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Loan No. A-331650 Indiana

RECORDING REQUESTED BY

AMASA G. COLBY  
CHIEF DEP. RECORDER

WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Avenue - Rm N16WC  
Milwaukee, WI 53202  
Attn: Kathleen A. Evanson

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document is  
MORTGAGE and SECURITY AGREEMENT  
NOT OFFICIAL!

THIS MORTGAGE and SECURITY AGREEMENT, Made as of the 6th day of January, 1995 between CENTIER BANK, L/k/a First Bank of Whiting, not personally but as Trustee, UTA dated July 1, 1991, known as Trust No. 1925, c/o Novogroder Companies, Inc., 875 North Michigan Avenue, 2nd Floor, Chicago, IL 60611, herein called Mortgagor, and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation, 720 E. Wisconsin Avenue, Milwaukee, WI 53202, herein called Mortgagee:

WITNESSETH, That Mortgagor, in consideration of the indebtedness herein mentioned, does hereby grant, convey, mortgage and warrant unto Mortgagee forever, with power of sale and right of entry and possession the following property (herein referred to as the "Property"):

- A. The land in the City of Merrillville, County of Lake, State of Indiana, described in Exhibit "A" attached hereto and hereby incorporated within this Mortgage and all appurtenances thereto; and
- B. All buildings and improvements now existing or hereafter erected thereon, all waters and water rights, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning equipment, water and gas fixtures, all carpeting, ranges, refrigerators, dishwashers, mini-blinds, washers and dryers, furniture, fitness equipment, easily removable equipment and all fixtures of every description belonging to Mortgagor which are or may be placed or used upon the real estate, all of which, to the extent permitted by applicable law, shall be deemed an accession to the freehold and a part of the realty as between the parties hereto; and



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- C. All articles of personal property of every kind and nature whatsoever, including but not limited to all carpeting, ranges, refrigerators, dishwashers, mini-blinds, washers and dryers, fitness equipment, furniture, easily removable equipment, now or hereafter located upon said real estate and now owned or leased or hereafter acquired or leased by Mortgagor.
- D. All Mortgagor's right, title and interest in and to that certain Reciprocal Easement and Operating Agreement dated October 1, 1993 and recorded October 12, 1993 as Document No. 93067081.
- E. All of Mortgagor's right, title and interest in and to that certain Declaration of Covenants, Conditions, Restrictions and Easements dated October 1, 1993 and recorded October 12, 1993 as Document No. 93067080.

Mortgagor agrees not to sell, transfer, assign or remove anything described in B and C above now or hereafter located on the above described real estate, without prior written consent from Mortgagee unless (i) such action does not constitute a sale or removal of any buildings or improvements or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

If any of the Property herein conveyed is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a Security Agreement and Financing Statement if permitted by applicable law and Mortgagor agrees to join with Mortgagee in the execution of any financing statements and to execute any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD the same unto Mortgagee for the purpose of securing:

(a) Payment to the order of Mortgagee of the indebtedness evidenced by a promissory note (herein referred to as "said note") of even date herewith (and any extension or renewal thereof) executed by Mortgagor for the principal sum of SIX MILLION SIX HUNDRED SEVENTY THOUSAND DOLLARS, with final maturity no later than November 1, 2012 and with interest as therein expressed, it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract.

(b) Payment of all sums that may become due Mortgagee under the provisions of this instrument or said note.

(c) Performance of each agreement of Mortgagor contained herein or in said note.

(d) Performance of each agreement of Mortgagor contained in any other security or agreement given in connection with the indebtedness, including but not limited to, assignments of leases and rents.

**TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES:**

**Payment of Debt.** To pay the indebtedness hereby secured promptly and in full compliance with the terms of said note and this instrument.

**Ownership.** That it owns the Property and has good and lawful right to convey the same; that the Property is free and clear from any and all encumbrances whatsoever, except as appears in the title evidence accepted by Mortgagee; that Mortgagor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

**Maintenance of Property and Compliance with Laws.** To keep the buildings and other improvements now or hereafter erected on the real estate in good condition and repair; not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times for the purpose of inspection, and to permit Mortgagee to conduct in a reasonable and proper manner, such tests as Mortgagee reasonably determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property.

**Insurance.** To keep the Property insured for the protection of Mortgagee in such manner, in such amounts and in such companies as Mortgagee may from time to time reasonably require or approve, and to keep the policies therefor, properly endorsed, on deposit with Mortgagee; that insurance loss proceeds (less expenses of collection) shall, at Mortgagee's option, be applied on the indebtedness, whether due or not, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default.

Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than the unpaid principal balance of said note or if the casualty occurs prior to the last two years of the term of said note, then the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty, subject to satisfaction of the following conditions:

- (a) There is then no Event of Default (as hereinafter defined), other than any non-monetary default resulting from the casualty.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as to Mortgagor's interest as owner or tenants' interests as occupants, of the Property.

- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held together with supplemental funds received from Mortgagor shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds shall be released to Mortgagor.
- (d) Mortgagee as mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the cost of restoration. In the event the estimated cost of restoration exceeds 15% of the original indebtedness, the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration.
- (e) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring against any liens arising from the restoration.
- (f) Mortgagor shall pay all costs and expenses incurred by Mortgagee including but not limited to outside legal fees, title insurance costs, reasonable Mortgagee's consultants' fees, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.
- (g) All reciprocal easement and operating agreements and any other agreements shall remain in full force and effect between the parties thereto on and after restoration of the Property or any portion thereof.

Notwithstanding the above, if the outstanding principal balance of the indebtedness is reduced or paid in full with insurance proceeds, there shall be no prepayment privilege fee required under the provisions of said note.

**Condemnation.** That it hereby assigns to Mortgagee any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property in connection with condemnation proceedings or the exercise of any power of eminent domain and the proceeds from any sale or transfer in lieu thereof; that such award and other proceeds (less expenses of collection) shall, at Mortgagee's option, be applied on said indebtedness, whether due or not, or to the restoration of the Property or be released to Mortgagor, but such application or release shall not cure or waive any default.

Notwithstanding the foregoing provision, Mortgagee agrees that if the proceeds of the condemnation award are less than the unpaid principal balance of said note or if the condemnation occurs prior to the last two years of the term of said note, then the proceeds of the condemnation award shall be applied to restoration of the Property to its condition prior to the condemnation, subject to satisfaction of the following conditions:

- (a) There is then no Event of Default, other than any non-monetary default resulting from the condemnation.

- (b) Mortgagee shall be satisfied that all proceeds of the condemnation award so held together with supplemental funds received from Mortgagor shall be sufficient to complete the restoration of the Property. Any remaining proceeds of the condemnation shall be released to Mortgagor.
- (c) Mortgagee as mortgagee shall release proceeds of the condemnation award as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the cost of restoration. In the event the estimated cost of restoration exceeds 15% of the original indebtedness, the drawings and specifications for the restoration shall be approved by Mortgagee in writing prior to commencement of the restoration.
- (d) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring against any liens arising from the restoration.
- (e) Mortgagor shall pay all costs and expenses incurred by Mortgagee including but not limited to outside legal fees, title insurance costs, reasonable Mortgagee's consultants' fees, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.
- (f) All reciprocal easement and operating agreements and any other agreements shall remain in full force and effect between the parties thereto on and after restoration of the Property or any portion thereof.

Notwithstanding the above, if the outstanding principal balance of the indebtedness is reduced or paid in full with such award or other proceeds, there shall be no prepayment privilege fee required under the provisions of said note.

**Taxes and Special Assessments.** To pay all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, said note or the indebtedness, or upon the interest of Mortgagee in the Property, this instrument, said note or the indebtedness, and to procure and deliver to Mortgagee the official receipt of the proper officer showing timely payment of all such taxes and assessments. Provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

**Other Liens.** To keep the Property free from all other mortgage liens and from all liens prior to the lien created hereby, with the exception of that certain mortgage previously granted by Mortgagor to Mortgagee on October 12, 1993 securing indebtedness in the initial principal amount of Ten Million Dollars (\$10,000,000). The creation of any other mortgage lien by either Mortgagor or George Novogroder, whether or not prior to the lien created hereby, the creation of any prior lien, the assignment or pledge by Mortgagor and/or George Novogroder of its revocable license to collect, use and enjoy rents and profits from the Property or the assignment by George Novogroder of any of

his rights or interests in the beneficial interest in the trust agreement dated July 1, 1991, known as Trust No. 1925 (the "Trust") shall constitute a default under the terms of this instrument. The term "mortgage" includes a mortgage, deed of trust, deed to secure debt or any other security interest in the Property.

**Additional Security; Prior Lien; Cross-Default.** That this Mortgage is a lien on the Property described as "Phase I & II" on Exhibit "A" attached hereto. Said Property is also subject to a lien (the "Permitted Lien") securing indebtedness in the original amount of \$10,000,000, given by Mortgagor to The Northwestern Mutual Life Insurance Company, recorded October 14, 1993 (as Document Number 93067554), in the records of Lake County, Indiana.

That in the event there shall be any default under the note, lien instrument or other documents related to the Permitted Lien, the Mortgagee, at its option, may declare the Indebtedness due and payable at once and may exercise or cause to be exercised all its rights and remedies under said Permitted Lien documents and this instrument concurrently or separately and in such order as Mortgagee may determine.

**Leases.** That there is no assignment or pledge of any leases of, or rentals or income from, the Property now in effect, and that, until the indebtedness is fully paid it (a) shall not make any such assignment or pledge to anyone other than Mortgagee (b) unless expressly permitted under another covenant in this instrument, shall not make any assignment or pledge to anyone of its hereinafter described revocable license to collect, use and enjoy the rents and profits, and (c) shall not, without the prior written approval of Mortgagee, consent to a cancellation or surrender of any of said leases having at the time an unexpired term of more than two years, or to a release or reduction of the liability of any party to such a lease except as is consistent with the usual and customary operation of the Property.

In consideration of the indebtedness hereinbefore described, Mortgagor, pursuant to an Absolute Assignment of Leases and Rents of even date herewith (the "Absolute Assignment"), has granted to Mortgagee an absolute assignment of Mortgagor's right, title and interest in said leases, including Mortgagor's right to collect, use and enjoy the rents and profits therefrom. Mortgagee, as assignee under the Absolute Assignment, in return has granted to Mortgagor a license to collect, use and enjoy said rents and profits. Such license shall be revocable by Mortgagee, as Assignee, pursuant to the terms of the assignment.

**Costs, Fees and Expenses.** To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event said note is placed in the hands of an attorney for collection, enforcement of this instrument is undertaken or, suit is brought hereon.

**Failure of Mortgagor to Act.** That should it fail to make any payment or do any act as herein provided, Mortgagee may, without obligation so to do, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto (iv) and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Mortgagor immediately and without demand with interest from date of expenditure at the Default Rate (as defined in said note). All sums so expended by Mortgagee and the interest thereon shall be added to the indebtedness and be secured by the lien of this instrument.

**Event of Default.** Any default by Mortgagor in making any required payment of the indebtedness hereby secured or any default in any provision, covenant, agreement or warranty contained herein; in said note or in any other agreement given in connection with the indebtedness (including the Absolute Assignment) or as security for the indebtedness shall, except as provided in the immediately succeeding paragraph, constitute an "Event of Default".

**Notice of Default.** Upon default in any payment required herein or in said note (a "Monetary Default"), Mortgagee shall not be required to send written notice of Monetary Default to Mortgagor prior to accelerating the indebtedness or exercising any other remedy.

Any other default hereunder or under said note (a "Non-monetary Default") shall not constitute an Event of Default unless Mortgagee shall have sent a written notice of such Non-monetary Default to Mortgagor and Mortgagor shall not have cured such Non-monetary Default within 30 days after the date on which Mortgagee shall have sent such notice of default to Mortgagor (or, if the Non-monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-monetary Default and deposited an amount sufficient to cure such Non-monetary Default in an escrow account satisfactory to Mortgagee).

For purposes of this provision, written notice shall be deemed sent five (5) days after the date on which such notice shall be deposited in the United States mail, postage prepaid, addressed to Mortgagor.

**Appointment of Receiver.** That upon commencement of any judicial proceeding to enforce any right under this instrument, including foreclosure thereof, Mortgagee, without limitation or restriction by any present or future law, and without regard to the solvency or insolvency, at that time, of any person liable for the payment of the indebtedness, and without regard to the then value of the Property or whether the same shall then be occupied by the owner of the equity of redemption as a homestead, shall have the absolute right to the appointment of a receiver of the Property and of the

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revenues, rents, profits and other income therefrom, and that said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses of such receivership and of operation, maintenance and repair of said Property, to apply the balance to the payment of any sums then due hereunder, or under said note.

**Foreclosure.** Upon the occurrence of an Event of Default, the entire unpaid indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law, **(ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED)**, and Mortgagee may institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the same or any portion thereof upon such terms as Mortgagee may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received as hereinafter provided in case of sale. Mortgagee is hereby further authorized and empowered, as agent or attorney in fact, either after or without such entry, to sell and dispose of the Property en masse or in separate parcels (as Mortgagee may think best), and all the right, title and interest of Mortgagor therein, by advertisement or in any manner provided by the laws of the state of Indiana, **(MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A HEARING PRIOR TO SUCH SALE)**, and to issue, execute and deliver a deed of conveyance, all as then may be provided by law; and Mortgagee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, costs of advertising the Property and of making said sale, and attorneys' fees as herein provided, apply to the indebtedness the amount of such indebtedness and all sums advanced by Mortgagee or the legal holder of the indebtedness, with interest from date of expenditure at the Default Rate (as defined in said note), rendering the overplus, if any, unto Mortgagor, its legal representatives or assigns; such sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity, against Mortgagor, its heirs, successors and assigns, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Mortgagor. The legal holder of the indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

**Due on Sale.** That the present ownership and management of the Property is a material consideration to Mortgagee in making the loan secured by this instrument, and Mortgagor shall not convey, or enter into any contract to convey (land contract/installment sales contract/assignment of beneficial interest in the Trust/trustee's deed or otherwise), title, or beneficial interest in the Property, to all or any part of the Property, or cause or permit a change in the proportionate ownership of Mortgagor. Except if resulting from the death or legal incompetence of any individual, any conveyance, contract to convey, or change in the proportionate ownership of Mortgagor shall constitute a default under the terms of this instrument (and Mortgagor shall give prior written notice to Mortgagee of any such default) and the whole indebtedness

hereby secured may, at the option of Mortgagee, be declared immediately due and payable.

For purposes of this instrument, a "change in the proportionate ownership of Mortgagor" shall include, without limitation: in the case of a corporation, a change in the ownership of the voting stock of such corporation; in the case of a trust, a change in the beneficial ownership and/or the title ownership of such trust; in the case of a partnership, a change in the ownership of the general partnership interests of such partnership; in the case of a joint venture, a change in the ownership of the joint venture interests of such joint venture.

Notwithstanding the above, provided there is then no default in the terms and conditions of said note or this instrument and upon prior written request from Mortgagor, Mortgagee shall not unreasonably withhold its consent to a one-time transfer of the Property provided (i) the Property shall have achieved Debt Service Coverage (as hereinafter defined) of at least 1.25 for the last full fiscal year; (ii) the purchaser thereof has a net worth determined in accordance with generally accepted accounting principles of at least \$25,000,000; (iii) the purchaser is experienced in the ownership and management of garden apartments; (iv) the purchaser assumes in writing all of the obligations and liabilities of Mortgagor under this instrument, said note and any other agreements securing, guaranteeing or related to the indebtedness evidenced thereby; (v) the purchaser and/or shareholders of such purchaser and/or the trustee and beneficiary of the trust acting as purchaser and/or the partners of such purchaser as the case may be, execute Mortgagee's then current form of Indemnity Agreement regarding hazardous substances; (vi) an updated environmental report on the Property which meets Mortgagee's then current requirements is provided to, and is satisfactory to, Mortgagee at the time of transfer and (vii) except as specifically stated in the next sentence, George Novogroder, pursuant to that certain Indemnity Agreement of even date herewith in favor of Mortgagee, shall remain liable thereunder for amounts necessary to pay costs of investigation and clean-up of hazardous materials and toxic substances on or affecting the Property and shall remain liable for all other obligations under said Indemnity Agreement. If Mortgagor shall make a one-time transfer to a Permitted Purchaser (as hereinafter defined), then and in such case, George Novogroder shall be released from the liability for amounts necessary to pay costs of investigation and clean-up of hazardous materials and toxic substances on or affecting the Property after the date of the one-time transfer to a Permitted Purchaser (the "Permitted Purchaser Transfer Date") but shall remain as indemnitor under Mortgagee's form of Indemnity Agreement regarding such hazardous materials and toxic substances on or affecting the Property prior to the Permitted Purchaser Transfer Date, and the Indemnity Agreement shall be so amended. If Mortgagor shall make a one-time transfer to a Permitted Purchaser or other purchaser approved by Mortgagee, Mortgagee shall be paid a fee equal to one percent (1%) of the then outstanding balance of said note at the time of transfer. The fee shall be paid on or before the closing date of such one-time transfer. At the time of such transfer, no modification of the interest rate or repayment terms of said note will be required.

For purposes of this covenant, "Permitted Purchaser" shall mean a purchaser who meets the above stated requirements of items (ii), (iii), (iv), and (v).

Notwithstanding the above, transfers by George Novogroder of his beneficial interest in the Trust to (a) a partnership so long as George Novogroder remains the general partner with a 51% (or more) interest in said partnership; or (b) a corporation so long as George Novogroder remains the 51% (or more) controlling shareholder in said corporation shall not constitute a conveyance or contract to convey title to the Property, nor a change in the proportionate ownership of Mortgagor.

For purposes of this provision, "Debt Service Coverage" means a number calculated by dividing Net Income Available for Debt Service (as hereinafter defined) for the immediately preceding full fiscal year by the debt service during such fiscal year under all indebtedness (including the indebtedness secured hereby) as well as any and all indebtedness by mortgagees other than Mortgagee, (the "Combined Indebtedness") secured by any portion of the Property. For purposes of the preceding sentence, "debt service" means the greater of (x) actual debt service due under the Combined Indebtedness secured by any portion of the Property and (y) debt service that would have been due and payable if the Combined Indebtedness secured by any portion of the Property were amortized over 21 years (whether or not amortization is actually required) and if interest on the Combined Indebtedness were due at the face rate shown on the notes therefor (whether or not the Combined Indebtedness require interest payments based on such face rates).

For purposes of this provision, "Net Income Available for Debt Service" means net income from the Property determined in accordance with generally accepted accounting principles during the immediately preceding full fiscal year plus the following:

- A) interest on indebtedness secured by any portion of the Property for such fiscal year; and
- B) depreciation, if any, of fixed assets constituting the Property for such fiscal year; and
- C) amortization of fees for the Combined Indebtedness, organizational costs, etc.,

less the following:

- D) a replacement reserve of \$250.00 per unit in the Property per annum; and
- E) the amount, if any, by which actual gross income during such fiscal year exceeds gross income which would have been earned from the rental income at 93% occupancy; and
- F) the amount, if any, by which the actual management fee is less than 4% of gross revenue during such fiscal year; and
- G) the amount, if any, by which the actual operating expenses (excluding real estate taxes) are less than \$2,200 per apartment unit per annum.

All adjustments to net income referenced above shall be calculated in a manner satisfactory to Mortgagee. All calculations must provide for stabilized real estate tax amounts.

**Financial Statements.** To furnish to Mortgagee, at Mortgagor's expense and within 90 days after the close of each fiscal year, annual financial statements ("Statements") on the Property and a current rent roll ("Reports"), said Reports to contain a certification by George Novogroder stating that the Statements and Reports are true and correct and that the Statements have been prepared in accordance with generally accepted accounting principles. Mortgagor acknowledges that Mortgagee requires such Statements and Reports in order to accurately record the value of the Property for financial and regulatory reporting and that, without the Statements and Reports, Mortgagee would be unable to adequately determine the value of Mortgagee's collateral securing the indebtedness evidenced by said note. If Mortgagor does not furnish, or cause to be furnished, such Statements and Reports to Mortgagee within said ninety (90) day period, then within 30 days after Mortgagee shall have mailed a written notice to Mortgagor that the Statements and/or Reports have not been received as required,

(x) interest on the unpaid principal balance of the indebtedness secured hereby shall immediately accrue and become payable at a rate equal to the sum of the Interest Rate (as defined in said note) plus one percent (1%) per annum (the "Increased Rate"); and

(y) Mortgagee may elect to obtain an independent appraisal and audit of the Property at Mortgagor's expense, and Mortgagor agrees that it will, upon request, promptly make Mortgagor's books and records regarding the Property available to Mortgagee and the person(s) performing the appraisal and audit (which obligation Mortgagor agrees can be specifically enforced by Mortgagee); provided, however, if such notice shall have previously been sent to Mortgagor on two or more occasions, then no subsequent notice shall be required and Mortgagee may obtain an independent audit and appraisal at Mortgagor's expense without notice.

The amount of the payments due under said note during the time in which the Increased Rate shall be in effect shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Increased Rate during the then remaining portion of a period of 21 years commencing with March 1, 1995. Interest shall continue to accrue and be due and payable monthly at the Increased Rate until said Statements and Reports shall be furnished to Mortgagee as required. Commencing on the date on which the Statements and Reports shall be received by Mortgagee, interest on the unpaid principal balance shall again accrue at the Interest Rate and the payments due during the remainder of the term of said note shall be changed to an amount which is sufficient to amortize the then unpaid principal balance at the Interest Rate during the then remaining portion of a period of 21 years commencing with March 1, 1995.

Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense at any time.

**Deposits by Mortgagor.** To deposit funds with Mortgagee to be held with interest credited thereon as provided below on funds so deposited in monthly instalments in amounts estimated by Mortgagee from time to time to be necessary to assure the payment of real estate taxes and special assessments relating to the Property as they become due. In the event of default, Mortgagee shall henceforth have the option to similarly require Mortgagor to deposit funds to assure the payment of fire and other hazard insurance premiums. If at any time the funds so held by Mortgagee shall be insufficient to pay any of said expenses, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real estate taxes and assessments. The average daily balance of the funds so held by Mortgagee during a month (the "Applicable Month") shall be credited with interest on the first day of the following month at a rate equal to the 30-Day United States Treasury Bill Yield.

As used herein, the "30-Day United States Treasury Bill Yield" means the "Ask Yield" for United States Treasury bills maturing the closest to 30 days from the last day of the applicable month as reported in the Wall Street Journal or a similar yield as reasonably determined by Mortgagee.

**Liens Discharged by Proceeds.** That Mortgagee shall be subrogated to the lien of any and all prior encumbrances, liens or charges paid and discharged from the proceeds of said note, and even though said prior liens have been released of record, the repayment of said note shall be secured by such liens on the portion of the Property affected thereby to the extent of such payments, respectively.

**Modification of Terms.** That without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the indebtedness or for performance of any obligation contained herein, and that without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said note, and without notice or consent: (a) release any person liable for payment of all or any part of the indebtedness or for performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Property.

**Exercise of Options.** That whenever by the terms of this instrument or of said note Mortgagee is given any option, such option may be exercised when the right accrues, or at any time thereafter, and no acceptance by Mortgagee of payment of indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

**Nature and Succession of Agreements.** That each of the provisions, covenants and agreements contained herein are joint and several, and shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, lessees and assigns of the parties hereto, respectively, and the term "Mortgagee" shall include the owner and holder of said note.

**Legal Enforceability.** No provision of this instrument or said note shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is herein or in said note provided for or shall be adjudicated to be so provided for in this instrument or in said note, the provisions of this paragraph shall govern, and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

**Limitation of Liability.** That notwithstanding any provision contained in this instrument or said note to the contrary, if Mortgagee shall take action to enforce the collection of the indebtedness evidenced by said note or this instrument (the "Indebtedness") its recourse shall, except as provided below, be limited to the proceeds from the sale of the Property, and the proceeds realized by Mortgagee in exercising its rights and remedies (i) under the Absolute Assignment, (ii) under the Guarantee of Recourse Obligations of even date herewith executed by George Novogroder for the benefit of Mortgagee, (iii) under other separate guarantees, if any, (iv) under any other security or agreement given in connection with the Indebtedness and (v) in any other collateral securing the Indebtedness. If such proceeds are insufficient to pay the Indebtedness, Mortgagee will never institute any action, suit, claim or demand in law or in equity against Mortgagor for or on account of such deficiency; provided, however, that the provisions contained in this paragraph shall not in any way affect or impair the validity or enforceability of the Indebtedness or this instrument; and provided, further, that the provisions contained in this paragraph shall not prevent the Mortgagee from seeking and obtaining a judgment against Mortgagor and Mortgagor shall be personally liable to the extent of (a) rents or other income from the Property from and after the date of any monetary default or notice of non-monetary default to the extent not applied to payment of operating expenses of the Property in the ordinary course of business under said note or this instrument remaining uncured on the date of the foreclosure sale of the Property pursuant to the Lien Instrument or the conveyance of the Property to Mortgagee hereof in lieu of foreclosure, (b) amounts necessary to repair any damage to the Property to the extent caused by willful acts or omissions of Mortgagor and/or George Novogroder and/or their agents, to the extent not covered by insurance, (c) insurance loss and condemnation proceeds released to Mortgagor and/or George Novogroder, but not applied in accordance with any agreement between Mortgagor and/or George Novogroder and Mortgagee as to their application, (d) to the extent provided under the Indemnity Agreement of even date herewith, amounts necessary to pay costs of investigation and clean-up of hazardous materials and toxic substances on or affecting the Property, (e) actual damages suffered by Mortgagee as a result of fraud or misrepresentation by Mortgagor and/or George Novogroder or any other person or entity acting as agent of Mortgagor and/or George Novogroder regarding material matters to which Mortgagee had a right to rely on in connection with the Indebtedness, and (f) real estate taxes, special assessments and insurance premiums with respect to the

Property to the extent not covered by amounts in the real estate tax escrow account either paid by Mortgagee and not reimbursed prior to, or remaining due or delinquent on, either (i) the later of (A) the date of a foreclosure sale of the Property pursuant to the Lien Instrument or (B) the date on which Mortgagee's statutory right of redemption shall expire or be waived or (ii) the date of the conveyance of the Property to Mortgagee hereof in lieu of foreclosure.

**Waiver of Liability.** That this instrument is executed by Centier Bank, f/k/a First Bank of Whiting, not personally, but as Trustee, UTA dated July 1, 1991, known as Trust No. 1925, in the exercise of the power and authority conferred upon and vested in it as such Trustee, (said Trustee hereby warrants that it possesses full power and authority to execute this instrument); that nothing contained in this instrument or said note shall be construed as creating any personal liability on said Trustee to pay the Indebtedness or to perform any covenants contained in this instrument, either express or implied, all such liability being expressly waived; however, this waiver shall in no way affect the personal liability of any other obligor, endorser or guarantor of said note. Notwithstanding any provision contained in this instrument or said note to the contrary, Mortgagee agrees that in the event it shall take action to enforce the collection of the Indebtedness, its remedy shall be limited to the proceeds from the sale of the Property, and the proceeds realized by Mortgagee in exercising its rights and remedies under the Absolute Assignment, under the Guarantee of Recourse Obligations of even date herewith executed by George Novogroder for the benefit of Mortgagee, under other separate guarantees, if any, under any other security or agreement given in connection with the Indebtedness, and in any other collateral securing the Indebtedness. If such proceeds are insufficient to pay the Indebtedness, Mortgagee will never institute any action, suit, claim or demand in law or in equity against Trustee for or on account of such deficiency; provided, however, that the provisions contained in this paragraph shall not in any way affect or impair the validity or enforceability of the Indebtedness or this instrument.

**Captions.** The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, nor in any way affect this instrument.

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

CENTIER BANK, f/k/a First Bank of Whiting,  
not personally but as Trustee, UTA dated July  
1, 1991, known as Trust No. 1925

By: SEE ATTACHED  
SIGNATURE PAGE

Attest: \_\_\_\_\_

STATE OF

)  
)ss.  
)

COUNTY OF

Before me \_\_\_\_\_ a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 1995,  
personally appeared \_\_\_\_\_ and \_\_\_\_\_  
the \_\_\_\_\_ President and \_\_\_\_\_ Secretary respectively, of CENTIER BANK,  
f/k/a First Bank of Whiting, not personally but as Trustee, UTA dated July 1, 1991,  
known as Trust No. 1925 and acknowledged the execution of the foregoing instrument as  
the act and deed of said corporation.

My commission expires:

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



This instrument was prepared by Judith L. Perkins, Attorney, for The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202.



Exhibit "A"  
Description of Property

Description of Property located in the City of Merrillville, County of Lake, State of Indiana, to wit:

PARCEL E (PHASE III)

DESCRIPTION: Part of the Polo Club Apartments, A Planned Unit Development in the Town of Merrillville, as recorded in Plat Book 70, page 50 in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Commencing at the Southwest corner of said Polo Club Apartments; thence North 00° 05' 30" West, along the boundary line of said Polo Club Apartments, a distance of 120.01 feet; thence South 89° 40' 00" East, along the boundary line of said Polo Club Apartments, a distance of 92.00 feet to the point of beginning; thence North 00° 05' 30" West, along the boundary line of said Polo Club Apartments, a distance of 550.00 feet; thence South 89° 40' 00" East, along the boundary line of said Polo Club Apartments, a distance of 492.48 feet; thence South 00° 03' 30" West, a distance of 39.59 feet; thence North 90° 00' 00" East, a distance of 654.60 feet; thence South 00° 00' 00" West, a distance of 443.93 feet; thence North 90° 00' 00" West, a distance of 48.00 feet; thence North 00° 00' 00" East, a distance of 266.72 feet; thence North 90° 00' 00" West, a distance of 197.58 feet; thence South 00° 00' 00" East, a distance of 122.79 feet; thence North 90° 00' 00" West, a distance of 450.28 feet; thence South 00° 00' 00" East, a distance of 330.17 feet to a point on the South boundary line of said Polo Club Apartments; thence North 89° 40' 00" West, along the South boundary line of said Polo Club Apartments, a distance of 450.10 feet; thence North 00° 05' 30" West a distance of 120.01 feet to the point of beginning, containing 11.363 acres, more or less, all in the Town of Merrillville, Lake County, Indiana.

PARCEL F (ACCESS ROAD TO GRANT STREET)

DESCRIPTION: Part of the Polo Club Apartments, A Planned Unit Development in the Town of Merrillville, as recorded in Plat Book 70, page 50 in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Commencing at the Southeast corner of said Polo Club Apartments; thence North 89° 40' 00" West, along the South boundary line of said Polo Club Apartments, a distance of 70.00 feet to a point on the West right of way line of Grant Street as shown on said plat of the Polo Club Apartments; thence North 00° 01' 30" East, along the West right of way line of Grant Street, a distance of 218.83 feet to the point of beginning; thence North 90° 00' 00" West a distance of 505.85 feet to a point of curve; thence Northwesterly, along a curve concave to the Northeast and having a radius of 152.00 feet, an arc distance of 114.54 feet (the chord of said curve bears North 68° 24' 48" West a distance of 111.84 feet; thence North 00° 00' 00" East a distance of 36.23 feet; thence Southeasterly, along a curve concave to the Northeast and having a radius of 128.00 feet an arc distance of 121.40 feet (the chord of said curve bears South 62° 49' 46" East, a distance of 116.90 feet); thence North 90° 00' 00" East a distance of 505.86 feet to a point on the West right of way line of Grant Street, thence South 00° 01' 30" West, along the West right of way line of Grant Street, a distance of 24.00 feet to the point of beginning, containing 0.343 acres, more or less, all in the Town of Merrillville, Lake County, Indiana.

**PARCEL 1:**

Part of the final site plan of the Polo Club Apartments, a Planned Unit Development in the Town of Merrillville, as recorded in Plat Book 70 page 50, in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Beginning at the Northwest corner of said Polo Club Apartments, said point being on a line that is 40 feet South of and parallel to the South right-of-way line of U.S. Highway No. 30; thence South 89 degrees 08 minutes 15 seconds East, along the boundary line of said Polo Club Apartments, a distance of 37.00 feet; thence South 00 degrees 02 minutes 41 seconds West, a distance of 424.51 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 48.28 feet; thence North 60 degrees 00 minutes 00 seconds East, a distance of 49.66 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 33.61 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 91.76 feet to a point on the East boundary line of said Polo Club Apartments that lies 363.31 feet South of the Northeast corner of said Polo Club Apartments; thence South 00 degrees 02 minutes 41 seconds West, along the boundary line of said Polo Club Apartments, a distance of 1323.07 feet; thence South 89 degrees 40 minutes 00 seconds East, along the boundary line of said Polo Club Apartments, a distance of 1007 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 818.46 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 233.00 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 38.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 421.58 feet; thence North 00 degrees 03 minutes 30 seconds East along the boundary line of said Polo Club Apartments and said line extended South, a distance of 1144.94 feet; thence South 89 degrees 36 minutes 49 seconds East, along the boundary line of said Polo Club Apartments, a distance of 433.34 feet; thence North 00 degrees 02 minutes 41 seconds East, along the boundary line of said Polo Club Apartments, a distance of 1328.14 feet to the point of beginning, all in Merrillville, Lake County, Indiana.

**PARCEL 2:**

Together with and subject to the non-exclusive easements for ingress and egress, parking and for public utilities over all the easements created for such purposes in the Reciprocal Easement and Operating Agreement dated October 1, 1993 and recorded October 12, 1993 as Document No. 93067081, upon the terms, covenants, provisions and obligations therein provided.

**PARCEL A (ACCESS TO U.S. 30 FRONTAGE ROAD)**

**DESCRIPTION:** Part of the Final Site Plan of the Polo Club Apartments, A Planned Unit Development in the Town of Merrillville, as recorded in Plat Book 70, page 50 in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Beginning at the Northwest corner of said Polo Club Apartments, said point being on a line that is 40 feet South of and parallel to the South right of way line of U.S. Highway No. 30; thence South 89 degrees 08 minutes 15 seconds East, along the boundary line of said Polo Club Apartments, a distance of 37.00 feet; thence South 00 degrees 02 minutes 41 seconds West a distance of 1054.03 feet to a point of curve; thence Southeasterly, along a curve concave to the East and having a radius of 191.50 feet, an arc distance of 100.42 feet to the point of tangent of said

curve (the chord of said curve bears South 14 degrees 58 minutes 30 seconds East, a distance of 99.27 feet; thence South 30 degrees 00 minutes 00 seconds East a distance of 206.44 feet; thence North 89 degrees 36 minutes 49 seconds West a distance of 166.09 feet; thence North 00 degrees 02 minutes 41 seconds East, along the boundary line of said Polo Club Apartments, a distance of 1328.14 feet to the point of beginning, all in the Town of Merrillville, Lake County, Indiana.

**PARCEL B (CLUBHOUSE PROPERTY)**

**DESCRIPTION:** Part of the Final Site Plan of the Polo Club Apartments, A Planned Unit Development in the Town of Merrillville, as recorded in Plat Book 70, page 50 in the Office of the Recorder of Lake County, Indiana, more particularly described as follows: Commencing at the Northwest corner of said Polo Club Apartments, said point being on a line that is 40 feet South of and parallel to the South right of way line of U.S. Highway No. 30; thence South 89 degrees 08 minutes 15 seconds East, along the boundary line of said Polo Club Apartments, a distance of 220.02 feet; thence South 00 degrees 02 minutes 41 seconds West, along the boundary line of said Polo Club Apartments, a distance of 363.31 feet to the point of beginning; thence continue South 00 degrees 02 minutes 41 seconds West, along the boundary line of said Polo Club Apartments, a distance of 963.00 feet; thence North 89 degrees 36 minutes 49 seconds West, a distance of 53.91 feet; thence North 30 degrees 00 minutes 00 seconds West a distance of 206.44 feet to a point of curve; thence Northwesterly, along a curve concave to the East and having a radius of 191.50 feet, an arc distance of 100.42 feet to the point of tangent of said curve (the chord of said curve bears North 14 degrees 58 minutes 39 seconds West, a distance of 99.27 feet); thence North 00 degrees 02 minutes 41 seconds East, a distance of 629.52 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 48.28 feet; thence North 60 degrees, 00 minutes 00 seconds East, a distance of 49.66 feet; thence North 00 degrees 00 minutes 00 seconds East, a distance of 33.61 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 91.76 feet to the point of beginning; all in the Town of Merrillville, Lake County, Indiana.



THIS MORTGAGE is executed by Centier Bank, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said CENTIER BANK hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said not contained shall be construed as creating any liability on the said First Party or on said CENTIER BANK personally to pay the said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the First Party and its successors and said CENTIER BANK personally are concerned, the legal holder or holders of said note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said not provided or by action to enforce the personal liability of the guarantor, if any.

Nothing contained herein shall be construed as creating any liability on CENTIER BANK, personally, under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other federal, state or local rule or regulation. CENTIER BANK, personally, is not a "Transferor" under the Act or regulation. CENTIER BANK, personally, is not a "Transferor" under the Act and makes no representations or warranties concerning any possible environmental defects. In making any representation or warranty herein, the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any representation or warranty in this instrument.

IN WITNESS WHEREOF, said CENTIER BANK has caused its name to be signed to these presents by its Vice President and Senior Trust Officer and its corporate seal to be hereunto affixed and attested by its Assistant Vice President and Trust Officer, the day and year first above written.



CENTIER BANK, as Trustee aforesaid and not personally,  
BY: [Signature]  
Daniel H. Brubeck, Vice President and Senior Trust Officer

ATTEST:

[Signature]  
Carolyn A. Mayer, Assistant Vice President and Trust Officer

STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF LAKE )

I, Patricia M. Miller, a Notary Public in and for said County and State, do hereby certify that Carolyn M. Robinson, of CENTIER BANK, a state bank organized under the state banking laws of Indiana, and Carolyn A. Mayer, of said state bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Senior Trust Officer and Assistant Vice President and Trust Officer respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary acts, and as the free and voluntary act of said state bank as Trustee, for the uses and purposes therein set forth; and the said Carolyn A. Mayer, did also then and there acknowledge that he, as custodian of the corporate seal of said state bank, did affix the said corporate seal of said state bank to said instrument as his own free and voluntary act, and as the free and voluntary act of said state bank, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 6th day of January, 1995.

My Commission Expires: March 3, 1995  
County of Residence: Lake

[Signature]  
Patricia M. Miller, Notary Public