

# UNOFFICIAL COPY

95142801

. DEPT-01 RECORDING \$77.00  
. 140012 TRAN 2814 03/01/95 11:25:00  
. 12743 REP \*95-142801  
. COOK COUNTY RECORDER

Property of Cook County

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage"), dated February 28, 1995 is from PALOS BANK AND TRUST COMPANY, not personally, but a Trustee under Trust Agreement dated January 31, 1995, and known as Trust No. 1-3728, (hereinafter referred to as "Borrower"), having an address at 12600 South Harlem Avenue, Palos Heights, Illinois 60463, to SOUTHWEST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHICAGO, (hereinafter referred to as "Lender" and "Noteholder"), having an address at 4062 Southwest Highway, Hometown, Illinois 60456.

WITNESSETH, that to secure the payment of an indebtedness in the amount of TWO MILLION THREE HUNDRED TWENTY-FIVE THOUSAND AND NO 100THS (\$2,325,000.00) DOLLARS lawful money of the United States, to be paid with interest thereon according to a certain 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 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 personalty (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,

95142801

778

5/1/95  
100-205-0000

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 or installed therein, the rents, issues and proceeds thereof, the present and future estates and interest of Borrower therein.

And the Borrower covenants with the Noteholder as follows:

1. Payment of Indebtedness and Performance of all Obligations and Conditions.

The Borrower will pay the indebtedness as in the Note provided and will otherwise duly comply with the terms thereof and further will timely perform all duties and obligations of Borrower under that certain Construction Loan and Security Agreement of even date herewith.

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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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.

#### 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

acceptable to Noteholder that, when added to the monies or other security, if any, deposited with Noteholder pursuant to Paragraph 4B 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 contest 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 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, risks insured against under extended coverage policies with all 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

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 not 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 time of prudent owners of comparable properties in 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 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 insurance effected by the Borrower on the Land, whether or not 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 Two percent (2%) 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) shall be adjusted by and paid to the Borrower and any such loss exceeding TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) 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.

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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00). 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

95142801

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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.

C. If an Event of Default (as hereinafter defined shall occur, all insurance proceeds received by the Noteholder may be retained 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.

## 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 Five percent (5%) 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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

a) If, during the term of the Note, the Borrower shall (whether voluntarily or by operation of law) sell, convey, assign, mortgage, convert the Mortgaged Premises to a condominium under the Illinois Condominium Act, hypothecate or otherwise transfer or encumber the Land or any part thereof or any right, title therein except to an entity wholly-owned directly or indirectly by the Borrower, all sums due hereunder shall become immediately due and payable and the Borrower, shall immediately pay the principal balance plus all accrued interest, prepayment premium, if any, and other amounts remaining unpaid under the Note.

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.

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, that certain Construction Loan and Security Agreement ("Construction Loan Agreement") dated of even date herewith between Borrower, RCR/Oak Tree Associates, Inc. and Noteholder, or this Mortgage, Borrower may sell any part of the Mortgaged Premises to third party purchasers, upon payment by Borrower to Noteholder of an amount equal to the greater of (i) Fifty-Five percent (55%) (rounded up to the nearest One Hundred (\$100.00) Dollars), of the Market Value of a single family lot or lots, or (ii) Fifty-Five percent (55%) (rounded up to the nearest One Hundred (\$100.00) Dollars), of the actual sale price of the lot, or lots, sold to a third party purchaser. The Market Value for an individual lot is equal to the Market Value as defined in the Construction Loan Agreement. In addition to the above, Borrower shall pay to Lender, as a release fee, the sum of \$100.00 for each lot which a release or partial release is issued. Borrower acknowledges that said release fee is reasonable.

9. Priority of Lien: After-Acquired Property.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

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 moneys 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 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or less, such amount shall be paid to 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 Condemnation Proceeds shall amount to more than TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) 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 purpose, Borrower shall promptly repair or restore 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 Premises as Noteholder may deem necessary or desirable.

## 12. Books and Records; Financial Statements.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 record and account shall, at all reasonable times, be open to the inspection of Noteholder and its accountants and other duly authorized representatives of Noteholder. Borrower shall enter in such books of record and account full, true and correct entries in accordance with generally accepted accounting principles of all dealings and transactions relative to the Land there in.

The Mortgagor shall deliver to the Mortgagee, at the place where interest is thereon payable, financial and operating statements of the Premises, monthly, quarterly and for each fiscal year, within ninety (90) days after the end of each fiscal year. Such financial and operating statements shall consist of a balance sheet, operating statement, and copies of bank reconciliations and statements, all in reasonable detail as may be reasonably requested by Mortgagee. Further, Mortgagor shall furnish Mortgagee with a proposed annual operating budgets for each fiscal year of the Mortgagor within 60 days prior to the end of the prior fiscal year. The financial statements and all other financial and operating statements shall be prepared by a certified public accountant and certified to Mortgagee by the Borrower, as to their truth and accuracy. If the statements furnished by the Borrower shall not be prepared in accordance with generally accepted income tax reporting procedures consistently applied, or if Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of Mortgagor, by an independent certified accountant, at Mortgagor's expense, and the costs of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand. In the event of such an audit, Mortgagor shall cause the books and records of the Mortgagor to be made available to Mortgagee for such audit purposes.

## 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 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 to 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 be liable 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 leases, except prepayments in the nature of security for the performance of the lessees 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, conditions and agreements contained in all leases of the premises now or hereafter existing, on the part of the lessor thereunder to be kept and 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

95142801

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

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.

(iv) Borrower covenants and agrees that all agreements to pay leasing commissions (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement, (b) shall be subordinate to the lien of this Mortgage, and (c) shall not be enforceable against the Mortgagee. Borrower shall furnish Mortgagee with evidence of the foregoing which is in all respects satisfactory to Mortgagee.

(v) Borrower further covenants and agrees that all agreements to manage the Premises (a) shall provide that the obligation to pay any amount thereunder shall not exceed the sum of six percent (6%) of the gross revenues generated from the Premises and will not be enforceable against any party other than the party who entered into such agreement (b) shall provide that such agreement, together with any and all liens and claims for lien that any manager or other person or entity performing the duties of a manager thereunder has or may thereafter have thereunder or for managing the Premises or any part thereof, shall be in all respects subordinate to the lien of the Mortgage and (c) shall not be enforceable against the Mortgagee. Borrower shall furnish Mortgagee with evidence of the foregoing which is in all respects satisfactory to Mortgagee.

#### 14. Hazardous Substances.

Mortgagor covenants and represents that it shall maintain and keep the Premises free at all times of any environmental violation, waste, hazard or damage, including toxic chemicals, asbestos, or gasoline, and that the Mortgagor shall provide any proof or tests required by the Mortgagee that the Premises are free from any environmental waste, hazard, or damage. Further, the Mortgagor represents that the Premises shall not violate any state or federal environmental statute, regulation or law. The Mortgagor covenants and agrees that the Mortgagor shall not, nor shall the Mortgagor voluntarily permit any other person or entity to, place, hold, locate or dispose of any hazardous Substances on, under or at the Premises or any part thereof, except in accordance with applicable law. Without limiting the foregoing, Mortgagor shall not cause or knowingly permit the Premises to be used to generate, manufacture, refine or process Hazardous Substances, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of hazardous Substances onto the Premises or onto any other property. Mortgagor shall comply with and use its reasonable efforts to ensure compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and

95142801

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

regulations, and use reasonable efforts to ensure that any and all tenants and subtenants obtain and comply with any and all approvals, registrations or permits required thereunder. The Mortgagee reserves the right to require the Mortgagor to obtain environmental risk studies and reports at any time during the term of this Mortgage if Mortgagee has reasonable cause for concern over an environmental matter affecting the Premises and informs Mortgagor of same in writing. If at any time any soil test or any other environmental test of the Premises evidences environmental violations or dangers, the Mortgagor shall have a period of sixty (60) days to remedy said violation and deliver an updated test to Mortgagee evidencing that the environmental violations or dangers have been removed. If the Mortgagor fails to remediate the environmental dangers evidenced by the requisite soil or environmental test within sixty (60) days, or if any other environmental violation, waste, hazard, or damage occurs on the Premises, said environmental violation, waste, hazard or damage shall be considered an Event of Default under the terms of this Mortgage, and the Mortgagee shall have the right, at its option, but shall have no obligation, to cure any environmental violation, waste, hazard or damage on behalf of the Mortgagor, and any and all amounts advanced by the Mortgagee hereunder shall become an additional indebtedness of the Mortgagor under the Note and this Mortgage, and interest shall accrue on said amounts advanced by the Mortgagee at the Default Rate as set forth in the Note. Any amounts advanced by the Mortgagee under this paragraph, plus interest thereon, shall be immediately due and payable by the Mortgagor.

The Mortgagee shall have the right, at its discretion, to direct the Mortgagor to conduct environmental tests upon the Premises at the Mortgagor's expense and to provide the Mortgagee with updated test reports detailing the results of the environmental tests. Upon receipt of a request for an environmental test from the Mortgagee, the Mortgagor shall have a period of thirty (30) days to provide the Mortgagee with the results of the requisite environmental test. Any failure of the Mortgagor to conduct any environmental test requested by the Mortgagee, or to provide the Mortgagee with test results, shall be considered an Event of Default under the terms of this Mortgage.

The Mortgagor agrees that, in addition to its representations provided in paragraph 14 above, it shall, at its own expense, comply with any operation or management plan proposed by any state or federal agency for the removal of asbestos from the Premises. The failure of the Mortgagor to comply with this paragraph shall be considered an Event of Default under this Mortgage.

The Mortgagor hereby agrees to indemnify the Mortgagee, its employees, agents, officers and directors, and hold the Mortgagee harmless from and against any and all losses, liabilities (including strict liability), damages, injuries, penalties, fines, settlements, expenses and costs of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, reasonable attorneys' fees, of any settlement or judgment and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Mortgagee by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of (i) the presence of or under, or the escape, leakage, disposal, spillage, emission, discharge or release from the Premises of any Hazardous Substance in violation of applicable law or (ii) at any time, the incorrectness or breach of this covenant, warranty or representation set forth in this Mortgage, including, without limitation, any violation or claim arising under the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, the Clean Air Act, and so called federal, state or local "Superfund" or "Superlien" statute, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Substance, regardless of whether or not caused by, on behalf of, or within the control of the Mortgagor; provided however, that the Mortgagor shall not indemnify the Mortgagee for any such losses, liabilities, damages, injuries, expenses or costs related to or involving Hazardous Substances placed or disposed of on the Premises after Mortgagee acquired title to the Premises through foreclosure or deed in lieu of foreclosure.

For purposes of this Mortgage, the term "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability (including strict liability) or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereinafter in effect.

If the Mortgagor receives any notice or knowledge of (i) the occurrence of any event involving the use, spill, release, leak, seepage, discharge or clean up of any Hazardous Substance or (ii) any compliant, order, citation or other notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting the Mortgagor or the Premises (an "Environmental Complaint") from any person or entity (including, without limitation, the EPA) then the Mortgagor shall immediately notify the Mortgagee orally and in writing of any such notice and, if the Environmental Complaint is in writing, shall immediately deliver a copy of the Environmental Complaint to Mortgagee. Further, the Mortgagor shall immediately commence all actions necessary to clean up, remove, resolve and comply with any complaint, order, citation, notice or Environmental Complaint as may be required to comply with applicable law.

In addition to all other rights granted to the Mortgagee, upon the occurrence of an Environmental Complaint and the Mortgagor's

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

failure to commence the clean up, removal or resolution of any Hazardous Substance or Environmental Complaint as required by applicable law within thirty (30) days notice of breach of a covenant or warranty or receipt of notice or knowledge specified herein and to thereafter continuously and diligently proceed with such clean up, removal or resolution, except as may be delayed by an act of God, strike, act of the public enemy, war, blockade, public riot, fire, storm, flood and explosion ("Force Majeure"), the Mortgagee shall have the right, but not the obligation, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Substance or Environmental Complaint following receipt of any notice from any person or entity (including without limitation, the EPA) asserting the existence of any Hazardous Substance or an Environmental complaint pertaining to the Premises or any part thereof, which, if true, could result in an order, suit or other action against the Mortgagee and/or which, in the reasonable opinion of the Mortgagee, could have a materially adverse impact on the value of the Premises or otherwise jeopardize the Mortgagee's lien against the Premises granted or created under the Mortgage. Any funds of the Mortgagee used for any purpose referred to in this Section shall constitute advances secured by the Loan Documents and shall bear interest at the Default Rate specified in the Note to be applicable after default thereunder.

The provision of this Section 14 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee and shall survive the transactions contemplated herein.

## 15. 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 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 22, 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 fifteen (15) 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), 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,

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

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 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 or 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 Default 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 the Default Rate as defined 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.

## 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

thirty 30 days written notification to Borrower for non-monetary defaults 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, on 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 thereof from 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 be 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:

(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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 Leasehold Interest, 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 effectuating 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 Leasehold Interest 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 hereunder, and all amounts received by Noteholder by reason of any 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, operating 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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 Two (2%) percent per annum over the prime rate then in effect 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 judgment 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. 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 fashion, then, in such 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,

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

each of said amounts shall bear interest at the rate of Two (2%) percent over the current rate then in effect under the Note.

## 19. Compromise of Actions.

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

## 20. 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 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.

## 21. 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 assurance to Noteholder of the properties and rights now or hereafter subjected to the lien hereof or assigned hereunder or intended so to be.

## 22. 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 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.

## 23. 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"; "Mortgagee" or "Lender" shall be construed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

as meaning "Noteholder" and any subsequent holder or holders of this Mortgage.

## 24. Authorization.

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

## 25. Permitted Contests.

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.

## 26. Uniform Commercial Code.

This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the state in which the Premises are located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate including but not limited to all personal property and fixtures in connection with the Premises, any Equipment, Inventory, Accounts (which term includes all daily receipts and billings generated from the motel facility on the Premises), Chattel Paper, Intangibles, Fixtures, Documents and Instruments as defined in the Code including all proceeds and products thereof, all insurance and condemnation proceeds, all building materials, all construction and architectural contracts and all plans and specifications (all for the purposes of this Section 26 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 26 shall not limited the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

a) The Borrower (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and Permitted Encumbrances.

b) The Collateral is to be used by the Borrower solely for business purposes, being installed upon the Premises for Borrower's own use, or as the equipment and furnishings furnished by Borrower, as landlord, to tenants of the Premises.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

c) The Collateral will be kept at the real estate comprised in the Premises, and will not be removed therefrom without the consent of the Noteholder (being the Secured Party as that term is used in the Code) by Borrower or any other person; and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.

d) The only persons having any interest in the Premises are the Borrower, its beneficiaries and the Noteholder.

e) There is no Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Borrower will at its own cost and expense, upon demand, furnish to the Noteholder such further information and will execute and deliver to the Noteholder such financing statement and other documents in form satisfactory to the Noteholder and will do all such acts and things as the Noteholder may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Note, subject to no adverse liens or encumbrances; and the Borrower will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Noteholder to be necessary or desirable.

f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such default not having previously been cured), the Noteholder at its option may declare the Note immediately due and payable, and thereupon Noteholder shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Borrower can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place where the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Noteholder shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of the Borrower's obligations, as provided in the Code. The Noteholder without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Noteholder may require the Borrower to assemble the Collateral and make it available to the Noteholder for its possession at a place to be designated by Noteholder which is reasonably convenient to both parties. The Noteholder will give Borrower at least ten (10) days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Noteholder will give Borrower at least ten (10) days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Borrower shown in Section 28 of this Mortgage, at least ten (10) days before the time of the sale or disposition. The Noteholder may but at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Noteholder may but at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised with the Premises, the Collateral and real estate to be sold as one lot if Noteholder so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Noteholder, shall be applied in satisfaction of the Note. The Noteholder will account to the Borrower for any surplus realized on such disposition.

g) The remedies of the Noteholder hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Noteholder, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Note remains unsatisfied.

h) The terms and provisions contained in this Section 26 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

## 27. 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.

## 28. 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: RCR/Oak Tree Associates, Inc.  
15750 South Bell Road  
Suite 2E  
Lockport, Illinois 60441  
Attn: Robert C. Ranquist, President

If to Noteholder: Southwest Federal Savings and Loan  
Association of Chicago  
4062 Southwest Highway  
Hometown, Illinois 60456

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

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 notice in writing to the other party.

29. 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 this Mortgage shall be paid by the Borrower immediately upon written demand therefor, together with interest thereon at Two (2%) 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 the 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's fees should Noteholder incur costs and attorneys fees relating to this Mortgage even in the event no suit or litigation is initiated.

30. Cross-Default Clause. Any default by Borrower in the performance or observance of any covenant or condition hereof in accordance with Paragraph 15 above shall be deemed default or event of default under each of the Loan Documents, entitling Noteholder to exercise all or any remedies available to Noteholder under the terms of any or all 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 or of the same default on any future occasion.

31. 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 Borrower.

32. Miscellaneous.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

B. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or 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, renewals, modifications, replacements and releases, and their 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.

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 provision 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 Palos bank and Trust Company, as Trustee under Trust Agreement dated January 31, 1995 and known as Trust 1-3728 in the exercise of the authority conferred upon it as such Trustee and not in its individual capacity. Nothing contained in this Mortgage shall be construed as

95142801

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

creating any liability on Palos bank and Trust Company, in its individual capacity, to pay the Note or any interest that may accrue thereon or any fee or charge that may become payable under the Mortgage or the Note, or to perform any covenant (either expressed or implied) contained in the Mortgage or the Note, all such liability, if any, being hereby waived by Noteholder and every person hereafter claiming any right or security hereunder.

IN WITNESS thereof, Borrower has caused this Mortgage to be executed and its corporate seal to be hereunder affixed and attested by its officers thereunto duly authorized.

PALOS BANK AND TRUST COMPANY, not personally, but as Trustee Under Trust Agreement dated January 31, 1995 and known as Trust No. 1-3728

This document is made by PALOS BANK AND TRUST COMPANY, as Trustee and is accepted upon the express understanding that PALOS BANK AND TRUST COMPANY ratifies into some not to be held liable as Trustee, and that anything hereinafter done by it shall be done as such and all of the representations, warranties, covenants, agreements and undertakings contained herein shall be deemed not as the personal representations, warranties, covenants or undertakings of PALOS BANK AND TRUST COMPANY for the purpose of binding only that party. The liability described herein, and that no personal liability shall be asserted against, PALOS BANK AND TRUST COMPANY because or on account of any representation, warranty, covenant, agreement or undertaking herein contained, all such liability, if any, being expressly waived and released.

BY: *Donald A. D...*  
Its Assistant V.P. & O.

ATTEST: *Mary Kay B...*  
Land Trust Officer  
Its \_\_\_\_\_

Property of Cook County Clerk's Office

95142801

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

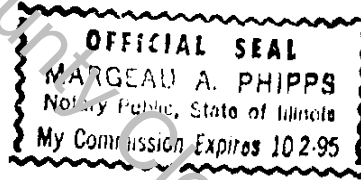
I, Margeau A. Phipps, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Barbara A. Danaher Asst. Vice President of Palos Bank and Trust Company and Mary Kay Burke, Land Trust Officer ~~Assistant Secretary~~, of said Palos bank and Trust Company, personally know to me to be the same persons whose name are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, 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 Palos Bank and Trust Company, as Trustee for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of February, 1995.

Margeau A. Phipps  
Notary Public

My Commission Expires:

10-2-95



This Document was prepared by:  
JAMES M. CROWLEY  
ROCK, FUSCO, REYNOLDS & GARVEY, LTD.  
350 North LaSalle Street  
Suite 900  
Chicago, Illinois 60610  
(312) 464-3500

**BOX 333-CTI**

95142801

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT A LEGAL DESCRIPTION

### OAK TREE DEVELOPMENT

THAT PART OF THE EAST HALF OF THE NORTHEAST QUARTER (EXCEPTING THEREFROM THE EAST 50.00 FEET) OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHWESTERLY OF THE CENTER LINE OF ARCHER AVENUE, ALSO THE EAST 35.80 LINKS OF THAT PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 27, AFORESAID LYING NORTHWESTERLY OF THE CENTER LINE OF ARCHER AVENUE, IN COOK COUNTY, ILLINOIS.

P.I.N. 22-27-200-008-0000

11700 So Archer Ave .

Property of Cook County Clerk's Office

95142801

UNOFFICIAL COPY

1 - 1

Property of Cook County Clerk's Office