

**UNOFFICIAL COPY 94988172**

Box 404  
Southwest Federal  
4062 Southland Highway  
Anniston, Ill 60426

9 COOK COUNTY, ILLINOIS?  
FILED FOR RECORD

MORTGAGE

31 NOV 22 AM 8:59

94988172

THIS MORTGAGE (the "Mortgage"), dated October 28, 1994 is from FIRST NATIONAL BANK OF EVERGREEN PARK, not personally, but as Trustee under Trust Agreement dated June 17, 1994, and known as Trust No. 13791, (hereinafter referred to as "Borrower"), having an address at 3101 West 95th Street, Evergreen Park, Illinois 60642, to SOUTHWEST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHICAGO, (hereinafter referred to as "Lender" and "Noteholder"), having an address at 3525 West 63rd Street, Chicago, Illinois 60629.

638

WITNESSETH, that to secure the payment of an indebtedness in the amount of Three Million Three Hundred Thousand and No/100 (\$3,300,000.00) Dollars lawful money of the United States, to be paid with interest thereon according to a certain mortgage note bearing even date herewith, as well as any extension, modification, renewal or substitution thereof (the "Note"), and pursuant to authority heretofore granted by its Beneficiaries, the Borrower hereby mortgages, conveys and transfers to the Noteholder all of Borrower's right, title and interest in the property (the "Land" or "Premises" or "Mortgaged Premises") situated in Cook County, State of Illinois, and legally described in Exhibit "A" attached hereto and made a part hereof.

Together with all of the improvements now or hereafter located thereon;

Together with all easements, rights-of-way and rights used in connection therewith or with a means of access thereto and all tenements, hereditaments and appurtenances thereto;

Together with all fixtures and all furniture, equipment and other personality (excluding inventory goods customarily located on, in or upon said real property, including but not limited to all machinery used in the operation of the business conducted on said real property, as well as any and all additions, substitutions, replacements and proceeds thereto or there from, (collectively referred to herein as "Personalty"); and

Together with all right, title and interest of the Borrower in and to any and all leases, now or hereafter on or affecting the property described in Exhibit "A"; and

Together with the rents, issues and profits of such real property, with full and complete authority and right in Noteholder in case of default of this Mortgage to demand, collect, receive and receipt for such rents, issues and profits.

Together with the real property legally described in Exhibit "A", together with the improvements thereon, the rights therein, the appurtenances thereto, the Personalty on, in, upon, attached to installed therein, the rents, issues and proceeds thereof, the present and future estates and interest of Borrower therein.

A-274-66-997

(Gina)

94988172

UNOFFICIAL COPY

871200

Property of Cook County Clerk's Office

871200

# UNOFFICIAL COPY

9 4 9 3 6 1 7 2

And the borrower covenants with the Noteholder as follows:

## 1. Payment of Indebtedness

The Borrower will pay the indebtedness as in the Note provided and will otherwise duly comply with the terms thereof.

## 2. Title to Land.

Borrower represents and covenants that (i) Borrower is seized of a Fee Simple Estate in the land and the improvements, and that the land is free and clear of all liens and encumbrances, other than Permitted Encumbrances (as defined herein), (ii) Borrower has full legal power, right and authority to mortgage, pledge and convey the Fee Simple Estate and (iii) this Mortgage creates a first lien on the Fee Simple Estate, subject only to the Permitted Encumbrances.

## 3. Maintenance of Lands Changes and Alterations.

A. The Borrower shall maintain, or cause to be maintained, the Land in good repair, working order and condition and make, or cause to be made, as and when necessary, all repairs, renewals, and replacements, structural and non-structural, exterior and interior, ordinary and extraordinary. The borrower shall refrain from, and shall not permit, the commission of waste in or about the Land and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Land without the prior written consent of the Noteholder, except as hereinafter otherwise provided.

B. The Borrower may, in its discretion and without the prior written consent of the Noteholder, any time and from time to time make, or cause to be made reasonable changes, alterations or additions, structural or otherwise, in or to the Land, which are suitable to the Land.

C. The Borrower may, in its discretion and without the prior written consent of the Noteholder, any time and from time to time, remove and dispose of any Personalty, now or hereafter constituting part of the Land which, in the reasonable opinion of Borrower, becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Land or the business conducted thereon, provided the Borrower promptly replaces such Personalty, and title to such replacements to be free and clear of all other liens and encumbrances and subject to a first lien hereunder. If any Personalty, which becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Land or the business conducted thereon, shall be removed and disposed of in compliance herewith, the proceeds of a sale, if any, may be retained by the Borrower.

# UNOFFICIAL COPY

9 1 7 0 8 1 7 2

## 4. Taxes and Liens.

A. Payment. Borrower shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Premises or any part thereof or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Borrower, and Borrower shall furnish to Noteholder receipts therefor on or before the date the same are due; and shall discharge any claim or lien relating to taxes upon the premises.

B. Contest. Borrower may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that:

- (a) Such contest shall have the effect of preventing the collection of the Taxes so contested and not paid and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;
- (b) Borrower has notified Noteholder in writing of the intention of Borrower not to pay, but to contest the same or to cause the same to be contested before any Tax has been increased by any interest, penalties, or costs; and
- (c) Borrower has deposited or caused to be deposited with Borrower, at such place as Noteholder may from time to time in writing designate, a sum of money or other security acceptable to Noteholder that, when added to the monies or other security, if any, deposited with Noteholder pursuant to Paragraph 3(c) hereof, is sufficient, in Noteholder's reasonable judgement, to pay in full such contested and unpaid Tax and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Noteholder's reasonable judgement, to pay in full such contested and unpaid Tax, increasing such amount to cover additional penalties and interest whenever, in Noteholder's reasonable judgement, such increase is advisable.

In the event Borrower fails to prosecute such contests with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Noteholder may, at its option, apply the monies and liquidate any securities deposited with Noteholder, in payment of, or on account of, such Taxes, or any portion thereof when unpaid, including all penalties and interest

94938172

# UNOFFICIAL COPY

9 4 9 1 6 1 7 2

thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Borrower shall forthwith, upon demand, either deposit with Noteholder a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Noteholder has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Noteholder. Provided that Borrower is not then in default hereunder. Noteholder shall, if so requested in writing by Borrower, after final disposition of such contest and upon Borrower's delivery to Noteholder of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.

## 5. Insurance.

A. The Borrower shall maintain at its sole cost and expense, the following insurance coverage with respect to the Land:

(i) Insurance against loss of or damage to the Land by fire and such other risks as are customarily insured against in the area in which the Land are located, including but not limited to, risk and difference in conditions endorsements, in each case in amounts at all times sufficient to prevent the Borrower from becoming a co-insurer under the terms of the applicable policies and, in any event, in amounts not less than the greater of (i) the principal balance remaining outstanding from time to time on the Note and (ii) ninety percent (90%) of the full insurable value (as hereinafter defined) of the Land, as determined from time to time.

(ii) Comprehensive general liability insurance against any and all claims (including all costs and expenses of defending the same) for bodily injury or death and for property damage occurring upon, in or about the Land and the adjoining streets or passageways in amounts less than the respective amounts which the Noteholder shall from time to time reasonably require, having regard to the circumstances and usual practice at the area in which the Land are located;

(iii) Explosion insurance in respect of boilers, heating apparatus or other pressure vessels, if any, at the time located on the Land in such amounts as shall from time to time be reasonably be required by the Noteholder;

(iv) Such other insurance as is customarily purchased in the area for similar types of business, in such amounts and against such insurable risks, as from time to time may reasonably be required by the Noteholder.

The term "full insurable value" as herein shall mean actual cash value, i.e., replacement cost less physical depreciation, exclusive of costs of excavation, foundations and footings below

94988172

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000

# UNOFFICIAL COPY

9 4 9 0 0 1 7 2

the lowest basement floor or mortgage indebtedness, whichever is greater.

The Borrower may effect for its own account any insurance not required under the provisions of subparagraph A hereof, but any required under this Mortgage, shall be for the benefit of the Noteholder and the Borrower, as their interests may appear, and shall be subject to the provisions of this Mortgage.

C. If the borrower shall fail to keep the Land insured in accordance with the requirements of this Paragraph, the Noteholder shall have the rights, at its option and in addition to any other remedies available to it under this mortgage, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Noteholder shall constitute additional indebtedness secured by this Mortgage, shall bear interest at Four percent (4%) over the then current interest rate, as set forth in the Note from the date of payment, and shall become immediately due and owing to the Noteholder.

D. All policies of insurance to be furnished under this Mortgage shall be in forms and with companies reasonably satisfactory to the Noteholder, with standard mortgage clauses attached to or incorporated in all policies in favor of the Noteholder, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without Thirty (30) calendar days' prior written notice to the Noteholder. Any or all of such insurance may be provided for under a blanket policy or policies carried by the Borrower or any affiliated corporation.

E. The Borrower shall deliver to the Noteholder, the originals of all insurance policies or certificates of coverage under blanket policies, including renewal or replacement policies, and in the case of insurance about to expire shall deliver renewal or replacement policies or binders as to the issuance thereof or certificates in the case of blanket policies not less than fourteen (14) days prior to their respective dates of expiration.

F. On all insurance policies of the character described in clauses (i), (iii), and (iv), of subparagraph A of this Paragraph 5, Noteholder shall be named as Noteholder in the standard mortgage clause and as an additional loss payee where appropriate and such insurance shall be for the be named as Noteholder in the standard mortgage clause and as an additional loss payee where appropriate and such insurance shall be for the benefit of the Borrower and the Noteholder, as their interest may appear: provided, however, such insurance may provide that any loss or damage to the Land not exceeding FIFTY THOUSAND DOLLARS (\$50,000.00) shall be adjusted by and paid to the Borrower and any such loss exceeding FIFTY THOUSAND DOLLARS (\$50,000.00) shall be adjusted by the Borrower and the Noteholder and paid to the Noteholder. All such insurance proceeds shall be applied in accordance with Paragraph 6 below, and any amounts not so applied shall be paid to the Borrower.

# UNOFFICIAL COPY

9 4 9 0 6 1 7 2

G. On all insurance policies of the character described in clauses (ii) and (v) of subparagraph A of this paragraph 5, Noteholder shall be named as an additional named insured thereunder.

H. In any event, the Borrower shall continue to pay the principal and interest on the Note notwithstanding any damage, loss, or capacity.

## 6. Damage or Destruction

A. In case of any damage to or destruction of the Land or any part thereof from any cause whatsoever, other than a Taking (as defined in Paragraph 10 below), the Borrower shall promptly give written notice thereof to the Noteholder, unless in Borrower's reasonable opinion such damage or destruction involved less than FIFTY THOUSAND DOLLARS (\$50,000.00). In any event, but subject to the provisions of subparagraph C of this Paragraph 6, Borrower shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction of with such changes, alterations and additions as may be made at the Borrower's election pursuant to Paragraph 4. Such restoration, repair, replacement or rebuilding (herein collectively called "Restoration") shall be commenced promptly and completed with diligence by the Borrower, subject only to delays beyond the control of the Borrower.

B. Subject to subparagraph C of this Paragraph 6, all net insurance proceeds received by the Noteholder pursuant to this Paragraph 6 shall be made available to the Borrower for the restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the net insurance proceeds which are payable to the Borrower in accordance with the terms of this Mortgage shall be insufficient to pay the entire cost of the Restoration, the Borrower shall pay the deficiency. In such an event, Borrower shall make all payments from its own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Noteholder shall make subsequent payments from the insurance proceeds to Borrower or to the contractor, whichever is appropriate. All payments hereunder shall be made only upon a certificate or certificates of a supervising architect appointed by the Borrower and reasonably satisfactory to the Noteholder that payments, to the extent approved by such supervising architect, are due to such contractor for the Restoration, the Land are free of all liens of record for work, labor or materials, and that the work conforms to the legal requirements therefor.

94906172

C. If an Event of Default (as hereinafter defined) shall occur, all insurance proceeds received by the Noteholder and applied, at its option, in payment of the mortgage indebtedness and any excess repaid to or for the account of Borrower.



UNOFFICIAL COPY

Property of Cook County Clerk's Office

152-11110

# UNOFFICIAL COPY

9 4 3 0 8 1 7 2

## 7. Indemnification.

The Borrower will protect, indemnify and save harmless the Noteholder from and against all liabilities obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against the Noteholder, as a result of (a) ownership of the Land or any interest therein or receipt of any rent or other sum thereof from, (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Land or any part thereof or on the adjoining sidewalks, curbs, vaults and thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways, (c) any use, nonuse or condition of the Land or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways, (d) any failure on the part of the Borrower to perform or comply with any of the terms of this Mortgage, or (e) the performance of any labor or services or the furnishing of any materials or other property with respect to the Land or any part thereof. Any amounts payable to the Noteholder under this Paragraph which are not paid within ten (10) days after written demand therefor by the Noteholder shall bear interest at Four percent (4%) over the then current interest rate as set forth in the Note from the date of such demand and shall constitute additional indebtedness secured by this Mortgage. The obligations of the Borrower under this paragraph shall survive any termination or satisfaction of this Mortgage.

## 8. Sale, Conveyance, Mortgaging, Hypothecation, or other Transfer.

a) Borrower shall not permit title to the Land or any portion thereof or to be conveyed or mortgaged, or the beneficial interest or any portion thereof to be assigned, collaterally assigned or otherwise transferred or encumbered, voluntarily or involuntarily, directly or indirectly, without the prior written consent of the Noteholder.

If prepayment is elected by Borrower, it shall be delivered to Noteholder simultaneously with the sale, conveyance, assignment, mortgage, hypothecation or other transfer or encumbrance together with accrued interest thereon.

# UNOFFICIAL COPY

9 3 1 0 0 1 7 2

b) In the event the Borrower conveys, sells, grants possession, transfers or assigns any interest therein, either directly or indirectly, including but not limited to the assignment of a beneficial interest, converts or subjects the Mortgaged Premises to the Illinois Condominium Act, or contracts to do any of the foregoing, without the prior written consent of the Noteholder or violates any of the provisions of the Note, all terms and provisions of the Note being incorporated herein by reference, all sums due hereunder, both principal and interest, shall become immediately due and payable irrespective of the maturity date specified.

c) Notwithstanding paragraphs 8 (a) and (b) above, so long as borrower is not in default under the terms of the Note, or other documents securing said Note, or this Mortgage, Borrower may sell all, or any part of the Mortgaged Premises to third party purchasers, upon payment by Borrower to Noteholder as follows: the sum of \$50,000.00 per single family lot for the issuance of a partial release and \$20,000.00 per townhome. In addition Borrower agrees to pay to Noteholder the sum of \$50.00 per lot for preparation of the release deed. Noteholder shall have no obligation to issue partial releases if Borrower is in default under the Note, Mortgage or other documents securing the Note.

## 9. Priority of Lien. After-Acquired Property.

This Mortgage is and will be maintained as a valid first mortgage. The Borrower will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Land, or any portion thereof, or against the rents, issues and profits thereof, any lien, security interest, encumbrance or charge prior to or on a parity with the lien of this mortgage provided, however, that nothing herein contained shall require the Borrower to pay any impositions or insurance premiums prior to the last day on which the same shall become due and payable without penalty or prevent the Borrower from contesting the validity of any impositions in accordance with the provisions of this Mortgage.

Subject to the rights granted under Paragraph 24, the Borrower will keep and maintain the Land free from all liens for monies due and payable to persons supplying labor for and providing materials used in the construction, modification, repair or replacement of the Land. If any such liens shall be filed against the Land, the Borrower agrees to cause the same to be discharged of record promptly after the Borrower has notice thereof.

In no event shall Borrower do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which, or omission to do which, would impair the security of this mortgage. The Borrower shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement materially

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

9 4 7 3 6 1 7 2

changing the uses which may be made of the Land or any part thereof without the express written consent of the Noteholder.

All property of every kinds acquired by the Borrower after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Borrower, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Borrower will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, security agreements, financing statements and assurances as Noteholder shall reasonably require for accomplishing the purpose of this Mortgage.

If any action or proceeding shall be instituted to recover possession of the Land or any or any part thereof or to accomplish any other purpose which would materially affect this Mortgage, Borrower will immediately, upon service of notice thereof, deliver to Noteholder a true copy of each precept, petition, summons, complaint, notice of motion order to show cause, and all other process, pleadings, and papers however designated, served in any such action or proceeding.

## 10. Condemnation.

A. The term "Taking" as used herein shall mean a Taking of all or part of the Land under the power of condemnation or eminent domain. Promptly upon the receipt by Borrower of notice of the institution of any proceeding for the Taking of the Land or any part thereof, Borrower shall give written notice thereof to Noteholder and Noteholder may, at its option, appear in any such proceeding. Borrower will promptly give to Noteholder copies of all notices, pleadings, awards, determinations and other papers received by Borrower in any such proceeding. Borrower shall not adjust or compromise any claim for award or other proceeds of a Taking without having first given at least Thirty (30) days' prior written notice to Noteholder of the proposed basis of adjustment or compromise and without first having received the written consent thereto of Noteholder. Any award or other proceeds of a Taking, after allowance for expenses incurred in connection therewith, are herein referred to as "Condemnation Proceeds".

B. In the event of a Taking of all or substantially all of the Land, or a Taking of less than all or substantially all of the Land are not susceptible to restoration, the Condemnation Proceeds shall be paid to Noteholder and applied, at its option, to payment of the mortgage indebtedness.

C. Subject to subparagraph D below, in the event of a Taking of less than all or substantially all of the Land the Condemnation Proceeds shall be applied as follows: (i) If the Condemnation Proceeds shall amount of FIFTY THOUSAND DOLLARS (\$50,000.00) or less, such amount shall be paid to Borrower for application by Borrower for application by Borrower to the repair or restoration to the extent practicable for any damage to the Land resulting from the Taking, and (ii) if the

9199881722

# UNOFFICIAL COPY

9 4 9 0 0 1 7 2

Condemnation Proceeds shall amount to more than FIFTY THOUSAND DOLLARS (\$50,000.00) such amount shall be paid to Noteholder in escrow, and shall be applied to reimburse the Borrower for such repair or restoration in conformity with and subject to the conditions specified in Paragraph 6 hereof relating to damage or destruction. In either of the foregoing events, whether or not the Condemnation Proceeds which are applicable thereto shall be sufficient for the Land as nearly as practicable substantially the same value, condition and character as existed immediately prior to the Taking, with such changes and alterations as may be made at Borrower's election in conformity with and subject to Paragraph 4 hereof and as may be required by such Taking.

If an Event of Default shall occur, any Condemnation Proceeds in the hands of Noteholder or to which Noteholder is entitled may be retained by Noteholder and, at its option, applied in payment of the mortgage indebtedness. Any amount remaining in the hands of Noteholder following such application shall be paid to Borrower.

## 11. Right to Inspect.

Noteholder, its agents and representatives, may at all reasonable times make such inspections of the Land as Noteholder may deem necessary or desirable.

## 12. Books and Records; Financial Statements.

Borrower will keep and maintain books of records and account relating to the Land and operation thereof, including the leases relating to the Land, which books of records and account shall, at all reasonable times, be open to the inspection of Noteholder and its accountants and other duly authorized representatives of account full, true and correct entries in accordance with generally accepted accounting principles of all dealings and transactions relative to the Land there in.

As soon as practicable after the end of each fiscal year of Borrower, and in any event within one hundred twenty (120) days thereafter, Borrower shall deliver to Noteholder duplicate copies of a statement of income and expense and a balance sheet of Borrower as at the end of such year, setting forth, in comparative form, the figures for the previous fiscal year, all in reasonable detail and certified as complete and correct by chief accounting officer of Borrower's Beneficiary.

## 13. Leases affecting Land.

A. Borrower covenants and agrees to keep, observe, and perform and to require the tenants to keep, observe, and perform all of the covenants, agreements, and provisions of any present or

91088172

# UNOFFICIAL COPY

9 4 9 0 0 1 7 2

future leases of any portion of the mortgaged premises on their respective parts to be kept, observed, and performed, and, in case Borrower shall neglect or refuse to do so, then Noteholder may, if it shall so elect, perform and comply with or require performance and compliance by the tenants with any such lease covenants, agreements and provision, and any sums expended by Noteholder in performance or compliance therewith or in enforcing such performance or compliance by the tenant, including costs, expenses, and attorneys' fees, shall bear interest from the date of such expenditures at the rate set forth in the note, shall be paid by Borrower the Noteholder upon demand and shall be deemed a part of the debt secured hereby and recoverable as such in all respects.

B. In addition to the covenants and terms herein contained and not in limitation thereof, Borrower covenants that the Borrower covenants that the Borrower will not in any case cancel, abridge or otherwise modify tenancies, subtenancies, leases, or subleases of the mortgaged property or accept prepayments of installments of rent to become due thereunder.

The whole of the principal sum and the interest shall become due at the option of Mortgage if Mortgagor fails or refuses to comply with the provisions of this paragraph.

C. Borrower covenants and warrants that, in the event of the enforcement of the Noteholder of the remedies provided for by law or by this mortgage, any person succeeding to the interest of the Mortgagor as a result of such enforcement shall not be bound by any payment of rent or additional rent for more than one (1) month in advance.

D. Borrower covenants and warrants that should Noteholder succeed to the interest of the Borrower, as Landlord, under the terms of the leases, pursuant to a default as defined herein, Noteholder shall not for security deposits for any leases on the property.

E. In addition to the above Borrower covenants and agrees as follows:

(i) The Borrower will not (a) execute an assignment of the rents or any part thereof from the premises unless such assignment shall provide that it is subordinate to the assignment contained in this mortgage and any assignment executed pursuant hereto: or, (b) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the premises or of any part thereof, not existing or hereafter to be made, having an unexpired term of two (2) years or more unless, promptly after the cancellation or surrender of any lease, a new lease is entered into with a new lessee on substantially the same terms as the terminated or cancelled lease; or (c) modify any such lease so as to shorten the unexpired term thereof or so as to decrease the amount of the rents payable thereunder: or (d) accept prepayments of any installments of rents to become due under such

94988172

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/10/2008



# UNOFFICIAL COPY

9 1 3 0 1 7 2

leases, except prepayments in the nature of security for the performance of the leases thereunder; or (e) in any other manner impair the value of the mortgaged property or the security of the Noteholder for the payment of the principal of, and interest on, the Note.

(ii) The Borrower will not execute any lease of all or a substantial portion of the premises except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, condition and agreements contained in all leases of the premises now or hereafter existing, on the part of the lessor thereunder to be kept or performed. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, the Borrower shall exercise its right to request such certificates with five (5) days of any demand therefor by the Noteholder.

(iii) The Borrower shall furnish to the Noteholder within thirty (30) days after a request by the Mortgagee to do so, a written statement containing the names of all lessees of the premises, the terms of their respective leases, the spaces occupied and the rental paid.

## 14. Events of Default

In the case one or more of the following events ("Events of Default") shall occur, to-wit:

A. If default shall be made in the payment of any of installment of interest, or of principal and interest, on the Note, or in the payment of any other amount required to be paid thereunder or hereunder when the same or any part thereof shall become due and payable, and such default shall have been declared, if so required, pursuant to the Note or this Mortgage and if such default shall not have been cured within the time period, if any given under the Note or this Mortgage; or,

B. Subject to the rights granted under Paragraph 21, if default shall be made in the payment of any Imposition when the same shall become due and payable, and if such default shall remain uncured for a period of thirty (30) days of such default; or,

C. If default shall be made in the performance of any of the other covenants or provisions of the Note or this Mortgage and if such default shall remain uncured for a period of thirty (30) days, provided that, if the default is curable but not reasonably capable of being cured within such thirty (30) day period, such default shall be deemed cured for the purposes hereof if, and so long as, Borrower shall commence such cure within such thirty (30) day period and diligently pursue said cure to completion; or,

D. If Borrower shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement its inability to pay its debts as they become due, or

# UNOFFICIAL COPY

9 1 9 0 8 1 7 2

shall file a petition in bankruptcy, or shall be adjudicated a bankrupt, or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Borrower or any material portion of their assets; or,

E. If, within Sixty (60) days after the commencement of any proceeding against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within Sixty (60) days after the appointment, without the consent or acquiescence of Borrower, of any trustee, receiver or liquidator of Borrower or any material portion of their assets, such appointment shall not have been vacated; or,

F. If any representation or warranty made by Borrower in this Mortgage, or made heretofore or contemporaneously herewith in any other instrument, agreement or written statement in any way related hereto or to the loan transaction with which this Mortgage is associated, shall prove to have been false or incorrect in any material respect on or as of the date when made and such falsity or incorrectness shall materially affect the security of this Mortgage.

Then, in any such event, at the option of Noteholder, the entire unpaid principal balance of the Note secured hereby, the applicable premium, if any, and all accrued and unpaid interest under the Note, and any other sums secured hereby shall be due and payable immediately and, thereafter, each of said amounts shall bear interest at the rate of four (4%) percent per annum over the then current interest rate as defined in the Note. All costs and expenses incurred by, or on behalf of, Noteholder (including, without limitation, reasonable attorneys' fees and expenses) occasioned by an Event of Default by Borrower hereunder shall be immediately due and payable by Borrower and, thereafter, each of said amounts shall bear interest at four percent (4%) over the then current rate then in effect under the Note. After any such Event of Default, Noteholder may institute, or cause to be instituted proceedings of the realization of its rights under this Mortgage or the Note.

## 15. Taxes on Mortgage or Note.

In the event of the passage of any law which deducts from the value of real property, for purposes of taxation, any lien thereon and which in turn, imposes a tax, whether directly or indirectly, on this Mortgage or on the Note, and if Borrower is prohibited by law from paying the whole of such tax in addition to every other payment required hereunder, or if Borrower, although permitted to pay such tax, fails to do so in a timely, then, in such

94988272

UNOFFICIAL COPY

Property of Cook County Clerk's Office

01/10/2010

# UNOFFICIAL COPY

94030172

event, at the option of Noteholder, the entire unpaid principal balance of the Note secured hereby, and all accrued and unpaid interest under the note, and any other sums secured thereby shall be due and payable immediately without premium and, thereafter, each of said amounts shall bear interest at the rate of Five percent over the current rate then in effect under the Note.

## 16. Rights, Powers and Remedies of Noteholder.

If an Event of Default shall occur, Noteholder may, at any time, at its election and to the extent permitted by law and after 15 days written notification to Borrower and after expiration of any applicable grace period:

A. Advertise the Land or any part thereof for sale and thereafter sell, assign, transfer and deliver the whole, or from time to time any part, of the Land, or any interest in any part thereof, at any private sale or at public auction, with or without demand upon Borrower, for cash, in credit or in exchange for other property, for immediate or future delivery, and for such price and on such other terms as Noteholder may, in its discretion, deem appropriate or as may be required by law. The exercise of this power of sale by Noteholder shall be in accordance with the provisions of any statute of the State of Illinois now or hereafter in effect which authorizes the enforcement of a mortgage by power of sale, or any statute expressly amending the foregoing:

B. Enter upon and take possession of the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Borrower and all other persons and any and all property therefrom, and may hold, operate, manage, and lease the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto. Noteholder shall be under no liability for or by reason of such entry, taking of possession, removal, holding, operation or management, except that any amounts so received shall be applied as hereinafter provided in this Paragraph; and

C. Make application for the appointment of a receiver for the Lands whether such receivership incident to a proposed sale of said Land or otherwise, and Borrower hereby consents to the appointment of such receiver and agrees not to oppose any such appointment. Further, Borrower agrees that Noteholder shall be appointed the receiver of the Land at Noteholder's option.

In the event the right to accelerate the indebtedness secured hereby or to foreclose the Mortgage has accrued to Noteholder, whether the entire debt has then been accelerated or whether foreclosure proceedings have been commenced, Noteholder may without order of Court notice to or demand upon Borrower, take possession of the Land. Should Court proceedings be instituted, Borrower hereby consents to the entry of an order by agreement to effect and carry out the provisions of this Subparagraph C. While in possession of the Land, Noteholder shall have the following powers:

# UNOFFICIAL COPY

9 4 1 1 0 1 7 2

(i) To collect the rents and manage, lease alter and repair the Land cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and

(ii) To pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

Noteholder may remain in possession of the Land, in the event of a foreclosure, until the foreclosure sale and thereafter during the entire period of redemption (if any), if a deficiency exists. Noteholder shall incur no liability for, nor shall Borrower assert any claim, set-off or recoupment as a result of, any action taken while Noteholder is in possession of the Land, except only for Noteholder's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Noteholder may remain in possession as long as there exists a Default.

In order to facilitate Noteholder's exercise of the rights, powers and remedies granted above, Borrower hereby irrevocably appoints Noteholder its true and lawful attorney to act in its name and stead for the purpose of effectuation any sale, assignment, transfer or delivery authorized above, whether pursuant to power of sale or otherwise, and to execute and deliver all such deeds, bills of sale, leases, assignments and other instruments as Noteholder may deem necessary and appropriate. Notwithstanding the foregoing, if requested by Noteholder or any purchaser from Noteholder, Borrower shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to Noteholder or such purchaser all appropriate deeds, bills of sale, leases, assignments and other instruments as may be designated in such request. Further, Borrower agrees that Noteholder may be a purchaser of the Land or any part thereof or any interest therein at any sale, whether pursuant to power of sale or otherwise, and may apply upon the purchase price the indebtedness secured hereby. Any purchaser at any sale shall acquire good title to the property so purchased, free of the lien of this Mortgage and free of all rights of redemption in Borrower. The receipt of the officer making the sale under judicial proceedings or of Noteholder shall be sufficient discharge to the purchaser for the purchase money and such purchaser shall not be responsible for the proper application thereof.

Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, redemption and equity of redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Land or any part thereof or any interest therein.

The Proceeds of any sale of the Land or part thereof or any interest therein, whether pursuant to power of sale or otherwise hereinunder, and all amounts received by Noteholder by reason of any

# UNOFFICIAL COPY

9 4 0 3 1 7 2

holding, operation or management of the Land or any part thereof, together with any other moneys at the time held by Noteholder, shall be applied in the following order:

First: To all costs and expenses of the sale of the Land or any part thereof or any interest therein, or entering upon, taking possession of, removal from, holding, operation and managing the Land or any part thereof, as the case may be, together with (a) the costs and expenses of any receiver of the Land or any part thereof appointed pursuant hereto and (b) any taxes, assessments or other charges, prior to the lien of this Mortgage, which Noteholder may consider necessary or desirable to pay;

Second: To any indebtedness secured by this Mortgage and at the time due and payable, other than the indebtedness with respect to the Note at the time outstanding;

Third: To all amounts of principal, premium, if any, and interest at the time due and payable on the Note at the time outstanding (whether at maturity or on a date fixed for any installment payment or any prepayment or by declaration or acceleration or otherwise), including interest at the rate of Five (5%) percent per annum over the then current interest rate as set forth in the Note on any overdue principal and premium, if any, and (to the extent permitted under applicable law) on any overdue interest; and, in case such moneys shall be insufficient to pay in full the amount so due and unpaid upon the Note, then first, to the payment of all amounts of interest at the time due and payable on the Note, and second, to the payment of all amounts of principal and premium if any, at the time due and payable on the Note and

Fourth: The balance, if any, to the person or entity then entitled thereto pursuant to applicable state law.

Borrower hereby waives all rights of redemption and/or equity of redemption which exists either by statute and/or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of its beneficiary and of each and every person, except decree or judgement creditors of Borrower who may acquire any interest in or title to the Land or the trust estate subsequent to the date hereof.

## 17. Remedies are Cumulative.

Each right, power and remedy of Noteholder now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in this Mortgage, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

## 18. Compromise of Actions.

Any action, suit or proceeding brought by Noteholder pursuant to this Mortgage, or otherwise, and any claim made by Noteholder

91088172

# UNOFFICIAL COPY

9 1 2 5 0 1 7 2

under this Mortgage, or otherwise, may be compromised, withdrawn or otherwise dealt with by Noteholder without any notice to or approval of Borrower, except as otherwise provided in this Mortgage.

## 19. No Waiver.

No delay or failure by Noteholder to insist upon the strict performance of any term hereof or of the Note or to exercise any right, power or remedy provided for herein or therein as a consequence of an Event of Default hereunder or thereunder, and no acceptance of any payment of the principal, interest or premium, if any, on the Note during the continuance of any such Event of Default, shall constitute a waiver of any such term, such Event of Default or such right, power or remedy preclude any other any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any Event of Default hereunder shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent Events of Default.

## 20. Further Assurances.

The Borrower, at its expense, will execute, acknowledge and deliver such instruments and take such actions as Noteholder from time to time may reasonably request for the further assurances to Noteholder of the properties and rights now or hereafter subjected to the lien hereof or assigned hereunder or intended so to be.

## 21. Defeasance.

If Borrower shall pay the principal, interest and premium, if any, due under the Note in accordance with the terms thereof, and if it shall pay all other sums payable hereunder and shall comply with all other terms hereof and of the Note, then this Mortgage and the estate and rights hereby created shall cease, terminate and become void, and thereupon Noteholder, at the expense of the Borrower, shall execute and deliver to Borrower such instruments as shall be required to evidence of record the satisfaction of this Mortgage and the lien thereof, and any sums at the time held by.

## 22. Definitions.

Where used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Borrower" shall be construed as meaning the "Borrower and any subsequent owner or owners of the Land" and the word "Noteholder" shall be construed as meaning "Noteholder and any subsequent holder or holders of this Mortgage".

## 23. Authorization.

The execution of this Mortgage has been duly authorized by the Borrower.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

575-2000



# UNOFFICIAL COPY

9 4 3 0 0 1 7 2

## 24. Permitted Contents.

Borrower, at its expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or the validity of any instrument of record affecting the Land or any part thereof, provided that (a) neither the Land, nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (b) neither Borrower nor Noteholder would be in any danger of any additional civil or any criminal liability for failure to comply therewith, and (c) Borrower shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Noteholder.

## 25. Amendments.

This Mortgage cannot be changed or terminated orally but may only be amended, modified or terminated pursuant to written agreement between Borrower and Noteholder.

## 26. Notices.

Any notice, demand or other communication given pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Borrower: P.D. Hartz Construction Co., Inc.  
8995 West 95th Street  
Palos Hills, Illinois 60465

If to Noteholder: Southwest Federal Savings and Loan  
Association of Chicago  
3525 West 63rd Street  
Chicago, Il. 60629  
Attn: Loan Servicing Department

or at such other address within the United States or to the attention of such other office as either party shall have designated in writing to the other. Any such notice, demand or other communication shall be deemed given when received at the office of the Noteholder or Borrower or of any other officer who shall have been designated by the addressee by the notice in writing to the other party.

94300172

## 27. Expense of Litigation and Preparation Where No Litigation is Initiated.

If any action or proceeding be commenced to which Noteholder is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Noteholder for the expense (including reasonable attorneys' fees) of any litigation to prosecute or to defend the rights and lien created by

# UNOFFICIAL COPY

9 4 3 3 6 1 7 2

this Mortgage shall be paid by the Borrower immediately upon written demand therefor, together with interest thereon at Five (5%) percent over the then current interest rate as set forth in the Note from the date of payment, or title to, interest in or claim upon the Premises, attaching to or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. Borrower further expressly agrees to pay all costs and expenses including reasonable attorneys' fees should Noteholder incur costs and attorneys' fees relating to this Mortgage even in the event no suit or litigation is initiated.

28. Cross-Default Clause. Any default by Borrower in the performance or observance of any covenant or condition hereof in accordance with Paragraph 14 above shall be deemed default or event of default under each of the Loan Documents, and any default or event of default under any other Loan Document shall be deemed a default hereunder, entitling Noteholder to exercise any or all remedies provided for herein. Failure by Noteholder to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Noteholder, and the waiver by Noteholder of any default by Borrower hereunder shall not constitute a continuing waiver or a waiver of any other default of of the same default on any future occasion.

29. Disclaimer by Noteholder. Noteholder shall not be liable to any party for services performed or obligations due in connection with this Loan. Noteholder shall not be liable for any debts or claims accruing in favor of any parties against Borrower or against the Mortgaged Premises. The Borrower is not nor shall be an agent of Noteholder for any purposes, and Noteholder is not a venture partner with Borrower in any manner whatsoever. Approvals granted by Noteholder for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or if not in writing such approvals shall be solely for the benefit of the Borrower.

## 30. Miscellaneous.

A. Within fifteen (15) days after request therefor, Borrower shall confirm in writing to the Noteholder, or its designee, the amount then due hereunder the Note.

B. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time to times, if the Note be renewed, modified or replaced, or if any security for the Note be released, Borrower and any other parties now or hereafter liable for payment of such indebtedness in whole or in part or interested in the Land shall be held to consent to such extensions, liability and the lien hereof and the other Loan Documents and Security Agreements and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Noteholder.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

608330000

# UNOFFICIAL COPY

9 4 1 0 1 7 2

C. The Loan proceeds are to be used, along with Borrower's other funds, for the purchase of the Mortgaged Premises, and for no other purposes, which shall occur contemporaneously with the disbursement of the Loan Proceeds. Such use is the business purpose of Borrower's beneficiaries and the Loan is therefore not usurious under Chapter 17, Section 6404, of the Illinois Revised Statutes.

D. This Mortgage shall be binding upon Borrower and its successors and assigns, and all persons claiming under or through Borrower or any such successor or assign, and shall inure to the benefit of and be enforceable by Noteholder and its successors and assigns.

E. The headings in this Mortgage are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

F. If any clause, phrase, paragraph or portion of this Mortgage or the application thereof to any person, party or circumstances shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Mortgage nor any other clause, phrase, paragraph or portion hereof, nor shall it affect the application of any clause, phrase, paragraph or provisions hereof to other persons, parties or circumstances.

G. This Mortgage is negotiated in the County of Cook, Chicago, Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois. It is expressly agreed that all parties hereto waive any right they now or in the future may have to remove any claim or dispute arising here from.

H. This mortgage is executed by FIRST NATIONAL BANK OF EVERGREEN PARK, AS TRUSTEE, UNDER TRUST AGREEMENT DATED JUNE 17, 1994 AND KNOWN AS TRUST NO. 13791.

IN WITNESS thereof, Borrower executed this Mortgage as of the date first above written.

FIRST NATIONAL BANK OF EVERGREEN PARK  
not personally, but as Trustee under  
Trust Agreement dated June 17, 1994  
and known as Trust No. 13791

BY: Robert J. Shney  
Its Vice President & Trust Officer

ATTEST: Mary Rodriguez  
Its Assistant Trust Officer

UNOFFICIAL COPY

Property of Cook County Clerk's Office

573244111

# UNOFFICIAL COPY

9 4 3 3 6 1 7 2

## LEGAL DESCRIPTION

A TRACT OF LAND COMPRISING PART OF LOTS 13 AND 14 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT 50 FEET NORTH OF THE SOUTH LINE AND 177 FEET WEST OF THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 16 AND RUNNING THENCE NORTH ALONG THE WEST LINE OF SAID EAST 177 FEET OF SAID SOUTHWEST 1/4 OF SECTION 16, A DISTANCE OF 1000 FEET, THENCE WEST ALONG A LINE 1050 FEET NORTH OF A PARALLEL WITH SAID SOUTH LINE OF SAID SOUTHWEST 1/4 OF SECTION 16, A DISTANCE OF 154 FEET TO AN INTERSECTION WITH THE WEST LINE OF THE EAST 331 FEET OF SAID SOUTHWEST 1/4 OF SECTION 16, THENCE SOUTH ALONG SAID WEST LINE OF EAST 331 FEET, A DISTANCE OF 57.70 FEET TO AN INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 992.30 FEET NORTH OF SAID SOUTH LINE OF SOUTHWEST 1/4 OF SECTION 16; THENCE WEST ALONG LAST DESCRIBED PARALLEL LINE, A DISTANCE OF 1270.47 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE 25 FOOT STRIP OF LAND LYING NORTHEASTERLY OF AND ADJOINING THE 66 FOOT RIGHT OF WAY OF THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD (SAID 25 FOOT STRIP OF LAND BEING CONVEYED BY DEED RECORDED JULY 11, 1929, AS DOCUMENT 10425373); THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF THE 25 FOOT STRIP, BEING A STRAIGHT LINE FORMING AN ANGLE OF 50 DEGREES, 10 MINUTES, WITH LAST DESCRIBED COURSE, A DISTANCE OF 1227.09 FEET TO AN INTERSECTION WITH A LINE DRAWN PARALLEL WITH AND 50 FEET NORTH OF SAID SOUTH LINE OF SOUTHWEST 1/4 OF SECTION 16; THENCE EAST ALONG LAST DESCRIBED PARALLEL LINE (BEING THE NORTH LINE OF SAID WEST 111TH STREET) A DISTANCE OF 640.65 FEET TO THE POINT OF BEGINNING.

PERMANENT INDEX NO. 24-16-300-070-0000  
24-16-300-077-0000  
24-16-300-078-0000

*2 1/2 Acres - 111 ST, C&N L&N, L*

PL 9998172

# UNOFFICIAL COPY

9 4 9 0 8 1 7 2

STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COCK     )

I,           Undersigned          , A Notary Public in and for said County in the State Aforesaid, DO HEREBY CERTIFY that Robert J. Mayo Vice President and Trust Officer, a Vice President & Trust Officer of First National Bank of Evergreen Park, and Nancy Rodighiero a Assistant Trust Officer, of said First National Bank of Evergreen Park, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such, Vice President & Trust Officer, and Assistant Trust Officer respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said First National Bank of Evergreen Park, as Trustee for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of ~~July~~, 1994.  
November

*Linda J. Pirowski*  
Notary Public "OFFICIAL SEAL"  
LINDA J. PIROWSKI  
Notary Public, State of Illinois  
My Commission Expires 12/18/94

My Commission Expires:

\_\_\_\_\_

This Document was prepared by:  
Cynthia Beilke  
Southwest Federal Savings & Loan Association of Chicago  
4062 Southwest Highway  
Homewood, Illinois 60456

94988172

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0111110  
1111110  
1111110