

WHEN RECORDED MAIL TO

96064413

ROBERT B. JOSELOW, ESQ.
SEEGER POTTER RICHARDSON
LUXTON JOSELOW & BROOKS, L.L.P.
2121 K Street, N.W., Suite 700
Washington, D.C. 20037

LAKE COUNTY
FILED FOR RECORD
Loan No. 704674068

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MARSHALL GIBBONS
RECORDER

19

HOLD FOR FIRST AMERICAN TITLE

Sub 96064415-FC 18380

Count # 96064414

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MULTIFAMILY MORTGAGE,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT
(Security for Construction Loan Agreement)**

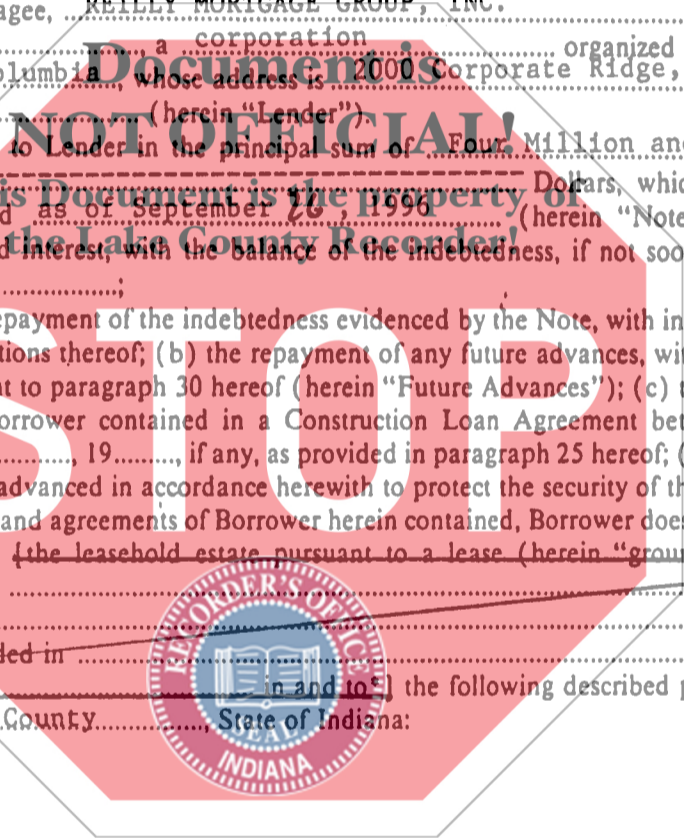
as of
THIS MORTGAGE (herein "Instrument") is made this 26 day of September
1996, between the Mortgagor/Grantor, THE O'BRIEN FAMILY LIMITED PARTNERSHIP, an Illinois
limited partnership,
whose address is c/o Arnel, Inc., 629 Green Bay Road, Wilmette, Illinois 60091
(herein "Borrower"), and the Mortgagee, REILLY MORTGAGE GROUP, INC.
a corporation organized and existing under
the laws of the District of Columbia, whose address is 2000 Corporate Ridge, McLean,
Virginia 22102 (herein "Lender").

WHEREAS Borrower is indebted to Lender in the principal sum of Four Million and no/100ths
(\$4,000,000.00) Dollars, which indebtedness is
evidenced by Borrower's note dated as of September 26, 1996 (herein "Note"), providing for
monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and
payable on October 1, 2006;

To SECURE TO LENDER (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, and
all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon,
made by Lender to Borrower pursuant to paragraph 30 hereof (herein "Future Advances"); (c) the performance of
the covenants and agreements of Borrower contained in a Construction Loan Agreement between Lender and
Borrower dated N/A, 19 , if any, as provided in paragraph 25 hereof; (d) the payment of
all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; and
(e) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage,
grant, convey and assign to Lender ~~(the leasehold estate pursuant to a lease (herein "ground lease") dated~~
 between
and
recorded in
in and to the following described property located in
 Lake County State of Indiana:

* Delete bracketed material if not completed.

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.



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TOGETHER with all buildings, improvements, and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, panelling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants, and.....

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.....; all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the real property covered by this Instrument; and all of the foregoing, together with said property (or the leasehold estate in the event this Instrument is on a leasehold) are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Property (and, if this Instrument is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Uniform Covenants. Borrower and Lender covenant and agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Property, (b) the yearly ground rents, if any, (c) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to paragraph 5 hereof, (d) the yearly premium installments for mortgage insurance, if any, and (e) if this Instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Borrower. Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

The Funds shall be held in an institution(s) the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in this Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing said account or for verifying said assessments and bills, unless Lender pays Borrower interest, earnings or profits on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Instrument that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to paragraph 8 hereof; (v) principal of advances made pursuant to paragraph 8 hereof; (vi) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Instrument in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 8 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

4. CHARGES; LIENS. Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property.

5. HAZARD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require and in such amounts and for such periods as Lender shall require. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (b) to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof (subject, however, to the rights of the lessor under the ground lease if this Instrument is on a leasehold).

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to paragraph 27 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all

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~~or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall provide for professional management of the Property by a residential rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.~~

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If this Instrument is on a leasehold, Borrower (i) shall comply with the provisions of the ground lease, (ii) shall give immediate written notice to Lender of any default by lessor under the ground lease or of any notice received by Borrower from such lessor of any default under the ground lease by Borrower, (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable, (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the ground lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings and (v) shall within thirty days after request by Lender obtain from the lessor under the ground lease and deliver to Lender the lessor's estoppel certificate required thereunder, if any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the ground lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the ground lease creating said estate and interests, and Borrower shall not, without the express written consent of Lender, alter or amend said ground lease. Borrower covenants and agrees that there shall not be a merger of the ground lease, or of the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger; if Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become a lien on such fee estate.

~~7. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.~~

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~~8. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in paragraph 5 hereof, and (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease.~~

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Any amounts disbursed by Lender pursuant to this paragraph 8, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 8 shall require Lender to incur any expense or take any action hereunder.

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~~9. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property.~~

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~~10. BOOKS AND RECORDS. Borrower shall keep and maintain at all times at Borrower's address stated below, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender, within one hundred and twenty days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid.~~

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11. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of lessor under the ground lease.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof, with the balance, if any, to Borrower. Unless Borrower and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

12. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

13. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. **ESTOPPEL CERTIFICATE.** Borrower shall within ten days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

15. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in paragraph 27 of this Instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 27 of this Instrument.

16. **LEASES OF THE PROPERTY.** As used in this paragraph 16, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower will not lease any portion of the Property for non-residential use except with the prior written approval of Lender. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. All leases of the Property shall specifically provide that such leases are subordinate to this Instrument; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornments. Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property providing for a term of three years or more, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-offs, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

Upon Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all leases now existing or hereafter made of all or any part of the Property and all security deposits made by tenants in connection with such leases of the Property. Upon assignment by Borrower to Lender of any leases of the Property, Lender shall have all the rights and powers possessed by Borrower prior to such assignment and Lender shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Lender's sole discretion.

17. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

18. **ACCELERATION IN CASE OF BORROWER'S INSOLVENCY.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 27 of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to paragraph 8 hereof.

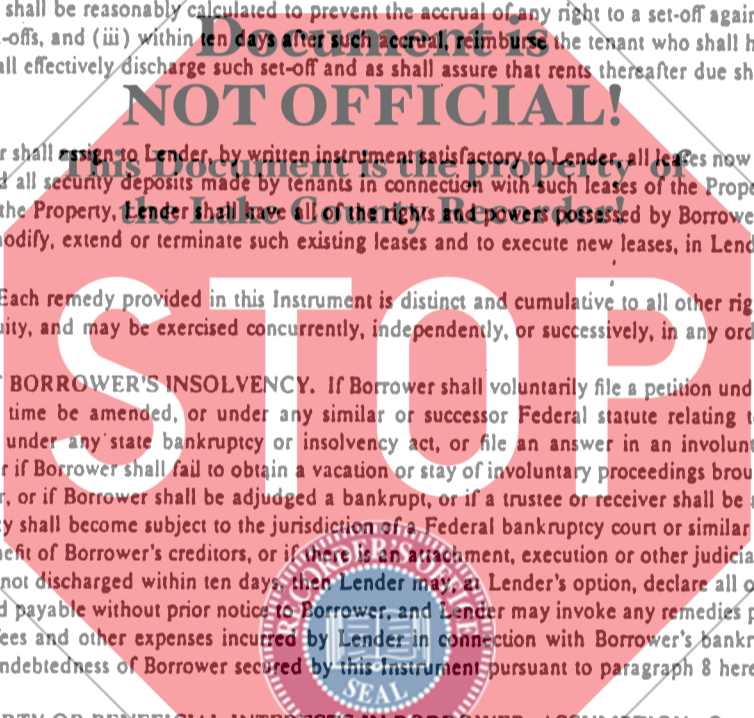
~~19. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER, ASSUMPTION.** On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 27 of this Instrument. This option shall not apply in case of~~

- ~~(a) transfers by devise or descent or by operation of law upon the death of a joint tenant or a partner;~~
- ~~(b) sales or transfers when the transferee's creditworthiness and management ability are satisfactory to Lender and the transferee has executed, prior to the sale or transfer, a written assumption agreement containing such terms as Lender may require, including, if required by Lender, an increase in the rate of interest payable under the Note;~~
- ~~(c) the grant of a leasehold interest in a part of the Property of three years or less (or such longer lease term as Lender may permit by prior written approval) not containing an option to purchase (except any interest in the ground lease, if this Instrument is on a leasehold);~~
- ~~(d) sales or transfers of beneficial interests in Borrower provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Borrower, but excluding sales or transfers under subparagraphs (a) and (b) above, do not result in more than 49% of the beneficial interests in Borrower having been sold or transferred since commencement of amortization of the Note; and~~
- ~~(e) sales or transfers of fixtures or any personal property pursuant to the first paragraph of paragraph 6 hereof.~~

~~20. **NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given by mailing such notice by certified mail addressed to Borrower at Borrower's address stated below or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Instrument or in the Note shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.~~

21. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 19 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

22. **UNIFORM MULTIFAMILY INSTRUMENT; GOVERNING LAW; SEVERABILITY.** This form of multifamily instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property and related fixtures and personal property. This Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this



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Instrument and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

23. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

24. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

25. CONSTRUCTION LOAN PROVISIONS. Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefor.

From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may accelerate the sums secured by this Instrument and invoke those remedies provided in paragraph 27 hereof, or (iii) may do both. If, after the commencement of amortization of the Note, the Note and this Instrument are sold by Lender, from and after such sale the Construction Loan Agreement shall cease to be a part of this Instrument and Borrower shall not assert any right of set-off, counterclaim or other claim or defense arising out of or in connection with the Construction Loan Agreement against the obligations of the Note and this Instrument.

26. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all the rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in paragraph 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph 26 as the same become due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only; provided, however, that the written notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph 26, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents. Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph 26.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to paragraph 8 hereof. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

Non-Uniform Covenants. Borrower and Lender further covenant and agree as follows:

27. ACCELERATION; REMEDIES. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this Instrument, Lender at Lender's option may declare all of the sums secured by this Instrument to be immediately due and payable without further demand and may foreclose this Instrument by judicial proceeding and may invoke any other remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorney's fees, costs of documentary evidence, abstracts and title reports.

28. RELEASE. Upon payment of all sums secured by this Instrument, Lender shall release this Instrument. Borrower shall pay Lender's reasonable costs incurred in releasing this Instrument.

29. WAIVER OF VALUATION AND APPRAISEMENT. Borrower hereby waives all right of valuation and appraisal.

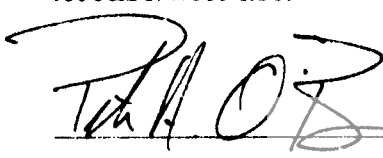
30. FUTURE ADVANCES. Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Instrument, not including sums advanced in accordance herewith to protect the security of this Instrument, exceed the original amount of the Note (US \$4,000,000.00.....) plus the additional sum of US \$ 0.....

The attached Exculpation Rider to Note and Security Instrument and Supplemental Rider to Multifamily Security Instrument dated the date hereof are incorporated herein by this reference.

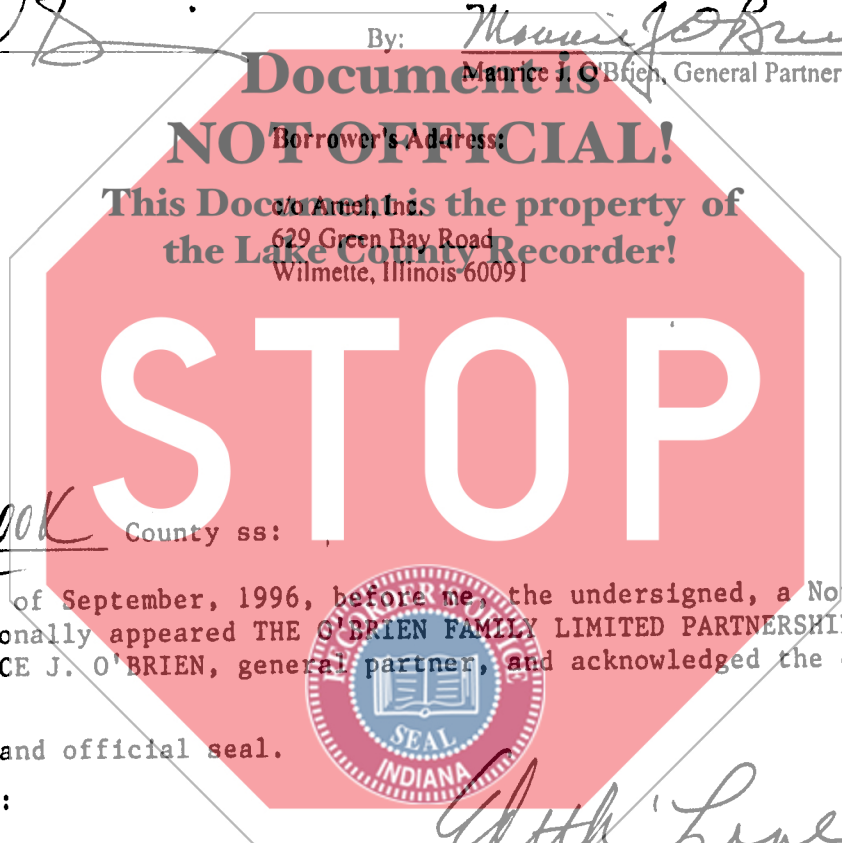
IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

ATTEST/WITNESS:

THE O'BRIEN FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership



By: Maurice J. O'Brien [SEAL]
Maurice J. O'Brien, General Partner



STATE OF ILLINOIS, COOK County ss:

On this 24th day of September, 1996, before me, the undersigned, a Notary Public in and for said County, personally appeared THE O'BRIEN FAMILY LIMITED PARTNERSHIP, a limited partnership, by MAURICE J. O'BRIEN, general partner, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

My Commission Expires:



Edith Love
Notary Public

OFFICIAL SEAL
Edith Love
Notary Public, State of Illinois
My Commission Expires 7/25/99

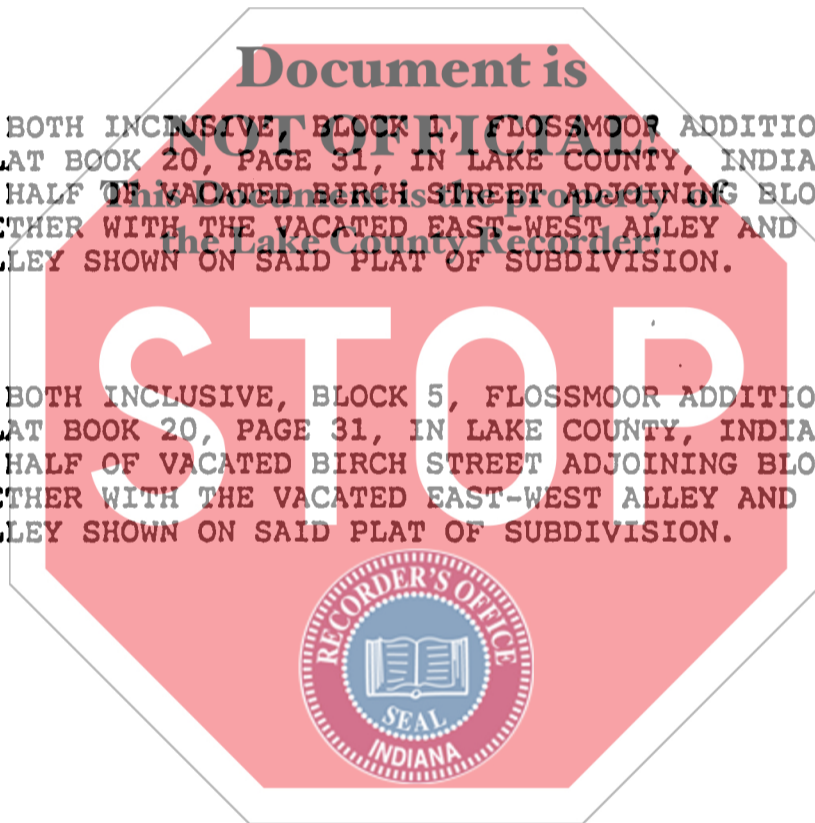
EXHIBIT A
LEGAL DESCRIPTION
FOR
MCLAUGHLIN APARTMENTS

PARCEL 1:

LOTS 1 TO 38, BOTH INCLUSIVE, BLOCK 1, FLOSSMOOR ADDITION TO HAMMOND, AS SHOWN IN PLAT BOOK 20, PAGE 31, IN LAKE COUNTY, INDIANA, TOGETHER WITH THE EAST HALF OF VACATED BIRCH STREET ADJOINING BLOCK 1 ON THE WEST, AND TOGETHER WITH THE VACATED EAST-WEST ALLEY AND THE VACATED NORTH-SOUTH ALLEY SHOWN ON SAID PLAT OF SUBDIVISION.

PARCEL 2:

LOTS 1 TO 32, BOTH INCLUSIVE, BLOCK 5, FLOSSMOOR ADDITION TO HAMMOND, AS SHOWN IN PLAT BOOK 20, PAGE 31, IN LAKE COUNTY, INDIANA, TOGETHER WITH THE WEST HALF OF VACATED BIRCH STREET ADJOINING BLOCK 5 ON THE EAST, AND TOGETHER WITH THE VACATED EAST-WEST ALLEY AND THE VACATED NORTH-SOUTH ALLEY SHOWN ON SAID PLAT OF SUBDIVISION.



AFTER RECORDING, PLEASE RETURN TO:

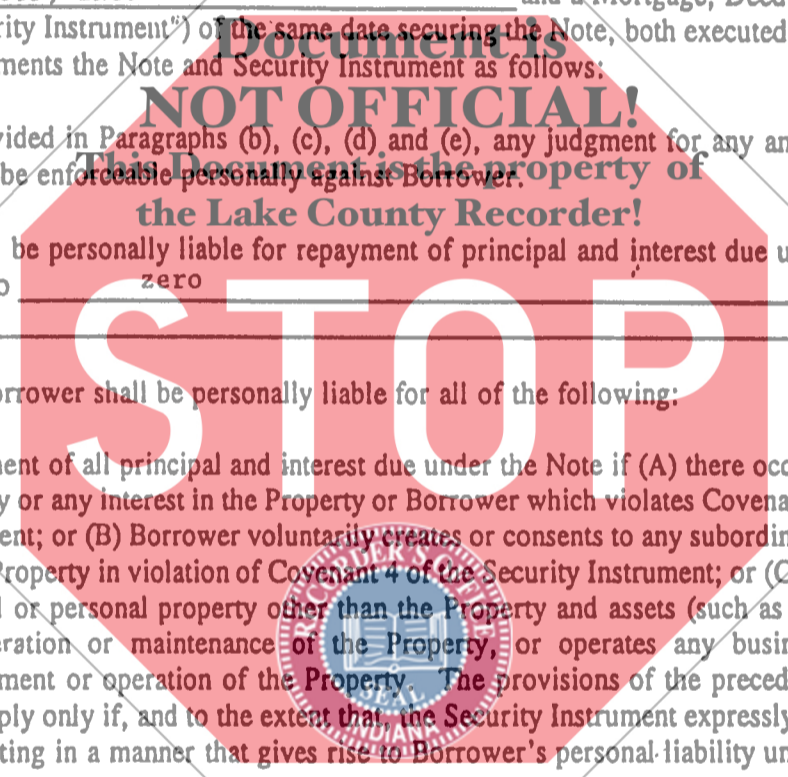
**ROBERT B. JOSELOW, ESQ.
SEEGER POTTER RICHARDSON
LUXTON JOSELOW & BROOKS, L.L.P.
2121 K STREET, N.W., SUITE 700
WASHINGTON, D.C. 20037**



EXCULPATION RIDER TO NOTE AND SECURITY INSTRUMENT

This Rider is attached to and incorporated into a Multifamily Note (the "Note") payable to REILLY MORTGAGE GROUP, INC. and a Mortgage, Deed of Trust or Deed to Secure Debt (the "Security Instrument") of the same date securing the Note, both executed by the undersigned, and amends and supplements the Note and Security Instrument as follows:

- (a) Except as provided in Paragraphs (b), (c), (d) and (e), any judgment for any amount due under the Note shall not be enforceable personally against Borrower.
- (b) Borrower shall be personally liable for repayment of principal and interest due under the Note in an amount equal to zero
- (c) In addition, Borrower shall be personally liable for all of the following:
 - (1) Repayment of all principal and interest due under the Note if (A) there occurs a transfer of the Property or any interest in the Property or Borrower which violates Covenant 19 of the Security Instrument; or (B) Borrower voluntarily creates or consents to any subordinate mortgage or lien on the Property in violation of Covenant 4 of the Security Instrument; or (C) Borrower acquires any real or personal property other than the Property and assets (such as accounts) related to the operation or maintenance of the Property, or operates any business other than the management or operation of the Property. The provisions of the preceding clause ~~(b)(2)(C)*~~ shall apply only if, and to the extent that, the Security Instrument expressly prohibits Borrower from acting in a manner that gives rise to Borrower's personal liability under such clause.
 - (2) Repayment of principal and interest due under the Note in an amount equal to any loss, damage or cost to Lender resulting from fraud or intentional material misrepresentation or intentional material omission by Borrower, its employees or agents in connection with applying for or obtaining the loan evidenced by the Note.
 - (3) Repayment of principal and interest due under the Note in an amount equal to any loss, damage or cost to Lender resulting from any failure of Borrower, during the existence of any monetary or other material default under the Note or Security Instrument, to deliver to Lender upon written demand all books and records relating to the Property.
 - (4) Repayment of principal and interest due under the Note in an amount equal to (A) any rents or revenues of the Property received by Borrower after the occurrence of any monetary or other material default under the Note or Security Instrument (whether such default is intentional or unintentional, and regardless of whether Lender has notified Borrower of such default) which have been used for any purpose other than to pay the costs and expenses of operating and maintaining the Property, unless the amount of all such rents and revenues not so used is deposited in the Property's bank account within ten days after written demand by Lender and is thereafter used only to pay such costs and expenses; and (B) any insurance proceeds, condemnation awards or tenant security deposits which are applied by Borrower in a manner not permitted by the Security Instrument and applicable law. For the purposes of this paragraph ~~(b)(5)*~~, the costs and expenses of operating and maintaining the Property shall include, without limitation, the payment of principal, interest and any other amounts payable under the Note or Security Instrument.



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* (c) (1) (C)
** (c) (4)

(5) Repayment of principal and interest due under the Note in an amount equal to the costs of replacing and installing any fixture, equipment, machinery or appliance in or on the Property which is removed from the Property by Borrower without being replaced with an item of like kind.

(d) In addition, Borrower shall be personally liable for the repayment of all principal and interest due under the Note if there occurs a breach under that certain Debt Restriction Agreement dated even date herewith between Borrower and Lender.

(e) In addition, Borrower shall be personally liable for any costs and expenses incurred by Lender in connection with collecting any amounts for which Borrower is personally liable under this Rider. Such costs and expenses shall include without limitation attorneys' fees and the cost of conducting an independent audit of Borrower's books and records to determine any amounts owed under this Rider.

(f) Nothing contained in this Rider shall be construed to (1) impair any guaranty of the debt evidenced by the Note, (2) release or impair that debt, or (3) preclude the holder of the Note from exercising any rights against the Property or any other security or pursuing any other rights available to Lender under the Note, the Security Instrument or applicable law.

Borrower has signed this Rider for the purpose of identifying it as part of the Note and Security Instrument.

BORROWER:



THE O'BRIEN FAMILY LIMITED PARTNERSHIP,
an Illinois limited partnership

By:

Maurice J. O'Brien [SEAL]
Maurice J. O'Brien, General Partner

SUPPLEMENTAL RIDER TO MULTIFAMILY SECURITY INSTRUMENT

(Conventional Cash Mortgage Purchase Program)

This Rider, dated as of September 26, 1996, is attached and incorporated into the Instrument of the same date, executed by the undersigned to:

REILLY MORTGAGE GROUP, INC.

Name of Lender

Document is NOT OFFICIAL!

and amends and supplements the Instrument as follows:

A. Covenants 6, 7, 8, 9, 10, 19 and 20 of the Instrument are amended and restated in their entirety to read as follows:

This Document is the property of the Lake County Recorder!

- 6. **PRESERVATION AND MAINTENANCE OF PROPERTY; COMPLIANCE WITH LAWS; LEASEHOLDS.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary, (e) shall provide for professional management of the Property by a residential rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (f) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (g) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

Borrower agrees and covenants that Borrower will take appropriate measures to prevent and will not engage in or knowingly permit any illegal activities at the Property, and that Borrower will comply with all laws, ordinances, regulations and requirements of any governmental body or authority relating to the Property including, without limitation, all laws, ordinances, regulations and requirements pertaining to health and life safety, construction of improvements on the Property, zoning and land use. Borrower hereby represents and warrants to Lender that no portion of the Property has been or will be purchased with the proceeds of any illegal activity.

If this Instrument encumbers a leasehold, Borrower (i) shall comply with the provisions of the lease, (ii) shall give immediate written notice to Lender of any alleged default by lessor under the lease or of any notice received by Borrower from such lessor of any alleged default under the lease, (iii) shall exercise on a timely basis any option to renew or extend the lease and immediately give written confirmation thereof to Lender, (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings and (v) shall within thirty days after request by Lender obtain from the lessor under the lease and deliver to Lender the lessors's estoppel certificate required thereunder, if any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the lease.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the lease creating said estate and interests, and Borrower shall not, without the express written consent of Lender, alter or amend said lease. Borrower and Lender intend and Borrower covenants and agrees that there shall not be a merger of the lease, or of the leasehold estate created thereby, with the fee estate covered by the lease by reason of said leasehold estate or said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger; if Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action become a lien on such fee estate.

7. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property nor convert or permit the conversion of the Property to a condominium or housing cooperative or subdivide or permit the subdivision of any part of the Property without Lender's prior written consent.

8. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in Covenant 5 hereof, (iv) audit or cause to be audited Borrower's financial statements for the operation of the Property in the event Borrower fails to comply with the provisions of Covenant 10 hereof, and (v) if this Instrument is on a leasehold, exercise of any option to renew or extend the lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the lease.

Any amounts disbursed by Lender pursuant to this Covenant 8, with interest thereon from the date of such disbursement until paid at the rate stated in the Note, shall be immediately due and payable to Lender by Borrower, provided, however, that if collection from Borrower of interest at such rate would be contrary to applicable law, then such amount shall bear interest at the highest rate which may be collected from Borrower under applicable law. Without in any way limiting the provisions of the immediately preceding sentence, any disbursements made by Lender pursuant to this Covenant 8 together with interest thereon shall become additional indebtedness of Borrower secured by this Instrument until paid. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby including, without limitation, any indebtedness created pursuant to this Covenant 8. Nothing contained in this Covenant 8 shall require Lender to incur any expense or take any action hereunder.

9. **INSPECTION.** To protect Lender's security under this Instrument, Lender, its agents, representatives and/or designees may make or cause to be made during normal business hours, or at any other reasonable time, entries upon and inspections of the Property.

10. **BOOKS AND RECORDS.** Borrower shall keep and maintain at all times at the Property, the management agent's offices, Borrower's address set forth herein, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property (including, but not limited to, all bills, invoices and contracts for utilities, including cable and satellite television services and other electronic systems, waste management service, telephone service and management services, rent registrations and all materials filed with rent control authorities, where applicable). Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Borrower shall furnish to Lender the following: (i) within one hundred twenty days after the end of each fiscal year of Borrower and at any other time upon Lender's request, financial statements for the operation of the Property including a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete and, if Lender shall require, audited by an independent certified public accountant; (ii) together with the foregoing financial statements and at any other

time upon Lender's request, a rent schedule for the Property in a form acceptable to Lender, certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable, the rent paid and any other information requested by Lender; (iii) upon Lender's request, a balance sheet of Borrower certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete and an authorization to obtain a credit report (A) for each general partner of the Borrower, if Borrower is a partnership, (B) for any stockholder owning, directly or indirectly, ten percent (10%) or more of any general partner of Borrower, if Borrower is a partnership with any corporate general partners, (C) for any stockholders owning, directly or indirectly, ten percent (10%) or more of Borrower, if Borrower is a corporation and (D) for any member owning, directly or indirectly, ten percent (10%) or more of Borrower and for any manager of Borrower who is also a member of Borrower, if Borrower is a limited liability company; (iv) upon Lender's reasonable request, monthly income and expense statements for the Property in such form and detail as Lender may reasonably require and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete; (v) upon Lender's reasonable request, a monthly property management report for the Property, showing the number of inquiries made and/or rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender, in reasonable detail and certified by Borrower (or an officer, general partner or principal of Borrower if Borrower is not an individual) under penalty of perjury to be true and complete; and, (vi) upon Lender's reasonable request, an accounting of all security deposits held in connection with any lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to obtain information regarding such accounts directly from such financial institutions.

19. TRANSFERS OF THE PROPERTY OR SIGNIFICANT INTERESTS IN BORROWER; ASSUMPTION. (a) Lender may, at Lender's option, declare all sums secured by this Instrument immediately due and payable and Lender may invoke any remedies permitted by Covenant 27 of this Instrument upon sale or transfer, whether voluntary or involuntary, of any of the following:

- (i) All or any part of the Property, or any interest in the Property, including but not limited to transfers between co-owners of the Property;
- (ii) Any Significant Interest (as defined below in paragraph 19 (b)) in Borrower; and
- (iii) Any Significant Interest in a corporation, partnership, limited liability company, joint venture, estate or trust, or other legal entity which in turn owns a Significant Interest in the Borrower.

(b) For purposes of this Covenant 19, a "Significant Interest" in any entity shall mean the following:

- (i) If the entity is a general partnership or a joint venture, (A) any general partnership interest in the entity or (B) any interest of a joint venturer in the entity;
- (ii) If the entity is a limited partnership, any limited partnership interest in the entity which, together with any other limited partnership interest in the entity transferred since the date of the Note, exceeds 49% of all limited partnership interests in the entity or any general partnership interest in the entity; or
- (iii) If the entity is a limited liability company, any interest of a manager or any other interest which, if transferred, results in a transfer of power of direction or control of the limited liability company; or

- (iv) If the entity is a corporation, any stock in the entity which, together with any other stock in the entity transferred since the date of the Note, exceeds 49% of all outstanding voting stock in the entity; or
- (v) If the entity is a trust other than a land trust, any interest in such trust which, if transferred, results in a transfer of power of direction or control of the trust; or
- (vi) If the entity is a land trust, any transfer of interest in such trust or a change of trustee(s); or
- (vii) In the case of any other legal entity, any interest which, if transferred, results directly or indirectly in a transfer of power of direction or control of the entity.

(c) Notwithstanding the provisions of Section 19(a) to the contrary, Lender shall consent, *one time only* and without any adjustment to the rate at which the indebtedness secured by this Instrument bears interest, to a sale or transfer which would otherwise violate this Covenant 19 if, prior to the sale or transfer:

- (i) Borrower causes to be submitted to Lender all information required by Lender to evaluate the transferee and the Property under the standards set forth in paragraphs (ii) through (v) below; and
- (ii) the transferee meets all of the eligibility, credit, management and other standards (including but not limited to any standards respecting previous relationships between Lender and the transferee and the organization of the transferee entity) customarily applied by Lender at the time of the proposed sale or transfer to the approval of borrowers in connection with the origination or purchase of similar mortgages on multifamily properties; and
- (iii) the Property, at the time of the proposed sale or transfer, meets all standards as to its physical condition which are customarily applied by Lender at the time of the proposed sale or transfer to the approval of properties in connection with the origination or purchase of similar mortgages on multifamily properties; and
- (iv) the loan to value ratio at the time of the proposed sale or transfer is 70% or less ("loan to value ratio" means the ratio of (A) the principal amount of the indebtedness secured by this Instrument to (B) the value of the Property (as such value is determined by Lender), expressed as a percentage); and
- (v) the debt service coverage ratio for the last twelve full calendar months preceding the proposed sale or transfer was 1.35 or more ("debt service coverage ratio" means the ratio of (A) the annual net operating income from the Property's operations during that month which is available for repayment of debt, after deducting operating expenses, to (B) the annual principal and interest payable under the Note); and
- (vi) there exists no breach by Borrower of any covenant or agreement in this Instrument; and
- (vii) the transferee executes an assumption agreement that is acceptable to Lender and which requires the transferee to perform all obligations of Borrower set forth in the Note, this Instrument and in any other documents executed and delivered in connection therewith; and
- (viii) Borrower pays to Lender (A) at the time it requests Lender's consent, a review fee in the amount of \$2000.00 (which fee shall not be refundable); (B) as a condition precedent to any sale or transfer to which Lender has consented, an assumption fee equal to 1.0% of the outstanding principal balance of the indebtedness evidenced by the Note; and (C) upon demand by Lender, all fees and out of pocket costs of Lender's legal counsel related to the transfer and assumption and the cost of all title searches and title insurance related to the transfer.

(d) Notwithstanding the foregoing, Lender shall not be entitled to declare sums secured by this Instrument immediately due and payable or to invoke any remedy permitted by Covenant 27 of this Instrument solely on the basis of the occurrence of any of the following:

- (i) A transfer by devise or descent or by operation of law upon the death of an owner of the Property or the owner of a Significant Interest.
- (ii) The grant of a leasehold interest in part of the Property for a term of three years or less not containing an option to purchase.
- (iii) Sales or transfers of obsolete or worn-out personal property replaced by substitutes with value which is equal to or greater than that which the replaced items had when new.
- (iv) Transfers of the Property pursuant to any security instrument encumbering the Property which is subordinate to this Instrument and to which Lender shall have consented pursuant to Covenant 4 above, provided the transferee meets all of the requirements set forth in paragraph (c) of this Covenant 19.
- (v) Borrower elects, one time only, to convert through sale, transfer or otherwise to a single asset entity with the same general partner/limited partner structure as submitted in the Full application package relating to the Loan secured by this Instrument. In such instance, the review fee described in Covenant 19(c)(viii) shall be applicable but limited to \$2,000.00; the assumption fee therein described shall be waived.

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20. NOTICE. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given in writing by mailing such notice by certified mail, return receipt requested, or by sending such notice by a recognized overnight courier with postage, freight and any other charges paid, with a receipt therefor, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given in writing by mailing such notice certified mail, return receipt requested, or by sending such notice by a recognized overnight courier, with postage, freight and other charges paid, with a receipt therefor, addressed to Lender at Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Except for any notice deemed under applicable law to have been given at a different time, any notice provided for in this Instrument shall be deemed to have been given to Borrower or Lender on the earlier of (a) the second day after such notice is mailed or deposited with a courier in a manner designated herein or (b) the day such notice is actually received.

B. The following Covenants are hereby added to the Instrument:

26A. ENVIRONMENTAL COVENANTS AND INDEMNITY. The Undersigned hereby warrants, covenants and agrees as follows:

- (a) Borrower shall not (1) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including storage in above ground and underground storage tanks for petroleum or petroleum products), treatment, handling, or disposal of any Hazardous Materials (as defined below) (excluding the safe and lawful use and storage of (i) quantities of petroleum products, customarily used in the operation and maintenance of comparable multifamily properties and (ii) quantities of Hazardous Materials customarily used for normal household purposes) on or under the Property, or in any way affecting the Property or its value or which may form the basis for any present or future claim, demand or action seeking cleanup of the Property, or the transportation of any Hazardous Materials to or from the Property, or (2) cause or exacerbate any occurrence or condition on the Property that is or may be in violation of Hazardous Materials Law (as defined below) (the matters described in clauses (1) and (2) above being referred to collectively below as "Prohibited Activities or Conditions"). Borrower represents and warrants that it has not at any time caused or permitted any Prohibited Activities or Conditions and that, to the best of its knowledge, no Prohibited Activities or Conditions exist or have existed on or under the Property. Borrower shall take all appropriate steps to prevent its employees, agents, and contractors, and all tenants from causing, permitting, or exacerbating any Prohibited Activities or Conditions. Without limiting the provisions of Covenant 7 of this Instrument, Borrower shall not lease or allow the sublease or use of all or any portion of the Property for non-residential use to any tenant, subtenant or user that, in the ordinary course of its business, would cause, permit, or exacerbate any

Prohibited Activities or Conditions, and all leases, subleases and use agreements relating to the Property shall provide that tenants, subtenants and users shall not cause, permit or exacerbate any Prohibited Activities or Conditions.

- (b) Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Property to so comply with, (1) any program of operations and maintenance ("O&M Program") relating to the Property that is acceptable to Lender with respect to one or more Hazardous Materials, and (2) Hazardous Materials Law. Any O&M Program shall be performed by qualified contractors under the supervision of a consulting engineer hired by Borrower with the prior written approval of Lender. All costs and expenses of any O&M Program shall be paid by Borrower, including without limitation the charges of such contractors and consulting engineer and Lender's fees and costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance thereunder.
- (c) Borrower represents that Borrower has not received and has no knowledge of the issuance of any claim, citation or notice of any pending or threatened suits, proceedings, orders, or governmental inquiries or opinions involving the Property that allege the violation of any Hazardous Materials Law ("Governmental Actions").
- (d) Borrower shall promptly notify Lender in writing of: (1) any Governmental Actions or (2) any claim made or threatened by any third party against Borrower, Lender, or the Property relating to loss or injury resulting from any occurrence or condition on the Property or any other real property that could require the removal from the Property of any Hazardous Materials or cause any restrictions on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law. Borrower shall cooperate with any governmental inquiry, and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions.
- (e) Borrower shall pay promptly all costs and expenses incurred by Lender in connection with any Governmental Action, including but not limited to costs of any environmental audits, studies, investigations or remedial activities including but not limited to the removal of any Hazardous Materials from the Property. Borrower also shall pay promptly the costs of any environmental audits, studies, investigations or the removal of any Hazardous Materials from the Property required by Lender as a condition of its consent to any sale or transfer of all or any part of the Property or any interest therein or required by Lender following a reasonable determination by Lender that there may be Prohibited Activities or Conditions on or under the Property. Any such costs or expenses incurred by Lender (including but not limited to fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become additional indebtedness secured by this Instrument pursuant to Covenant 8 of this Instrument.
- (f) Borrower shall hold harmless, defend and indemnify Lender and its officers, directors, trustees, employees, and agents from and against all proceedings, claims, damages, penalties, costs and expenses (including without limitation fees and expenses of attorneys and expert witnesses, investigatory fees, and cleanup and remediation expenses, whether incurred in connection with any judicial or administrative process or otherwise), arising directly or indirectly from (1) any breach of any representation, warranty, or obligation of Borrower contained in this Covenant 26A or (2) the presence or alleged presence of Hazardous Materials on or under the Property. The obligations and liabilities of Borrower under this Covenant 26A shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Instrument.
- (g) The term "Hazardous Materials," for purposes of this Covenant 26A, includes petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive materials in smoke detectors), polychlorinated biphenyls ("PCBs"), lead, asbestos or asbestos containing materials in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "hazardous

chemicals," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever.

- (h) The term "Hazardous Materials Law," for the purposes of this Covenant 26A, means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements and any court judgments applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. "Hazardous Materials Law" also shall include, but not be limited to, the following laws, as amended as set forth herein and as subsequently amended: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the superfund Amendments and Reauthorization Act of 1986, 42 USCA 9601 et seq.; (2) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 USCA 6901 et seq.; (3) the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 USCA 1251 et seq.; (4) the Toxic Substances Control Act of 1976, as amended, 15 USCA 2601 et seq.; (5) the Emergency Planning and Community Right-to-Know Act of 1986, 42 USCA 11001 et seq.; (6) The Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USCA 77401 et seq.; (7) the National Environmental Policy Act of 1969, as amended, 42 USCA 4321 et seq.; (8) the Rivers and Harbors Act of 1899, as amended, 33 USCA 401 et seq.; (9) the Endangered Species Act of 1973, as amended, 16 USCA 1531 et seq.; (10) the Occupational Safety and Health Act of 1970, as amended, 29 USCA 651 et seq.; (11) the Safe Drinking Water Act of 1974, as amended, 42 USCA 300(f) et seq.; and (12) the Hazardous Materials Transportation Act of 1975, 49 USCA 11801 et seq., and all regulations adopted in respect to the foregoing laws.

The representations, warranties, covenants, obligations, and liabilities of Borrower contained in this Covenant 26A shall be in addition to any and all other obligations and liabilities that Borrower may have to Lender under applicable law.

26B. OPERATION AND MAINTENANCE AGREEMENTS. Borrower covenants and agrees, to perform timely its obligations under any operating and/or maintenance agreement entered into in connection with the operation and/or maintenance of the Property.

26C. FURTHER ASSURANCES. Borrower shall do, execute, acknowledge, and deliver, at its sole cost and expense, all such further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, convey, assign, transfer, and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Instrument, or any other instrument under which Borrower may be or may hereafter become bound to convey, mortgage, transfer, or assign to Lender in connection with the performance of the provisions of this Instrument. Borrower hereby appoints Lender its attorney-in-fact to execute, acknowledge, and deliver in the name of Borrower any and all of the instruments mentioned herein, and this power, being coupled with an interest, shall be irrevocable as long as any part of the indebtedness evidenced by the Note remains unpaid.

26D. REPLACEMENT RESERVES. Borrower shall establish with Lender an escrow account (the "Replacement Reserve Escrow") for the replacement of or repairs to such furniture, fixtures, equipment or building components comprising a portion of the Property as Lender, in its sole discretion may approve. The terms and conditions relating to the Replacement Reserve Escrow shall be more particularly set forth in a separate agreement to be executed by Lender and Borrower concurrently herewith.

Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, Lender may apply in any amount and in any order as Lender, in its sole discretion, shall determine any funds held in the Replacement Reserve Escrow (i) to pay any charge which would be payable under any escrow agreement provided

for in this Instrument, or (ii) as a credit against any sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any funds held by Lender in the Replacement Reserve Escrow.

26E. WAIVER OF RIGHT TO JURY TRIAL. THE BORROWER (I) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE TRIABLE OF RIGHT BY A JURY AND (II) WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL, BY THE BORROWER (AND EACH OF THEM, IF MORE THAN ONE), AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS RIDER TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES HERETO, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF THE BORROWER'S HEREIN CONTAINED WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, THE BORROWER (AND EACH OF THEM, IF MORE THAN ONE) HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER (INCLUDING, BUT NOT LIMITED TO, THE LENDER'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO THE BORROWER THAT LENDER WILL NOT SEEK TO ENFORCE THE PROVISIONS OF THIS COVENANT 26E.

26F. SURVIVAL OF INDEMNITIES. Any indemnities of the Undersigned contained within this Instrument shall survive the termination, by any cause whatsoever, of the Note and Instrument.

Covenant 27 of the Instrument is amended as follows:

27. ~~ACCELERATION REMEDIES~~ ~~The foregoing notwithstanding, Lender shall exercise the option aforesaid after providing thirty (30) day written notice to Borrower of a breach of covenant or agreement and Borrower does not cure said breach within the thirty (30) day period. The thirty (30) day right to notice and cure aforesaid shall not apply to: (i) a breach or default constituting the non-payment of money; (ii) a breach or default resulting from junior liens or transfers of interests in the Property or Borrower; (iii) a breach or default in the obligation to carry insurance (provided that such notice and grace period shall be provided in the event of any required increases in insurance coverage); and (iv) a breach or default under Paragraph 18 of the Instrument.~~

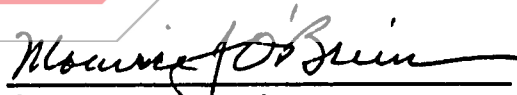
IN WITNESS WHEREOF, the undersigned has identified this Rider as part of the Instrument as of the day and year first above-written.



Borrower(s):

THE O'BRIEN FAMILY LIMITED PARTNERSHIP, an Illinois limited partnership

(Name of Borrower)


(By) Maurice J. O'Brien

General Partner
(Title)

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