

## MORTGAGE AGREEMENT

THIS MORTGAGE AGREEMENT (hereinafter called the "Mortgage") is made August 2, 19 83, by and between KROH BROTHERS DEVELOPMENT COMPANY, a Missouri Corporation (hereinafter called "Mortgagor") and CHARTER AMERICAN MORTGAGE COMPANY, a Missouri Corporation (hereinafter called "Mortgagee"),

W I T N E S S E T H:

That for good and valuable consideration, and to secure the payment of a Note of even date herewith in the principal amount of Two Million and No/100 Dollars (\$2,000,000.00), as it may be renewed, extended or amended from time to time hereafter (hereinafter called the "Note"), together with interest thereon, at the rate as provided in the Note, and to secure any other indebtedness owed by Mortgagor to Mortgagee, now or hereafter arising under the terms hereof or in any other instrument constituting additional security for the Note, and all other sums of money secured hereby as hereinafter provided, the Mortgagor does grant, bargain, sell, remise, release, and convey unto the Mortgagee, its successors and assigns, the real estate described in Exhibit A, attached hereto and made a part hereof, which, together with the property hereinafter described, is referred to herein as the "Premises";

## TOGETHER WITH:

(a) All buildings and improvements, now or hereafter located thereon, all privileges and other rights now or hereafter made appurtenant thereto including, without limitation, all right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed and all easements and rights of way, public or private, now or hereafter used in connection with the Premises; and

(b) All fixtures, fittings, furnishings, appliances, apparatus, goods, equipment, and machinery, including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, escalators, bathtubs, sinks, water closets, basins, pipes, faucets and other ventilating and air-conditioning, plumbing, lighting and heating fixtures, mirrors, mantles, refrigerating plants, refrigerators, iceboxes, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus and appurtenances, washing machines, dryers, trash compactors, TV antennas, phone systems, incinerators, trash receptacles, sprinklers and fire extinguishing systems, smoke detectors and other fire alarm devices, door bell and alarm systems, screens, awnings, doors, storm and other detachable doors and windows, built-in cases, counters, trees, hardy shrubs and perennial flowers, interior and exterior equipment, and all building material, supplies, and equipment now or hereafter delivered to the Premises and installed or used or intended to be installed or used therein; all other fixtures and personal property of whatever kind and nature at present contained in or hereafter placed in any building standing on the Premises; such other goods, equipment, chattels and personal property as are usually furnished by landlords in letting premises of the character hereby conveyed; and all renewals or replacements thereof or articles in substitution therefor. All of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or used or intended to be used in

connection with the operation thereof, all of which shall be deemed to be fixtures and accessions to the freehold and a part of the realty as between the parties hereto, and all persons claiming by, through or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and secured by this Mortgage. If the lien of this Mortgage on any fixtures or personal property be or become subject to a lease agreement, conditional sale agreement or chattel mortgage covering such property, then all the rights, title and interest of the Mortgagor in and to any and all deposits made thereon or therefor are hereby assigned to the Mortgagee, together with the benefit of any payments now or hereafter made thereon. There is also transferred, set over and assigned hereby by Mortgagor to Mortgagee, its successors and assigns, all leases and use agreements of machinery, equipment and other personal property of Mortgagor in the categories hereinabove set forth, under which Mortgagor is the lessee of, or entitled to use, such items, and Mortgagor agrees to execute and deliver to Mortgagee specific separate assignments to Mortgagee of such leases and agreements when requested by Mortgagee; but nothing herein constitutes Mortgagee's consent to any financing of any fixtures or personal property, and nothing herein shall obligate Mortgagee to perform any obligations of Mortgagor under any such leases, or agreements unless it so chooses, which obligations Mortgagor hereby covenants and agrees to well and punctually perform. The items set forth in this paragraph (b) are sometimes hereinafter separately referred to as "Collateral"; and

(c) All rents, income, profits, revenues, royalties, bonuses, rights, accounts, contract rights, general intangibles and benefits under any and all leases or tenancies now existing or hereafter created in all or any portions of the Premises or any part thereof, or arising out of the construction, use or operation of the premises or any parts thereof, and any other equitable or contract rights pertaining to the Premises, with the right to receive and apply the same to said indebtedness, and Mortgage may demand, sue for and recover such payments but shall not be required to do so; and

(d) All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any taking of the Premises or any part thereof or interest therein under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof or interest therein, including any award for change of grade of streets; and

(e) The abstract of title covering the Premises; all insurance policies covering all or any portion of the Premises; and all blueprints, plans, maps, documents, books and records relating to the Premises; and

(f) All proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims.

TO HAVE AND TO HOLD the above granted Premises, with all the privileges and appurtenances to the same belonging to the said Mortgagee, its successors and assigns, to its and their use and behoof forever.

PROVIDED, HOWEVER, that if the Mortgagor shall pay or cause to be paid to the Holder of the Note the principal and interest, as provided in the Note, and prepayment premium, if any, to become due thereupon at the time and in the manner stipulated therein, and shall pay or cause

to be paid all other sums payable hereunder and all indebtedness hereby secured, then, in such case, the estate, right, title and interest of the Mortgagee in the Premises shall cease, determine and become void, and upon proof being given to the satisfaction of the Mortgagee that the Note, together with interest and prepayment premium, if any, thereon have been paid or satisfied, and upon payment of all fees, costs, charges, expenses and liabilities chargeable or incurred or to be incurred by Mortgagee, and of any other sums as herein provided, the Mortgagee shall, upon receipt of the written request of the Mortgagor cancel, release and discharge this Mortgage.

#### ARTICLE ONE

Mortgagor covenants and agrees with Mortgagee that:

##### 1.01 Title.

(a) The Mortgagor warrants that it has good and marketable title to an indefeasible fee simple estate in the Premises, subject to no liens, charges or encumbrances, that it has good, right and lawful authority to mortgage the Premises in the manner and form herein provided; that Mortgagor has full power and authority to mortgage the Premises in the manner and form herein done or intended hereafter to be done; that this Mortgage is and shall remain a valid and enforceable first lien on the Premises subject only to those exceptions to title in a Mortgagee's Title Insurance Policy accepted in writing by Mortgagee; that Mortgagor and its successors and assigns shall warrant and defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

(b) Mortgagor has and shall maintain title to the Collateral including any additions or replacements thereto free of all security interests, liens and encumbrances, other than the security interest hereunder and other than as disclosed to and accepted by Mortgagee in writing, and has good right to subject the Collateral to the security interest hereunder.

(c) The Mortgagor shall, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention of facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, shall execute and deliver, and hereby authorizes the Mortgagee to execute in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Collateral.

(d) The Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter from time

to time, shall cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Collateral and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully protect the lien hereof upon, and the interest of the Mortgagee in, the Premises.

(e) The Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Collateral, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Collateral or any instrument of further assurance.

(f) The Mortgagor shall, so long as it is owner of the Premises, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a legal entity under the laws of the state of its formation and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Premises or any part thereof.

1.02 Payment of Note. The Mortgagor shall promptly and punctually pay all principal and interest as provided in the Note, prepayment premiums and all other sums to become due in respect to the Note, according to the true intent and meaning thereof.

1.03 Maintenance and Repair. The Mortgagor shall keep the Premises in good operating order, repair and condition and shall not commit or permit any waste thereof. Mortgagor shall make all repairs, replacements, renewals, additions and improvements and complete and restore promptly and in good workmanlike manner any building or improvements which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor. Mortgagor shall not remove from the Premises or demolish any of the property conveyed hereby, nor demolish or materially alter such Premises without prior written consent of the Mortgagee. Mortgagor shall permit Mortgagee or its agents the opportunity to inspect the Premises, including the interior of any structures, at any reasonable times.

1.04 Compliance with Laws. The Mortgagor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said Premises or the operation thereof, and shall pay all fees or charges of any kind in connection therewith.

1.05 Insurance.

(a) The Mortgagor shall keep all buildings and improvements now or hereafter situated on said Premises insured against loss or damage by fire and other hazards as may reasonably be required by Mortgagee, including, without limitation (i) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary; and (ii)

flood and earthquake insurance whenever in the opinion of Mortgagee such protection is necessary. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require. The Mortgagor shall initially maintain, until Mortgagee shall otherwise indicate in writing, fire and extended coverage insurance in an amount of not less than the full replacement cost of the Premises.

(b) All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with Standard Mortgage Clauses attached to all policies in favor of and in form satisfactory to mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration.

(c) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a Standard Mortgage Clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance. In the event of a foreclosure or other transfer of title to the Premises in lieu of foreclosure, or by purchase at the foreclosure sale all interest in any insurance policies in force shall pass to Mortgagee, transferee or purchaser as the case may be.

1.06 Casualty. Mortgagor shall promptly notify Mortgagee of any loss whether covered by insurance or not. In case of loss or damage by fire or other casualty, Mortgagee is authorized (i) to settle and adjust any claim under insurance policies which insure against such risks, or (ii) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, the Mortgagee is authorized to collect and receipt for any such insurance money. Such insurance proceeds may, at the option of the Mortgagee, be applied in the reduction of the indebtedness secured hereby, whether due or not, or be held by the Mortgagee without any allowance of interest and used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on said Premises; provided, however, that if the casualty giving rise to payment of insurance proceeds causes destruction of less than 25% in value of the buildings or improvements located on the Premises, such proceeds shall be used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on said Premises, with any excess insurance proceeds to be subject to Mortgagee's rights as herein provided. If, for any reason, the Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said Premises, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require, including without limitation, (i) approval of plans and specifications of such work before such work shall be commenced, and (ii) suitable completion or performance bonds and builder's All Risk insurance, and (iii) that no insurer claims any rights of participation and/or assignment of rights with respect to the indebtedness secured hereby. The buildings

and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of such cost of rebuilding or restoration shall, at the option of the mortgagee, be applied on account of the indebtedness secured hereby or be paid to Mortgagor. If the casualty giving rise to payment of insurance proceeds causes destruction of greater than 25% in value of the buildings or improvements located on the Premises, and if Mortgagee exercises its option to apply such proceeds to the reduction of the indebtedness secured hereby, then Mortgagor shall have the right to prepay the remaining indebtedness secured hereby without penalty.

1.07 Condemnation. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of the Premises or any portion thereof, shall notify Mortgagee of the pendency thereof. The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. Mortgagee may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. After deducting therefrom all of its expenses, including attorneys' fees, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or hold said proceeds without any allowance of interest and make available for restoration or rebuilding of the Premises; provided, however, that if the condemnation giving rise to said payment of proceeds involves less than 25% in value of the Premises, such proceeds shall be used to reimburse Mortgagor for the cost of restoring or rebuilding the Premises, with any excess proceeds to be subject to Mortgagee's rights as herein provided. In the event that the Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the buildings or improvements on said Premises, such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require in the manner provided under Section 1.06 above. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost rebuilding or restoration shall at the option of the Mortgagee be applied on account of the indebtedness secured hereby or be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Mortgagee may require. If condemnation giving rise to payment of proceeds involves greater than 25% in value of the Premises, and if Mortgagee exercises its option to apply such proceeds to the reduction of the indebtedness secured hereby, then Mortgagor shall have the right to prepay the remaining indebtedness secured hereby without penalty.

1.08 Liens and Encumbrances. The Mortgagor shall not, except as specified herein, without the Mortgagee's express written consent, permit the creation of any liens or encumbrances on the Premises other than the lien of this Mortgage, and shall pay when due all obligations, lawful claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Premises or on the rents, issues,



income and profits arising therefrom, whether such lien would be senior or subordinate hereto, including, but without limiting the generality of the foregoing, all claims of mechanics, materialmen, laborers and others for work or labor performed, or materials or supplies furnished in connection with any work of demolition, alteration, improvement of or construction upon the Premises, and the Mortgagor will do or cause to be done everything necessary so that the first lien of this Mortgage shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

Notwithstanding the foregoing, the Premises may be encumbered with junior financing under the following circumstances:

(a) Contemporaneously with the Closing hereof, the Premises may be encumbered for the purposes of acquiring such funds as are necessary to complete funding of the construction of improvements on the Premises.

(b) The Premises may also be encumbered in connection with the sale of the Premises to an entity owned or controlled, directly or indirectly by George P. Kroh and/or John A. Kroh, Jr., as provided in paragraph 1.11 herein.

1.09 Taxes and Assessments. The Mortgagor shall pay in full when due, and in any event before any penalty or interest attaches, all general taxes and assessments, special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises and shall furnish to Mortgagee official receipts evidencing the payment thereof.

1.10 Indemnification. The mortgagor shall appear in and defend any suit, action or proceeding that might in any way and in the sole judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee. Mortgagor shall, at all times, indemnify, hold harmless and on demand, reimburse Mortgagee for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest at the rate provided in the Note and secured hereby and shall be due and payable on demand. Mortgagor shall pay cost of suit, cost of evidence of title and reasonable attorneys' fees in any proceeding or suit, including appellate proceedings, brought by Mortgagee to foreclose this Mortgage.

1.11 Assumption and Sale of the Premises.

(a) The loan evidenced by the Note may be assumed subject to Mortgagees review and approval of the financial status of the new borrower. Upon approval of the new borrower, the terms and provisions of the Note and this Mortgage shall remain the same. The Mortgagee, may however charge a fee for any application for assumption. In addition, during the first Loan Year (as said term is defined in the Note), Mortgagor shall have the right to transfer ownership of the Premises to a limited partnership in which Mortgagor or another entity owned or controlled by, directly or indirectly George P. Kroh and/or John A. Kroh, Jr., is a general partner holding at least a 25 percent (25%) ownership interest without assumption. Provided that Mortgagor shall provide Mortgagee with written notice of said transfer.

(b) In the event ownership of the Premises, or any part thereof, becomes vested in a person or persons other than Mortgagor, without the prior written approval of Mortgagee, except as provided in Paragraph 1.11(a) the Mortgagee may, without notice to the Mortgagor, waive such default and deal with such successor or successors in interest with reference to this Mortgage, and the Note in the same manner as with Mortgagor, without in any way releasing, discharging or otherwise affecting the liability of Mortgagor hereunder, or for the Mortgage indebtedness hereby secured. No sale of the premises, no forbearance on the part of the Mortgagee, no extension of the time for the payment of the Mortgage indebtedness or any change in the terms thereof consented to by Mortgagee shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Mortgagor herein, either in whole or in part, nor shall the full force and effect of this lien be altered thereby. Except for conveyances to a Limited Partnership as set forth in paragraph 1.11(a), any deed conveying the Premises, or any part thereof, shall provide that the grantee thereunder assume all of the grantor's obligations under this Mortgage, the Note and all other instruments or agreements evidencing or securing the repayment of the Mortgage indebtedness. In the event such deed shall not contain such assumption, the grantee under such deed shall nevertheless be deemed to have assumed such obligations by acquiring the Premises or such portion thereof subject to this Mortgage.

(c) Except for conveyances to a Limited Partnership as set forth in paragraph 1.11(a), Mortgagor shall not voluntarily, involuntarily or by operation of law sell, assign, transfer or otherwise dispose of the Collateral or any interest therein and shall not otherwise dispose of the Collateral or any interest therein and shall not otherwise do or permit anything to be done or occur that may impair the Collateral as security hereunder except so long as this Mortgage and Security Agreement is not in default, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when absolutely worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises in the conduct of the business of Mortgagor, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value of that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby and so that the security of the Mortgagee hereunder shall be the first priority security interest in said Collateral. In the event the Collateral is sold other than to a Limited Partnership as provided in paragraph 1.11(a) in connection with the sale of the real estate described in Exhibit A, Mortgagor shall require, as a condition of the sale, that the buyer specifically agree to assume Mortgagor's obligations as to the security interest herein granted and to execute whatever agreements and filing deemed necessary by Mortgagee to maintain its perfected security interest in the Collateral.

1.12 Management. The Mortgagor agrees that the Mortgagee shall have and reserves the right to install professional management of the Premises at any time that the Mortgagor is in default under any provision of this Mortgage for a period of forty-five (45) days. Such installation shall be at the sole discretion of the Mortgagee and nothing herein shall obligate the Mortgagee to exercise its right to install professional management. The cost of



such management shall be borne by Mortgagor and shall be treated as an advance under section 1.13.

1.13 Advances. If Mortgagor shall fail to perform any of the covenants herein contained or contained in any instrument constituting additional security for the Note, the Mortgagee may, but without obligation to do so, make advances to perform same in its behalf, and all sums so advanced shall be a lien upon the Premises and shall be secured by this Mortgage. The Mortgagor shall repay on demand all sums so advanced in its behalf with interest at the rate of 5 percentage points above the rate of the Note at the time of such advance. Nothing herein contained shall prevent any such failure to perform on the part of the Mortgagor from constituting an event of default as defined below.

1.14 Financial Statements. The Mortgagor shall deliver to Mortgagee, within sixty (60) days after the end of each of Mortgagor's fiscal years, an annual operating statement in reasonable detail and certified as complete and correct by Mortgagor or, at Mortgagee's option, which shall not be exercised unreasonably, by a Certified Public Accountant.

1.15 Time. The Mortgagor agrees that time is of the essence hereof in connection with all obligations of the Mortgagor herein or in said Note or any other instruments constituting additional security for said Note.

1.16 Records. The Mortgagor agrees to keep adequate books and records of account in accordance with generally accepted accounting principles and shall permit the Mortgagee, and its agents, accountants and attorneys, to visit and inspect the Premises and examine its books and records of account, and to discuss its affairs, finances and accounts with the Mortgagor, at such reasonable times as Mortgagee may request.

1.17 Assignment of Rents and Leases. Mortgagor agrees to execute and deliver to Mortgagee such assignments of leases and rents applicable to the Premises as the Mortgagee may from time to time request while this Mortgage and the debt secured hereby are outstanding.

## ARTICLE TWO

### Default

2.01 Events of Default. The following shall be deemed to be events of Default hereunder:

(a) Failure to make any payment when due in accordance with the terms of the Note secured hereby or this Mortgage.

(b) Failure to perform any of the other terms, covenants and conditions in the Note secured hereby, this Mortgage, the Security Agreement and the Assignment of Lessor's interest in Leases each of even date herewith, or any other instrument constituting additional security for this loan; (provided that such default shall have continued for a period of thirty (30) days after written notice of such default from Mortgagee).

(c) Breach of any warranties or representations given by Mortgagor to Mortgagee.

(d) An event of default under, or institution of foreclosure or other proceedings to enforce any second

Mortgage or junior security interest, lien or encumbrance of any kind upon the Premises or any portion thereof.

(e) Should the Mortgagor, or any Guarantor of the Note secured hereby, or any successors and assigns thereof, including without limitation the then current owners of any interest in the Premises:

(i) file a petition under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing (hereafter referred to as a "Bankruptcy Proceeding"); or

(ii) file any answer admitting insolvency or inability to pay its debts; or

(iii) fail to obtain a vacation or stay of any involuntary Bankruptcy Proceeding within forty-five (45) days, as hereinafter provided; or

(iv) be the subject of an order for relief against it in any Bankruptcy Proceeding; or

(v) have a custodian or trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation if such trustee or receiver shall not be discharged or if such jurisdiction relinquished, vacated or stayed on appeal or otherwise within forty-five (45) days; or

(vi) make an assignment for the benefit of its creditors; or

(vii) admit in writing its inability to pay its debts generally as they become due; or

(viii) consent to an appointment of custodian or receiver or trustee of all of its property, or the major part thereof.

(f) Failure to pay any state, county or local tax when due or failure to pay any general or special assessment when due; or

(g) Failure to pay any insurance premium payment when due.

## 2.02 Remedies.

(a) Upon and after any such Event of Default, the Mortgagee, by written notice given to the Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, all prepayment premiums payable thereunder and all other obligations of Mortgagor hereunder to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding.

(b) Upon and after any such Event of Default, the Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use,

operate, manage and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, the Mortgagee at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction may maintain and restore the Premises, whereof it shall become possessed as aforesaid, may complete the construction of the improvements and in the course of such completion may make such changes in the contemplated improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgagor, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall have the right to manage and operate the Premises and to carry on the business thereof and exercise all rights and power of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Premises and every part thereof, all of which shall for all purposes constitute property of the Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Premises or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, the Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become payable and second, to the payment of any other sums required to be paid by the Mortgagor under this Mortgage.

(c) Upon and after any such Event of Default, the Mortgagee shall have all of the remedies of a Secured Party under the Uniform Commercial Code of Nebraska, including without limitation the right and power to sell, or otherwise dispose of, the Collateral, or any part thereof, and for that purpose may take immediate and exclusive possession of the Collateral, or any part thereof, and with or without judicial process, enter upon any Premises on which the Collateral, or any part thereof, may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Mortgagee's option Mortgagor shall assemble the Collateral and make it available to the Mortgagee at the place and at the time designated in the demand. Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale. Mortgagee without removal may render the Collateral unuseable and dispose of the Collateral on the Mortgagor's Premises. To the extent permitted by law, Mortgagor expressly waives any notice of sale or other disposition of the Collateral and any other right or remedy of Mortgagee existing after default hereunder, and to the extent any such notice is required and cannot be waived, Mortgagor agrees that as it relates to this paragraph c. only if such notice is marked, postage prepaid, to the Mortgagor at the above address at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable.

and shall fully satisfy any requirement for giving of said notice.

(d) Upon and after any such Event of Default, the Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

(i) sell the Premises to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such terms and after such notice thereof as may be required or permitted by law; or

(ii) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(iii) apply to any court of competent jurisdiction for the appointment of a receiver or receivers for the Premises and of all the earnings, revenues, rents, issues, profits and income thereof; or

(iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

(e) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned. In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender herein provided or arising or existing otherwise than herein set forth shall continue as if no such proceeding had been taken.

(f) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this section, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby appointed the true and lawful attorney irrevocable of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Premises and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or

such substitute or substitutes shall lawfully do by virtue hereof. This power of attorney shall be deemed to be a power coupled with an interest and not subject to revocation. Nevertheless, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this section whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(g) In the event of any sale made under or by virtue of this section, the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(h) The purchase money, proceeds or avails of any sale made under by virtue of this section, together with any other sums which then may be held by the Mortgagee under the provisions of this section or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including reasonable compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the rate for advance hereunder in section 1.13.

Second: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provisions of this Mortgage or of the Note.

Third: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal and accrued interest at the rate specified in the note, from and after the happening of any Event of Default described above from the due date of any such payment of principal until the same is paid.

Fourth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

(i) Upon any sale made under or by virtue of this section, by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Mortgagee is authorized



to deduct under this Mortgage. The Mortgagee, upon so acquiring the Premises, or any part thereof shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

(j) In the event of any foreclosure sale, Borrower for itself and for its successors and assigns and for the benefit of Lender and its successors and assigns hereby expressly waives (a) appraisement of the said premises, and (b) all rights to redeem and periods of redemption and equity of redemption to which it may have been entitled under the laws of the State of Nebraska.

(k) Lender, at Lender's option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower as a defense to any proceedings instituted by Lender to collect the sums secured hereby.

### ARTICLE THREE

#### Miscellaneous Terms and Conditions

3.01 Leases. In the event the Mortgagee shall institute judicial proceedings to foreclose the lien hereof, and shall be appointed as a Mortgagee in possession of the Premises, the Mortgagee during such time as it shall be Mortgagee in possession of the Premises pursuant to an order or decree entered in such judicial proceedings, shall have, and the Mortgagor hereby gives and grants to the Mortgagee, the right, power and authority to make and enter into leases of the Premises or the portions thereof for such rents and for such periods of occupancy and upon such conditions and provisions as such Mortgagee in possession may deem desirable, and Mortgagor expressly acknowledges and agrees that the term of any such lease may extend beyond the date of any sale of the Premises pursuant to a decree rendered in such judicial proceedings; it being the intention of the Mortgagor that while the Mortgagee is a Mortgagee in possession of the Premises pursuant to an order or decree entered in such judicial proceedings, such Mortgagee shall be deemed to be and shall be the attorney-in-fact of the Mortgagor for the purpose of making and entering into leases of parts or portions of the Premises for the rents and upon the terms, conditions and provisions deemed desirable to such Mortgagee and with like effect as if such leases had been made by the Mortgagor as the owner in fee simple of the Premises free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by the Mortgagor to Mortgagee shall be deemed to be coupled with an interest and shall not be revocable by Mortgagor.

3.02 Taxation of Note and Mortgage. If at any time before the debt hereby secured is fully paid, any law be enacted, deducting from the value of said real estate, for the purposes of taxation, any lien thereon, or revising or changing in any way the laws now in force for the taxation of mortgages or bonds, or the debts secured thereby, for state or local purposes, or the manner of collection of such taxes, so as to affect adversely this Mortgage or the debt hereby secured, or the owner and holder thereof in respect thereto, then this Mortgage and the Note hereby secured shall at the option of said Mortgagee without notice to any party, become immediately due and payable.



If any such law should be enacted and to the extent permitted by such law, Mortgagor shall have the opportunity of paying to the Mortgagee the amount of any additional cost or taxes to the Mortgagee from such law.

3.03 Marshalling of Assets. Mortgagor on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights to require a marshalling of assets by Mortgagee or to require Mortgagee, upon a foreclosure, to first resort to the sale of any portion of the Premises which might have been retained by Mortgagor before foreclosing upon and selling any other portion as may be conveyed by mortgagor subject to this Mortgage.

3.04 Partial Release. Without affecting the liability of any other person for the payment of any indebtedness herein mentioned (including Mortgagor should it convey said Premises) and without affecting the priority of the lien hereof upon any property not released, Mortgagee may, without notice, release any person so liable, extend the maturity or modify the terms of any such obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Premises described herein, take or release any other security or make compositions or other arrangements with debtors. Mortgagee may also accept additional security, either concurrently herewith or hereafter, and sell same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

3.05 Non-Waiver.

(a) By accepting payment of any sum secured hereby after its due date or altered performance of any obligation secured hereby, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any indebtedness hereby secured, either to require prompt payment when due of all other sums so secured or to take remedy for failure to make such prompt payment or full performance. No exercise of any right or remedy by Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

(b) No delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

(c) Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Mortgage and any disposition of the same by Mortgagee shall not constitute a waiver of the right of foreclosure by Mortgagee in the event of default or failure of performance by Mortgagor of any covenant or agreement contained herein or in any note secured hereby.

3.06 Protection of Security. Should Mortgagor fail to make any payment or to perform any covenant as herein provided, Mortgagee (but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof) may: make or do the same in the manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Premises for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the

judgment of Mortgagee is prior or superior hereto and, in exercising any such power, incur any liability and expend whatever amounts in its absolute discretion may deem necessary therefor, including cost of evidence of title and reasonable counsel fee. Any expenditures in connection herewith shall constitute an advance hereunder.

3.07 Rule of Construction. When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The headings of each paragraph are for information and convenience only and do not limit or construe the contents of any provision hereof.

3.08 Severability. If any term of this Mortgage, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term to persons or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

3.09 Successors in Interest. This Mortgage applies to, inures to the benefit of, and is binding not only on the parties hereto, but also on their heirs, executors, administrators, successors and assigns. All obligations of Mortgagor hereunder are joint and several. The term "Mortgagee" shall mean the holder and owner, including pledgees, of the Note secured hereby, whether or not named as Mortgagee herein.

3.10 Notices. All notices to be given pursuant to this Mortgage shall be sufficient if mailed postage prepaid, certified or registered mail, return receipt requested, to the below described addresses of the parties hereto, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail.

MORTGAGOR:

Kroh Brothers  
Development Company  
8900 Ward Parkway  
Kansas City, Missouri

With A Copy To:

Robert L. Jackson, Jr.  
Jackson, Dillard, et al.  
801 W. 47th, Suite 400  
1100 Main  
Kansas City, MO 64112

MORTGAGEE:

Charter American Mortgage  
Company  
Penntower, Suite 518  
3100 Broadway  
Kansas City, Missouri

With A Copy To:

Polsinelli, White & Vardeman  
4705 Central  
Kansas City, Missouri 64112  
Attn: Dale L. Schulte

3.11 Modifications. This Mortgage may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

3.12 Governing Law. This Mortgage shall be construed according to and governed by the laws of the State of Nebraska.

3.13 Expenses. Borrower will pay or reimburse Lender for all reasonable attorneys' fees, costs and expenses incurred by Lender in any action, proceeding or dispute of any kind in which Lender is made a party or appears as a party plaintiff or defendant, affecting the note, Mortgage, Borrower or Mortgaged Property, including, but not limited to, any condemnation action or proceeding involving the Mortgaged Property, any bankruptcy, receivership, insolvency, reorganization, arrangement, adjustment, or other similar proceeding, or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the indebtedness and secured by the lien of this Mortgage, and shall bear interest from the date of payment at the rate set forth in the Note secured hereby.

3.14 Notwithstanding anything herein to the contrary or anything contained in any Security Document given contemporaneously herewith, Mortgagee shall look solely to the foreclosure hereunder or under other Security Documents to remedy any default. Mortgagee shall not seek to obtain any personal judgment or deficiency judgment against Mortgagor, or anyone else, for or on account of any default under the Mortgage, Note or other Security Document.

IN WITNESS WHEREOF, the said Mortgagor has caused this instrument to be signed and sealed as of the date first above written.

KROH BROTHERS DEVELOPMENT COMPANY

By

Harry A. [Signature]

[SEAL]

ATTEST:

Secretary

STATE OF MISSOURI )  
COUNTY OF JACKSON ) ss.

On July 28, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared, GEORGE GILCHRIST personally known to be the ASST. VICE PRES. of KROH BROTHERS DEV. CO., a Missouri corporation and JACOB MONDSCHIEF, personally known to me to be ASST. SECRETARY of said corporation that executed and attested the within instrument and acknowledged to me that same was their free act and deed and is the execution by said corporation, same having been duly authorized by said corporation.

Witness my hand and official seal.

Janice L. Berry  
Notary Public

My Commission Expires:

4-10-87

JANICE L. BERRY  
Notary Public - State of Missouri  
Commissioned in Clay County  
and adjoining Counties  
My Commission Expires April 10, 1987

Exhibit A

Lots 1, 3 and 4, Maple 108 Shopping Center, an addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska.

RECEIVED  
1983 AUG -2 PM 1:48  
G. HAROLD OSTLER  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

Book 2593  
Page 177  
of 179

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