder shall reasonably deem necessary to protect Holder's interest.
- i. Unless otherwise provided by applicable law, Holder may require such funds to be paid by Mortgagor in a lump sum or in periodic instalments, at Holder's option.
- j. Holder shall apply the funds to pay said rates, rents, taxes, levies, charges, assessments, insurance premiums, and other items so long as Mortgagor is not in breach of any covenant or agreement of Mortgagor in this Mortgage or the Note it secures.
- k. The funds are pledged as additional security for all of the sums secured by this Mortgage and for the Note it secures.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage or the Note it secures, Holder may apply in any amount and in any order, as Holder shall determine in Holder's sole discretion, any funds held by Holder at the time of application (i) to pay levies, charges, rents taxes, assessments, and insurance premiums which are now or will hereafter become due, or (ii) as a credit against sums secured by this Mortgage. Upon payment in full of all sums secured by this Mortgage, Holder shall promptly refund to Mortgagor any funds held by Holder.

10. The Mortgagee is to have and hold the Premises forever for the uses set forth herein, free from any rights and benefits of dower, and free from any homestead, and other exemption laws of the State of Illinois, any of which rights and benefits the Mortgagor (and the members, shareholders, and beneficiaries of the Mortgagor) hereby release and waive.
11.
  - a. If all or any portion of the Premises is subject to the Illinois Condominium Property Act:
    - i. The Premises will be the land, property, and space delineated on the recorded plat thereof, and on any subsequent plat (as such plats may be amended) which is recorded to reflect the results of actual construction, together with the items noted in Section 8, and
    - ii. The Mortgagee's mailing address is as noted above.

b. If this Mortgage is on a leasehold, Mortgagor (i) shall comply with the provisions of the ground lease, (ii) shall give immediate written notice to Holder of any default by lessor under the ground lease, or of any notice received by Mortgagor from such lessor of any default under the ground lease by Mortgagor, (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Holder within thirty days after such option becomes exercisable, (iv) shall give immediate written notice to Holder of the commencement of any remedial proceedings under the ground lease by any party thereto and, if required by Holder, shall permit Holder as Mortgagor's attorney-in-fact to control and act for Mortgagor in any such remedial proceedings, and (v) shall within thirty days after request by Holder obtain from the lessor under the ground lease and deliver to Holder the lessor's estoppel certificate required thereunder, if any. Mortgagor hereby expressly transfers and assigns to Holder the benefit of all covenants contained in the ground lease, whether or not such covenants run with the land, but Holder shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

Mortgagor shall not surrender the leasehold estate and interests herein conveyed, nor terminate or cancel the ground lease creating said estate and interests, and Mortgagor shall not, without the express written consent of Holder, alter or amend said ground lease. Mortgagor covenants and agrees that there shall not be a merger of the ground lease, or of the leasehold estate created thereby with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either coming into common ownership, unless Holder shall consent in writing to such merger; if Mortgagor shall acquire such fee estate, then this Mortgage shall simultaneously and without further action be spread so as to become a lien on such fee estate.

12. The Mortgagor and the Holder (herein, the "Parties") recognize that the most appropriate use of any condemnation proceeds (including the proceeds of any award, payment, or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Premises or part thereof, or for conveyances in lieu of condemnation) arising from the Premises requires the exercise of judgment and cannot be determined in advance or by a fixed formula. The Parties also recognize that such judgment can be exercised, ultimately, by only one of them and have agreed that the Holder is to do so. Specifically:

- a. Mortgagor shall promptly notify Holder of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Premises or part thereof.
- b. Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Holder in writing. Mortgagor authorizes Holder, at Holder's option, as attorney-in-fact for Mortgagor, to commence, appear in, and prosecute in Holder's or Mortgagor's name, any action or proceedings relating to any condemnation or other taking of the Premises, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking.
- c. The Mortgagor assigns to the Holder the full amount of any condemnation proceeds (including such other proceeds, as above described) of all or any part of the Premises, subject, if this

94955440

**UNOFFICIAL COPY**

- d. If (at the time such proceeds are collected by the Holder) any default then exists, the Holder may use the proceeds to cure the default and will apply the balance of the proceeds as provided herein.
  - e. If the entire Premises are taken, any balance of proceeds will be applied to payment of all amounts secured hereby, with any residue being promptly paid to the Mortgagor.
  - f. In the event of a partial taking, the Holder will determine whether the balance of the proceeds is to be applied to the amounts secured hereby (in which event the balance will be applied to principal last to become due, or as the Holder may otherwise determine) or to restoration of the Premises. In the latter event, the balance will be paid out under architects' and inspections' certificates in such manner to protect the Holder against the assertion of an Other Lien (as defined below) against the Premises, but sufficient funds will be retained at all times to complete the work in full in accordance with plans acceptable to the Holder and prepared by architects acceptable to the Holder.
  - g. If the balance exceeds the cost of restoration, the surplus will be applied (when the amount of the surplus is determined) to the principal last to become due of any amount secured hereby.
  - h. The Mortgagor may discuss settlement of the amount of any condemnation award (keeping the Holder advised at all times), but must first advise the condemning authority of the Holder's position, and may not agree to any settlement without the Holder's approval.
  - i. Unless Mortgagor and Holder otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly instalments or change the amount of such instalments.
  - j. Mortgagor agrees to execute such further evidence of assignment of any award, proceeds, damages, or claims arising in connection with such condemnation or taking as Holder may require.
13. This Mortgage secures:
- a. Payment of all amounts due hereunder and/or under the Note, including any revisions, renewals, extensions, and/or modifications thereof.
  - b. Payment of any other amount, now or hereafter, due to the Holder from the Mortgagor, and whether or not arising from the loan transaction for which the Note was given.
  - c. Payment of any amount due to the Holder under the Note by any guarantor, endorser, or other party thereto.
  - d. Performance of the Mortgagor's and Borrower's covenants, as provided herein and in the Note.
  - e. Payment of any judgment obtained hereunder or under the Note, or for any other obligation secured hereby.

- f. Payment of all other sums with interest thereon, advanced in accordance herewith or under the Note secured hereby to protect the security of this Mortgage.
14. Any of the following will constitute a Default hereunder:
- a. Default in payment of any amount (of principal, interest, or otherwise) secured hereby whether or not due by acceleration.
  - b. Default in performance of any covenant and / or warranty of the Mortgagor (and / or its beneficiaries) hereunder or of the Borrower under the Note.
  - c. The institution of proceedings to enforce any Other Lien (as that term is defined below).
  - d. Placement of the Premises, or any of the following, under the control of or in the custody of a committee, conservator, any judicial, or executive officer:
    - i. If the Mortgagor is an individual: The Mortgagor.
    - ii. If the Mortgagor is a corporation: The Holder of more than ten (10%) percent of the Mortgagor's then outstanding common stock.
    - iii. If the Mortgagor is a trust: The Holder of any present beneficial interest in the Mortgagor.
    - iv. If the Mortgagor is a partnership: Any general partner or the holders of more than twenty (20%) percent of the limited partnership interests (if any) in the Mortgagor.
  - e. Abandonment by the Mortgagor of the Premises or the operation that the Mortgagor is conducting therein as of the date of this Mortgage (or that the Mortgagor described in the Mortgagor's application for the Loan).
  - f. Failure to pay when due any charge or assessment (whether for insurance premiums, maintenance, taxes, capital improvements, purchase of another unit, or otherwise) imposed by any condominium, townhouse, cooperative, or similar owners' group.
  - g. The occurrence of any "Default", as defined in the Note.
15. The Mortgagor and the Mortgagee/Holder have considered the consequences, advantages and disadvantages of a due-on-sale clause, and have agreed to include herein a broad form of such clause, which will be subject only to the exceptions that are specified below, and the operation of which will not depend on the credit, or any other attribute of the transferee of the interest involved (the Mortgagor recognizes that the Holder may use the clause in order to increase the Holder's portfolio return, based solely on action taken by the Mortgagor with respect to itself or the Premises). If any interest in the Premises or the Mortgagor is changed after the date hereof, the Holder, in the Holder's absolute discretion, and without the necessity for notice of any kind to the Mortgagor or otherwise, may declare to be immediately due and payable in full the entire amount (including principal, interest, escrow payments, and otherwise) then due hereunder and under the Note secured hereby. The Holder may proceed with foreclosure if such amount is not paid on demand.

a. Subject to Subsections c. and d., and interest in the Premises will be deemed to have been changed (and the Holder may proceed as described above) if:

1. The Mortgagor effects or consents (with or without consideration) to any or all of: (A) a sale of the Premises or any part thereof; (B) a conveyance or encumbrance of the Premises or any part thereof; (C) a lease of 50% or more of the useable square footage of the Premises for a term of five years or more; (D) the granting of an option to acquire the Premises; (E) collateral assignment(s) of beneficial interest(s) of a trust; outright assignment(s) of beneficial interest(s) of a trust; instalment sales, land contracts, Articles of Agreement, whether relating to stock, interest of a partnership or joint venture, beneficial interest(s) of a land trust, equitable interest(s) under a trust, fee title, or any other interest in the Premises, whether legal, equitable, personal property, real property, or otherwise.

ii. The Premises are sold, voluntarily or involuntarily, by the Mortgagor or by any party (such as a sheriff, trustee in bankruptcy, executor, or administrator) acting for the Mortgagor.

b. The foregoing is intended merely to enumerate several of the types of "changes" contemplated by this section, but shall not be deemed to limit the type and/or number of "changes" which shall be violations of this section. For purposes of this section, the word "change" shall be given its broadest definition and construction in favor of the Holder/Mortgagee.

c. Subsection a. will not apply to:

i. A transfer of the Premises to a revocable trust (established by the Mortgagor) of which the Mortgagor is the sole trustee and the Mortgagor owns the entire beneficial interest.

ii. A transfer of the Premises by operation of law on the death of the Mortgagor if the Mortgagor is a natural person (but any subsequent transfer as by an administrator, executor, or trustee will permit Mortgagee to proceed as described above).

d. An interest in the Mortgagor will be deemed to have been changed (and the Holder may proceed as described above) if the owner(s) of 25% or more of the beneficial interest in the Mortgagor (whether such interest is represented by corporate stock, interest(s) in a trust, partnership interest(s), or otherwise) are or become different from such owner(s) as of the date on which this Mortgage was executed.

e. The Mortgagor will provide to the chief executive officer of the Holder prompt written notice of any change or action of the type described in Subsections a., c., and d.

f. The Holder will be deemed to have notice of any action, or condition described in Subsection a., c. or d. only when explicit written notice thereof has been delivered to the chief executive officer of the Holder. The Holder will not be deemed to have such notice by reason of constructive notice through recording statutes, changes in



- g. References to the "Premises" include any part thereof or interest therein, and references to "recording" include Torrens registration. A document evidencing action by or for the Mortgagor hereunder will be effective for purposes of enabling the Holder to proceed as described above, whether or not the document is recorded or entitled to be recorded.

16. The Mortgagor will:

- a. Pay when due all indebtedness due under the Note, and all amounts secured by this Mortgage.
- b. Promptly repair, restore, or rebuild in good and workmanlike manner any improvements, now or hereafter, on the Premises that may become damaged or be destroyed to the equivalent of its original condition, or such other condition as Holder may approve in writing, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair.
- c. Keep the Premises, including improvements, fixtures, equipment, machinery, and appliances thereon in good condition and repair, without waste or diminution in value, and replace fixtures, equipment, machinery, and appliances thereon when necessary to keep such items in good repair.
- d. Keep the Premises at all times free from any "Other Lien", and upon request exhibit to the Holder satisfactory evidence of the payment and discharge of such Lien.
- e. Complete within a reasonable time any improvements and alterations thereto, now or hereafter, under or planned for construction on the Premises.
- f. Comply with the requirements of all laws, ordinances, regulations, and requirements of any governmental body relating to the Premises and the use thereof.
- g. Not diminish or impair the value of the Premises by any act or omission, or permit the Premises to be used for any but their present use (and any prospective use that was specified in the Mortgagor's application for the Loan).
- h. Not suffer or permit any unlawful use to be made of or any nuisance to exist on the Premises.
- i. Not suffer or permit, without the prior written consent of the Holder, (i) any structural alterations, additions, demolition, removal or sale of any improvements, apparatus, appurtenances, fixtures or equipment now or hereafter on the Premises, (except when incident to the replacement of fixtures, equipment, machinery, and appliances with items of like kind) or (ii) any lease, or any purchase on conditional sale, or otherwise under which title is reserved by the vendor of any fixtures to be used on the Premises.
- j. Pay the premiums for any life or disability insurance assigned to the Holder as additional security for the Note or for any other amounts secured hereby.

- k. Pay or cause to be paid, rent, premiums, taxes, assessments, water and sewer charges, and other governmental and quasi-governmental charges applicable to the Premises before the same become delinquent. Mortgagor shall promptly furnish to Holder all notices of amounts due under this subparagraph k. and Section 9 hereinabove, and in the event Mortgagor shall make payment directly, Mortgagor shall promptly furnish to Holder receipts evidencing such payments.
  - l. Generally operate and maintain the Premises in a manner to ensure maximum rentals.
  - m. Give notice in writing to Holder, and unless otherwise directed in writing by Holder, appear in and defend any action or proceeding purporting to affect the Premises, the security of this Mortgage, or the rights or powers of Holder.
  - n. Not allow changes in the use for which all or any part of the Premises was intended at the time this Mortgage was executed, unless required by applicable law or unless Holder has otherwise agreed in writing.
  - o. Not initiate or acquiesce in a change in the zoning classification of the Premises without Holder's prior written consent.
17. The Mortgagor realizes that it is possible for a mechanic's lien to attach to the Premises in such a way as to be superior to the lien of the Mortgage with respect to certain improvements on or constituting a part of the Premises. It being the intent of the Parties that no such priority be permitted to exist, the Mortgagor herewith relinquishes to the Holder (which relinquishment will continue in effect until this Mortgage has been released of record) all power to enter into any contract that could result in such a lien (unless the same be expressly subordinated to the lien hereof, with respect to the Premises and all improvements then or thereafter on or constituting a part of the Premises), and agree that the Mortgagor has no power to enter into a contract that could give rise to such a lien unless the same be expressly so subordinated. The recording or registration of this Mortgage will provide notice to all persons of this MECHANIC'S LIEN provision.
18. The Mortgagor will keep all improvements now or hereafter situated on the Premises continuously insured:
- a. In companies satisfactory to the Holder.
  - b. Against loss or damage by fire, lightning, windstorm, rent loss, hazards included within the term "extended coverage", and such other hazards, casualties, liabilities, and contingencies (including liability under laws relating to intoxicating liquors, and including hazards not now contemplated) as the Holder (and if this Mortgage is on a leasehold, the ground lease) may from time to time require.
  - c. Under policies:
    - i. That will result in payment of net funds that will be sufficient to pay in full the lesser of the replacement cost of all improvements on the Premises or all indebtedness secured hereby.
    - ii. Payable in case of loss or damage to the Holder (or the owner of the certificate of sale, or of any deficiency judgment, or

94955440

any grantee from a foreclosure sale, (as the case may be) such rights to be evidenced by the standard mortgage clause to be attached to each such policy.

- iii. To be kept effective until all indebtedness secured hereby is paid in full, or, in the event of foreclosure, until expiration of the longest period of redemption therefrom.
  - iv. That provides either that the Holder's insurable interest (as mortgagee) will not be reduced by any amount that the Holder may bid at a foreclosure sale, or that the Holder's insurable interest will include the full amount due to the Holder hereunder, (regardless of such bid) and will be automatically covered by such insurance (in the Holder's capacity as an owner of an interest or potential interest in the Premises or otherwise).
19. The entire proceeds of any such insurance (whether obtained by the Mortgagor, by anyone succeeding to any of its interest in the Premises, or otherwise) are pledged to the Holder as further security. In the event of loss, mortgagor shall give immediate written notice to the insurance carrier(s) and to the Holder; any loss thereunder will be payable to the Holder for use hereunder, and the Holder is authorized to adjust, settle, compromise, collect, receive and receipt for the proceeds of any such insurance, and to deduct therefrom Holder's expenses incurred in the collection of such proceeds. Despite the absence of a provision of such effect in any of such policies, the Holder is authorized (in its discretion) to adjust and compromise any claim, and to execute all receipts and other papers required in connection with paying any such loss, and to appear in and prosecute any action arising from such insurance policies. The Mortgagor will not engage any attorney, adjuster, or other person who might make a claim against any such proceeds, without the advance written consent of the Holder for each claim under each policy in each loss. Nothing contained in this paragraph shall be construed to require Holder to incur any expense or take any action hereunder.
20. Upon the execution hereof, the Mortgagor will deliver to the Holder any existing insurance policies of all such kinds, and will deliver renewal policies to the holder at least ten days before expiration of the prior policies (unless such renewal policies are obtained by the Holder). Additional and replacement policies will be delivered to the Holder promptly upon their issuance. Evidence of payment for any of such policies will be delivered to the Holder promptly upon request therefor. If this Mortgage is on a leasehold, Mortgagor shall furnish Holder a duplicate of all policies, renewal notices, renewal policies, and receipts of paid premiums, if by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Holder.
- 21.
- a. Any monies received by the Holder under any such insurance will be applied by the Holder, in its discretion, to any or all of:
    - i. Payment of any or all of the amount secured hereby (any amount of such payment that is applied to principal due under the Note will be applied first to the payments of principal last to become due under the Note, unless the Holder determines otherwise). Any application of insurance proceeds received by Holder to principal shall not extend or postpone the due dates of the monthly instalments referred to in Paragraph 3 hereof or change the amount of such instalments.

94955440

**UNOFFICIAL COPY**

11. Repair or restoration of the Premises to their prior condition, under arrangements satisfactory to the Holder to insure that the contemplated work will be satisfactorily performed, and will be paid for without the assertion of any "Other Lien". (If the insurance proceeds are held by Holder to reimburse Mortgagor for the cost of restoration and repair of the Premises, the Premises shall be restored to the equivalent of its original condition or such other condition as Holder may approve in writing. Holder may, at Holder's option, condition disbursement of said proceeds on Holder's approval of such plans and specifications of an architect satisfactory to Holder, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Holder may reasonably require.)

b. If the Premises is sold pursuant to Paragraph 29 hereof, or if Holder acquires title to the Premises, Holder shall have all of the right, title, and interest of Mortgagor in and to any insurance policies and unearned premiums thereon, and in and to the proceeds resulting from any damage to the Premises prior to such sale or acquisition.

22. The Mortgagor will (by payment thereof, or by other action as appropriate) prevent any "Other Lien" from arising.

a. As used herein, the term "Other Lien" means a tax assessment lien, a mechanic's lien, a leasehold interest, and any encumbrance, charge, or lien, whether voluntary or involuntary, and whether arising by contract, lease, tenancy, judgment, levy or otherwise that affects or would affect the Premises or any portion or component thereof, and that (i) is or may be prior to the lien of the Mortgage, with respect to all or any part or component of the Premises, or any improvements that now or hereafter are on, or constitute a part of, the Premises, and/or that (ii) would give rise to (A) redemption rights greater than those (if any) of the Mortgagor hereunder, or (B) a period of redemption that could end after that (if any) accorded to the Mortgagor by law or hereunder.

b. This section will not apply to general real estate taxes that are not delinquent or in default (but this exception does not affect the Mortgagor's obligations under Section 9).

23. If the Mortgagor fails to do so, the Holder may make any payment and take any action required of the Mortgagor under the Note and Mortgage, and may take whatever action it deems appropriate to cause the covenants of the Note and Mortgage to be performed, by the Mortgagor, or otherwise, and the Mortgagor agrees to pay all expenses paid or incurred by the Holder in connection therewith. By way of illustration, the Holder may (a) buy any of the insurance referred to herein (b) cause the Premises to be repaired or restored as required (engaging architects and contractors therefor as the Holder deems appropriate) (c) cause any improvements on the Premises to be completed in any manner and form deemed proper by the Holder (d) pay, purchase, settle, or redeem from the sale of any Other Lien (e) if this Mortgage is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Mortgagor, and the curing of any default of Mortgagor in the terms and conditions of the ground lease, (f) take any action the Holder deems appropriate to protect the lien hereof, (g) take

**UNOFFICIAL COPY**

any action the Holder deems appropriate under Section 62 hereof. Mortgagor hereby covenants and agrees that Holder shall be subrogated to the lien of any mortgage or "Other Lien" discharged, in whole or in part, by the indebtedness secured hereby.

24. In addition to the other payments provided for herein, the Mortgagor will pay all expenses that may be paid or incurred by the Holder in connection with claiming or collecting any amount secured hereby, or protecting and/or defending the priority of the lien hereof, whether in a foreclosure, bankruptcy, or other proceeding preparing for and conducting any proceeding to foreclose (or which involves the foreclosure of) the lien hereof, or any other type of proceeding deemed necessary to protect the Mortgagee's interest, including any expenses incurred under Section 62 hereof, whether such proceeding is commenced by the Holder or otherwise, and whether or not such proceeding is in fact commenced, and whether or not the Mortgagor is in default hereunder.
25. The interest rate and other terms of the Note and this Mortgage are based on the assumption that the specified rate will be a net return to the Holder, and that the Holder will incur no expense whatever specifically relating to the Loan after it has been disbursed. Accordingly, the Mortgagor will pay (in addition to making the payments and reimbursements referred to in the Note and in Sections 22, 23, 24, 25 through 28, 56 and 62 hereof) any expense that the Holder may pay or incur by reason of having made the Loan, or having purchased and/or held the Note and Mortgage, or that so relate to any other obligation secured hereby, whether or not such expense arises from default by the Mortgagor, (all such amounts being secured hereby) in any of the following situations:
- a. Any proceeding to foreclose the lien hereof.
  - b. Any action such as a petition in a bankruptcy proceeding to assert a claim, and/or to modify a stay, or restraining order relating hereto that affects the Mortgagor or the Premises whether or not ancillary to any proceeding to foreclose the lien hereof.
  - c. Any judicial or administrative proceedings (whether in bankruptcy, garnishment, tax enforcement, divorce, probate, guardianship, or otherwise, and whether the relief sought by any party thereto involves money damages, an injunction, a declaratory judgment, foreclosure, lifting a stay, removal of hazardous materials storage and / or contamination, or otherwise) affecting the Note or Mortgage, or any amount secured hereby, or the Holder's ownership thereof, or rights thereunder with respect to which the Holder may:
    - i. Be made a party, or
    - ii. Be served with summons, subpoena, citation, interrogatories, notice of deposition, or other papers, or
    - iii. Deem it proper to take action of any kind.
  - d. Response to inquiries by any person or entity concerning the Loan, the Note, the Mortgage, the Premises, the Mortgagor, or any amount secured hereby.
  - e. Proceedings to foreclose any lien (whether or not an "Other Lien") against the Premises or any part thereof.

949554A0

- 26. In addition to reimbursement for expenses paid or incurred by the Holder in any manner hereunder, the Holder will be entitled to reasonable compensation (which the Mortgagor herewith agrees to pay to the Holder on demand) for the Holder's services in acting under Section 23, 34 and 62; such compensation will be earned and payable immediately as the services involved are performed and will be secured hereby.
- 27. By the way of illustration, the expenses and amounts referred to in Section 24 and 25 hereof include (but are not limited to):
  - a. Court costs, sheriffs' fees and charges, costs of publishing and providing notice, recording fees, and costs of effecting service of papers and process by the Sheriff's office, private process servers, or otherwise.
  - b. Costs of procuring all such abstracts of title, title searches, reports and examinations, title insurance policies in the amount of the total indebtedness, torrens searches and certificates, and all similar data and assurances with respect to the condition, title, and value of the Note and Premises, as the Holder may deem appropriate for its own information; for conducting any judicial or administrative proceeding (in foreclosure, bankruptcy, or otherwise); for preparing for or for evidencing to bidders at any sale (judicial or otherwise) of the Premises, or of the Note and Mortgage such condition, title, and value.
  - c. Fees and charges of appraisers, engineers, architects, consultants, and experts of all kinds who advise the Holder in connection with any action of the kind provided for at Section 25, whether or not such persons testify in court, and whether or not such fees and charges exceed the fees allowed by statute to witnesses testifying in court.
  - d. Attorney's fees and disbursements paid or incurred by the Holder in any way with respect to the Note, this Mortgage, or any amount secured hereby, or in connection with any action taken by the Holder under the terms of the Mortgage.
  - e. Expenses of preparation of pleadings and related papers and of all exhibits, whether or not attached to pleadings, or offered for admission as evidence.
  - f. Reporters' fees and disbursements for service rendered in connection with reporting any such proceedings.
  - g. Amounts paid or incurred by the Holder at any time (whether before or after commencement of foreclosure, judgment of foreclosure, or sale of the Premises) prior to acquisition of fee title to all of the Premises, pursuant to Section 25.
  - h. Review of the Holder's records in order to respond to a notice of tax levy, interrogatories, summons for examination of documents, garnishment, or supplemental proceedings.
  - i. All expenses, costs, fees, losses, and / or penalties, etc, described in Section 62 hereof.
- 28. Any amounts paid or incurred by the Holder pursuant to Sections 23, 24, and 25 above, or 62 below, or earned pursuant to Sections 26 above or 34 or 62 below, will be added to the principal balance due hereunder (and

94955A40

will bear interest at the rate provided in the Note) immediately and without notice upon being paid, incurred, or earned by the Holder, and will be paid to or for the Holder immediately upon demand therefor being made of the Mortgagor, non-payment upon such demand constituting a Default hereunder.

29. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, including, but not limited to, the covenants to pay when due any sums secured by this Mortgage, Holder, at Holder's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand, and may foreclose this Mortgage by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. The Premises may be sold upon such foreclosure en masse or in parcels, at the Holder's option, and the sale proceeds will be applied in the following order of priority (unless applicable law provides otherwise):
- a. the reasonable expenses of sale;
  - b. the reasonable expenses of securing possession before sale, holding, maintaining, and preparing the real estate for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, receiver's and management fees; reasonable attorney's fees; payments, when due, of installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other senior lien or encumbrance; payments, when due, of installments or real estate taxes and/or special taxes or assessments; payments of any other obligations authorized by this mortgage; payments of any amounts in connection with other liens, encumbrances or interest reasonably necessary to preserve the status of title; all costs and expenses incidental to the foreclosure proceedings and any judicial proceedings ancillary thereto including (but not limited to) the amounts referred to in Section 27 above; and other legal expenses incurred by the mortgagee;
  - c. all other items that under the terms hereof constitute secured indebtedness additional to the original principal balance due under the Note;
  - d. all principal and interest remaining unpaid;
  - e. if the sale was pursuant to judicial foreclosure satisfaction of claims in the order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and
  - f. remittance of any surplus to be held by the person appointed by the court to conduct the sale until further order of the court.
30. Any amounts due to (or to be paid for) the Holder under Sections 22 through 28 inclusive, plus reasonable estimates as to the amount of any such items to become due or to be incurred after the below mentioned judgment, will be included as additional indebtedness owed to the Holder under any judgment foreclosing the lien hereof, and will be entitled to the same priority in payments as if they had been part of the original principal disbursed under the Note. By the recordation or registration of this Mortgage, all persons are put on notice of the possibility of the Holder's claiming a PRIORITY FOR OTHER AMOUNTS hereunder.
31. The provisions hereof that empower the Holder to take corrective action are intended solely for the protection of the Holder, and the Holder is

not obliged to take any action thereunder. If the Holder chooses to take any such action, the Holder may do so in accordance with any bill, statement, invoice, notice, contract, or other document, or state of facts that appears on its face to be correct or genuine, and the Holder need make no inquiry into any such document or state of facts. The Holder will not be liable for any such action that the Holder may take or fail to take. The fact that the Holder may fail to take any such action in particular cases will not constitute a waiver of or a limitation on the Holder's right to take any such action in other cases.

32. The Holder has the right to inspect the Premises at any reasonable time or times, whether or not a Default then exists.
33. Despite the due-on-sale provision hereof, and without mitigating the applicability of those provisions, the terms of this Mortgage will extend to and be binding on all persons or entities claiming by or through the Mortgagor, whether or not they have signed the Note or Mortgage, but the Holder's dealing with any successor to the Mortgagor will in no way alter the Mortgagor's obligations or the Holder's rights hereunder.
34.
  - a. As used in this paragraph, the word "lease" shall mean "sublease" if this Mortgage is on a leasehold. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all leases of the Premises or any part thereof. Mortgagor, at Holder's request, shall furnish Holder with executed copies of all leases now existing or hereafter made of all or any part of the Premises, and all leases now or hereafter entered into will be in form and substance subject to the approval of Holder. All leases of the Premises shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Holder such attornment to be effective upon Holder's acquisition of title to the Premises; that the tenant agrees to execute such further evidences of attornment as Holder may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure, and that Holder may, at Holder's option, accept or reject such attornments. Mortgagor shall not, without Holder's written consent, execute, modify, surrender, or terminate, either orally or in writing any lease now existing or hereafter made of all or any part of the Premises providing for a term of three years or more, permit an assignment or sublease of such a lease without Holder's written consent, or request or consent to the subordination of any lease of all or any part of the Premises to any lien subordinate to this Mortgage. If Mortgagor becomes aware that any tenant proposes to do or is doing any act or thing which may give rise to any right of set-off against rent, Mortgagor shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Holder thereof of the amount of said set-offs, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off, or take such other steps as shall effectively discharge such set-off, and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.
  - b. As further security, the Mortgagor assigns to the Holder the benefit of any leases, or other agreements relating to the use or occupancy of the Premises, whether or not written, now existing or hereafter executed (which assignment will not be merged in any foreclosure judgment), and in addition agrees that in the event of any Default hereunder or under the Note secured hereby, the Holder will have all

94955440



- i. The Holder may immediately commence collecting all rents, issues, and profits from the Premises, whether arising under a lease or other agreement in existence at the time of the execution hereof or thereafter, and regardless of when the same may have been earned.
- ii. The Holder may take any action that the Holder deems appropriate in management of the Premises, and specifically, may purchase hazard, liability, rent, or other insurance, pay taxes, terminate or modify existing or future leases, and let and re-let the Premises or any part thereof in the Holder's absolute discretion.  

The term of any such lease may be for such period as the Holder may determine, in the Holder's absolute discretion, and is not limited to any redemption period, or by the anticipated duration of any Default.
- iii. The Holder may bring or defend any suits for collection of rents, eviction, recovery of damages, or otherwise in connection with the Premises in the Holder's own name or the name of the Mortgagor.
- iv. The Holder may make any repairs or improvements, whether or not the cost of the same may be paid from current rents, as the Holder may deem appropriate.
- v. The Holder may do anything in and about the Premises that the Mortgagor could do, and the Mortgagor hereby ratifies and confirms all that the Holder may do hereunder, it being recognized that the Holder will act hereunder only in the event of a Default, but may so act at any time during the continuance of any Default.
- vi. The Holder will be entitled to a management fee hereunder of 5% of the gross rentals paid with respect to the Premises during any time while the Holder was acting under this Section 34.
- vii. The Holder is entitled to recover all such fees and expenses from rents from the Premises, and any remaining amount of such fees and expenses will be a debt secured by this Mortgage. Any remaining net rents may be applied by the Holder, in its discretion, in any order of priority to any other amounts secured by this Mortgage.
- viii. The Holder may engage a real estate broker or manager to take any action permitted to the Holder hereunder.
- ix. If the Mortgagor is in possession of the Premises at the time the Holder exercises its rights under this section, the Mortgagor will pay a monthly amount for use and occupancy of the Premises in an amount equal to the greater of (i) 120% of the total of any instalment payment (including any supplemental payments for taxes and insurance, and prorated monthly if necessary) due under the Note at that time, and (ii) the prevailing rate for properties of like kind. If the

Mortgagor fails promptly to pay such amount in advance on the first day of each month after the Holder has elected to proceed under this section, such failure will in and of itself automatically constitute a forcible entry and detainer with the result that the Holder may in its own name and without any notice or demand maintain an action of forcible entry and detainer and obtain possession of the Premises.

- x. No suit will be sustainable against the Holder for anything the Holder may do or fail to do hereunder, unless brought within 90 days after (i) expiration of the period of redemption, if any, or (ii) relinquishment by the Holder of possession hereunder, whichever shall first occur.
  
- c. Upon delivery of written notice by Holder to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Mortgage, and without the necessity of Holder entering upon and taking and maintaining full control of the Premises in person, by agent, or by a court-appointed receiver, Holder shall immediately be entitled to possession of all rents and revenues of the Premises as specified in this Section as the same become due and payable, including, but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Mortgagor as trustee for the benefit of Holder only; provided, however, that the written notice by Holder to Mortgagor of the breach by Mortgagor shall contain a statement that Holder exercises its rights to such rents. Mortgagor agrees that commencing upon delivery of such written notice of Mortgagor's breach by Holder to Mortgagor, each tenant of the Premises shall make such rents payable to and pay such rents to Holder or Holder's agents on Holder's written demand to each tenant therefor; delivered to each tenant personally, by mail, or by delivering such demand to each rental unit without any liability on the part of said tenant to inquire further as to the existence of a default by Mortgagor.
  
- d. Mortgagor hereby covenants that Mortgagor has not executed any prior assignment of said rents; that Mortgagor has not performed and will not perform any acts, or has not executed and will not execute any instrument which would prevent Holder from exercising its rights under this Section, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any of the rents of the Premises for more than two months prior to the due dates of such rents. Mortgagor covenants that Mortgagor will not hereafter collect or accept payment of any rents of the Premises more than two months prior to the due dates of such rents. Mortgagor further covenants that Mortgagor will execute and deliver to Holder such further assignments of rents and revenues of the Premises as Holder may from time to time request.
  
- e. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, or upon or at any time after the filing of a foreclosure suit, either before or after entry of judgment of foreclosure, Holder may in person, by agent, or by a court-appointed receiver, regardless of the adequacy of Holder's security, or the financial condition of Mortgagor, or the fact that the Premises may be occupied as a Homestead, enter upon and take and maintain full control of the Premises in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation, or modification of leases, the collection of all rents and revenues of the Premises,

94955440

# UNOFFICIAL COPY

the making of repairs to the Premises, and the execution or termination of contracts providing for the management or maintenance of the Premises all on such terms as are deemed best to protect the security of this Mortgage.

In the event Holder elects to seek the appointment of a receiver for the Premises upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, Mortgagor hereby expressly consents to the appointment of such receiver. Holder or receiver shall be entitled to receive a reasonable fee for so managing the Premises.

All rents and revenues collected subsequent to delivery of written notice by Holder to Mortgagor of the breach by Mortgagor of any covenant or agreement of Mortgagor in this Mortgage shall be applied first to the costs, if any, of taking control of and managing the Premises, and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments, and other charges on the Premises, and the costs of discharging any obligation, or liability of Mortgagor as lessor or landlord of the Premises, and then to the sums secured by this Mortgage. The Holder or receiver shall have access to the books and records used in the operation and maintenance of the Premises, and shall be liable to account only for those rents actually received. Holder shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Premises by reason of anything done or left undone by Holder under this Section. If the rents of the Premises are not sufficient to meet the costs, if any, of taking control of and managing the Premises and collecting the rents, any funds expended by Holder for such purposes shall become indebtedness of Mortgagor to Holder secured by this Mortgage pursuant to Section 24 through 28 hereof. Unless Holder and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Holder to Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event, such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law.

Any entering upon and taking and maintaining control of the Premises by the Holder or receiver, and any application of rents as provided herein, shall not cure or waive any default hereunder, or invalidate any other right or remedy of Holder under the applicable law or provided herein.

f. This assignment of rents of the Premises shall terminate at such time as this Mortgage ceases to secure indebtedness held by Holder or its assigns.

35. The Mortgagor warrants to the Holder that this Mortgage is prior to the rights of any parties hereafter in possession of the Premises, and that no party has any rights (whether under a mortgage, option, or contract to purchase, right of first refusal, or otherwise) that would be prior to the Mortgagee's rights hereunder. (This Section does not apply to non-delinquent general real estate taxes and assessments.) If this Mortgage is executed by trustee, said warranty shall be deemed made by the beneficiaries of the trust and each of them.

94955440

- 36. No action for enforcement of the lien (or of any provision) hereof will be subject to any defense that would not be good and available to the party interposing the defense in an action at law upon the indebtedness secured hereby.
- 37. The terms hereof will be binding on and will inure to the benefit of the successors and assigns of the Mortgagor and the Mortgagee, respectively, subject to the provisions of Section 15 hereof.
- 38. If the Mortgagor is a trustee:
  - a. This Mortgage is executed not personally but solely as such trustee in the exercise of the power and authority conferred on and vested in the Mortgagor as such trustee.
  - b. Nothing herein or in the Note secured hereby will create any liability on the trustee personally to pay the Note, or to perform any covenant of the Note or of this Mortgage; all such personal liability being waived by the Holder, and every person, now or hereafter, claiming any right to security hereunder except that such trustee expressly warrants that:
    - i. It possesses full power and authority to execute this Mortgage and the Note it secures.
    - ii. The same were duly and properly executed and are valid and binding in accordance with their terms.
    - iii. If the Mortgagor is a corporate trustee, the waivers in Section 39 and 40 below were duly authorized and are valid and binding in accordance with its terms.
  - c. The Holder will not look to such trustee individually for payment of the Note, or performance of any of the covenants therein or in this Mortgage.
- 39. The Mortgagor hereby waives any and all rights of redemption from the foreclosure under any order, decree, or judgment of foreclosure of this Mortgage, on the Mortgagor's own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof.
- 40. The mortgagor hereby waives any and all rights of reinstatement under any applicable law on the mortgagor's own behalf and on behalf of each and every person acquiring an interest in or title to the premises subsequent to the date hereof
- 41. Except for any notice required under applicable law to be given in another manner, any notice to the Holder may be delivered to the Holder c/o Deerfield Federal Savings and Loan Association, at the address shown above, or at such other address as the Holder may designate.
- 42. Except for any notice required under applicable law to be given in another manner, any notice to the Mortgagor may be mailed or delivered to the Mortgagor at the address shown at Section 1 above.
- 43. Any notice will be deemed to have been received by the Mortgagor:
  - a. If delivered: when delivered.

94955440

- b. If mailed, three days after an envelope containing the same, and bearing sufficient postage, addressed as provided herein, was sent by registered or certified first class mail from a U.S. Post Office in Deerfield or metropolitan Chicago, Illinois, or in the city in which is located the Mortgagor's mailing address.
44. Any such address may be changed on written notice, as provided herein.
- 45.
- a. All of the rights of the Holder hereunder are in addition to those that the Holder has as a matter of law, or pursuant to any other agreement with any person.
  - b. Each remedy of the Holder provided in this Mortgage is distinct, and cumulative to all other rights or remedies under this Mortgage, or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.
  - c. In exercising any rights hereunder, or taking any actions provided for herein, Holder may act through its employees, agents, or independent contractors as authorized by Holder.
46. References herein to beneficiaries of the Mortgagor are applicable if the Mortgagor is a trust. References to shareholders of the Mortgagor are applicable if the Mortgagor is a corporation.
47. The parties hereto recognize that the Holder may, on its own initiative, or at the request of the Mortgagor, from time to time, forebear from exercising any right or remedy that the Holder may have hereunder under the Note, or under applicable law; that such forbearance would be advantageous to the Mortgagor, and that the Mortgagor does not wish the Holder to be inhibited in any such forbearance (which forbearance would necessarily occur only in the Holder's discretion). Accordingly, no such forbearance, no matter how often, or in what manner effected, or how long continued, will be a waiver of or preclude the exercise of any such right or remedy by the Holder.
- The acceptance by Holder of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Holder's right to either require prompt payment when due of all other sum so secured, or to declare a default for failure to make prompt payment. The procurement of insurance, or the payment of taxes, or "Other Liens", or charges by Holder shall not be a waiver of Holder's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Holder's receipt of any awards, proceeds, or damages under Paragraphs 12 and 21 hereof operate to cure or waive Borrower's default in payment of sums secured by this Mortgage.
48. This Mortgage will remain in effect for all purposes until all amounts secured by the Mortgage have been paid in full, in which event, the Holder will provide to the Borrower (upon payment of Holder's reasonable costs incurred in releasing this Mortgage) a recordable release of the Mortgage to be recorded without expense to the Holder.
49. All statements made to the title insurer by the Mortgagor, or any of the Mortgagor's agents, to induce the title insurer to issue its owner's or loan title insurance policy, including, by way of illustration, the certifications customarily made to the title insurer in an "ALTA Loan and Extended Coverage Owner's Policy Statement", composite mortgage statement, or other statement of similar intent and purpose shall also be

94955440

**UNOFFICIAL COPY**

deemed to be made to Mortgage/Holder for the purpose of inducing the Mortgage/Holder to make the loan and disburse the mortgage proceeds under the Note secured hereby.

50. If the Mortgagor or Borrower comprises more than one person, references herein to the Mortgagor or Borrower will be modified accordingly, and the singular shall include the plural and vice versa, and the obligations of each of such persons hereunder are joint and several.
51. References herein to subsections are to subsections of the paragraph, sections, or subsection in which the reference appears. The term "paragraph" shall also mean "section" and vice-versa.
- 52.
- a. Mortgagor (and / or its beneficiaries) shall keep and maintain at all times at Mortgagor's address stated above, or such other place as Holder may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Premises, and copies of all written contracts, leases, and other instruments which affect the Premises. Such books, records, contracts, leases, and other instruments shall be subject to examination and inspection at any reasonable time by Holder.
  - b. Upon Holder's request, Mortgagor (and or / its beneficiaries) shall furnish to Holder, within 120 days after the end of each fiscal year of Mortgagor, a balance sheet, a statement of income and expense of the Premises, and a statement of changes in financial position, each in reasonable detail and certified by Mortgagor (and / or its beneficiaries), and if Holder shall require, by an independent certified public accountant.
  - c. Mortgagor (and / or its beneficiaries) shall furnish, together with the foregoing financial statements, and at any other time upon Holder's request, the following:
    - i. Current occupancy status of the premises, including a rent schedule for the Premises, certified by Mortgagor (and / or its beneficiaries), showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, and the rent paid; and
    - ii. The most recent annual financial statement on the premises; and
    - iii. The most recent annual corporate financial statement(s), and / or personal financial statement(s), and / or corporate federal income tax return(s), and / or personal federal income tax return(s) of all guarantors of the Note secured by this Mortgage, and / or makers of the Note secured by this Mortgage, and / or mortgagor(s), and / or such other individual(s) and / or entities on whose credit worthiness the Loan secured by this Mortgage was made.
  - d. The failure of the mortgagor, and / or its beneficiaries, to perform the covenants of this paragraph will constitute a default hereunder and under the Note secured hereby, permitting the Holder, at its option, to increase the interest rate of the Note (pursuant to Section 11 of the Note), and / or, at its option, accelerate without further demand or notice, and Holder further may, at its option,

53. From time to time, Holder may, at Holder's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns, or any junior lienholder or guarantors, without liability on Holder's part, and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Mortgage any part of the Premises, take or release other or additional security, reconvey any part of the Premises, consent to any map or plan of the Premises, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest, or period of amortization of the Note, or change the amount of the monthly instalments payable thereunder. Any actions taken by Holder pursuant to the terms of this paragraph shall not affect the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage, and to observe the covenants of Mortgagor contained herein; shall not affect the guaranty of any person, corporation, partnership, or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Premises. Mortgagor shall pay Holder a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred, at Holder's option, for any such action if taken at Mortgagor's request.
54. Mortgagor shall within ten days of a written request from Holder, furnish Holder with a written statement, duly acknowledged, setting forth the sums secured by this Mortgage, and any right of set-off, counterclaim, or other defense which exists against such sums and the obligation of this Mortgage.
55. This instrument is also intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code and Mortgagor hereby grants Holder a security interest in said items. Mortgagor agrees that Holder may file this instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Premises. Any reproduction of this instrument, or any other security agreement, or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Holder, upon Holder's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument in such form as Holder may require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statements, and any extensions, renewals, amendments, and release thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Holder may reasonably require. Without the prior written consent of Holder, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this instrument, including the covenants to pay when due all sums secured by this instrument, Holder shall have the remedies of a secured party under the Uniform Commercial Code and, at Holder's option, may also invoke the remedies provided in Paragraph 29 of this instrument as to such items. In

exercising any of said remedies, Holder may proceed against the items of real property and any items of personal property specified above as part of the Premises separately or together, and in any order whatsoever, without in any way affecting the availability of Holder's remedies under the Uniform Commercial Code or of the remedies provided in Paragraph 29 of this instrument.

56. If Mortgagor (for purposes of this paragraph, "Mortgagor" shall be deemed to also refer to those persons and entities set forth and defined in Paragraph 14(d) herein above) shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements, or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency, or inability to pay debts, or if Mortgagor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution, or liquidation of Mortgagor, or if Mortgagor shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Mortgagor or Mortgagor's property, or if the Premises shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Mortgagor shall make an assignment for the benefit of Mortgagor's creditors, or if there is an attachment, execution, or other judicial seizure of any portion of Mortgagor's assets, and such seizure is not discharged within ten days then Holder may, at Holder's option, declare all of the sums secured by this Mortgage to be immediately due and payable without prior notice to Mortgagor, and Holder may invoke any remedies permitted by Paragraphs 29 and 55 of this Mortgage. Any attorney's fees and other expenses incurred by Holder in connection with Mortgagor's bankruptcy, or any of the other aforesaid events shall be additional indebtedness of Mortgagor secured by this Mortgage pursuant to Paragraphs 24 and 25 hereof.
57. This Mortgage shall be governed by the law of the jurisdiction in which the Premises is located. In the event that any provision of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Mortgage and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in this Mortgage or in the Note, whether considered separately or together with other charges levied in connection with this Mortgage and the Note, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Holder in excess of the amounts payable to Holder pursuant to such charges as reduced shall be applied by Holder to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all indebtedness which is secured by the Mortgage or evidenced by the Note and which constitute interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.
58. Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage, or to any action

94955440



brought to enforce the Note, or any other obligation secured by this Mortgage.

59. Notwithstanding the existence of any other security interests in the Premises held by Holder or by any other party, Holder shall have the right to determine the order in which any or all of the premises shall be subjected to the remedies provided herein. Holder shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Mortgage, and any party who now or hereafter acquires a security interest in the Premises, and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.
60. Mortgagor agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Mortgage. All advances made by Holder pursuant to the Construction Loan Agreement shall be indebtedness of Mortgagor secured by this Mortgage, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Holder prior to completion of the improvements to protect the security of this Mortgage up to the principal amount of the Note shall be treated as disbursement pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event, such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law and shall be payable upon notice from Holder to Mortgagor requesting payment therefor. From time to time as Holder deems necessary to protect Holder's interest, Mortgagor shall upon request of Holder execute and deliver to Holder, in such form as Holder shall direct, assignments of any and all rights, or claims which relate to the construction of the Premises, and which Mortgagor may have against any party supplying, or who has supplied labor, materials, or services in connection with construction of the Premises. In case of breach by Mortgagor of the covenants and conditions of the Construction Loan Agreement, Holder, at Holder's option, with or without entry upon the Premises, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may accelerate the sums secured by this Mortgage and invoke those remedies provided in Section 29 hereof, or (iii) may do both. If after the commencement of amortization of the Note, the Note and this Mortgage are sold by Holder, from and after such sale, the Construction Loan Agreement shall cease to be a part of this Mortgage, and Mortgagor shall not assert any right of set-off, counterclaim, or other claim, or defense arising out of or in connection with the Construction Loan Agreement against the obligations of the Note and this Mortgage.
61. Mortgagor hereby waives all right of homestead exemption in the Premises.
62. a. Definitions: For the purpose of this Mortgage, Mortgagor and its beneficiaries and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:
1. "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to

time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.A. Section 9601 et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) poly-chlorinated biphenyls; (e) any substance and presence of which on the Premises is prohibited by any Governmental Requirements, and (f) any other substance which by any Governmental Requirement requires special handling in its collection, storage, treatment, or disposal.

- ii. "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, ground water, air, or other elements on or of the Premises by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air, or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Premises.
- b. **Mortgagor's Warranties:** Mortgagor (and its beneficiaries) hereby represents and warrants that no Hazardous Materials are now located on the Premises and that neither Mortgagor (and its beneficiaries) nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located, or disposed of on, under, or at the Premises or any part thereof. No part of the Premises has ever been used as a manufacturing, storage, or dump site for Hazardous Materials, nor is any part of the Premises affected by any Hazardous Materials Contamination. Mortgagor (and its beneficiaries) further represent and warrant that it (and its beneficiaries) have no duty to disclose (and provide a disclosure document) under and pursuant to Section 3(e) of the Illinois Responsible Property Transfer Act ("IRPTA"), Ill. Rev. Stat., ch 30, para. 901, Et Seq.
- c. **Mortgagor's Covenants:** Mortgagor (and its beneficiaries) agrees to (a) give notice to Mortgagee immediately upon the Mortgagor acquiring knowledge of the presence of any Hazardous Materials on the Premises or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Governmental Requirement requiring the removal, treatment, or disposal of such Hazardous Materials or Hazardous Materials Contamination, and provide Mortgagee with satisfactory evidence of such compliance, and (c) provide Mortgagee, within thirty (30) days after demand by the Mortgagee, with a bond letter of credit or similar financial assurance evidencing to the Mortgagee's satisfaction that the necessary funds are available to pay the cost of removing, treating, or disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Premises as a result thereof.
- d. **Site Assessments:** Mortgagee (by its officers, employees, and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the premises for the purposes of determining whether there exists on the Premises any environmental condition which could result in any liability, cost of expense to the owner or occupier of such Premises arising under any state,

94955440

**UNOFFICIAL COPY**

federal or local law, rule, or regulation relating to Hazardous Materials. The Site Assessment may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Premises for such purposes.

The Site Reviewers are further authorized to perform both above and below ground testing for environmental damage or the presence of Hazardous Materials on the Premises and such other tests on the Premises as may be necessary to conduct the Site Assessment in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessment and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessment fully available to Mortgagor which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessment and the description of tasks of the Site Reviewers. The cost of performing such Site Assessment shall be paid by Mortgagor upon demand of Mortgagee and any such obligations shall constitute additional indebtedness hereby secured by this Mortgage.

- e. **Indemnification:** Regardless of whether any Site Assessments are conducted hereunder, any Event of Default shall have occurred and be continuing or any remedies in respect of the Premises are exercised by Mortgagee, Mortgagor (and its beneficiaries) shall defend, indemnify and hold harmless Mortgagee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorney's fees and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release, discharge, satisfaction, and /or foreclosure of this Mortgage) be paid, incurred or suffered by or asserted against, Mortgagee by any person or entity or governmental agency for, with respect to, or as a direct result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises of any Hazardous Materials or Hazardous Materials Contamination or arise out of or result from the environmental condition of the Premises or the applicability of any Governmental Requirement relating to Hazardous Material (including, without limitation, CERCLA or any so called federal, state, or local "Superfund" or Superlien" laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Mortgagee. The representations, covenants, and warranties contained in this Section 62 shall survive the release, discharge, satisfaction, and / or foreclosure of this Mortgage, and / or judicial sale of the secured premises or other collateral.
- f. **Mortgagee's Right to Remove Hazardous Materials:** Mortgagee shall have the right but not the obligation, without in any way limiting Mortgagee's other rights and remedies under this Mortgage, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Premises following receipt

# UNOFFICIAL COPY

of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Premises, or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Premises, or other action and/or which, in Mortgagee's sole opinion, could jeopardize Mortgagee's security under this Mortgage. All reasonable costs and expenses, including attorney's fees, paid or incurred by Mortgagee in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Mortgagor (and / or its beneficiaries) upon demand.

Property of Cook County Clerk's Office

94955440

# UNOFFICIAL COPY

Legal Description of the Mortgaged Premises:

PARCEL 1:

THE SOUTH 71 FEET OF LOTS 11 AND 12 IN BLOCK 31 IN VILLAGE OF RIDGELAND, A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 OF SECTION 7 AND THE NORTHWEST 1/2 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/2 OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 1 (EXCEPT THAT PART THEREOF LYING NORTHWESTERLY OF A LINE DRAWN FROM A POINT ON THE NORTH LINE OF LOT 1 AFORESAID, 15 FEET EAST OF THE NORTHWEST CORNER THEREOF TO THE WEST LINE OF LOT 1 AFORESAID, 38 FEET SOUTH OF AND SAID NORTHWEST CORNER) IN CENTRAL TERMINAL, BEING PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. 16-08-118-025-0000 (AFFECTS PARCEL 1) AND  
19-09-100-032-0000 (AFFECTS PARCEL 2)

Property: 300 W. Lake St.  
Oak Park  
4701 S. Central  
Franklin Park, IL

PREPARED BY AND MAIL TO:

DEERFIELD FEDERAL SAVINGS AND LOAN ASSOCIATION  
745 DEERFIELD ROAD  
DEERFIELD, IL 60015  
ATTENTION: LISA BERTAGNA  
#73001439

BOX 333-CTI

# UNOFFICIAL COPY

Trustee signatures and acknowledgments

In Witness Whereof the undersigned Mortgagor has signed this Mortgage, not individually but solely as Trustee as aforesaid, this 31st day of October, 1994.

Deerfield Federal Savings and Loan Association, as Trustee Under Trust Agreement dated 7/12/94 A/K/A Trust #430

(Name of trustee and number of trust)

By: Candy S. LoGiurato  
(Signature)

Candy S. LoGiurato, Vice President  
(Name and Title)

ATTEST:

Richard Erlar  
(Signature)

Richard Erlar, Assistant Secretary  
(Name and Title)

(Seal)

STATE OF ILLINOIS )

) SS.

COUNTY OF Lake )

This instrument is signed by Deerfield Federal Savings & Loan not individually but solely as Trustee under a certain trust Agreement known as Trust No. 430. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing of this instrument shall be payable only out of any trust property which may be held thereunder, and said Trustee shall not be personally liable for the performance of any of the provisions of this agreement or for the validity or condition of the title of said property or for any agreement with respect thereto. Any and all personal liability of Deerfield Federal Savings and Loan Association is hereby expressly waived by the parties hereto and their respective successors and assigns.

The undersigned, a Notary Public for Lake County, Illinois, certifies that Candy S. LoGiurato, the Vice President of Deerfield Federal Savings and Loan Association, the above-named corporate trustee, and Richard Erlar, the Assistant Secretary of such trustee, who are personally known to me to be the same persons whose names are subscribed to the above Mortgage in such capacities on behalf of the Mortgagor, personally appeared before me this day and severally acknowledged that they signed and delivered the Mortgage as their free act and as the free act of such trustee (acting as such trustee and not individually) and such Assistant secretary acknowledged that, as custodian of such trustee's corporate seal, he affixed such seal to the Mortgage as his free act and as the free act as such trustee, all for the purposes set forth therein.

Given under my hand and official seal, this 31st day of October, 1994 at Deerfield, Illinois.

"OFFICIAL SEAL"  
MARGUERITE DOLAN  
NOTARY PUBLIC, STATE OF ILLINOIS  
My Commission Expires 3/30/97

(Seal)

Marguerite Dolan  
(Notary Public)

My commission expires: \_\_\_\_\_

94955440