

F:\...\JME\MET2644.5

. DEPT-01 RECORDING  
. T#0014 TRAN 5829 05/25/95 14:  
. #2054 # JW \*-95-341  
. COOK COUNTY RECORDER

**CONSTRUCTION MORTGAGE, SECURITY AGREEMENT  
AND FINANCING STATEMENT**

4180274 2/3 MJ GIT

**MORTGAGOR:** CERMAK PLAZA ASSOCIATES, a New York general partnership

**MORTGAGEE:** PINNACLE BANK, an Illinois banking corporation

THIS INSTRUMENT IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF MORTGAGOR ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

This instrument was prepared by  
(and after recording return  
to):

BURKE, WARREN & MacKAY, P.C.  
225 West Washington Street  
24th Floor  
Chicago, Illinois 60606-3418  
Attention: Douglas E. Wambach  
(312) 357-0800

Street Address of Property:  
7043 West Germak Road  
Berwyn, Illinois 60402

Permanent Index Number(s):  
16-30-100-011  
16-30-100-012



102-2

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

### TABLE OF CONTENTS

1.	CONSTRUCTION MORTGAGE . . . . .
2.	MULTIPLE MORTGAGE CLAUSE . . . . .
3.	MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC. . . . .
3A.	RIGHT TO CONTEST . . . . .
4.	PAYMENT OF TAXES . . . . .
5.	TAX DEPOSITS . . . . .
5A.	INSURANCE DEPOSITS . . . . .
6.	MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST . . . . .
7.	INSURANCE . . . . .
8.	ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE . . . . .
9.	STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION . . . . .
10.	OBSERVANCE OF LEASE ASSIGNMENT . . . . .
11.	MORTGAGOR AND LIEN NOT RELEASED . . . . .
12.	MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS . . . . .
13.	MORTGAGEE'S RELIANCE ON TAX BILLS, ETC. . . . .
14.	ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT . . . . .
15.	FORECLOSURE; EXPENSE OF LITIGATION . . . . .
16.	APPLICATION OF PROCEEDS OF FORECLOSURE SALE . . . . .
17.	APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION . . . . .
18.	RIGHTS CUMULATIVE . . . . .
19.	MORTGAGEE'S RIGHT OF INSPECTION . . . . .

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

- 20. CONDEMNATION . . . . .
- 21. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS . . . . .
- 22. GIVING OF NOTICE . . . . .
- 23. WAIVER OF DEFENSES . . . . .
- 24. WAIVER OF STATUTORY RIGHTS . . . . .
- 25. FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE . . . . .
- 26. FILING AND RECORDING CHARGES AND TAXES . . . . .
- 27. USURY LAW EXEMPTION . . . . .
- 28. SECURITY AGREEMENT AND FINANCING STATEMENT . . . . .
- 29. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES AND THE LIKE . . . . .
- 30. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE . . . . .
- 31. ADDITIONAL REPRESENTATIONS AND COVENANTS; INDEMNITY; SURVIVAL . . . . .
- 32. ENVIRONMENTAL MATTERS; NOTICE; REMEDIAL WORK; INDEMNITY; SURVIVAL . . . . .
- 33. MISCELLANEOUS
  - 33.0 Binding Nature . . . . .
  - 33.1 Release of Previous Holder . . . . .
  - 33.2 Severability and Applicable Law . . . . .
  - 33.3 Governmental Compliance . . . . .
  - 33.4 Estoppel Certificate . . . . .
  - 33.5 Non-joinder of Tenants . . . . .
  - 33.6 Regulation G Clause . . . . .
- 34. WAIVER OF JURY TRIAL . . . . .

EXHIBIT "A" -- LEGAL DESCRIPTION

EXHIBIT "B" -- PROMISSORY NOTE A AND PROMISSORY NOTE B

EXHIBIT "C" -- FORM OF STANDARD LEASE

SCHEDULE OF LEASES

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made as of this 5<sup>th</sup> day of May, 1995, by and between CERMAK PLAZA ASSOCIATES, a New York general partnership, whose mailing address is c/o Concordia Realty, 1127 South Mannheim Road, Suite 212, Westchester, Illinois 60154 (the "Mortgagor"), to and for the benefit of PINNACLE BANK, an Illinois banking corporation, whose mailing address is 6000 West Cermak Road, Cicero, Illinois 60650 (the "Mortgagee").

### W I T N E S S E T H:

WHEREAS the Mortgagor is justly indebted to the Mortgagee (i) in the principal sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00), evidenced by one certain Promissory Note of the Mortgagor of even date herewith ("Note A"), made payable to the order of and delivered to the Mortgagee, and (ii) in the principal sum of Two Hundred Thousand Thousand and No/100 Dollars (\$200,000.00), evidenced by one certain Promissory Note of the Mortgagor of even date herewith ("Note B"), whereby the Mortgagor promises to pay the said principal sum, late charges and interest, at the rate or rates and in installments, all as provided in Note A and Note B, copies of which are attached hereto as Exhibit "B" (Note A and Note B are herein collectively referred to as the "Notes"). The final payment of principal and interest on Note A, if not sooner paid, shall be due on March 1, 2000. The final payment of principal and interest on Note B, if not sooner paid, shall be due on March 1, 1997. All such payments on account of the indebtedness evidenced by the Notes shall be applied first to interest on the unpaid principal balance, secondly to any other sums (other than principal) due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal, all of said principal and interest being made payable at such place as the holder of the Notes may from time to time, in writing, appoint, and in the absence of such appointment, then at the office of Lender first set forth above.

In no event will the total amount of the indebtedness secured hereby exceed three hundred percent (300%) of the aggregate face amount of the Notes.

NOW, THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest and late charges in accordance with the terms, provisions and limitations of this Mortgage and of the Notes, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed (collectively, the "Indebtedness"), and also in consideration of the sum on ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

of its present and hereafter-acquired estate, right, title and interest therein, situated, lying and being in the County of Cook, and State of Illinois, to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND  
MADE A PART HEREOF AS EXHIBIT "A"

which, with the property hereinafter described, is collectively referred to herein as the "Premises";

TOGETHER with:

(a) all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), including without limitation;

(b) all shades, awnings, venetian blinds, draperies, rods, screens, screen doors, storm doors and windows, now or hereafter therein or thereon and all fixtures, apparatus, equipment and articles now or hereafter therein or thereon used to supply water, light, power, sprinkler protection, waste removal, refrigeration and ventilation (whether single units or centrally controlled);

(c) all machinery, devices, fixtures, appurtenances, equipment, to the extent owned by Mortgagor, now or hereafter located in or at, and used or useful in connection with the construction, occupancy, operation or maintenance of, the property described in Exhibit "A", including, without limitation: all maintenance equipment, engines, furnaces, boilers, stokers, pumps, tanks, heaters, oil burners, dynamos, generators, motors, switchboards, ranges, refrigerators and other floor, wall and ceiling coverings, partitions, doors and hardware; electrical wiring and equipment; projection equipment; heating, plumbing, washroom, toilet and lavatory fixtures and equipment; lifting, ventilating and incinerating apparatus; sprinkler and other fire extinguishing and fire prevention apparatus or systems; air-cooling and air-conditioning apparatus; gas, electric and steam fixtures; elevators, conveyors, escalators, hoists, fittings, radiators, chutes, ducts and machinery;

(d) all additions to any of the foregoing, replacements thereof, substitutions therefor and the proceeds thereof, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items or property not specifically mentioned;

(e) all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(f) any monies on deposit for the payment of real estate taxes or special assessments against the real estate described in Exhibit "A" or for the payment of premiums on policies of fire and other hazard insurance covering the Collateral described hereunder or the real estate described in Exhibit "A";

(g) all proceeds paid for damage done to the Collateral described hereunder or the real estate described in Exhibit "A";

(h) all proceeds of any award or claim for damages for any of the Collateral described hereunder or the real estate described in Exhibit "A" taken or damaged under the power of eminent domain or by condemnation;

(i) all right, title and interest of Mortgagor in to and under the following documents and all rights, privileges, options and remedies therein contained:

(1) all present and future contracts (and amendments thereto) for construction of improvements on any of the land described in Exhibit "A";

(2) all present and future contracts (and amendments thereto) for design and architectural services and all Plans and Specifications related in any way to the land described in Exhibit "A"; and

(3) all permits, licenses, consents, agreements and authorities issued by each governmental authority which relate in any way to the construction, ownership, operation or use of or improvements and/or personal property on the land described in Exhibit "A".

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

**TO HAVE AND TO HOLD** the Premises unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

**IT IS FURTHER COVENANTED AND AGREED THAT:**

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 1. CONSTRUCTION MORTGAGE.

With respect to Note A, this Mortgage secures an obligation incurred to finance the construction of improvements on the lands hereby mortgaged and constitutes a "construction mortgage" within the meaning of §§ 9-313 of the Uniform Commercial Code of the State of Illinois.

The loan evidenced by Note A is to be disbursed by Mortgagee to or for the benefit of the Mortgagor in accordance with the provisions contained in one or more of: (i) the Mortgagee's Loan Commitment dated August 30, 1994 as amended by letter dated November 14, 1994, as the same may have been heretofore or may hereafter be amended (collectively, the "Commitment"); and (ii) the Construction Loan Agreement (the "Loan Agreement") between Mortgagor and the Mortgagee bearing even date herewith. All advances and Indebtedness arising and accruing under the Commitment and Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be Indebtedness of Mortgagor and secured hereby to the same extent as though the Commitment and Loan Agreement were fully incorporated in this Mortgage at this point; and the occurrence of any event of default under the Commitment and Loan Agreement shall constitute an event of default under this Mortgage, entitling Mortgagee to all of the rights, powers, elections, options and remedies conferred upon the Mortgagee by the terms of the Commitment, Loan Agreement, this Mortgage, all other security now held by Mortgagee and by law, as in the case of any other default hereunder.

2. (Intentionally Deleted)

## 3. MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC.

Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject however to the rights of the Mortgagor set forth in Paragraph 3A below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof (no such lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee;

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(e) complete within a reasonable time any building(s) or other improvements now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof; (g) make no alterations in the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) not initiate or acquiesce in any zoning variation or reclassification without Mortgagee's prior written consent; (j) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (k) pay each item of Indebtedness secured by this Mortgage when due according to the terms hereof and of the Notes.

## 3A. RIGHT TO CONTEST.

Anything in Paragraphs 3(c) or 3(d) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest to Mortgagor. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of the payment to be made.

#### 4. PAYMENT OF TAXES.

Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law.

#### 5. TAX DEPOSITS.

(a) Subject to subparagraph (b) of this Paragraph 5, Mortgagor shall deposit with the Mortgagee or such depository ("Depository") as the Mortgagee may from time to time in writing appoint, commencing on the date of the first disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become due and payable. Such deposits are to be held without any allowance of interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee or Depository, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Anything in this Paragraph 5 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with the Mortgagee or the Depository the full amount of any such special deficiency.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 5 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

(b) Notwithstanding the provisions of Paragraph 5(a) above, Mortgagor need not make monthly deposits for taxes and assessments as long as there is strict compliance with the following requirements:

(i) No Event of Default by Mortgagor shall have occurred under this Mortgage, the Notes secured hereby, or any other Loan Documents which has not been cured in a manner satisfactory to Mortgagee;

(ii) No sale, transfer, conveyance or assignment of Mortgagor's interest in the Premises or of the beneficial interest under any trust agreement pursuant to which title to the Premises is held shall have occurred, except for a transfer permitted pursuant to the terms and provisions hereof.

(iii) All taxes and assessments shall be paid when due and before penalty attaches; and

(iv) Mortgagor shall promptly provide to Mortgagee satisfactory evidence of timely payment of all taxes and assessments.

The conditional waiver of tax deposits contained in this subparagraph (b) is personal to the Mortgagor and shall not be effective in the event of any transfer of title to all or any part of the Premises.

## 5A. INSURANCE DEPOSITS.

(a) Subject to subparagraph (b) of this Paragraph 5A, for the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the "Collateral" (defined in Paragraph 28 below),

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagor shall deposit with the Mortgagee or the Depository, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to the Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse prior to the date when such premiums become due and payable. No interest shall be allowed to Mortgagor on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

(b) Notwithstanding the provision of Paragraph 5A(a) above, Mortgagor need not make monthly deposits for insurance premiums as long as there is strict compliance with the following requirements:

(i) No Event of Default by Mortgagor shall have occurred under this Mortgage, the Notes secured hereby, or any other Loan Documents which has not been cured in a manner satisfactory to Mortgagee;

(ii) No sale, transfer, conveyance or assignment of Mortgagor's interest in the Premises or of the beneficial interest under any trust agreement pursuant to which title to the Premises is held shall have occurred, except for a transfer permitted pursuant to the terms and provisions hereof;

(iii) All insurance premiums shall be paid when due and before penalty attaches; and

(iv) Mortgagor shall promptly provide to Mortgagee satisfactory evidence of timely payment of all insurance premiums.

The conditional waiver of insurance premium deposits contained in this subparagraph (b) is personal to the Mortgagor and shall not be effective in the event of any transfer of title to all or any part of the Premises.

## 6. MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST.

In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 5 and 5A hereof on any of Mortgagor's obligations contained herein or in the Notes, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, is hereby granted to the Mortgagee

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

in and to all monies at any time on deposit pursuant to Paragraphs 5 and 5A hereof and such monies and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee or Depositary for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor the Depositary shall be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the bills therefor and requested Mortgagee or the Depositary in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments or insurance premiums. Neither Mortgagee nor the Depositary shall be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

## 7. INSURANCE.

Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 28 below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance; (b) flood insurance whenever the same is available and (in the opinion of Mortgagee) such protection is necessary; and (c) during any period of construction, Builder's Risk insurance. Mortgagor shall also provide comprehensive general public liability insurance coverage with limits for personal injury and death and property damage as Mortgagee may reasonably require, and worker's compensation insurance in the statutorily required amount. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts reasonably satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and all policies covering property damage shall include a standard noncontributory mortgagee clause naming Mortgagee as loss payee, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver copies of all such policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereunder a

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

## **8. ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.**

In case of loss or damage by fire or other casualty, Mortgagee is authorized: (a) in the event such loss or damage is greater than \$100,000 (as reasonably determined by an appraiser selected by Mortgagee), to settle and adjust any such claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. In the event of the occurrence of a casualty loss (i) which is covered by insurance, and (ii) which results in the destruction of not more than Fifty Percent (50%) of the appraised value of the improvements located on the Premises, Mortgagee agrees that all proceeds of insurance shall be paid over to Mortgagor, on such terms and conditions as Mortgagee in its discretion may specify, to be used to repair the buildings, structures, improvements or equipment, or to build or install new ones in their place. In the event of the occurrence of a casualty loss with respect to which more than Fifty Percent (50%) of the appraised value of the improvements located on the Premises is destroyed, all such insurance proceeds may, at the sole discretion of Mortgagee, be (a) applied to the restoration, repair, replacement, or rebuilding of the Premises, or (b) applied to the payment of the last-maturing installment or installments of the Indebtedness (whether or not then due and payable); or (c) paid over to the Mortgagor, on such terms and conditions as Mortgagee in its sole discretion may specify, to be used to repair the buildings, structures, improvements or equipment, or to build or install new ones in their place, or for any other purpose or object satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. In the event Mortgagee elects or is required to make such insurance proceeds available for repair, restoration or rebuilding of the Premises, any portion of such proceeds not needed or used in such repair, restoration, rebuilding or building shall be applied to the payment of the Indebtedness, as provided above, or paid to Mortgagor at Mortgagee's option. In any event, the buildings and other improvements shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of ONE HUNDRED THOUSAND and NO/100

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

DOLLARS (\$100,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor or any lessee for the cost of repair, rebuilding or restoration, any surplus which may remain out of said insurance proceeds, after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party (hereinafter defined) shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 8, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust company or title insurance company selected by the Mortgagee.

## 9. STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.

9.0 If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax not in existence as of the date hereof is due or becomes due in respect of the issuance of the Notes, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Notes.

9.1 In the event of the enactment, after this date, of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

## 10. OBSERVANCE OF LEASE ASSIGNMENT.

As additional security for the payment of the Notes and for

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

the faithful performance of the terms and conditions contained herein, Mortgagor has assigned to the Mortgagee all of its right, title and interest as landlords in and to the leases listed on the Schedule of Leases attached hereto (the "Existing Leases"), if any, and all future leases of the Premises. All leases of the Premises, except for subleases of the Existing Leases under which the original Lessee remains fully liable to Mortgagor as Lessor, are subject to the reasonable approval of the Mortgagee as to form, content and tenant(s); provided, however, that such approval (other than with respect to subleases) shall be deemed granted without further action on the part of Mortgagee or Mortgagor if such leases are substantially in the form of that attached hereto as Exhibit "C" and made a part hereof.

Mortgagor will not without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the indebtedness; or (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof as provided in the subject lease; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not modify, amend, cancel, terminate or accept surrender of any lease without the prior written consent of Mortgagee, except in the Mortgagor's ordinary course of business; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

any sum of money or damages which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

Subject to Mortgagee's execution and delivery of a reasonable non-disturbance agreement with respect to any tenant under any lease of the Premises, each such tenant shall, at the option of the Mortgagee, agree in writing to attorn to the Mortgagee or to any other person succeeding to the interest of landlord as a result of any enforcement by Mortgagee of any remedy provided by law or herein upon an event of default hereunder, and shall agree to recognize the Mortgagee or such successor in interest as landlord under such lease without change in the amount of rent or other provisions thereof; provided, however, that the Mortgagee or other successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment of or modification to any lease made without the consent of the Mortgagee or other successor in interest.

Upon prior written notice to Mortgagor, Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of the Premises which Mortgagee determines in its sole judgment will materially and adversely affect the ability of the Mortgagor to timely perform its payment obligations under the Notes, this Mortgage and the other documents and instruments executed in connection herewith, provided such default is not cured by Mortgagee within the period and pursuant to the cure right, if any, granted in such lease. It is covenanted and agreed that a default under the Assignment of Leases, Rents, Guaranties and Security Deposits of even date herewith from Mortgagor to Mortgagee (taking into account any applicable cure periods set forth therein) shall constitute a default hereunder, on account of which the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagor.

## 11. MORTGAGOR AND LIEN NOT RELEASED.

From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor or Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition of Mortgagor contained in this Mortgage: (a) release

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any condominium declaration, plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Notes or change the time of payment or the amount of the monthly installments payable thereunder; and (i) waive or fail to exercise any right, power, option, election or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 11 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

With respect to any action described in this Paragraph 11 taken at the request of Mortgagor, Mortgagor shall pay to Mortgagee (i) any standard, reasonable service charge customarily imposed by Mortgagee for taking such action, and (ii) such title insurance premiums and reasonable attorneys' fees as may be incurred by Mortgagee in connection with such action.

## 12. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS.

Upon the occurrence of, and during the continuance of an Event of Default hereunder, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems 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 and 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 or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees and any other monies advanced by Mortgagee in regard to any tax referred to in Sections 9.0 or 9.1 or to protect the Premises or 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 rate or rates of interest set forth in the Notes applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 13. MORTGAGEE'S RELIANCE ON TAX BILLS, ETC.

Mortgagee, in making any payment hereby authorized: (a) relating to taxes and 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; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

## 14. ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.

The occurrence or existence of the following events or conditions shall constitute an Event of Default:

(a) Mortgagor shall fail to pay principal of or interest on the Notes, or any other payment due in accordance with the terms thereof when and as due; or

(b) the Mortgagor shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or (ii) any answer admitting insolvency or inability to pay its debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within ten (10) days, as hereinafter provided; or

(c) any order for relief of the Mortgagor shall be entered in any case under Title 11 of the United States Code, or a custodian, trustee or a receiver shall be appointed for the Mortgagor or for all or the major part of the property of Mortgagor in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor and such custodian, trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days; or

(d) the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a custodian, receiver, trustee or liquidator of all or any major part of its property; or

(e) default shall be made in the due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained and required to be kept or performed or observed by the Mortgagor, and such default is not

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

cured within thirty (30) days following written notice of such default from Mortgagee to Mortgagor;

(f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor or any other obligor under the Loan Agreement or any other instrument given at any time to secure the payment of the Notes, and such default is not cured within any applicable cure period provided for in such agreement or instrument;

then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee or association for the cost of repair, rebuilding or restoration of buildings or other improvements on the Premises, set forth in Paragraphs 8 and 20 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness then in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

## 15. FORECLOSURE; EXPENSE OF LITIGATION.

When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimates as to items to be expended after entry of said order or judgment) or procuring all such abstracts of title, title searches and examination, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition or the title to, or the value of, Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Notes or the Premises, including probate,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable to Mortgagor, with interest thereon at the rate set forth in the Notes applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Notes applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

## 16. APPLICATION OF PROCEEDS OF FORECLOSURE SALE.

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, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Notes, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Notes; and fourth, any overplus to any party entitled thereto as their rights may appear.

## 17. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION.

Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, with ten (10) days notice and 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; and the Mortgagee or any holder of the Notes may be appointed as such receiver or as a mortgagee in possession. Such receiver or the Mortgagee in possession shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any)

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases of the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or the mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

## 18. RIGHTS CUMULATIVE.

Each right, power, election, option and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power, election, option and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power, election, option and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power, election, option or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power, election, option or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power, election, option or remedy accruing hereunder or arising otherwise shall impair any such right, power, election, option or remedy, or be construed to be a waiver of any default or acquiescence therein.

## 19. MORTGAGOR'S RIGHT OF INSPECTION.

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

## 20. CONDEMNATION.

Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. In the event of a taking or condemnation, the Mortgagee may elect: (a) to apply the proceeds of the award or claim upon or in reduction of the Indebtedness, whether due or not; or (b) to make those proceeds available to Mortgagor or any lessee for repair, restoration or rebuilding of the Premises, in the manner and under the conditions that the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Mortgagee may require; provided, however, that if the portion of the Premises condemned or taken is less than 25% of the appraised market value of the Premises immediately prior to such taking, the Mortgagee shall make the proceeds available pursuant to clause (b) above if, in Mortgagee's sole and reasonable discretion, such repair, restoration or rebuilding is architecturally viable and economically sound. In any event, the buildings and improvements shall be repaired, restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. If the proceeds are made available by the Mortgagee, any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on the proceeds of any award held by the Disbursing Party.

## 21. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.

Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness secured hereby (including any prepayment charges and late charges provided for herein or in the Notes) and upon payment of a reasonable fee to Mortgagee for the execution of such proper instrument.

## 22. GIVING OF NOTICE.

Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof, by certified mail addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

## 23. WAIVER OF DEFENSES.

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Notes.

## 24. WAIVER OF STATUTORY RIGHTS.

Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it,

95341746  
95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of this Mortgage or under any sale or statute or order, decree or judgment of any court relating to this Mortgage, on behalf of itself and each and every person acquiring any interest in or title to any portion of the Premises, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all such other persons are and shall be deemed to be hereby waived to the maximum extent and with the maximum effect permitted by the provisions of the Illinois Mortgage Foreclosure Law, including without limitation Sections 15-1601 and 15-1602 and any other applicable sections thereof, and to the maximum extent and with the maximum effect permitted by the provisions of all other applicable laws or by any successor or replacement statutes.

## **25. FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.**

25.0 Mortgagor covenants and agrees that it will keep and maintain books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, in the event that Mortgagor reasonably deems itself to be insecure, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives at reasonable times and on reasonable notice. Such books of records and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

25.1 Mortgagor covenants and agrees to furnish to the Mortgagee, within one hundred ten (110) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, financial statements compiled by an independent certified public accountant, acceptable to Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses.

25.2 If Mortgagor fails to furnish promptly any report required by Paragraph 25.1, the Mortgagee may elect (in addition to exercising any other right, power, election, option or remedy) to make an audit of all books and records of Mortgagor which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

additional Indebtedness and shall be immediately due, and payable with interest thereon at the rate set forth in the Notes applicable to a period when a default exists thereunder.

25.3 Mortgagor covenants and agrees to furnish to the Mortgagee within thirty (30) days following the end of each calendar quarter, financial statements for the quarter then ended certified by a general partner of Mortgagor.

## 26. FILING AND RECORDING CHARGES AND TAXES.

Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Notes and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Notes, this Mortgage and all other documents securing the Notes and all assignments thereof.

## 27. USURY LAW EXEMPTION.

Mortgagor represents and warrants that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Section 205/4(1) of Chapter 815 of the Illinois Compiled Statutes, and that the principal obligation secured hereby constitutes a "business loan" and a "loan secured by a mortgage on real estate" which come within the purview and operation of said Paragraph.

## 28. SECURITY AGREEMENT AND FINANCING STATEMENT.

Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State in which the Premises are located (the "Code") with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 5, 5A, 8 and 20 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in Exhibit "A" or may not constitute a "fixture" (within the meaning of § 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; and to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, fifteen (15) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others. The Mortgagor and the Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit "A"; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of §§ 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the land described in Exhibit "A".

If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

security interests herein granted and to execute whatever agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral and the Deposits.

## 29. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES AND THE LIKE.

So long as the original Mortgagee named on page 1 hereof is the owner of the Notes, and regardless of whether any proceeds of the loan evidenced by the Notes have been disbursed, this Mortgage also secures the payment of all loan commitment fees and commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby.

## 30. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE.

(a) Mortgagor acknowledges that, in determining whether to make the loan secured hereby, Mortgagee has examined the credit-worthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repaying the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. Mortgagor is well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and provisions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate of a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (1) may divert funds which would otherwise be used to pay the Notes, (2) could result in acceleration and foreclosure by any such junior lender which would force Mortgagee to take measures and incur expenses to protect its security, (3) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same, and (4) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear title to the Premises.

In recognition of such considerations and for the purposes of (i) protecting Mortgagee's security, both of the repayment by Mortgagor and value of the Premises, (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor, (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

and (iv) keeping the Premises free of any subordinate financing liens, except as provided herein, Mortgagor has agreed to the provisions of Paragraph 30(b) and agrees that if such provisions may be deemed a restraint on alienation that they are reasonable restraints.

(b) Any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law), direct or indirect, without the Mortgagee's prior written consent, shall be an event of default hereunder, except (i) for transfers of general partnership interests in the Mortgagor, provided that David W. Bermant, his spouse and/or lineal descendants, shall, in the aggregate, at all times be the legal or beneficial owners of at least 27% of the total general partnership interests in the Mortgagor, and (ii) as provided in subparagraph (c) below.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon, a subsequent event of default under this Paragraph.

(c) Notwithstanding any provision in the foregoing subparagraph (b) to the contrary, no consent of Mortgagee shall be necessary, nor shall it be considered an Event of Default hereunder, for Mortgagor to create any subordinate liens or encumbrances on the Premises

(i) to the extent that the indebtedness secured by such liens or encumbrances does not and will not cause the total indebtedness secured by liens or encumbrances on the Premises (including the Indebtedness) to exceed \$3,750,000; and

(ii) subject to the condition that at no time shall the Debt Service Coverage Ratio (as defined below) for the immediately preceding twelve month period be less than 1.20 to 1.00 and Mortgagee receives satisfactory evidence that a Debt Service Coverage Ratio of at least that level will be maintained for the next succeeding twelve months;

provided, however, the foregoing is subject to Mortgagee having received prior written notice of the creation of such liens or encumbrances and having received from each such lienholder (collectively, the "Permitted Subordinate Lienholders") its express written agreement to subordinate such liens or encumbrances to the lien of this Mortgage and all other security for the Indebtedness and to subordinate the payment of the debt secured by such liens to payment of the Indebtedness.

For purposes of this subsection (c), "Debt Service Coverage Ratio" shall mean the ratio, as determined by Mortgagee, of (i) Net Operating Income (as defined below) for the Premises for the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

applicable twelve-month period, to (ii) the debt service payments (including principal and interest) during such twelve-month period on all indebtedness (including the Indebtedness) secured by a lien on the Premises. For purposes of this definition, "Net Operating Income" shall mean arm's length market rate rents, additional rents, percentage rents and other customary fees, charges and pass-throughs received pursuant to leases of the Premises with unaffiliated third parties, less fixed expenses (such as insurance, real estate taxes and other taxes) and less customary operation expenses.

## 31. ADDITIONAL REPRESENTATIONS AND COVENANTS; INDEMNITY; SURVIVAL.

Mortgagor represents to and covenants with Mortgagee that:

(a) after completion of the improvements to be constructed on the Premises, the Premises will be maintained in good condition and repair, without material structural or physical defects, and will be useable for the intended operations of the Mortgagor thereon, subject only to normal wear and tear;

(b) to the best of Mortgagor's knowledge, there are no defects in the soils, sub-soils, grading or compaction of the Premises which would or might materially interfere with the intended construction on or use of the Premises, other than with respect to those environmental matters set forth in the following reports provided to the Mortgagee (collectively, the "Disclosed Reports"):

(i) that certain Phase I Environmental Assessment Report dated August 16, 1993, prepared by Nova Environmental Services, Inc., relating to the Premises and identified therein as Project No. C93-307;

(ii) that certain Limited Subsurface Investigation Report dated October 12, 1993, prepared by Nova Environmental Services, Inc., relating to the Premises and identified therein as Project No. C93-342;

(iii) that certain 45-Day Report and Supplemental Information dated December 9, 1994, prepared by Boelter Environmental Consultants, relating to the Premises and identified therein as Project No. 1449A-3981; and

(iv) that certain Subsurface Investigation Report dated October 28, 1994, prepared by Boetler Environmental Consultants, relating to the Premises and identified therein as Project No. 1449A-3981;

(c) all such improvements will be built or installed substantially in accordance with all applicable governmental requirements, and, to the best of Mortgagor's knowledge, the

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

Premises are not now and will not be in violation of any applicable zoning, building, environmental, occupational, health, safety or other land use law, ordinance, regulation or other legal requirement, other than as set forth in the Disclosed Reports.

(d) other than the Disclosed Reports, Mortgagor has not received notice of any violation of any of the matters set forth in clause (c) and is not aware of any such violation; and Mortgagor will fully defend, indemnify and hold Mortgagee harmless of and from any claims, damages, causes of action, actions, damages or expenses which Mortgagee may incur if any such covenant or representation is untrue or inaccurate, which indemnity shall survive the repayment of the Loan secured hereby and the foreclosure or release of record by Mortgagee of this Mortgage.

## 32. ENVIRONMENTAL MATTERS; NOTICE; REMEDIAL WORK; INDEMNITY; SURVIVAL.

(a) Other than the existing Hazardous Substances disclosed in the Disclosed Reports, and other than asbestos currently existing on the Premises, Mortgagor will not install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Premises, nor transport to or from the Premises, any Hazardous Substance (as defined below) nor allow any other person or entity to do so except in minor amounts and under conditions permitted by applicable laws, regulations and ordinances.

(b) Other than existing Hazardous Substances disclosed in the Disclosed Reports, Mortgagor will keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, any "Environmental Law" (as defined below).

(c) Mortgagor will give prompt written notice to the Mortgagee of:

(1) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any "Hazardous Substance" (as defined below) on, under or about the Premises or the migration thereof to or from adjoining property;

(2) all claims made or threatened by any individual or entity against Mortgagor or the Premises relating to any loss or injury allegedly resulting from any Hazardous Substance; and

(3) the discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Premises which might cause the Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Premises under any Environmental Law.

(d) The Mortgagee shall have the right and privilege to: (i)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Premises; and to (ii) have all costs and expenses thereof (including without limitation the Mortgagee's reasonable attorneys' fees and costs) paid by Mortgagor.

(e) Mortgagor shall protect, defend, indemnify and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense and liability (including without limitation reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the installation, use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the Premises, including without limitation: (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Premises; and (iii) the preparation and implementation of any closure, remedial or other required plans, and including without limitation, any such loss, damage, cost, expense and liability which may arise as a result of the Hazardous Substances disclosed in the Disclosed Reports. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including without limitation any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu thereof.

(f) If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground-water, surface water or soil vapor at, on, about, under or within the Premises or portion thereof, Mortgagor shall, within thirty (30) days after written demand for performance by the Mortgagee (or within such shorter time as may be required under any applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by the Mortgagee and under the supervision of a consulting engineer approved in advance by the Mortgagee. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of the Mortgagee's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Mortgagor. If Mortgagor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, the Mortgagee may (but shall not be required) to cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

therewith (including without limitation the reasonable fees and expenses of Mortgagee's counsel), shall be paid by Mortgagor to the Mortgagee forthwith after demand and shall be a part of the Indebtedness.

(g) The term "Environmental Law" means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act, as amended, 15 U.S.C. §§ 2601 et seq.; the Illinois Environmental Protection Act, as amended, 415 Ill. Compiled Stat. 5/1, et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency and the County of Cook and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Premises or the use or operation thereof.

(h) The term "Hazardous Substance" means and includes, without limitation:

(i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of CERCLA, RCRA, the Illinois Environmental Protection Act and the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.) and in regulations promulgated pursuant thereto;

(ii) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

(iii) those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and

(iv) any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyls; (C) designated or listed as a "hazardous substance" pursuant to § 311 or § 307 of the Clean Water Act (33 U.S.C. §§ 1251 et seq.);

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(D) explosive; (E) radioactive; or (F) petroleum or petroleum products.

## 33. MISCELLANEOUS.

**33.0 Binding Nature.** This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for (i) the payment of the Indebtedness or any part thereof, and (ii) any guarantor of completion of any improvements on the Premises, in either case whether or not such persons shall have executed the Notes or this Mortgage.

**33.1 Release of Previous Holder.** The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Notes. However, whenever the Notes are sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Notes, are turned over to the purchasers of the Notes.

**33.2 Severability and Applicable Law.** In the event one or more of the provisions contained in this Mortgage or in the Notes or in any other document given at any time to secure the payment of the Notes or in any other document given at any time to secure the payment of the Notes shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Notes or other document and this Mortgage, the Notes or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Notes it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

**33.3 Governmental Compliance.** Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of an for the provisions of this Section 33.3 shall be void.

**33.4 Estoppel Certificate.** Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of Indebtedness and whether or not any default, offset or defense then is alleged to exist against the Indebtedness and, if so, specifying the nature thereof.

**33.5 Non-joinder of Tenants.** After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

**33.6 Regulation G Clause.** Mortgagor covenants that the proceeds evidenced by the Notes secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve system.

## 34. LIMITATION OF LIABILITY

Except as specifically provided in this Section 34, it is expressly understood and agreed that, notwithstanding anything contained herein or in any document or instrument executed in connection herewith to the contrary, nothing herein or therein shall be construed as creating any personal liability on any general partner of the Mortgagor, including without limitation, any personal liability on any deficiency judgment which Mortgagee may obtain after foreclosure or realization upon this Mortgage, the Notes, the Loan Agreement or any of the other documents or instruments executed in connection herewith after default by the Mortgagor, or any personal liability to pay any amount due or perform any obligation required under this Mortgage, it being understood and agreed that Mortgagee may only satisfy the Indebtedness solely from the assets of the Mortgagor and not those of its general partners and that for purposes of this provision the assets of the Mortgagor shall not include the assets of its general partners or any negative capital account of any general partner or any obligation of any general partner to contribute capital to the Mortgagor;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

provided, however, that, notwithstanding the foregoing limitation, nothing contained herein shall relieve the general partners from personal liability or responsibility for:

(a) any fraud committed by such person in connection with the execution of this Mortgage, the Note and the other documents and instruments executed in connection herewith; and

(b) any of the indemnity obligations of Mortgagor pursuant to Section 31(d) or Section 32(e) hereof.

## 35. WAIVER OF JURY TRIAL

FOR AND IN CONSIDERATION OF MORTGAGEE'S MAKING OF THE LOAN, MORTGAGOR BEING AN EXPERIENCED PARTICIPANT IN SOPHISTICATED REAL ESTATE VENTURES, AND HAVING CONSULTED WITH COUNSEL OF ITS CHOOSING, HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING (I) BROUGHT BY MORTGAGOR, MORTGAGEE OR ANY OTHER PERSON RELATING TO (A) THE LOAN OR (B) THE SECURITY DOCUMENTS, OR (II) TO WHICH MORTGAGEE IS A PARTY. MORTGAGOR HEREBY AGREES THAT THIS AGREEMENT CONSTITUTES A WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY, AND MORTGAGOR DOES HEREBY CONSTITUTE AND APPOINT MORTGAGEE ITS TRUE AND LAWFUL ATTORNEY-IN-FACT, HOWEVER SAID APPOINTMENT IS LIMITED SOLELY TO ACTS RELATED TO THIS JURY WAIVER WHICH APPOINTMENT IS COUPLED WITH AN INTEREST, AND MORTGAGOR DOES HEREBY AUTHORIZE AND EMPOWER MORTGAGEE, IN THE NAME, PLACE AND STEAD OF MORTGAGOR, TO FILE THIS AGREEMENT WITH THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS A STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY. MORTGAGOR ACKNOWLEDGES THAT ITS WAIVER OF TRIAL BY JURY HAS BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument as of the day and year first above written.

CERMAK PLAZA ASSOCIATES, a New York  
general partnership

By: David W. Bermant  
David W. Bermant, its Managing Partner

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF CALIFORNIA            )  
  ) SS.  
COUNTY OF SANTA BARBARA    )

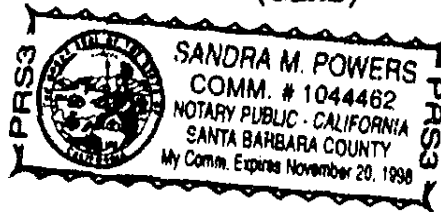
The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of MAY, 1995, by David W. Bermant, as Managing Partner of Cermak Plaza Associates, a New York general partnership, on behalf of the partnership, as the free and voluntary act of said partnership.

Sandra M. Powers  
Notary Public

My Commission Expires:

11-20-98

(SEAL)



Property of Cook County Clerk's Office

55341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

Property of Cook County Clerk's Office

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

THAT PART OF LOT 1 (EXCEPT THOSE PARTS FALLING IN STREET) OF THE CIRCUIT COURT PARTITION OF THE WEST PART OF THE NORTHWEST 1/4 AND THE WEST PART OF THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A STRAIGHT LINE, RUNNING FROM A POINT IN THE EAST LINE OF SOUTH HARLEM AVENUE 1590.99 FEET NORTH OF ITS INTERSECTION, WITH THE NORTH LINE OF WEST 26TH STREET TO A POINT IN THE WEST LINE OF SOUTH HOME AVENUE 971.94 FEET SOUTH OF ITS INTERSECTION WITH THE SOUTH LINE OF WEST CERMAK ROAD.

(AND ALSO EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE STATE OF ILLINOIS BY WARRANTY DEED RECORDED JULY 28, 1964 AS DOCUMENT NUMBER 19198042, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST 1/4 CORNER OF SAID SECTION 30, THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 30 A DISTANCE OF 1374.29 FEET TO THE EXTENDED WEST LINE OF HOME AVENUE, AS THE SAME IS NOW LOCATED AND ESTABLISHED, THENCE SOUTH ALONG THE WEST LINE OF HOME AVENUE, AND THE SAME EXTENDED A DISTANCE OF 60 FEET TO A POINT; THENCE WEST IN A STRAIGHT LINE PARALLEL TO AND DISTANT 60 FEET SOUTH FEET SOUTH, MEASURED AT RIGHT ANGLES FROM SAID NORTH LINE OF SECTION 30, A DISTANCE OF 286.0 FEET TO A POINT; THENCE SOUTH IN A STRAIGHT LINE MEASURED AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.0 FEET TO A POINT; THENCE WEST IN A STRAIGHT LINE PARALLEL TO AND DISTANT 65.0 FEET SOUTH, MEASURED AT RIGHT ANGLES FROM SAID NORTH LINE OF SECTION 30, A DISTANCE OF 972.86 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG A CURVED LINE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 65.0 FEET AND A CENTRAL ANGLE OF 90 DEGREES, 22 MINUTES, 30 SECONDS, A DISTANCE OF 102.51 FEET TO A POINT OF TANGENCY IN THE EAST LINE OF HARLEM AVENUE AS THE SAME IS NOW LOCATED AND ESTABLISHED, DISTANT 50.0 FEET EAST MEASURED AT RIGHT ANGLES FROM THE WEST LINE OF SAID SECTION 30; THENCE WEST IN A STRAIGHT LINE, A DISTANCE OF 50.0 FEET TO A POINT IN THE WEST LINE OF SAID SECTION 30; THENCE NORTH ALONG THE WEST LINE OF SAID SECTION 30; A DISTANCE OF 130.43 FEET TO THE POINT OF BEGINNING (EXCEPTING THAT PART OF THE ABOVE DESCRIBED PREMISES PREVIOUSLY DEDICATED OR NOW USED FOR HARLEM AVENUE AND CERMAK ROAD), ALL IN COOK COUNTY, ILLINOIS.

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT "B"

PROMISSORY NOTE A AND PROMISSORY NOTE B

Property of Cook County Clerk's Office

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## TERM PROMISSORY NOTE

\$200,000.00

May 5, 1995

FOR VALUE RECEIVED, the undersigned, **CERMAK PLAZA ASSOCIATES**, a New York general partnership, whose mailing address is c/o Concordia Realty Management, Inc., 1127 South Mannheim Road, Suite 212, Westchester, Illinois 60154 (the "Borrower"), promises to pay to the order of **PINNACLE BANK**, an Illinois banking corporation, whose mailing address is 6000 West Cermak Road, Cicero, Illinois 60650 (the "Lender"), the principal sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00), with interest on the unpaid balance thereof at the rate or rates and in the amounts, at the time or times, in the manner and upon the terms and conditions provided in this Note.

### 1. **PAYMENTS.**

Interest shall accrue daily on the unpaid principal amount of this Note disbursed from time to time pursuant to the Loan Agreement at the rate of nine percent (9.00%) per annum from the date hereof and for the actual number of days elapsed in a year consisting of 360 days (the "Note Rate").

This Note shall be payable as follows:

- (i) On June 15, 1995, Borrower shall pay an amount equal to all accrued interest hereunder calculated from the date hereof to and including such payment date, and thereafter shall pay quarterly installments of accrued interest hereunder, commencing on July 15, 1995 and continuing thereafter on each October 15, January 15, April 15 and July 15 to and including January 15, 1997;
- (ii) In addition to the interest payments set forth in clause (i), Borrower shall pay on March 1, 1996, an installment of principal in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00);
- (iii) The entire unpaid balance of principal hereunder and accrued interest thereon shall be due and payable on March 1, 1997 (the "Maturity Date").

As used herein, "Maturity" shall mean the Maturity Date or such earlier day as the entire principal balance of the Note may be due and payable by acceleration or otherwise as hereinafter provided.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 2. LATE PAYMENT AND DEFAULT INTEREST PROVISIONS.

(a) Late Charge. If any payment of principal and/or interest due under this Note is not paid in full on or before the fifth (5th) day immediately following such due date, a late charge equal to three percent (3%) of the overdue payment (hereinafter called the "Late Charge") shall be deemed to be immediately assessed and shall be immediately due and payable. The Late Charge shall be in addition to all other rights and remedies available to Lender upon the occurrence of a default hereunder or under the Mortgage (as defined herein). The Late Charge shall be due and payable notwithstanding any notice and cure period granted in this Note, the Mortgage or any of the other documents executed in connection with or evidencing or securing the loan evidenced by this Note (the "Loan Documents"). The payment of the Late Charge shall not be required to the extent that the amount thereof, together with all other interest payable hereunder, exceeds the maximum interest rate permitted to be charged by applicable law, and if such payment has been made at the time it is determined that such excess exists, Lender shall, at its option, either return such excess to Borrower or credit such excess against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable.

(b) Default Rate. Notwithstanding anything to the contrary contained in this Note, (a) upon any acceleration of this Note or (b) from and after the occurrence of an Event of Default (as defined below) and during the continuance thereof, the unpaid principal of this Note from time to time outstanding shall bear interest at a rate (hereinafter called the "Default Rate") per annum which is equal to the Note Rate plus three (3) percentage points. The payment of interest at the Default Rate shall not be required to the extent that the amount thereof, when taken together with all other interest payable hereunder, including, without limitation, any Monthly Late Charge, exceeds the maximum interest rate permitted to be charged by applicable law, and if such payment has been made at the time it is determined that such excess exists, Lender shall, at its option, either return such excess to Borrower or credit such excess against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable.

## 3. PREPAYMENT.

This Note may be prepaid at any time, in whole or in part, without premium or penalty.

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## 4. DEFAULT; REMEDIES.

(a) Borrower shall be in default under this Note upon the occurrence of any of the following (each an "Event of Default"): (i) any payment due under this Note is not made within five (5) days following delivery of notice from the Lender of nonpayment on the scheduled due date for such payment; or (ii) the occurrence of any default or Event of Default (other than as specified in clause (i) of this paragraph 4(a)) under this Note or any of the other Loan Documents (taking into account any applicable cure period).

(b) Upon the occurrence of an Event of Default under this Note, Lender may, at its option and without any further notice to Borrower: (i) declare the entire unpaid principal balance of this Note immediately due and payable in full; and (ii) exercise any or all of Lender's rights and remedies available under the Security Documents and any other remedies available to Lender at law or in equity.

## 5. APPLICATION OF PAYMENTS.

At Lender's option, the order of application of all payments received from Borrower shall be as follows: (a) to unpaid Late Charges and costs incurred by Lender in collecting any amounts due hereunder (including, without limitation, reasonable attorneys' fees); (b) to any other indebtedness, charges and sums due under the Security Documents; (c) to interest on the unpaid balance hereof; and (d) the balance to unpaid principal.

## 6. NO USURY.

It is the intent of Lender and Borrower in the execution of this Note and all other instruments now or hereafter securing this Note to contract in strict compliance with applicable usury law. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money bearing interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law. Neither Borrower nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this paragraph shall control over all other provisions of this Note and any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the Maturity of this Note is accelerated. If the Maturity of this Note shall be accelerated for any reason or if the principal of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the loan evidenced by this Note (the "Loan") exceeds the applicable maximum lawful rate, Lender shall, at its option, either refund to Borrower the amount of such excess or credit the amount of such excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender shall contract for, charge or receive any amount or amounts which are deemed to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such amounts deemed to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Lender, be either immediately returned to Borrower or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note, Borrower acknowledges that it believes the Loan to be non-usurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give Lender notice of such condition and Borrower agrees that Lender shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Note shall mean the laws of the State of Illinois or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

## 7. SECURITY.

This Note is the Note referred to in the Mortgage of even date herewith between the Borrower and Lender (the "Mortgage") and is secured by the Mortgage, an Assignment of Rents and Leases, an Assignment of Inducement Agreement and other documents reciting that they secure this Note (the "Security Documents") and is entitled to the benefits and security thereof. Reference is made to the Security Documents for descriptions of the collateral subject thereto and the respective rights and obligations of Borrower and Lender thereunder and the terms and provisions of the Security Documents are hereby incorporated herein.

## 8. MAKING OF PAYMENTS.

All payments of principal and interest hereunder are payable in lawful money of the United States of America at Lender's address set forth in the opening paragraph of this Note, or at such other place and in such manner as the holder of this Note may specify by notice to Borrower. If the date for any payment hereunder falls on a day which is not a Business Day, then for all purposes hereof the same shall be deemed to have fallen on the next succeeding Business

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Day, and such extension of time shall in such case be included in the computation of interest hereunder. The term "Business Day" shall mean a day other than a Saturday, Sunday or legal holiday for commercial lenders under the laws of the State of Illinois.

## 9. MISCELLANEOUS.

(a) Borrower and all other parties liable hereon, whether as principal, endorser or otherwise, hereby severally waive presentment, demand for payment, notice of intention to accelerate, notice of acceleration, protest and notice of dishonor and waive recourse to suretyship defenses generally, including extensions of time, release of security or other indulgences that may be granted by Lender to Borrower or any other party liable hereon, and also agree to pay all costs of collection, including reasonable attorneys' fees.

(b) Any forbearance by Lender in exercising any right or remedy hereunder or under any other Loan Document, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by Lender. The acceptance by Lender of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of Lender to (i) declare a default for failure to make prompt payment, unless waived in writing by Lender, or (ii) require prompt payment when due of all other sums payable hereunder.

(c) This Note may not be changed, modified or terminated except in writing signed by the party to be charged.

(d) This Note and the rights and duties of the parties hereunder shall be governed for all purposes by the internal laws of the State of Illinois and the laws of the United States applicable to transactions within such State, without regard to conflicts of laws. The Borrower and, subject to the provisions of Section 9(i) below, its general partners unconditionally submit themselves in any legal action or proceeding relating to this Note to the non-exclusive general jurisdiction of the state and federal courts having situs in Cook County, Illinois.

(e) This Note shall be the joint and several obligation of all makers, endorsers, guarantors and sureties, and shall be binding upon them and their respective successors and assigns and shall inure to the benefit of Lender and its successors and assigns. The term "Lender" shall mean the holder of this Note at the time in question.

(f) All notices under this Note shall be given as provided in the Mortgage.

(g) It is expressly agreed that time is of the essence with respect to this Note.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(h) In the event of default hereunder, Borrower shall have the obligation to reimburse Lender for all reasonable, related "Collection Expenses" incurred by Lender as a result of a default, including but not limited to, all travel costs, third party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses and legal fees and expenses.

(i) Except as specifically provided in this Section 9(i), it is expressly understood and agreed that, notwithstanding anything to the contrary herein or in any document or instrument executed in connection herewith, nothing herein or therein shall be construed as creating any personal liability on any general partner of the Borrower, including without limitation, any personal liability on any deficiency judgment which Lender may obtain after foreclosure or realization upon any of the Loan Documents after default by Borrower, or any personal liability to pay any amount due or perform any obligation required under this Note, it being understood and agreed that Lender may only satisfy the indebtedness of Borrower hereunder solely from the assets of the Borrower and not those of its general partners and that for purposes of this provision the assets of the Borrower shall not include the assets of its general partners or any negative capital account of any general partner or any obligation of any general partner to contribute capital to the Borrower; provided, however, that notwithstanding the foregoing limitation, nothing contained herein shall relieve the general partners from personal liability or responsibility for:

(i) any fraud committed by such person in connection with the execution of this Note and the other Loan Documents; and

(ii) any of the indemnity obligations of Borrower pursuant to Section 31(d) or Section 32(e) of the Mortgage.

(j) Borrower acknowledges and agrees that (i) this Note evidences a business loan within the purview and operation of Section 205/4(1) of Chapter 815 of the Illinois Compiled Statutes and (ii) the obligation evidenced by this Note is an exempt transaction under the Federal Truth in Lending Act, 15 U.S.C. §1601, et seq.

FOR AND IN CONSIDERATION OF LENDER'S MAKING OF THE LOAN, BORROWER, BEING AN EXPERIENCED PARTICIPANT IN SOPHISTICATED REAL ESTATE VENTURES, AND HAVING CONSULTED WITH COUNSEL OF ITS CHOOSING, HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING (I) BROUGHT BY BORROWER, LENDER OR ANY OTHER PERSON RELATING TO (A) THE LOAN OR (B) THE SECURITY DOCUMENTS, OR (II) TO WHICH LENDER IS A PARTY. BORROWER HEREBY AGREES THAT THIS AGREEMENT CONSTITUTES A WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY, AND BORROWER DOES HEREBY CONSTITUTE AND APPOINT LENDER ITS TRUE AND LAWFUL ATTORNEY-IN-FACT, WHICH APPOINTMENT IS COUPLED WITH AN INTEREST, AND BORROWER DOES HEREBY AUTHORIZE AND EMPOWER LENDER, IN THE NAME, PLACE AND STEAD OF BORROWER, TO FILE THIS AGREEMENT WITH

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

THE CLERK OR JUDGE OF ANY COURT OF COMPETENT JURISDICTION AS A STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT ITS WAIVER OF TRIAL BY JURY HAS BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY BORROWER AS PART OF A BARGAINED FOR LOAN TRANSACTION.

IN WITNESS WHEREOF, this Note has been executed as of the date first set forth above.

**BORROWER:**

**CERMAK PLAZA ASSOCIATES,** a New York  
general partnership

By: \_\_\_\_\_

David W. Bermant, Managing Partner

Property of Cook County Clerk's Office

95341746

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## CONSTRUCTION PROMISSORY NOTE

\$450,000.00

May 5, 1995

FOR VALUE RECEIVED, the undersigned, **CERMAK PLAZA ASSOCIATES**, a New York general partnership, whose mailing address is c/o Concordia Realty Management, Inc., 1127 South Mannheim Road, Suite 212, Westchester, Illinois 60154 (the "Borrower"), promises to pay to the order of **PINNACLE BANK**, an Illinois banking corporation, whose mailing address is 6000 West Cermak Road, Cicero, Illinois 60550 (the "Lender"), the principal sum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) or so much thereof as is disbursed pursuant to the terms of that certain Construction Loan Agreement between Borrower and Lender of even date herewith (the "Loan Agreement"), with interest on the unpaid balance at the rate or rates and in the amounts, at the time or times, in the manner and upon the terms and conditions provided in this Note.

### 1. PAYMENTS.

Interest shall accrue daily on the unpaid principal amount of this Note disbursed from time to time pursuant to the Loan Agreement at the rate of nine and one-quarter percent (9.25%) per annum from the date hereof and for the actual number of days elapsed in a year consisting of 360 days (the "Note Rate").

This Note shall be payable as follows:

- (i) On October 15, 1995, Borrower shall pay an amount equal to all accrued interest hereunder calculated from the date hereof to and including such payment date, and thereafter shall pay quarterly installments of accrued interest hereunder, commencing on January 15, 1996 and continuing thereafter on each April 15, July 15, October 15 and January 15 to and including January 15, 2000;
- (ii) In addition to the interest payments set forth in clause (i), Borrower shall pay installments of principal on the dates and in the amounts set forth below:

October 15, 1995	\$ 10,000
October 15, 1996	\$ 20,000
October 15, 1997	\$ 40,000
October 15, 1998	\$ 80,000
October 15, 1999	\$ 100,000;

- (iii) The entire unpaid balance of principal hereunder and accrued interest thereon shall be due and payable on March 1, 2000 (the "Maturity Date").

As used herein, "Maturity" shall mean the Maturity Date or such earlier day as the entire principal balance of the Note may be

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

due and payable by acceleration or otherwise as hereinafter provided.

## 2. LATE PAYMENT AND DEFAULT INTEREST PROVISIONS.

(a) Late Charge. If any payment of principal and/or interest due under this Note is not paid in full on or before the fifth (5th) day immediately following such due date, a late charge equal to three percent (3%) of the overdue payment (hereinafter called the "Late Charge") shall be deemed to be immediately assessed and shall be immediately due and payable. The Late Charge shall be in addition to all other rights and remedies available to Lender upon the occurrence of a default hereunder or under the Mortgage (as defined herein). The Late Charge shall be due and payable notwithstanding any notice and cure period granted in this Note, the Loan Agreement, the Mortgage or any of the other documents executed in connection with or evidencing or securing the loan evidenced by this Note (the "Loan Documents"). The payment of the Late Charge shall not be required to the extent that the amount thereof, together with all other interest payable hereunder, exceeds the maximum interest rate permitted to be charged by applicable law, and if such payment has been made at the time it is determined that such excess exists, Lender shall, at its option, either return such excess to Borrower or credit such excess against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable.

(b) Default Rate. Notwithstanding anything to the contrary contained in this Note, (a) upon any acceleration of this Note or (b) from and after the occurrence of an Event of Default (as defined below) and during the continuance thereof, the unpaid principal of this Note from time to time outstanding shall bear interest at a rate (hereinafter called the "Default Rate") per annum which is equal to the Note Rate plus three (3) percentage points. The payment of interest at the Default Rate shall not be required to the extent that the amount thereof, when taken together with all other interest payable hereunder, including, without limitation, any Monthly Late Charge, exceeds the maximum interest rate permitted to be charged by applicable law, and if such payment has been made at the time it is determined that such excess exists, Lender shall, at its option, either return such excess to Borrower or credit such excess against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## 3. PREPAYMENT.

This Note may be prepaid at any time, in whole or in part, without premium or penalty.

## 4. DEFAULT; REMEDIES.

(a) Borrower shall be in default under this Note upon the occurrence of any of the following (each an "Event of Default"): (i) any payment due under this Note is not made within five (5) days following delivery of notice from the Lender of nonpayment on the scheduled due date for such payment; or (ii) the occurrence of any default or Event of Default (other than as specified in clause (i) of this paragraph 4(a)) under this Note or any of the other Loan Documents (taking into account any applicable cure period).

(b) Upon the occurrence of an Event of Default under this Note, Lender may, at its option and without any further notice to Borrower: (i) declare the entire unpaid principal balance of this Note immediately due and payable in full; and (ii) exercise any or all of Lender's rights and remedies available under the Security Documents and any other remedies available to Lender at law or in equity.

## 5. APPLICATION OF PAYMENTS.

At Lender's option, the order of application of all payments received from Borrower shall be as follows: (a) to unpaid Late Charges and costs incurred by Lender in collecting any amounts due hereunder (including, without limitation, reasonable attorneys' fees); (b) to any other indebtedness, charges and sums due under the Security Documents; (c) to interest on the unpaid balance hereof; and (d) the balance to unpaid principal.

## 6. NO USURY.

It is the intent of Lender and Borrower in the execution of this Note and all other instruments now or hereafter securing this Note to contract in strict compliance with applicable usury law. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money bearing interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law. Neither Borrower nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this paragraph shall control over all other provisions of this Note and any other instruments now or hereafter

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

executed in connection herewith which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the Maturity of this Note is accelerated. If the Maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the loan evidenced by this Note (the "Loan") exceeds the applicable maximum lawful rate, Lender shall, at its option, either refund to Borrower the amount of such excess or credit the amount of such excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender shall contract for, charge or receive any amount or amounts which are deemed to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such amounts deemed to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Lender, be either immediately returned to Borrower or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. In execution of this Note, Borrower acknowledges that it believes the Loan to be non-usurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give Lender notice of such condition and Borrower agrees that Lender shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Note shall mean the laws of the State of Illinois or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

## 7. SECURITY.

This Note is the Note referred to in the Mortgage or even date herewith between the Borrower and Lender (the "Mortgage") and is secured by the Mortgage, an Assignment of Rents and Leases, an Assignment of Inducement Agreement and other documents reciting that they secure this Note (the "Security Documents") and is entitled to the benefits and security thereof. Reference is made to the Security Documents for descriptions of the collateral subject thereto and the respective rights and obligations of Borrower and Lender thereunder and the terms and provisions of the Security Documents are hereby incorporated herein.

## 8. MAKING OF PAYMENTS.

All payments of principal and interest hereunder are payable in lawful money of the United States of America at Lender's address

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

set forth in the opening paragraph of this Note, or at such other place and in such manner as the holder of this Note may specify by notice to Borrower. If the date for any payment hereunder falls on a day which is not a Business Day, then for all purposes hereof the same shall be deemed to have fallen on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest hereunder. The term "Business Day" shall mean a day other than a Saturday, Sunday or legal holiday for commercial lenders under the laws of the State of Illinois.

## 9. MISCELLANEOUS.

(a) Borrower and all other parties liable hereon, whether as principal, endorser or otherwise, hereby severally waive presentment, demand for payment, notice of intention to accelerate, notice of acceleration, protest and notice of dishonor and waive recourse to suretyship defenses generally, including extensions of time, release of security or other indulgences that may be granted by Lender to Borrower or any other party liable hereon, and also agree to pay all costs of collection, including reasonable attorneys' fees.

(b) Any forbearance by Lender in exercising any right or remedy hereunder or under any other Loan Document, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by Lender. The acceptance by Lender of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of Lender to (i) declare a default for failure to make prompt payment, unless waived in writing by Lender, or (ii) require prompt payment when due of all other sums payable hereunder.

(c) This Note may not be changed, modified or terminated except in writing signed by the party to be charged.

(d) This Note and the rights and duties of the parties hereunder shall be governed for all purposes by the internal laws of the State of Illinois and the laws of the United States applicable to transactions within such State, without regard to conflicts of laws. The Borrower and, subject to provisions of Section 9(i) below, its general partners unconditionally submit themselves in any legal action or proceeding relating to this Note to the non-exclusive general jurisdiction of the state and federal courts having situs in Cook County, Illinois.

(e) This Note shall be the joint and several obligation of all makers, endorsers, guarantors and sureties, and shall be binding upon them and their respective successors and assigns and shall inure to the benefit of Lender and its successors and assigns. The term "Lender" shall mean the holder of this Note at the time in question.

UNOFFICIAL COPY

Property of Cook County Clerk's Office