

12-08-1998-1830

CONSENT AND ASSUMPTION AGREEMENT

THIS CONSENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of August 24, 1998, by and among the Village of Arlington Heights, Illinois, a political subdivision of the State of Illinois (the "State") and a home rule unit under Article VII, Section 6(a) of the 1970 Constitution of the State (together with any successors and assigns the "Issuer"), First Tennessee Bank National Association, a national banking association duly organized and existing under the laws of the United States of America and having the authority to exercise corporate trust powers (together with any successors and assigns, the "Trustee"), CAPREIT Waterford Place Limited Partnership, an Illinois limited partnership (the "Transferee"), and RG Bond Partners I Limited Partnership, a Delaware limited partnership (the "Developer").

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WITNESSETH:

D17733353 JB

WHEREAS, the Issuer issued and sold its \$14,120,000 Multifamily Housing Revenue Refunding Bonds, Series 1991 (Waterford Place Project) (the "Bonds") for the purpose of refunding certain outstanding prior bonds of the Issuer (the "Prior Bonds"), which Prior Bonds were issued to assist Pacific Guaranty Housing Corporation (the "Original Developer") to acquire, develop and equip a multifamily residential rental project located on the real property in Arlington Heights, Illinois described on Exhibit A and known as Waterford Place Apartments (the "Development"); and

WHEREAS, the Bonds were issued by resolution of the Issuer and pursuant to a Trust Indenture, dated as of May 1, 1991, by and between the Issuer and the Trustee, as supplemented and amended (the "Indenture"); and

WHEREAS, the proceeds made available from the issuance of the Bonds and the refunding of the Prior Bonds were loaned to the Developer pursuant to the Developer Loan Agreement, dated as of May 1, 1991, by and between the Developer and the Issuer, as supplemented and amended (the "Loan Agreement") and various other Loan Documents for the purpose of refinancing the Development; and

WHEREAS, CAPREIT Acquisition Corporation, a Maryland corporation ("CAC"), an affiliate of the Transferee, contracted to purchase the Development from the Developer pursuant to an Agreement for Purchase and Sale dated June 6, 1998 (the "Purchase Agreement"); and

WHEREAS, CAC assigned its rights under the Purchase Agreement to Transferee pursuant to an Assignment of Contract Rights dated July 27, 1998; and

WHEREAS, Section 3.5 of the Loan Agreement provides that the Developer shall not sell, transfer, or otherwise dispose of the Development or any interest therein, except in accordance with the Mortgage and the Land Use Restriction Agreement ("LURA"); and

BOX 333-CTI

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WHEREAS, Section 9 of the LURA provides that the Developer shall not sell the Development in whole without the prior written consent of the Issuer, which shall respond within a reasonable period of time and shall not unreasonably withhold such consent provided that, among other things, (i) it is reasonably expected that continued operation of the Development will comply with the requirements of the LURA, (ii) the subsequent purchaser or assignee shall execute any document reasonably requested by the Trustee or the Issuer with respect to assuming the obligations of the Developer under the LURA, (iii) the Trustee and the Issuer shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Development, (iv) the purchaser or assignee shall have first executed a document in recordable form addressed to the Issuer and the Trustee to the effect that such purchaser or assignee will comply with the terms and conditions of the LURA and the Loan Agreement, and (v) the Trustee and the Issuer shall have received an opinion of Qualified Bond Counsel to the effect that such sale, transfer, disposition or assignment will not result in interest on the Bonds, or any part thereof, becoming subject to federal income taxes then in effect; and

WHEREAS, pursuant to Section 3.1 of the Reimbursement Agreement dated as of May 1, 1991 (the "Reimbursement Agreement") from the Developer to Commercial Union Assurance Company PLC (the "Insurer"), acting through SRS Insurance Services, Inc. ("SRS"), the Developer covenanted that it would not sell, transfer or otherwise dispose of all or substantially all of its assets without the prior express written consent of the Insurer; and

WHEREAS, pursuant to Section 5.9 of the Reimbursement Agreement, any consent required or permitted to be given to the Developer by or on behalf of the Insurer under the Reimbursement Agreement may be given by SRS, and any such consent so given by SRS shall be effective as to the Insurer; and

WHEREAS, by this Agreement in connection with its acquisition of the Development, the Transferee desires to assume all of the obligations of the Developer under the Note, the Loan Agreement, the Mortgage, the LURA and the other Loan Documents; and

WHEREAS, the Issuer by resolution adopted on July 6, 1998 authorized the Village President and the Village Clerk to consent on behalf of the Issuer to the conveyance of the Development to the Transferee; and

WHEREAS, SRS, by execution of this Agreement, has consented on behalf of the Insurer to the transfer of the Development from the Developer to the Transferee.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree as follows:

1. The Transferee for itself and its successors and assigns, for the benefit of the Issuer, the Insurer, and the Trustee and any holders from time to time of the Bonds hereby unconditionally accepts and assumes and agrees to observe all payment and performance obligations of the Developer arising on or after the date of this Agreement under the Loan

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Agreement, the Note, the Mortgage, the LURA and the other Loan Documents, each as may be amended from time to time, including all indemnification provisions contained therein.

2. The Transferee hereby unconditionally covenants to fully comply on and after the date of this Agreement with all provisions of the Loan Agreement and the LURA and any other Loan Documents concerning the operation of the Development and the leasing of units to Low or Moderate Income Persons.

3. The Transferee hereby agrees that the foregoing assumption of the obligations of the Developer under the Loan Documents shall be enforceable by the Trustee.

4. The Transferee hereby acknowledges that any sale, transfer, assignment or other disposition of the Development by the Transferee shall be subject to the assumption by any subsequent transferee of the obligations of the Transferee assumed hereby.

5. From and after the date of this Agreement, all references in the Loan Documents to the "Developer" shall be deemed to be references to the Transferee.

6. From and after the date of this Agreement, all notices, certificates or other communications to be given to the Developer under any of the Loan Documents shall be given to the Transferee at the following address.

CAPREIT Waterford Place Limited Partnership  
11200 Rockville Pike  
Suite 100  
Rockville, Maryland 20852  
Attention: Richard L. Kadish

7. The Developer hereby is released from its obligations under the Loan, the LURA and the other Loan Documents, other than its obligations under Sections 5.3(a)(iii) and (v), 8.8, 8.9, 10.5, 10.10 and 12.14 of the Loan Agreement, which arose prior to the date of this Agreement.

8. The Developer hereby represents and warrants to the Issuer, the Trustee, the Insurer and the Transferee that the Developer is not in default of any of its obligations under the Loan Agreement, the LURA or any of the other Loan Documents.

9. The Issuer hereby consents to the transfer of the Development to the Transferee, subject to the delivery to the Issuer and the Trustee, on or before the date of conveyance, of (i) an opinion of counsel reasonably acceptable to them to the effect that the Transferee's obligations under the LURA, the Loan Agreement and the other Loan Documents to which it is a party are enforceable against the Transferee in accordance with their terms, and (ii) an opinion of Qualified Bond Counsel to the effect that the conveyance of the Development will not, in and of itself, result in interest on the Bonds, or any part thereof, becoming subject to federal income taxes.

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10. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement.

11. This Agreement shall be governed by the laws of the State of Illinois and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original.

13. The Transferee hereby agrees to indemnify and hold harmless the Issuer and its officers, board members, employees and agents (each, an "Indemnified Party") from and against any losses, costs, charges, expenses (including reasonable attorneys' fees), judgments and liabilities arising in connection with or by reason of the execution and delivery by the Issuer of this Agreement and any amendments to the Indenture and the Loan Agreement, if any, in connection herewith, and the consummation of the transaction contemplated hereby, except any losses, costs, charges, expenses, judgments, and/or liabilities resulting from the gross negligence or willful misconduct of an Indemnified Party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

(Seal)

VILLAGE OF ARLINGTON HEIGHTS, ILLINOIS

Attest:

By: Edwin Cross  
Village Clerk

By: Kathie Q. Hahn  
Village President PRO TEM

STATE OF ILLINOIS  
COUNTY OF COOK

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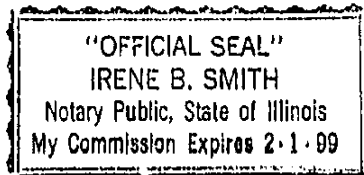
I IRENE SMITH, a notary public for the aforesaid jurisdiction, do hereby certify that before me this day in person appeared KATHIE HAHN, personally known to me to be the Village President of the Village of Arlington Heights, Illinois, and he acknowledged that he signed and delivered the foregoing instrument in the capacity herein set forth, pursuant to the authority given under the organizational documents of said entity, and as his own free and voluntary act and deed, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

Given under my hand and seal this 6 day of JULY, 1998

Irene B. Smith  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_



FIRST TENNESSEE BANK NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_ Authorized Officer

STATE OF \_\_\_\_\_

:SS

COUNTY OF \_\_\_\_\_

I \_\_\_\_\_, a notary public for the aforesaid jurisdiction, do hereby certify that before me this day in person appeared \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ of First Tennessee Bank National Association, and he acknowledged that he signed and delivered the foregoing instrument in the capacity herein set forth, pursuant to the authority given under the organizational documents of said entity, and as his own free and voluntary act and deed, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1998

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

FIRST TENNESSEE BANK NATIONAL ASSOCIATION, as Trustee

By: Wallace L. Duke, Jr.  
Authorized Officer

STATE OF Tennessee

:SS

COUNTY OF Davidson

I Elizabeth A. Gold, a notary public for the aforesaid jurisdiction, do hereby certify that before me this day in person appeared Wallace L. Duke, Jr. personally known to me to be the Vice President of First Tennessee Bank National Association, and he acknowledged that he signed and delivered the foregoing instrument in the capacity herein set forth, pursuant to the authority given under the organizational documents of said entity, and as his own free and voluntary act and deed, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

Given under my hand and seal this 17<sup>th</sup> day of August, 1998

Elizabeth A. Gold  
Notary Public

(SEAL)

My Commission Expires: My Commission Expires MAR. 24, 2001

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CAPREIT WATERFORD PLACE LIMITED PARTNERSHIP, an Illinois limited partnership, as Transferee

By: CAPREIT of Waterford Place, Inc., its general partner

By: [Signature]  
Richard L. Kadish, President

STATE OF NEW YORK

:SS

COUNTY OF NEW YORK

I AGNES WILSON, a notary public for the aforesaid jurisdiction, do hereby certify that before me this day in person appeared Richard L. Kadish, personally known to me to be the President of CAPREIT of Waterford Place, Inc., the general partner of CAPREIT Waterford Place Limited Partnership, and he acknowledged that he signed and delivered the foregoing instrument in the capacity herein set forth, pursuant to the authority given under the organizational documents of said entity, and as his own free and voluntary act and deed, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

Given under my hand and seal this 20th day of August, 1998

[Signature]  
Notary Public

(SEAL)

AGNES WILSON  
Notary Public, State of New York  
No. 24-4610094  
Qualified in Kings County  
Commission Expires 0/31/99

My Commission Expires: \_\_\_\_\_

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RG BOND PARTNERS I LIMITED PARTNERSHIP, a Delaware limited partnership, as Developer

By: Rosewood Apartment Equities, Inc., its general partner

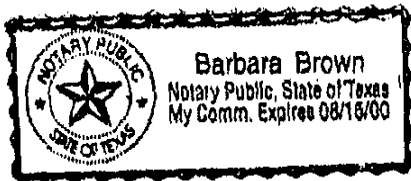
By: [Signature]  
Name: Bruce Endendyk  
Title: Vice President

STATE OF TEXAS

COUNTY OF DALLAS

I Barbara Brown, a notary public for the aforesaid jurisdiction, do hereby certify that before me this day in person appeared Bruce Endendyk, personally known to me to be the Vice President of Rosewood Apartment Equities, Inc., the general partner of RG Bond Partners I Limited Partnership, and he acknowledged that he signed and delivered the foregoing instrument in the capacity herein set forth, pursuant to the authority given under the organizational documents of said entity, and as his own free and voluntary act and deed, and as the free and voluntary act and deed of said entity for the uses and purposes therein set forth.

Given under my hand and seal this 17 day of August, 1998



[Signature]  
Notary Public

(SEAL)

My Commission Expires: \_\_\_\_\_

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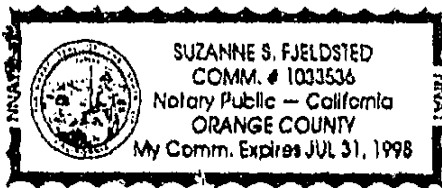
SRS INSURANCE SERVICES, INC., for the sole purpose of consenting to the sale of the Development in accordance with the provisions of the Reimbursement Agreement

By: David A. Belnap  
Name: DAVID A. BELNAP  
Title: SR. VICE PRESIDENT

STATE OF CALIFORNIA  
COUNTY OF ORANGE :SS

I SUZANNE S. FJELDSTED, a notary public for the aforesaid jurisdiction, do hereby certify that before me this day in person appeared DAVID A. BELNAP, personally known to me to be the SR. VICE PRESIDENT of SRS Insurance Services, Inc., and he acknowledged that he signed and delivered the foregoing instrument in the capacity herein set forth, pursuant to the authority given under the organizational documents of said entity, and as his own free and voluntary act and deed, and as the free and voluntary act and deed of said entity, for the uses and purposes therein set forth.

Given under my hand and seal this 13th day of AUGUST, 1998



Suzanne S. Fjeldsted  
Notary Public

(SEAL)

My Commission Expires: JULY 31, 1998

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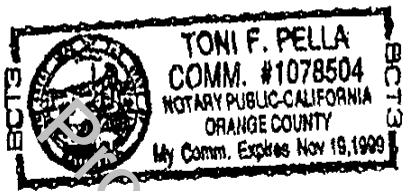
State of California

County of Orange

On August 13, 1998 before me, Toni F. Pella, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared DAVID A. BELNAP  
Names of Signer(s)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*[Handwritten Signature]*  
Signature of Notary Public

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

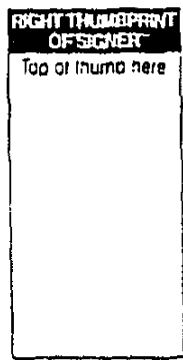
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

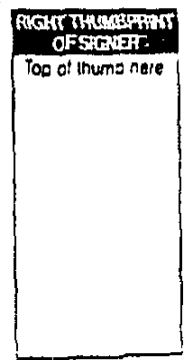
- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

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**EXHIBIT A**

All that certain real property situated in the County of Cook, State of Illinois, and described as follows:

Lot 2 in Westridge Unit No. 1, being a subdivision of part of the Southeast ¼ of Section 6, Township 42 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded July 2, 1985, as Document Number 85084774, and Certificate of Correction recorded October 3, 1986, as Document Number 86454650, in Cook County, Illinois.

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313 Haggfield Drive

Orlando Heights

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