

UNOFFICIAL COPY

19748

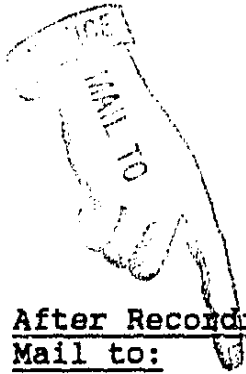
DEPT-11 TORRENS \$51.50  
T:0013 TRAN 2554 08/02/95 16:39:00  
48814 CT \*--95-509565  
COOK COUNTY RECORDER

95509565

MORTGAGE AND ASSIGNMENT OF RENTS

Property of Cook County Clerk's Office

95509565



After Recording  
Mail to:

Phillip Grossman  
8707 Skokie Blvd.  
Skokie, Illinois 60077

Amended and corrected

51.50  
DAH

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## MORTGAGE AND ASSIGNMENT OF RENTS

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made effective as of the 26th day of July, 1995, between M.C. DEVELOPMENT, INC., an Illinois corporation having a mailing address at 440 W. IVY ARLINGTON HEIGHTS IL 60004 (the "Mortgagor") and NICK PILOLLA, having a mailing address at 8622 Sunset, Niles, Illinois, 60714 (the "Mortgagee").

WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the sum of FOUR HUNDRED FIFTY FIVE THOUSAND AND NO/100 DOLLARS (\$455,000.00), with interest thereon, according to the terms of a certain promissory note (the "Note") bearing even date herewith, having a final maturity on August 1, 1999.

NOW, THEREFORE, to secure to the Mortgagee the payment of the aforesaid indebtedness, with interest thereon, the payment of all other moneys secured hereby or advanced hereunder and the performance of the covenants and agreements herein contained, the Mortgagor does hereby grant, bargain, sell, convey and mortgage unto the Mortgagee and to its successors and assigns the real property located in the City of Park Ridge, County of Cook, State of Illinois described at Schedule "A" attached as a part hereof, together with all and singular the tenements, hereditments and appurtenances thereof; all buildings and improvements now or hereafter constructed thereon; and all fixtures, equipment, machinery, apparatus and articles of personal property of every kind and character now owned or hereafter located in or used for the operation and maintenance of the aforesaid buildings and improvements (all of which property is herein called the "Collateral"). The above described real estate, appurtenances, improvements and Collateral are hereinafter collectively called the "Mortgaged Premises" and are hereby declared to be subject to the lien of this Mortgage as security for the payment of the indebtedness herein described.

TO HAVE AND TO HOLD the Mortgaged Premises with all the rights, improvements and appurtenances thereunto belonging, or in anywise appertaining unto the Mortgagee, its successors and assigns forever. The Mortgagor covenants that, except as stated at Schedule "B" attached as a part hereof, the Mortgagor is seized of an indefeasible estate in fee simple in the Mortgaged Premises, that the Mortgagor has a good right to sell, convey and mortgage the same, that the Mortgaged Premises are free and clear of all general and special taxes, liens, charges and encumbrances of every kind and character, and that the Mortgagor hereby warrants and will forever defend the title thereto against the claims of all persons whomsoever.

1. Payment of Debt. If the Mortgagor shall pay the indebtedness herein described and shall in all things do and

95502555

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

perform all other acts and agreements herein contained to be done, then, in that event only, this Mortgage shall be and become null and void, except that no prepayment of this Mortgage shall be permitted prior to January 1, 1997.

2. Maintenance; Waste. Subject to the terms of the Mortgage, with respect to the Mortgaged Premises, the Mortgagor covenants and agrees: to keep the same in good condition and repair; to pay all general and special taxes and assessments and other charges that may be levied or assessed upon or against the same as they become due and payable and to furnish to the Mortgagee receipts showing payment of any such taxes and assessments, if demanded; to pay all debts for repair or improvements now existing or hereafter arising which may become liens upon or charges against the Mortgaged Premises; to comply with or cause to be complied with all requirements of any governmental authority relating to the Mortgaged Premises; to promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation proceeding or exercise of eminent domain, and to promptly notify the Mortgagee of any damage to the Mortgaged Premises in excess of Twenty Thousand (\$20,000.00) Dollars. The Mortgagor further covenants and agrees that the Mortgagor will not: commit or suffer to be committed any waste of the Mortgaged Premises; initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Premises or any part thereof without the prior consent of Mortgagee. Mortgagee hereby consents to Mortgagor applying for a zoning variance to reduce the number of required parking spaces; permit any lien or encumbrance of any kind or character to accrue or remain on the Mortgaged Premises or any part thereof which might take precedence over the lien of this Mortgage, except the matters described at Schedule "B".

3. Taxes. Mortgagor shall deposit with the Mortgagee as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimates as to the amount of taxes and assessments to be levied and assessed reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become due and payable. ~~Such deposits are to be held without any allowance of interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due.~~ If the funds so deposited are insufficient to pay any such taxes or assessments (general or

95509565

wjm

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits shall be kept separate and apart from any other funds of the Mortgagee. Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with the Mortgagee the full amount of any such deficiency. If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

4. Insurance. Mortgagor agrees: to keep the Mortgaged Premises insured for the benefit of the Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and (when and to the extent insurance against war risks is obtainable from the United States of America or an agency thereof) against war risks, all in amounts approved by the Mortgagee not exceeding 100% of full insurable value, and when and to the extent reasonably required by the Mortgagee, against any other risk insured against by persons operating like properties in the locality of the Mortgaged Premises. All insurance herein required shall be in form and companies approved by the Mortgagee. Regardless of the types or amounts of insurance required and approved by the Mortgagee, the Mortgagor will assign and deliver to the Mortgagee all policies of insurance which insure against any loss or damage to the Mortgaged Premises, as Collateral and further security for the payment of the indebtedness secured by this Mortgage, with loss payable to the Mortgagee pursuant to the insurer's standard mortgagee clause. If the Mortgagee, by reason of such insurance, receives any money for loss or damage, such amount may (i) be retained by the Mortgagee and applied by the Mortgagee toward payment of the indebtedness hereby secured in the event the Mortgagor shall then be in default; or in all other cases (ii) be paid over wholly or in part to the Mortgagor for the repair of said buildings or for the erection of new buildings in their place, or for any other purpose or object satisfactory to the Mortgagee, but the Mortgagee shall not be obligated to see to

95309565

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

the proper application of any amount paid over to the Mortgagor, except that in the event that the amount of the insurance proceeds payable by reason of the damage or loss shall be less than ten percent (10%) of the insurable value of the mortgaged premises, all such proceeds shall be paid to the Mortgagor solely for use by the Mortgagor in the repair and/or restoration of the mortgaged premises. In any case, where insurance proceeds are released to the Mortgagor by reason of the damage or destruction of the mortgaged premises, the Mortgagor shall certify to Mortgagee all costs incurred in the restoration and/or repair of the mortgaged premises, not less frequently than each forty-five (45) days following Mortgagor's receipt of the insurance proceeds as to the repairs and/or improvements made and the cost thereof. Not less than ten (10) days prior to the expiration dates of each policy of insurance required hereunder, the Mortgagor will deliver to the Mortgagee a certificate of insurance satisfactory to the Mortgagee. In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Premises shall succeed to all the rights of the Mortgagor, including any right to unearned premiums in and to all policies of insurance assigned or delivered to the Mortgagee pursuant to the provisions of this Mortgage.

5. Alterations. Except as otherwise provided within paragraph 20 hereof, no building or other property now or hereafter subject to the lien of this Mortgage shall be removed, demolished or materially altered, without the prior written consent of the Mortgagee, except that the Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such collateral as from time to time may become worn or obsolete, provided that either: (a) simultaneously with or prior to such removal, any such Collateral shall be replaced with other Collateral of a value at least equal to that of the replaced Collateral and free from any title retention device, security agreement or other encumbrance, and by such removal or replacement, the Mortgagor shall be deemed to have subjected such Collateral to the lien of this Mortgage; or (b) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last installments due on the indebtedness hereby secured, without any charge for prepayment.

6. Default; Remedies. Upon the failure of the Mortgagor to pay any of the taxes, assessments, debts, liens or other charges as the same become due and payable, or to insure the Mortgaged Premises or deliver the policies of insurance as herein provided, or to perform any of the Mortgagor's covenants and agreements herein, the Mortgagee is hereby authorized, at its option, to insure the Mortgaged Premises, or any part thereof, and pay the costs of such insurance, and to pay such taxes, assessments, debts, liens or other charges herein described, or any part thereof, and to remedy the Mortgagor's failure to perform hereunder and pay the costs associated therewith, and the

95502565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagor hereby agrees to refund on demand all sum or sums so paid, with interest thereon at a rate equal to five (5%) percent per annum in excess of the interest rate stated in the Note; and any such sum or sums so paid, together with interest thereon, shall become a part of the indebtedness hereby secured; provided, however, that the retention of a lien hereunder for any sum so paid shall not be a waiver of subrogation or substitution which the Mortgagee might otherwise have. In the event of the failure of the Mortgagor to pay any of the taxes, assessments, debts, liens or other charges herein described as the same become due and payable or to keep the Mortgaged Premises insured in the manner and time herein provided, or the failure to deliver renewal policies in the manner and time herein provided, or if any installment of principal or interest is not paid at or within the time required by the terms of the Note, or in the case of the actual or threatened destruction, demolition, removal, condemnation or taking of a substantial part of the Mortgaged Premises, or the failure to do any of the things herein agreed to be done, or on the breach of any of the terms of the Note, this Mortgage or any other instrument securing or evidencing the indebtedness hereby secured, then, in any of such events, whether the Mortgagee has paid any of the taxes, liens or other charges, or procured the insurance, or remedied the Mortgagor's failure to perform, all as above mentioned, or not, the principal of the Note and all sums then hereby secured, without deduction, shall at the option of the Mortgagee, but subject to the same notice requirements contained in the Note secured hereby, become due and payable, and the Mortgagee shall be entitled to foreclose this Mortgage, and shall be entitled to the possession of the Mortgaged Premises and the rents and profits thereof, and shall be entitled to have a receiver appointed to take possession of the Mortgaged Premises without further notice.

7. Expenses of Collection. It is agreed that if, and as often as, this Mortgage or the Note is placed in the hands of an attorney for collection, or to protect the priority or validity of this Mortgage, or to prosecute or defend any suit affecting the Mortgaged Premises, or to enforce or defend any of the Mortgagee's rights hereunder, the Mortgagor shall pay to the Mortgagee its reasonable attorneys' fees, together with all court costs, expenses for title examination, title insurance or other disbursements relating to the Mortgaged Premises, which sums shall be secured hereby.

8. Warranty of Title. The Mortgagor warrants unto the Mortgagee that it has fee title to the Mortgaged Premises.

9. Sale in Parcels. In case of any sale under this Mortgage by virtue of judicial proceedings or otherwise, the Mortgaged Premises may be sold in one parcel and as an entirety or in such parcels, manner or order as the Mortgagee in its sole discretion may elect, and the Mortgagor waives any and all rights

95509565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

which the Mortgagor may have to insist upon the sale of the Mortgaged Premises in one parcel or in separate parcels.

10. Condemnation Awards. Mortgagor covenants and agrees that if at any time all or any portion of the Mortgaged Premises shall be taken or damaged under the power of eminent domain, the award received by condemnation proceedings for any property so taken or any payment received in lieu of such condemnation proceedings shall be paid directly to the Mortgagee and all or any portion of such award or payment shall (i) be applied to the indebtedness hereby secured in payment of the last maturing installments of the indebtedness if the Mortgagor shall be in default under the terms of this Mortgage or (ii) in all other cases, paid over, wholly or in part, to the Mortgagor for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of any such taking or damage, or for any other purpose or object satisfactory to Mortgagee, provided that the Mortgagee shall not be obligated to see to the application of any amount paid over to the Mortgagor. The Mortgagor immediately upon obtaining knowledge of the institution of any proceedings or negotiations for the condemnation of the Mortgaged Premises, or any portion thereof, will notify the Mortgagee of the pendency of such negotiations or proceedings. The Mortgagee may participate in any such negotiations or proceedings, and the Mortgagor from time to time will execute and deliver to the Mortgagee all instruments requested by the Mortgagee to permit such participation.

However, in the event the proceeds of any condemnation award shall result in payment of an amount less than ten percent (10%) of the unpaid principal balance then due under the Note secured by this Mortgage and the Mortgagor shall not be in default in the performance of the covenants of this Mortgage, the right of the Mortgagee to receive the said proceeds and direct the payment of the same is herewith waived and released and all of such proceeds shall become the sole and exclusive property of the Mortgagor. If however, the condemnation award shall be to an amount equal to ten percent (10%) or more of the then unpaid balance due under the Note, and the Mortgagor shall not be in default in the performance of this Mortgage, the entire amount of the condemnation award will be retained by the Mortgagee, as escrowee, for disbursement through Mortgagee in the restoration of the mortgaged premises as reasonably determined by Mortgagee, upon such conditions as Mortgagee may require. Any proceeds not disbursed for restoration purposes shall be applied by Mortgagee in reduction of the principal balance due under the Note.

11. Certificate. The Mortgagor, upon request made either personally or by mail, shall certify, by a writing duly acknowledged, to the Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on this

55503565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgage and whether any offsets or defenses exist against the indebtedness hereby secured, within ten (10) days after the mailing of such request.

12. Notice. Every provision for notice and demand or request shall be deemed fulfilled by written notice or request personally served on one or more of the persons who shall at the time hold record title to the Mortgaged Premises, or on their heirs or successors, or mailed by depositing it in any post office station or letter box by certified mail, enclosed in a postpaid envelope addressed to such person or persons, or their heirs or successors, at his, their or its address last known to the Mortgagee. For the purposes of this Mortgage:

The address of the Mortgagee is:

Nick Pilolla  
8622 Sunset  
Niles, Illinois 60714

with a copy to:

Phillip Grossman  
8707 Skokie Boulevard  
Skokie, Illinois 60077

The address of the Mortgagor is:

Michael Menas  
358 E. Deer Run Drive  
Hainsville, Illinois 60030

with a copy to:

Neil Beaulieu  
520 S. River Road  
Des Plaines, Illinois 60016

13. Inspection; Management. The Mortgagee and any persons authorized by the Mortgagee shall have the right to enter and inspect the Mortgaged Premises at all reasonable times upon 24 hours prior written notice to the Mortgagor. If, at any time after default by the Mortgagor in the performance of any of the terms, covenants or provisions of this Mortgage or the Note, the management or maintenance of the Mortgaged Premises shall be determined by the Mortgagee to be unsatisfactory, the Mortgagor shall employ, for the duration of such default, as managing agent of the Mortgaged Premises, any person from time to time designated or approved by the Mortgagee, to the extent consistent with applicable law.

95503565

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

14. Payment by Others. Any payment made in accordance with the terms of this Mortgage by any person at any time liable for the payment of the whole or any part of the indebtedness now or hereafter secured by this Mortgage, or by any subsequent owner of the Mortgaged Premises, or by any other person whose interest in the Mortgaged Premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation or any partner of a partnership or trustee or beneficial owner of a trust which at any time may be liable for such payment or may own or have such an interest in the Mortgaged Premises, shall be deemed, as between the Mortgagee and all persons who at any time may be liable as aforesaid or may own the Mortgaged Premises, to have been made on behalf of the Mortgagor.

15. No Waiver. Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by the Mortgagor. Neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the indebtedness now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and the Mortgagee extending, from time to time, the time of payment or modifying the terms of the Note or this Mortgage without first having obtained the consent of the Mortgagor or such other person, and in the latter event, the Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, the Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for such indebtedness and may from time to time extend the time of payment or otherwise modify the terms of the Note and/or this Mortgage without, as to the security for the remainder thereof, in any way impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any

95100565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Premises whether or not such lease be subordinate to this Mortgage. The Mortgagee may resort for the payment of indebtedness hereby secured to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

16. Cumulative Remedies. The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the other. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

17. Assignment of Rents. In the event of any default, hereunder, on the part of the Mortgagor or any subsequent owner of said premises, the rents and profits of the Mortgaged Premises are hereby assigned to the holder of said Mortgage as further security for the payment of said indebtedness. Immediately upon the occurrence of any default or breach, the Mortgagee shall have the right forthwith, with the irrevocable consent of the Mortgagor, or any subsequent owner or person then in possession, hereby given and evidenced by the execution of this Mortgage, to enter upon and take possession of the premises, including any portion occupied by the Mortgagor or any subsequent owner. At the option of the Mortgagee, such entry and taking of possession shall be accomplished either by actual physical entry and taking of possession or by written notice given personally or by mail addressed to the owner at his address as it then appears on the records of the Mortgagee. Such entry and taking of possession may be so accomplished irrespective of the pendency of any action of foreclosure by the Mortgagee or any junior lienor. Simultaneously with such actual physical entry and taking of possession or the giving of such written notice as aforesaid, the rents, issues, profits and all other amounts accrued, and accruing to the owner by reason of the ownership of the premises, including deposits held as security under leases, thereupon shall be deemed to be assigned as security to the Mortgagee, together with the leases and all other documents evidencing such rents, issues, profits and other amounts, including deposits held as security under leases; and for the purpose of giving immediate effect to such assignment, no other or further instrument of assignment or other document shall be necessary or requisite. The Mortgagee shall then have the right to let the premises, or any part thereof, and to collect and receive all the rents, issues, profits, and all other amounts past due, due or to become due to the Mortgagor or any subsequent owner of the premises by reason of such ownership, and to apply the same after payment of all necessary charges and expenses in connection with the operation of said premises, including any managing agents, commission, at the option of the Mortgagee, on account of the interest, amortization, taxes, water charges and

95508565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

assessments, insurance premiums, and any advance made by the Mortgagee for the account of the Mortgagor, or on account of the debt hereby secured.

18. Rent Upon Possession. In the event of any such entry, and in the event of such taking of possession by the Mortgagee pursuant to the provisions above stated, or in the event of the appointment of a receiver of rents or profits in any action brought by the Mortgagee by reason of the provisions of this Mortgage, the Mortgagor or any subsequent owner, if in possession of any portion of the Mortgaged Premises, shall be obligated to pay to the Mortgagee or to the receiver of rents, a reasonable rental monthly in advance for the portion of the premises so occupied. In the event a receiver is appointed by reason of such default or breach, the amount of rent payable shall be determined upon an application to be made by the receiver to the court for a determination of the reasonable rental value payable by the Mortgagor, or any subsequent owner. In the event of a default in the payment of any amount of rent monthly in advance, to be determined as above stated, the Mortgagor or any subsequent owner, may be dispossessed by the usual summary proceedings in the same manner that any defaulting tenant may likewise be dispossessed.

The Mortgagor covenants that it will not assign, pledge or otherwise alienate any of the rents, issues and profits from said premises without prior written consent of the Mortgagee and any such attempted assignment, pledge or alienation of said rents shall be subject and subordinate to the rights of the Mortgagee.

19. Hazardous Waste. As of the date the Mortgagor shall be vested in legal title to the Collateral, Mortgagor hereby represents and warrants to Mortgagee: (i) that no oil, petroleum, or chemical liquids or solids, liquid or gaseous products, or hazardous or toxic substances, within the meaning of any applicable Federal, state or local statute, ordinance or regulation, are presently stored or otherwise located on the land or on any adjacent and contiguous real property owned by Mortgagor or any related entity or affiliate of Mortgagor; (ii) that no release of any such hazardous or toxic substance has occurred on the land or on any adjacent and contiguous real property owned by Mortgagor or any related entity or affiliate of Mortgagor; (iii) that no part of the land or any adjacent and contiguous real property owned by Mortgagor or any related entity or affiliate of Mortgagor, including the groundwater located thereon, is presently contaminated by such hazardous or toxic substance; and (iv) that Mortgagor has not received any notice from any governmental agency or authority or from any tenant under a lease with respect to any such release of hazardous or toxic materials onto the land or adjacent parcels of real estate. Mortgagor further covenants and agrees with Mortgagee that, throughout the term of the Indenture: (i) all hazardous or toxic substances, within the definition of any applicable statute or regulation, which may be used by any

PAS OF  
DATE  
LEGAL  
TITLE  
VESTED  
IN MORTGAGEE  
MGM  
SUSSEX

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

person or any purpose upon the land shall be used or stored thereon only in safe and approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any governmental agency or authority; (ii) the land will not be used for the principal purpose of storing such substances; and (iii) no such storage or use will otherwise be allowed on the land which will cause, or which will increase the likelihood of causing, the release of such hazardous or toxic substances onto the land. Mortgagor hereby agrees to indemnify and save and hold Mortgagee harmless of and from all loss, cost (including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee arising out of or by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs upon the land, or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs expended by reason of such violation; provided that, to the extent that Mortgagee is strictly liable under any such statute or regulation, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee.

20. Environmental Compliance Generally. Mortgagor hereby agrees to comply and cause its tenant(s) to comply with any and all Federal, state or local legislation, rules and regulations relating to environmental protection including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, and such other legislation, rules and regulations as are in, or may hereafter come into, effect and apply to Mortgagor, the Mortgagee, the loan transaction contemplated in this Mortgage or the Mortgaged Premises or any occupancy users thereof, whether as lessees, tenants, licensees, or otherwise. Mortgagor shall indemnify and hold Mortgagee harmless against any and all claims, costs or expenses relating to such environmental protection provisions notwithstanding any exculpatory or nonrecourse provisions contained in this Mortgage and the loan documents.

21. Bankruptcy. The entire indebtedness secured by this Mortgage shall become and immediately be due at the option of the Mortgagee if by order of a court of competent jurisdiction a receiver or liquidator or trustee of the Mortgagor, or of all or any part of the Mortgaged Premises, shall be appointed and shall not have been discharged within sixty (60) days; or, if by decree of such court, the Mortgagor shall be adjudicated bankrupt or insolvent or the Mortgaged Premises shall have been sequestered and such decree shall have continued undischarged and unstayed for sixty (60) days after the entry thereof; or if the Mortgagor shall file a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy or insolvency law or shall consent

95509585

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

to the filing of any bankruptcy petition against the Mortgagor under any such law; or if the Mortgagor shall file a petition or answer seeking reorganization or an arrangement with creditors; or if (without limitation of the generality of the foregoing) the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing an inability to pay debts generally as they become due, or shall consent to the appointment of a receiver, or trustee or liquidator of the Mortgagor, or of all or any part of the Mortgaged Premises.

22. Tax Stamps. In the event that it is determined by any governmental authority having jurisdiction that tax stamps are due on any mortgage note secured by the Mortgage, the Mortgagor shall pay the amount of such stamps, together with any penalty accrued thereon.

23. Prepayment Right. The Mortgagor shall have the right at any time, to prepay in full, or in part, the indebtedness under this Mortgage by paying to the Mortgagee an amount equal to the entire principal sum evidenced hereby then outstanding together with all unpaid interest accrued thereunder.

24. Transfer of Mortgaged Premises. Except as specified within Section 34 of this Mortgage, in the event of any sale or transfer or hypothecation of all or any part of the Mortgaged Premises, Mortgagee may, at Mortgagee's option, declare all of the sums evidenced by the Note to be immediately due and payable and Mortgagee may invoke any remedies permitted hereunder or under the other instruments which secure the Note unless the Mortgagee shall have issued its prior written consent to any such sale, transfer, hypothecation of the Mortgaged Premises or any interest therein.

The Mortgagor shall not permit any mechanic's liens or judgment liens to be filed or placed as against the Mortgaged Premises. If any such mechanic's lien claim or judgment lien shall at any time be filed as against the Mortgaged Premises, the Mortgagor shall cause the same to be discharged of record within thirty (30) days after the date Mortgagor has knowledge of such filing. In the event Mortgagor shall not discharge the same within such period, Mortgagee shall, at its option, have the right at all times during the mortgage term, to pay any such claim for lien against the Mortgaged Premises or buildings, or any part thereof, and to redeem the Mortgaged Premises or buildings from any sale arising out of the foreclosure of any mechanic's lien or judgment lien and the amount so paid, together with interest from the date of payment at the rate specified including reasonable expenses, shall be an additional advance of funds from the Mortgagor to the Mortgagee and shall be payable at the next payment date under the Note with interest at the Default Interest Rate, from the date of payment thereof by the Mortgagee, it being expressly agreed, however, that the Mortgagor shall not be required to pay or discharge any such lien so long as the

\* OR HAVE TITLE CLEARED WITH A TITLE W/AM  
INDEMNITY

95503565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagor shall in good faith contest the same by appropriate legal proceedings; provided, however, that the Mortgagor shall give notice in writing to the Mortgagee of its intention to contest the validity of such lien and shall furnish a surety bond of a responsible surety company satisfactory to Mortgagee or any other reasonable collateral, in an amount sufficient to pay such contested lien claim, together with all interest thereon. Mortgagor shall give Mortgagee written notice of the existence of filing of any liens against or encumbrances on the Mortgaged Premises, within thirty (30) days after the date Mortgagor has knowledge of the existence or filing of any such lien or encumbrance.

25. Calculation of Interest. The principal sum evidenced hereby from time to time outstanding shall bear interest at the rate of nine (9.0%) percent per annum, computed on the basis of a 360-day year consisting of 12 months each having 30 days.

26. Usury. The Mortgagor represents and agrees that the principal obligation secured by this Mortgage is a business purpose loan and that the interest rate specified within the Note or as provided in the event of default under the Note are not violative of any statute, ordinance or regulation limiting the maximum legal rate of interest.

27. Default Interest Rate. Without limiting the provisions of the preceding paragraphs, in the event that the principal sum evidenced hereby is not paid on or before ten (10) days after the same is due, the undersigned promises to pay a "late charge" of five (5%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment. In addition thereto, to the extent permitted by applicable law, interest payable during any period of default hereunder (the "Default Interest Rate") shall be at the rate of 11% per annum after the ten (10) day grace period has expired.

28. Indemnity of Mortgagee. Mortgagor shall indemnify and save harmless the Mortgagee against and from all suits, demands, claims, loss, liabilities, damages and expenses, including reasonable attorneys fees, which may directly or indirectly arise out of or be incurred or suffered by the Mortgagee in connection with or by reason of the failure by the Mortgagor to fully perform and observe any one or more of the covenants, terms, obligations or conditions on Mortgagor's part to be performed or observed under this Mortgage or any instrument securing payment of the same. Not by limitation of the foregoing, Mortgagor further covenants and agrees to and with Mortgagee that in the event Mortgagee shall, without any fault on its part, be made party to any litigation commenced by or against Mortgagor or against parties in possession of the said Mortgaged Premises or any building situated thereon or any part thereof, claiming under

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

the Mortgagor, then Mortgagor shall and will pay all costs and reasonable attorneys fees incurred by, or imposed on Mortgagee or in connection with such litigation.

29. Default Notice. No proceedings to foreclose the lien of this Mortgage or any instrument given to secure payment of the same shall be commenced by Mortgagee without ten (10) days prior written notice to Mortgagor in the event of non-payment of any money by Mortgagor and without 30 days prior written notice to Mortgagor in the event of all other defaults; provided, however, if the default is not capable of being cured within thirty (30) days, the Mortgagee shall not commence a foreclosure proceeding or accelerate the indebtedness secured hereby. Mortgagee shall not expend funds to cure any default of Mortgagor without ten (10) days prior written notice to Mortgagor except in the event a lien will ensue by reason of the failure of the Mortgagee to so act within the said ten (10) day notice period.

30. Governing Law. This Mortgage and the Note securing payment of the same shall be governed by the laws of the jurisdiction in which the mortgaged premises are located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect the other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

31. Construction. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Mortgaged Premises", the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage", the word "Note" shall mean "note secured by this Mortgage" and the word "person" shall mean "an individual, corporation, partnership or unincorporated association". The paragraph headings contained herein are included as a matter of convenience and are not intended to define, limit or modify the terms of this Mortgage. This Mortgage shall be binding on the Mortgagor and all heirs, personal representatives, successors and assigns of the Mortgagor and inure to the benefit of the Mortgagee and all heirs, personal representatives, successors and assigns of the Mortgagee.

32. Amendment. This Mortgage cannot be changed except by an agreement in writing signed by the party against whom enforcement of the change is sought.

33. Waiver of Redemption. Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or

95509565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Note and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Premises do not constitute agricultural real estate, as defined in Section 15-1201 of the Act, or residential real estate, as defined in Section 15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, pursuant to Section 15-1601(b) of the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

34. Condominium Conversion - Partial Release. Provided the Mortgagor shall not be in default of this Mortgage, the Mortgagor shall have the right to submit the Mortgaged Premises to the Condominium Property Act of the State of Illinois (the "Act") and the Mortgagee, subject to its review and reasonable right of approval for such Declaration, shall consent to such submission. The Mortgagee, subsequent to January 1, 1997 and provided the Mortgaged Premises shall have been submitted to the Act, shall issue partial release deeds on a per unit basis, at 115% of the per unit allocated mortgage balance.

35. Prior Real Estate Taxes and Tax Impound Deposits. The Mortgagor shall fully pay real estate taxes for the year 1994 and shall fully pay the first installment of 1995 real estate taxes allocable to the period January 1, 1995 through June 30, 1995. Real estate taxes for the period July 1, 1995 through July 25, 1995 shall be prorated as between Mortgagor and Mortgagee based upon the full actual real estate tax bill for the year 1995 and within fourteen (14) days of the issuance of the full tax bill. In the event the Mortgagee shall not pay its real estate obligations as herein provided, the Mortgagor shall have the right to cure such non-payment and to deduct, as against the principal balance due under the Note, the funds advanced by the Mortgagor in

9550000096  
NEXT  
PMT 1/15/95 (5)  
WJH

UNOFFICIAL COPY

Property of Cook County Clerk's Office





UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT "A"

Property Address: 1855 Parkside, Park Ridge, Illinois

THE NORTH ONE HUNDRED NINETEEN (119) FEET OF THE SOUTH FIVE HUNDRED SEVENTY (570) FEET AS MEASURED ON THE EAST AND WEST LINES THEREOF, OF LOT ONE (1) IN MAINE MANOR, BEING A SUBDIVISION OF PART OF THE SOUTH HALF (1/2) OF THE SOUTHEAST QUARTER (1/4) OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON AUGUST 13, 1958, AS DOCUMENT NUMBER 1811858.

PIN: 09-15-403-039

Property of Cook County Clerk's Office

95509565

UNOFFICIAL COPY

Property of Cook County Clerk's Office

955027007