

ASSIGNMENT OF LEASES, RENTS AND PROFITS

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS ("Assignment") is made as of the 28th day of January, 1994, by Northwind Development, L.C., a Texas Limited Liability Company qualified to do and doing business in Colorado as Northwind Development Company, L.L.C. ("Assignor"), whose address is 1202 Del Mar Blvd., Suite 7, Laredo, Texas 78041, to The Laredo National Bank ("Assignee"), whose address is P. O. Drawer 59, Laredo, Texas 78042-0059.

WITNESSETH:

FOR VALUE RECEIVED, Assignor hereby presently, absolutely, irrevocably and unconditionally grants, transfers, pledges, conveys, and assigns to Assignee all of the following relating to Lot 16, Block 1, Vail Village First Filing, Eagle County, Colorado (the "Property"; the Property and the buildings, improvements and structures now or hereinafter located thereon are hereinafter collectively referred to as the "Premises"): (1) any and all leases, rental agreements, licenses, occupancy agreements, use agreements and other agreements, whether written or oral, relating to the Premises or the use, occupation, operation or enjoyment of all or any portion of the Premises, whether now existing or hereafter entered into; (2) any and all extensions, renewals, modifications and amendments thereof or thereto; (3) any and all guaranties of any of the lessees' or any other parties' obligations under the terms and conditions of any of the foregoing and under any extensions, renewals, modifications and amendments thereof or thereto (all of the foregoing described under items (1), (2) and (3) above hereinafter are collectively referred to as the "Leases"); (4) all rents, issues, profits, income, proceeds, revenues, royalties, rights, benefits, awards, accounts, and payments now or hereafter due or payable with respect to any of the Leases, including, without limitation, as a result of or pursuant to any bankruptcy, insolvency, or similar proceedings involving any lessee or other party under a Lease, settlement payments, payments made by or on behalf of any lessee or other party in lieu of the rent or other payment due under any Lease, and all other income, revenue, proceeds, profits, rents, issues, and benefits of every kind and nature and all deposits (whether for security or otherwise) of and from the Premises or the use, occupation, operation or enjoyment thereof (collectively, the "Rents"); and (5) the right to the use, possession and enjoyment of the foregoing.

It is the intention of Assignor to create, grant and transfer to Assignee a present and absolute assignment of the Rents and not merely grant a security interest in the Rents, subject to the right and license of Assignor to collect the Rents in accordance with paragraph 3 of this Assignment until the occurrence of a default under the Note or the Deed of Trust (as hereinafter defined).

IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Security.** That this Assignment is given to Assignee as additional collateral and as partial consideration for Assignee granting to Assignor the loan evidenced by the instruments described herein and for the purpose of securing:

(a) payment of the indebtedness evidenced by a certain Adjustable Rate Note (including any extensions, modifications, or renewals thereof) in the original principal sum of Three Million Five Hundred Thousand and no/100ths Dollars (\$3,500,000.00), made by Assignor payable to the order of Assignee (the "Note"), which Note is secured by, among other things, a certain Deed of Trust encumbering the Premises (the "Deed of Trust"), and one or more UCC Security Agreement(s);

(b) payment of all other sums, with interest thereon, becoming due and payable to Assignee under the provisions hereof or under the provisions of the Note, the Deed of Trust and any other document or agreement evidencing, securing, or relating to the Note; and

(c) performance and discharge of each and every obligation, covenant and agreement of Assignor herein or in the Note or the Deed of Trust.

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2. Covenants. That to protect the security of this Assignment, Assignor agrees:

(a) Enforcement and Performance of Leases. To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Leases to be performed by Assignor as lessor; and not to anticipate the rents thereunder.

(b) Defend Actions. At Assignor's sole cost and expense to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the Leases or the obligations, duties or liabilities of Assignor and any lessee thereunder, and to pay all costs and expenses of Assignee, including reasonable attorneys' fees and disbursements in any action or proceeding in which Assignee may appear.

(c) Action by Assignee. That should Assignor fail to make any payment or to do any act as herein provided, then Assignee, but without obligation to do so and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting Assignee's general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and disbursements.

(d) Reimbursement of Assignee. To pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the Default Rate as set forth in the Note.

3. Collection of Rents. That so long as there shall exist no default by Assignor in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant or agreement contained herein or in the Note or the Deed of Trust Assignor shall have the right and license to collect upon, but not prior to, the due date thereof all the Rents and retain, use and enjoy the same (the "Right to Collect").

4. Default and Remedies. That upon or at any time after failure to pay, when due, any indebtedness secured hereby or upon a breach in the performance of any obligation, covenant or agreement herein or in the Note, or the Deed of Trust, and the expiration of the applicable grace period, if any, with respect thereto, the Right to Collect shall be automatically revoked and terminated and Assignee may declare all sums secured hereby immediately due and payable and may, at Assignee's option, without notice, and irrespective of whether declaration or notice of default under the Deed of Trust has been delivered to the Trustee thereunder, and without regard to the adequacy of the security for the repayment of the indebtedness hereby secured, either in person or by agent and with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Premises or any part thereof; make, cancel, enforce or modify leases; obtain and evict tenants, and fix or modify rents, and do any acts which Assignee deems proper to protect the security hereof, and either with or without taking possession of the Premises, in Assignee's own name sue for or otherwise collect and receive the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and disbursements, upon any indebtedness secured hereby, and in such order as Assignee may determine. The entering upon and taking possession of the Premises, the collection of the Rents and the application thereof as aforesaid, shall not cure or waive any default or waive, modify or effect notice of default under the Deed of Trust or the Note or invalidate any act done pursuant to such notice.

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Assignor hereby irrevocably appoints Assignee as its true and lawful attorney-in-fact to perform any and all obligations and rights of Assignor under the Leases, to collect the Rents, and to perform any and all of the foregoing.

Any default by Assignor in the performance of any obligation, covenant or agreement herein contained and the acceleration of the indebtedness secured hereby shall constitute and be deemed to be a default under the terms of the Deed of Trust and the Note, entitling Assignee to every and all rights and remedies therein contained, including specifically the right to declare a default thereunder and to elect to sell the property encumbered thereby, and foreclose the Deed of Trust as provided by law.

5. No Liability of Assignee. That Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this Assignment.

6. Termination. That upon the payment in full of all indebtedness secured hereby and upon the release of the Deed of Trust of record, this Assignment shall become and be void and of no effect, but the affidavit of any officer or loan supervisor of Assignee showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

7. Successors and Assigns; Construction. That this Assignment applies to, inures to the benefit of and binds all parties hereto, their heirs, personal representatives, successors and assigns. In this Assignment, whenever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and conversely. All obligations of each Assignor hereunder, if more than one party signs this Assignment as Assignor, are joint and several.

8. Notices. That all notices, demands or documents of any kind to be delivered pursuant to this Assignment shall be delivered in accordance with the notice provisions of the Deed of Trust.

9. Waivers. That Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by Assignee to the satisfaction of such indebtedness without prejudice to any of Assignee's rights hereunder. It is further agreed that nothing herein contained and no act done or omitted by Assignee pursuant to the powers and rights granted Assignee herein shall be deemed to be a waiver by Assignee of Assignee's rights and remedies under the Note, the Deed of Trust, or any other document, but this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect said indebtedness and to enforce any other security of Assignee therefor may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by Assignee hereunder.

10. Interpretation. The terms "lessor" and "lessee," as used herein, shall be deemed to mean "landlord" or "owner" and "tenant," respectively, if they are so called in any Lease, and also shall be deemed to refer to the similar parties, respectively, to any rental, use or other such agreement.

11. Severability. In case of any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. Appointment of Receiver. If an event of default shall have occurred hereunder or under the Deed of Trust or the Note, Assignee, as a matter of right and without

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proof of any grounds for appointment other than default hereunder and without notice to Assignor or to anyone claiming under Assignor, and without regard to statutory grounds therefor, the solvency or insolvency of Assignor or the then owner of the Premises, the condition of the Premises, or the then value of the Premises or any other security in favor of Assignee or the interest of Assignor therein, shall have the right to apply *ex parte* to any court having jurisdiction to appoint a receiver or receivers of the Premises, or any portion thereof, and the Rents, and all bank accounts containing any of the Rents or other funds, rents, issues, profits, income, proceeds or revenue derived from the Premises or the occupancy, use, operation or enjoyment thereof, and any business conducted by Assignor or any other person on the Premises (collectively, the "Bank Accounts") and any business assets used in connection therewith and Assignor or the then owner of the Premises and each other person liable for the payment of the indebtedness secured hereby and the owner of any business conducted on the Premises hereby irrevocably consent, or shall be deemed to have consented, to such appointment and hereby irrevocably waive, or shall be deemed to have waived, notice of any application therefor. The receiver so appointed by a court of competent jurisdiction shall be vested with the fullest powers permitted under applicable law, including, without limitation, the following: such receiver shall be empowered to enter upon, take possession of, and manage, operate, repair, maintain, preserve and protect the Premises, to take possession of the Rents and the Bank Accounts, to oust tenants for nonpayment of rent, to lease any and all portions of the Premises on such terms as such receiver may deem advisable, to make alterations, renewals, replacement, additions, betterments, improvements, and repairs and deduct the cost thereof from the Rents, to receipt for all Rents, to pay appropriate operating costs, maintenance expenses and management charges, and costs and expenses of the receivership, to make any payments and other amounts due under the Note and the Deed of Trust to pay other amounts secured by this Assignment, to pay taxes, assessments, ground rents, insurance premiums, utility charges, costs of completing the construction of unfinished improvements, other similar charges and renewals thereof, to borrow funds from Assignee or any other source and issue receivers' certificates for funds advanced in order to perform the receiver's duties relating to the Premises; provided, however, that in no event shall any payments be made to the holder of any junior lien or interest until the indebtedness evidenced and secured by this Assignment and the Note and Deed of Trust has been paid in full. In the event receivers' certificates are issued to and held by Assignee, Assignee may elect to treat the amount evidenced by such receivers' certificates as an advance of funds under this Assignment or the Deed of Trust, in which event the amounts evidenced by such receivers' certificates shall bear interest at the Default Rate provided in the Note and may be added (i) to the amount necessary to cure any default, (ii) to the amount of the bid made by Assignee at the time of foreclosure sale or other proceedings, and (iii) to the cost of redemption in the event the owners of the Premises, Assignor, a junior lien holder, or other person entitled to do so redeems any foreclosure sale. All the Rents shall be applied by such receiver according to the law and the orders and directions of the court. If, at such time as Assignee is entitled to the appointment of a receiver pursuant to this Assignment, Assignee brings any action to have a receiver appointed, Assignor agrees to pay to Assignee the costs and reasonable attorneys' fees incurred by Assignee thereby.

13. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Colorado.

14. Jury Trial Waiver. It is mutually agreed that Assignor and Assignee each hereby waives trial by jury in any action, proceeding, or counterclaim brought by Assignor or Assignee on any matter whatsoever arising out of or in any way relating to the Note, the Deed of Trust or this Assignment, including, without limitation, the exercise of any rights or remedies under those documents.

15. Rights Cumulative. The rights, remedies and provisions contained in this instrument are in addition to and cumulative of the rights, remedies and provisions for the benefit of Assignee contained in the Note and in any document, agreement or security interest executed or given in connection therewith.

16. Attorneys Fees. In the event the Assignee refers the loan evidenced by the Note to its attorneys on the occasion of any default under any document, agreement or

