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DEPT-01 RECORDING \$39.00  
T#0012 TRAN 7614 11/14/95 10:28:00  
#5323 + CG #--95-785725  
COOK COUNTY RECORDER

## CONSTRUCTION MORTGAGE

THIS INSTRUMENT, made October 30, 1995, between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee under Trust Agreement dated September 19, 1993, and known as Trust No. 120841-09 (herein referred to as "Mortgagor"), and PRAIRIE BANK & TRUST CO., an Illinois banking association, (herein referred to as "Mortgagee").

### WITNESSETH:

THAT WHEREAS, the Mortgagor has concurrently herewith executed a Construction Loan Agreement ("Loan Agreement") providing for a loan from Mortgagee to Mortgagor in the aggregate amount of \$3,160,000.00 ("Loan"), evidenced by a Construction Note in the amount of \$3,160,000.00 ("Note"). The Loan is payable with interest at a rate equal to ONE percent (1%) in excess of the Prime Rate ("Interest Rate"), and the entire remaining balance of principal and interest is due and payable on or before April 30, 1997.

All such payments on account of the indebtedness evidenced by said Note shall be first applied to interest on the unpaid principal balance and the remainder to principal. Interest after default or maturity, whether by reason of acceleration or otherwise, shall accrue at a rate equal to FOUR percent (4%) plus the Prime Rate (hereinafter defined) per annum. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed. All of said principal and interest shall be payable at Burbank, Illinois, or at such other place as Mortgagee shall from time to time designate in writing.

As used herein, the term "Prime Rate" at any time shall mean the rate of interest then most recently announced at Payee's corporate office as Payee's Prime Rate; provided, however, that if Lender ceases to use the term "Prime Rate" in setting a base rate of interest for commercial loans, then the Prime Rate shall be determined by reference to such base rate as designated in writing by Payee to Maker. Payee makes no representation or warranty that the Prime Rate is the lowest or best rate of interest offered by the Payee to commercial or other borrowers.

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**NOW, THEREFORE**, Mortgagor to secure the payment of the said principal sum of money and said interest in accordance with the terms, provisions and limitation of this Mortgage, and also in consideration of the sum of One Dollar in hand paid, the receipt whereof is hereby acknowledged, does by these presents, grant, remise, release, and convey unto the Mortgagee, its successors and assigns, the following described Real Estate situate, lying and being in the County of Cook, and the State of Illinois, to wit:

**LEGAL DESCRIPTION - SEE EXHIBIT A ATTACHED HERETO** which, with the property hereinafter described, is referred to herein as the "Premises".

This Mortgage shall also secure any and all renewals or extensions of the whole or any part of the indebtedness hereby secured however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms of rate of interest shall not impair in any manner the validity or priority of this Mortgage, nor release the Mortgagor from personal liability for the indebtedness hereby secured.

**TOGETHER** with all improvements thereon situate and which may hereafter be erected or placed thereon, and all and singular tenements, hereditaments and appurtenances and easements thereunto belonging and the rents, issues and profits thereof, which are hereby expressly conveyed and assigned to the Mortgagee as additional security and as an equal and primary fund with the property herein conveyed for the repayment of the monies secured by this Mortgage, and any and all appurtenances, fixtures and equipment in or that may at any time be placed in any building now or hereafter standing on said premises.

It is mutually covenanted and agreed, by and between the parties hereto that, in addition to all other things which at law or by convention are regarded as fixtures, and specifically but not by way of limitation all shades and awnings, screens and carpets, scrubbery, gas and electric fixtures, radiators, heaters, engines and machines, boilers, ranges, elevators and motors, bathtubs, sinks, water-closets, basins, pipes, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating plants, iceboxes, electric refrigerators, air conditioning apparatus, cooking apparatus and appurtenances, and such other goods and chattels as may ever be furnished by a landlord in letting and operating an unfurnished building, similar to any building now or hereafter standing on said premises, whether or not the same are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry, or in any other manner whatsoever, which are now or hereafter to be used upon said described premises shall be conclusively deemed to be the "fixtures" and an accession to the freehold and a part of the realty, whether affixed or annexed or not, and conveyed by this Mortgage; and all the estate, right, title or interest of the said Mortgagor in and to said premises, property, improvements, furniture, apparatus, furnishings and fixtures are hereby expressly conveyed, assigned and pledged; and as to any of the property aforesaid, which does not so form a part and parcel of the Real Estate or does not constitute a "fixture" as such term is defined in the Uniform Commercial Code. This Mortgage is hereby deemed to be as well a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property,

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2014-01-01

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which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code).

**TO HAVE AND TO HOLD** the above described premises with the appurtenances and fixtures thereto appertaining or belonging unto the Mortgagee, its successors and assigns, forever, for the purposes herein set forth and for the security of the indebtedness evidenced by the Note hereinbefore described, and interest thereon and free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the said Mortgagor does hereby expressly release and waive.

In addition, the Mortgagor covenants with the Mortgagee as follows:

- 1. State and Condition of Premises.** Mortgagor shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed so long as insurance proceeds are sufficient therefor; (2) keep said premises in good condition and repair, without waste, and free from mechanics' or other liens or claims for lien not expressly subordinated to the lien hereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (5) comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof; (6) perform all obligations of the Borrower under the terms of the Loan Agreement (hereafter defined), and not cause or permit a default to occur or exist under the terms of the Loan Agreement which shall not be cured as provided in the Loan Agreement.
- 2. Payment of Indebtedness, Taxes and Other Charges.** Mortgagor shall pay the principal and interest on the indebtedness secured hereby and shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may desire to contest.
- 3. Insurance.** Mortgagor shall obtain and maintain insurance as provided in Section 5.1(c) of the Loan Agreement.
- 4. Protection of Security by Mortgagee.** In case of default therein, Mortgagee may, but need not, make any reasonable payment or perform any reasonable act hereinbefore required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including

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reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the mortgaged premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the default rate stated above. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any default hereunder on the part of Mortgagor. The Mortgagee making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. **Default and Acceleration.** The Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms of the Note, and shall perform each and every covenant and provision of this Mortgage. At the option of Mortgagee, upon such notice as required under the terms of the Loan Agreement (hereafter defined), all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable (a) immediately in the case of default under the terms of the Loan Agreement, the Note or this Mortgage; (b) immediately in the event Mortgagor shall, without the prior consent of Mortgagee, sell, transfer, convey, encumber, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom in violation of the provisions of the Loan Agreement, whether by operation of law, voluntarily or otherwise, or shall contract to do any of the foregoing unless the Note will be repaid as part of that transaction; or (c) immediately upon the occurrence of a default in the performance of any covenant or agreement of the Mortgagor contained in this Mortgage or in the Note secured hereby, whereupon Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance, accrued interest, and other charges, if any, to be immediately due and payable without notice to Mortgagor.

6. **Foreclosure.** When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the judgment for sale all expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee for attorneys' fees, special process server fees, Mortgagee's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the judgment) of procuring all such abstracts of title, title searches and examination, guarantees policies and similar data and insurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the premises. Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee to the extent reimbursable under the Illinois Mortgage Foreclosure Law, as amended from time to time, whether or not enumerated herein, shall be added to the indebtedness secured by this Mortgage, and included in such judgment of foreclosure. All expenditures and expenses in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the rate stated above, when

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paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; (b) preparation for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced. In addition to the foregoing, in any such foreclosure proceeding, the Mortgagee shall be entitled to exercise any and all rights and remedies provided in the Illinois Mortgage Foreclosure Law, as amended from time to time, in such order as Mortgagee may lawfully elect.

**7. Application of Proceeds.** The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, on account of all other items which under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, on account of all principal and interest remaining unpaid on the Note; fourth, any overplus to Mortgagor, his successors or assigns, as their rights may appear.

**8. Receiver.** Upon, or at any time after the filing of a Complaint to foreclose this Mortgage, the court in which such Complaint is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not during the pendency of such foreclosure suit. Such receiver shall have all powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole or any part of the pendency of such foreclosure suit and any period of redemption. Any amounts received by such receiver from such management and operation of the premises shall be applied as follows: (1) First, to the indebtedness secured hereby, or any decree foreclosing this Mortgage, or any tax special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (2) Second, to the deficiency in case of a sale and deficiency.

**9. Waiver of Redemption.** In the event of a judicial proceeding to foreclose this Mortgage, Mortgagor does hereby expressly waive any and all rights of redemption from any judgment of foreclosure of this Mortgage on its own behalf, and on behalf of its successors and assigns and each and every person acquiring any interest in or title to the premises subordinate or subsequent hereto, and on behalf of all other persons to the extent permitted by the applicable provisions of the statutes and laws of the State of Illinois.

**10. Inspection.** Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

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11. **Examination of Title, Location, etc.** Mortgagee has no duty to examine the title, location, existence, or condition of the premises, nor shall Mortgagee be obligated to record this Mortgage or to exercise any right herein given unless expressly obligated by the terms hereof, nor be liable for any acts or omissions hereunder, except in case of its own gross negligence or misconduct or that of the agents or employees of Mortgagee.

12. **Condemnation.** If all or any part of the Mortgaged Property is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire proceeds of the award of compensation payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. The proceeds of any award or compensation actually received by Mortgagee after deduction therefrom of all reasonable costs and expenses including reasonable attorney's fees incurred by Mortgagee in connection with the taking, at Mortgagee's option, shall be applied, without premium, in part or entirely to payment of the indebtedness secured hereby or to restoration of the Mortgaged Property, as provided in the Loan Agreement.

13. **Release.** Mortgagee shall release this Mortgage and the lien thereof by proper instrument in accordance with the terms of the Loan Agreement.

14. **No Exclusive Remedy.** Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein. If any provisions of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Illinois Mortgage Foreclosure Law, as amended, in the absence of said provision, Mortgagee shall be vested with the rights granted in the Illinois Mortgage Foreclosure Law, as amended, to the full extent permitted thereby.

15. **Provisions Severable.** In the event any one or more of the provisions of this Mortgage for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Mortgage. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, as amended, the provisions of the Illinois Mortgage Foreclosure Law, as amended, shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Illinois Mortgage Foreclosure Law, as amended.

16. **Incorporation of Provisions of Loan Agreement.** This Mortgage is executed by Mortgagor pursuant to the terms and provisions of the Construction Loan Agreement of even date herewith executed by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated September 19, 1995 and known as Trust No. 120841-09, and RDM DEVELOPMENT & INVESTMENT, INC., an Illinois corporation

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("Borrowers"), and the Mortgagee, as Lender ("Loan Agreement"). The terms and provisions of the Loan Agreement, including the definitions contained therein, are hereby incorporated herein by reference.

17. **Notices.** All notices pursuant to this Mortgage shall be in writing and shall be deemed to be sufficiently given or served for all purposes when given in accordance with the terms of the Loan Agreement.

18. **Successors and Assigns.** This Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's subsidiaries, affiliates, successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and Mortgagee's successors and assigns. The word "Mortgagee" shall include the successors and assigns of Mortgagee, and the holder or holders, from time to time, of the Note and any other indebtedness instruments.

19. **Miscellaneous.** The captions in this Mortgage are for convenience only and do not define or limit the provisions of this Mortgage. All changes to this Mortgage must be in writing signed by Mortgagee and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural, the singular, and use of any gender shall be applicable to all genders.

20. This Mortgage is executed by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on said Mortgagor or on said AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained.

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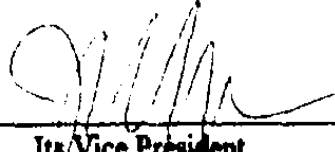
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IN WITNESS WHEREOF, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Vice-President and its corporate seal to be hereunto affixed and attested by its Assistant Trust Officer the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee as aforesaid and not personally

CORPORATE SEAL

By:   
Its Vice President

ATTEST:

By:   
Its Assistant Trust Officer

THIS DOCUMENT PREPARED BY:

Richard C. Jones, Jr., Esq.  
Tina M. Jacobs, Esq.  
MALK & JONES  
212 East Ohio Street  
Suite 400  
Chicago, Illinois 60611  
(312) 649-0200

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STATE OF ILLINOIS     )  
  )SS  
COUNTY OF COOK     )

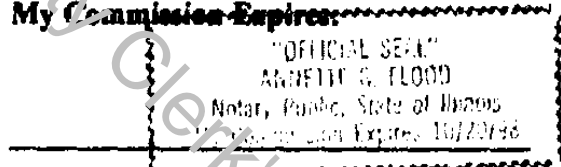
I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that J. MICHAEL WIELAM, Vice President (Trust Officer), and ROBERT J. SHIB, Assistant-Trust Officer, of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, who are personally known to me to be the same 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 act and as the free and voluntary act of said Trustee as aforesaid, for the uses and purposes therein set forth; and the said Assistant-Trust Officer then and there acknowledged that the Assistant-Trust Officer, as custodian of the corporate seal of said Trustee, did affix the seal of said Trustee to said instrument as said Assistant-Trust Officer's own free and voluntary act and as the free and voluntary act of said Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this        day of        1995, 19      .

*Annett G. Flood*

NOTARY PUBLIC

My Commission Expires:



THIS DOCUMENT PREPARED BY:

Richard C. Jones, Jr., Esq.  
Tina M. Jacobs, Esq.  
Malk & Jones  
212 E. Ohio Street  
Suite 400  
Chicago, Illinois 60611  
(312) 649-0200

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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 15, 16, 17, 18 AND 19 IN ALBERT WISNER'S SUBDIVISION OF BLOCK 10 IN THE SUBDIVISION OF THAT PART LYING NORTHEAST OF THE CENTER OF LINCOLN AVENUE OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 2843 N. LINCOLN AVENUE  
CHICAGO, ILLINOIS

PERMANENT INDEX NO.: 14-29-127-007  
14-29-127-008  
14-29-127-009  
14-29-127-010  
14-29-127-011

MAIL TO:

PRAIRIE BANK & TRUST CO.  
7661 S. Harlem  
BRIDGEVIEW IL. 60455

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