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BOX 333 - HV

153420

HFCOR Loan Number

Address: 701 Gullo Avenue, Nos. 147-151,
187-191, 201-205 and 221-225
Stanley St., Elk Grove Village,
Illinois 60007

PREPARED BY AND MAIL TO:

STEPHEN A. MALATO, ESQ.
West Washington St.

Chicago, Illinois 60602 Tax Nos.:

08-22-302-014-0000 (1) LOT
08-22-302-015-0000 (2)
ERO 08-22-302-016-0000 (3)
08-22-302-017-0000 (4)
08-22-302-018-0000 (5)

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement ("Mortgage") is made as of November 30, 1987 by HARRIS TRUST AND SAVINGS BANK, not personally but as Trustee pursuant to the terms and provisions of a certain Trust Agreement ("Trust Agreement") dated June 6, 1985 and known as Trust No. 43230 ("Mortgagor"), with a mailing address of 115 West Monroe Street, Chicago, Illinois 60690, in favor of HFC COMMERCIAL REALTY, INC., a Delaware corporation ("Mortgagee"), with a mailing address of 2700 Sanders Road, Prospect Heights, Illinois 60070, and pertains to the real estate legally described as follows ("Real Estate"):

Lots 1, 2, 3, 4 and 5 in Gullo International's Resubdivision of Lot 3 in Gullo International's Office and Industrial Center, being a subdivision in the West 1/2 of the Southwest 1/4 of Section 22, Township 41 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

1. RECITALS.

1.1 Note. WHEREAS, Mortgagor has executed and delivered to Mortgagee a Note ("Note") of even date herewith, wherein Mortgagor promises to pay to the order of Mortgagee the principal amount of TWO MILLION FIVE HUNDRED FIFTY ONE THOUSAND AND NO/100 DOLLARS (\$2,551,000.00), in repayment of a loan ("Loan") from Mortgagee to Mortgagor in a like amount, or so much thereof as may now or hereafter be disbursed or advanced by Mortgagee under the Note, together with interest thereon, from the date thereof, at the rate set forth therein [and, if applicable, at the "Default Rate" (as such term is defined in Note)], in the installments set forth in the Note, with the entire unpaid principal balance and accrued interest being due and payable on December 1, 1992 ("Maturity Date"), and the terms and provisions of the Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

1.2 Other Security Documents. WHEREAS, as security for the repayment of the "Indebtedness Hereby Secured" (hereinafter defined), in addition to this Mortgage, Mortgagor, BRYSON PROPERTIES XI, an Illinois limited partnership, the owner of one hundred per

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cent (100%) of the beneficial interest in Mortgagor ("Beneficiary"), and/or other parties have executed and delivered to Mortgagee certain other documents more particularly described in Exhibit "A" attached hereto and hereby made a part hereof (the Note, this Mortgage, and all other documents described on Exhibit "A", whether now or hereafter existing and as same may be amended, modified or supplemented from time to time, being collectively referred to herein as the "Security Documents"); and

1.3 Indebtedness. WHEREAS, Loan, together with interest, late charges, advances and prepayment premium, if any, due and owing thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time be due or owing or required to be paid pursuant to the Security Documents are herein collectively referred to as the "Indebtedness Hereby Secured".

2. THE GRANT.

Now, therefore, in order to secure the payment of the Indebtedness Hereby Secured and the performance of all other covenants, provisions, agreements and obligations contained herein or under the Security Documents (whether or not the Mortgagor is personally liable for such payment, performance and observance), in consideration of TEN AND NO/100 (\$10.00) Dollars, in hand paid by the Mortgagee to the Mortgagor, the recitals stated hereinabove, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby irrevocably grants, sells, assigns, releases, aliens, remises, conveys, mortgages and transfers to Mortgagee, its successors and assigns forever, all of its estate, right, title and interest in, to and under, and grants to Mortgagee a continuing security interest in and to all of the following described rights, interests, claims and property (collectively "Premises"):

- (a) the Real Estate;
- (b) all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Estate ("Improvements") together with any and all Personal Property (as defined in subparagraph (h) below), attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements including all extensions, additions, betterments, renewals, substitutions and replacements to any of the foregoing;
- (c) all estate, claim, demand, right, title and interest of Mortgagor now owned or hereafter acquired, including, without limitation, any after-acquired title, franchise, license, remainder or reversion, in and to:

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- (i) any land or vaults lying within the right-of-way of any street, avenue, way, passage, highway, or alley, open or proposed, vacated or otherwise, adjoining the Real Estate;
 - (ii) any and all alleys, sidewalks, streets, avenues, strips and gores of land belonging, adjacent or pertaining to the Real Estate and Improvements;
 - (iii) storm and sanitary sewer, water, gas, electric, railway and telephone services relating to the Real Estate and Improvements;
 - (iv) all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Real Estate or any part hereof; and
 - (v) each and all of the tenements, hereditaments, easements, appurtenances, other rights, liberties, reservations, allowances, and privileges relating to the Real Estate or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity;
- (d) all right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or the Improvements, or any part thereof or interest therein, and payments and rentals due thereon, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by the Mortgagor;
- (e) all rights of the Mortgagor to any and all plans and specifications, designs, drawings and other matters prepared for any construction on the Real Estate or to the Improvements;
- (f) all rights of the Mortgagor under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Real Estate or Improvements ("Third Party Agreements");
- (g) all rights of the Mortgagor, as seller or borrower, under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement

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of any person or entity to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Premises or any part thereof;

- (h) all right, title and interest of the Mortgagor in and to all tangible personal property ("Personal Property") owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, including, but not limited to:
- (i) all furniture, furnishings and equipment furnished by the Mortgagor to occupants of the Real Estate or Improvements (but expressly excluding from the term Personal Property any furniture, equipment, trade fixtures, furnishings or other property of or owned by the occupants of the Premises other than Mortgagor or Beneficiary;
 - (ii) all building materials and equipment located upon the Real Estate and intended for construction, reconstruction, alteration, repair or incorporation in or to the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements (all of which shall be deemed to be included in the Premises upon delivery thereto);
 - (iii) all machines, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, plumbing, sprinkler, waste removal, refrigeration, ventilation, and all fire sprinklers, alarm systems, protection, electronic monitoring equipment and devices;
 - (iv) all window, structural, and swimming pool maintenance and cleaning equipment and rigs and all equipment relating to the exclusion of vermin, pests or insects and the removal of dust;
 - (v) all lobby and other indoor and outdoor furniture, including without limitation, tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall sofas and other furnishings;
 - (vi) all rugs, carpets and other floor coverings, curtains, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;

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- (vii) all lamps, chandeliers and other lights;
- (viii) all recreational equipment and materials;
- (ix) all kitchen equipment, including without limitation, refrigerators, ovens, stoves, dishwashers, range hoods, exhaust systems and disposal units;
- (x) all laundry equipment and supplies including, without limitation, washers and dryers;
- (xi) all office furniture, equipment and supplies, but expressly excluding from the term Personal Property any furniture, equipment, trade fixtures, furnishings or other property of or owned by the occupants of the Premises other than Mortgagor or Beneficiary;
- (xii) all tractors, mowers, sweepers, snow removers, motor vehicles and other equipment used in the maintenance of the Real Estate or Improvements; and
- (xiii) all fixtures, personal property and other tangible property of any kind or character now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or with aforesaid Improvements thereon, including without limitation any and all antennae, appliances, basins, boilers, bookcases, cabinets, compactors, coolers, dehumidifiers, doors, ducts, elevators, engines, escalators, fans, fittings, furnaces, growing plants, hardware, heaters, humidifiers, incinerators, motors, pipes, pumps, radiators, screens, sinks, tools, ventilators, wall coverings, water fountains, windows, wiring, non-structural additions to the Real Estate, and all renewals or replacements therefor or articles in substitution thereof, whether or not the same be attached to such Improvements, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the Real Estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such

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Real Estate or does not constitute a "fixture", as such term is defined in the Uniform Commercial Code of the State in which the Premises are located ("Code"); Provided that the enumeration of any specific articles of Personal Property set forth herein shall in no way exclude or be held to exclude any items of property not specifically enumerated;

- (i) all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to proceeds of insurance in effect with respect to the Premises and any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards");
- (j) all other property or rights of the Mortgagor of any kind or character related to the Premises;
- (k) any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Mortgagor now has or may acquire in the Real Estate or Improvements or other rights, interests or properties comprising the Premises, now owned or hereafter acquired; and
- (l) all goodwill, trademarks, trade names, option rights, books and records and general intangibles of the Mortgagor relating to the Real Estate or Improvements, and all accounts, contract rights, instruments, chattel paper and other rights of the Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent or for advances or deposits made relating to the Real Estate or Improvements.

3. REPRESENTATIONS OF MORTGAGOR. The Mortgagor represents to the Mortgagee, as principle inducements to the making of the Loan, on which Mortgagor acknowledges and agrees that Mortgagee has a right to rely, as follows, all of which representations are true and correct on the date hereof and shall be true and correct until the Indebtedness Hereby Secured is paid in full and all other obligations required pursuant hereto and to other Security Documents have been performed:

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3.1 Warranty of Title. Mortgagor has good and marketable title to the Premises in fee simple absolute; is lawfully seized and possessed of the Premises; the Premises are unencumbered by subordinate liens except as may be herein expressly provided; and Mortgagor will forever ~~warrant and~~ defend the title to the Premises unto Mortgagee against the claims of all persons whomsoever. The Mortgagor hereby covenants with and to the Mortgagee and any purchaser at any foreclosure sale, that at its execution and delivery hereof, Mortgagor owns the Premises and has good and indefeasible estate therein in fee simple and that it has good and lawful right to sell, convey and mortgage the Premises.

3.2 Compliance with Law. Mortgagor to date has fully complied with all laws, ordinances, ruling, regulations, and orders of all governmental authorities affecting the Premises (including, but not limited to, zoning, land use and environmental) and has obtained all necessary and proper permits and licenses for development and operation of the Premises, and:

- (a) no hazardous substances, hazardous waste, industrial waste, pollution control waste or toxic substances, within the meaning of any applicable statute or regulation (collectively "Hazardous Substances"), are presently stored or otherwise located on Premises and that, within the definition of such statute, no part of Premises, including the ground-water located thereon, is presently contaminated by any Hazardous Substances;
- (b) until the Indebtedness Hereby Secured is paid in full, all Hazardous Substances, which may be used by any person for any purpose upon Premises, shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any governmental authority;
- (c) Premises will not be used for the principal purpose of storing Hazardous Substances and that no such storage or use will otherwise be allowed on Premises which will cause or increase the likelihood of causing the release of Hazardous Substances onto Premises;
- (d) Mortgagor shall promptly notify Mortgagee as soon as Mortgagor knows of or suspects that a Hazardous Substance has been released on Premises; and
- (e) Mortgagor shall indemnify and hold Mortgagee harmless of and from all loss, cost and expense (including reasonable attorneys' fees), liability, damage and claim whatsoever incurred by Mortgagee by reason of

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Mortgagor's failure to comply with applicable statutes and regulations for the protection of the environment, including occupational health and safety, hazardous waste and substances and environmental matters, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such failure to comply, PROVIDED THAT to the extent Mortgagee is strictly liable pursuant to any such statute, Mortgagor's obligations to Mortgagee pursuant to this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee.

3.3 Recitals. The recitals above are true and correct and are incorporated by reference herein.

3.4 Power and Authority. Mortgagor, is duly organized and validly existing, qualified to do business and is in good standing in the State of Illinois; and has full power and authority to execute, deliver and perform all of the terms, covenants, conditions and agreements contained in Security Documents in accordance with their respective terms, which execution, delivery and performance has been fully authorized by all necessary actions and approved by each required governmental authority or other party, and the obligations of Mortgagor and every other party thereof are the legal, valid and binding obligations of each, enforceable by the Mortgagee in accordance with the respective terms of the Security Documents, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws applicable to the enforcement of creditors' rights generally.

3.5 No Event of Default or Violations. No "Event of Default" (hereafter defined) or event which, with notice or passage of time or both, would constitute an Event of Default has occurred or is continuing under any of the Security Documents. Mortgagor is not in violation of any governmental regulation (including, without limitation, any applicable securities law) or in default under any agreement to which it is bound, or which affects it or any of its property; and the use and occupancy of the Premises and the execution, delivery and performance of any of the Security Documents, in accordance with their respective terms, shall not violate any governmental requirement (including, without limitation any applicable usury law), or conflict with, be inconsistent with or result in any default under any of the representations of any indenture, mortgage, easement, restriction of record, contract, document, agreement or instrument of any kind to which any of the foregoing is bound or which affects it or any of its property, except as identified in writing to and previously approved by Mortgagee.

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3.6 No Litigation or Governmental Controls. There are no proceedings of any kind pending, or threatened against or affecting Mortgagor, the Premises (including any attempt or threat by any governmental authority to condemn or re-zone all or any portion of the Premises), or involving the validity, enforceability or priority of this Mortgage, or any other of the Security Documents; or enjoining or preventing or threatening to enjoin or prevent the use and occupancy of the Premises or the performance by Mortgagor of its obligations hereunder; and there are no rent controls, governmental moratoria or environmental controls (presently in existence or threatened) affecting the Premises, except as identified in writing to and previously approved by Mortgagee.

3.7 Liens. Title to the Premises, or any part thereof, is not subject to any liens or encumbrances of any nature whatsoever, whether or not of record and whether or not customarily shown on title insurance policies, except for Exception Nos. _____, appearing on Schedule B of commitment for title insurance Number _____, dated _____, 19____, issued by _____, and real estate taxes not yet due and payable.

3.8 Financial and Operating Statements. All financial and operating statements submitted to Mortgagee in connection with this Loan are true and correct in all respects, have been prepared in accordance with the provisions herein set forth and fairly present the respective financial conditions of the subjects thereof and the results of their operations as of the respective dates shown thereon. No materially adverse changes have occurred in the financial conditions and operations reflected therein since their respective dates, and no additional borrowings have been made since the date thereof other than the borrowing made under this Mortgage and any other borrowing approved in writing by Mortgagee.

3.9 Other Statements to Mortgagee. Neither this Mortgage nor any other Security Document or any document, agreement, report, schedule, notice or other writing furnished to the Mortgagee by or on behalf of Mortgagor or on behalf of Beneficiary or its General Partners, contains any misleading or untrue statement of any fact material to any of the foregoing; or omits any fact which would, in the circumstances, make the said statements misleading.

3.10 Purpose of Loan. Loan is a business loan within the scope and operation of the laws of the State of Illinois, the proceeds of which will be used solely for the purpose of carrying on or acquiring the business of the Beneficiary.

4. COVENANTS AND AGREEMENTS OF MORTGAGOR. The Mortgagor further covenants and agrees as follows:

4.1 Payment of Sums Due. Mortgagor shall pay promptly when due each and every installment of the principal and interest

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and any other sums required to be paid (including fees and late charges), if any, on the Note at the times and in the manner provided therein and in this Mortgage or any of the other Security Documents and shall pay all other Indebtedness Hereby Secured, as the same becomes due, and shall duly perform and observe all of the covenants, agreements and provisions contained herein and in the Note and other Security Documents. All sums payable by Mortgagor shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

4.2 Repair; No Waste; Restoration; No Zoning Change. Mortgagor will maintain the Premises in good condition and repair; commit or suffer no waste of the Premises; promptly repair, restore, replace or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any eminent domain or similar proceeding; complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Premises; initiate, join in or consent to no change in any private restrictive covenant, zoning ordinance, or other public or private restriction, limiting or defining the uses which may be made of the Premises or any part thereof; cause the Premises to be managed in a competent and professional manner; and do nothing whatsoever, including, but not limited to, abandoning the Premises, which would depreciate or impair the value of the Premises or the security of the Mortgage.

4.3 Compliance With Law. Mortgagor will comply with or cause to be complied with all present and future laws, statutes, ordinances, rulings, regulations, orders and requirements of all federal, state, municipal, county, and other governmental agencies and authorities relating to the Premises, as well as all covenants, conditions, and restrictions affecting same; shall not permit any unlawful use or nuisance to exist upon the Premises, and shall refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements or any portion thereof.

4.4 No Alteration. No Improvement now or hereafter secured by the lien of this Mortgage shall be removed, demolished or materially altered or enlarged, nor shall any new improvement be constructed, without the prior written consent of Mortgagee. An alteration or other change shall be considered material and shall require Mortgagee's consent if the cost thereof, as to any one (1) building comprising a part of the Premises, is in excess of \$10,000.00, in any single instance, or \$20,000.00, in the aggregate, in any one calendar year.

4.5 Operating Costs. Mortgagor shall pay when due all operating costs of the Premises;

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4.6 No Cooperative or Condominium. The Mortgagor shall not operate the Premises or permit the same to be operated as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Premises, or any part thereof, as tenant stockholders or otherwise.

4.7 Other Payments and Contest of Liens and Encumbrances. Unless waived by Mortgagee in writing, Mortgagor shall deposit, in addition to the monthly installments of principal and interest required by the Note, monthly, until the Indebtedness Hereby Secured is paid;

- (a) a sum equal to all "Taxes" (hereinafter defined) next due on the Premises, all as estimated by Mortgagee, divided by the whole number of months to elapse before the month prior to the date when such Taxes will become due and payable; and
- (b) a sum equal to an installment of the premium or premiums that will become due and payable, as estimated by Mortgagee to renew the insurance as hereinafter required, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed.

All such payments (collectively "Tax and Insurance Deposits") shall be held with no obligation to segregate such payments by the Mortgagee or a depository designated by Mortgagee, in trust, without accruing, or without any obligation arising for the payment of, any interest thereon. The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal payable on the Note shall be paid in a single payment each month, to be applied to the following items in the order stated:

- (i) any sums advanced or expenses estimated or incurred but not yet paid by the Lender under the terms of this Mortgage, Assignment of Rents and Leases, or any other of the Security Documents;
- (ii) any Tax and Insurance Deposits due;
- (iii) late charges in accordance with the Note;
- (iv) interest due under the Note;
- (v) principal due under the Note;

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- (vi) prepayment charges; and
- (vii) principal not yet due.

If the total Tax and Insurance Deposits in the possession of the Mortgagee shall not be sufficient to pay all of the Taxes and insurance premiums, together with all penalties and interest thereon, when the same shall become due, the Mortgagor shall pay to the Mortgagee, on demand, any amount necessary satisfy the deficiency. If the total of such Tax and Insurance Deposits exceeds the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items.

Notwithstanding the foregoing, following the occurrence of an "Event of Default" (hereinafter defined), the Mortgagee may, at its option, without being required to do so, apply any Tax and Insurance Deposits in its possession on account of any part of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect.

When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which the same have been deposited and shall not be subject to the direction or control of the Mortgagor.

Notwithstanding anything contained herein to the contrary:

- (w) neither the depository nor the Mortgagee shall be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no Event of Default exists hereunder and within a reasonable time prior to the due date, shall have requested the Mortgagee, in writing, to make application of such Tax and Insurance Deposits in its possession to the payment of the particular taxes or insurance premiums, in accordance with the tax bills and insurance premium invoices submitted with such request;
- (x) upon request of the Mortgagor, the Mortgagee shall, from the Tax and Insurance Deposits, pay the insurance premiums and Taxes or shall, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor;

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- (y) Mortgagor shall be responsible for the payment, when first due and owing and before any penalty attaches, of all taxes and assessments (general or special), water charges, sewer charges, and any other charges, fees, taxes, claims, levies, charges, expenses, liens and assessments, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, that may be asserted against the Premises or any part thereof or interest (collectively "Taxes"), PROVIDED THAT if sufficient Tax and Insurance Deposits are available, Mortgagee, at its option, either may make such Tax and Insurance Deposits available to Mortgagor for the payments required pursuant hereto or may make such payments on behalf of Mortgagor; and
- (z) in the event Mortgagor desires to contest the validity of any Taxes, it shall:
- (1) on or before fifteen (15) days prior to the due date thereof, notify Mortgagee, in writing, that it intends to so contest the same;
 - (2) on or before the due date thereof, on demand, deposit with Mortgagee security (in form and content satisfactory to Mortgagee) for the payment of the full amount of such Taxes, or any balance thereof then remaining unpaid (or provide to Mortgagee such other indemnity as may be reasonably acceptable to it); and
 - (3) from time to time, deposit additional security or indemnity, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of such Taxes remaining unpaid, together with all interest, penalties, costs and charges accrued or accumulated thereon;

and if the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such Taxes by appropriate legal proceedings, which shall operate to prevent the collection thereof and the sale of the Premises, or any part thereof, to satisfy the same, (aa) Mortgagor shall be under no obligation to pay such Taxes until such time as the same has been decreed, by court order, to be a valid lien on the Premises, (bb) Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid Taxes, to prevent the sale or forfeiture of the Premises or non-payment of such

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Taxes, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular Taxes for which such deposit was made, (cc) any surplus deposit retained by Mortgagee, after the payment of the Taxes for which the same was made, shall be repaid to Mortgagor, unless an Event of Default exists, in which event, such surplus shall be applied by Mortgagee to cure such default.

4.7.1 Tax Payments by Mortgagee. Subject to Mortgagor's right to contest, as provided in Section 4.7 (z) hereof, Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to Taxes, that may be asserted against the Premises, or any part thereof, and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any Taxes, sales forfeiture, or title or claim relating thereto, and any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph, whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be established by this Mortgage.

In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph shall constitute additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor upon ten (10) days' written notice, together with interest at the Default Rate.

4.7.2 Insurance. The Mortgagor shall insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) insurance against loss to the Improvements caused by fire, lightning, windstorms, vandalism, malicious mischief, and risks covered by the so called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements, plus the cost of debris removal, with full replacement cost and inflation guard endorsement;

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- (b) comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000.00 (combined single limits);
- (c) rent and rental value insurance in amounts sufficient to pay, during any period of up to one (1) year in which the Improvements may be damaged or destroyed, all rents derived from the Premises and all amounts (including, but not limited to, all Taxes, utility charges and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;
- (d) broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;
- (e) during the installation of any alterations or improvements to the Premises, insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subsection (b) above and Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements;
- (f) federal flood insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured, if the Premises are in a "flood plain area" or "flood hazard area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;
- (g) if any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so called "dram shop" or "innkeepers liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify;
- (h) plate glass, sprinkler leakage if applicable, and machinery and pressurized vessel insurance; and

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- (i) any other insurance coverage required pursuant to Security Documents or lease agreements with tenants of Premises.

All policies of insurance to be maintained and provided as required herein shall be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto waiver of subrogation and Mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee. Said policies shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. All said insurance shall be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer and shall provide for thirty (30) days' prior written notice of cancellation to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee marked "paid" and, in case of insurance policies about to expire, the Mortgagor shall deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

Mortgagor shall not carry any separate insurance, concurrent in kind or form and contributing in the event of a loss, with any insurance required herein. Mortgagee may, at any time and in its reasonable discretion, upon five (5) business days' written notice to the Mortgagor, procure and substitute for any and all of the policies of insurance required herein, in such amounts and with such companies as Mortgagee may select, the cost of which shall be paid by Mortgagor upon demand. In the event of a change in ownership or occupancy of the Premises (if permitted by the provisions hereof), immediate notice thereof shall be delivered to all insurers. All monies paid by the Mortgagee in procuring said insurance that are not reimbursed by the Mortgagor shall be additional Indebtedness Hereby Secured and shall be immediately due and payable without the requirement of notice, together with interest thereon at the Default Rate. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the Indebtedness Hereby Secured, all right, title and interest of the Mortgagor in and to any insurance policies then in force and any claims or proceeds thereunder shall pass to the Mortgagee or any purchaser or grantee at the foreclosure sale or after entry of the decree of foreclosure.

The Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of the Premises.

In the event of a loss covered by policies of insurance, the Mortgagor shall give prompt notice thereof to the Mortgagee and the Mortgagee or, after entry of decree of foreclosure, the purchaser at the foreclosure sale is hereby authorized, at its option, either to

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settle and adjust any claim under such policies, without the consent of the Mortgagor, or allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss, provided that the Mortgagor may itself adjust losses aggregating not in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), and provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds. The expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be added to and become a part of the Indebtedness Hereby Secured, which shall be immediately due and payable to the Mortgagee without the requirement of notice, together with interest thereon at the Default Rate.

In the event of any insured damage to or destruction of the Premises or any part thereof ("Insured Casualty") and if, in the judgment of the Mortgagee:

- (i) the general area of the Premises is not incompatible for the use of the Premises for industrial warehouse purposes and the Premises can be restored to an architectural and economic unit of the same character and not less valuable than existed prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness Hereby Secured;
- (ii) the insurers do not deny liability to the insureds;
- (iii) no Event of Default shall have occurred and be then continuing and no circumstance or event shall exist which, with the service of notice or the passage of time, or both, would constitute an Event of Default;
- (iv) all existing leases shall continue in full force and effect without reduction or abatement of rentals (except during the period of untenability);
- (v) Mortgagee is given an architect's certificate acceptable to Mortgagee indicating the Premises may be reconstructed at least 30 days prior to the Maturity Date;
- (vi) the Premises as reconstructed will be of at least equal value and of substantially the same character as prior to such damage or destruction; and
- (vii) the insurance proceeds and all other funds of the Mortgagor are sufficient to pay the costs of "Restoring" (hereafter defined);

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the proceeds of insurance shall be applied, consistent with the provisions of paragraph 4.9 hereof, to reimburse the Mortgagor for the cost of restoring, repairing, replacing, or rebuilding (herein generally called "Restoring") the Premises, or any part thereof.

If, in the judgment of Mortgagee, the conditions for Restoring set forth immediately above shall not have been satisfied, then, at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor served within sixty (60) days of the date Mortgagee has received written notice of the Insured Casualty, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be due, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become immediately due and payable, and Mortgagee is hereby authorized to collect all proceeds of insurance and apply the same to the payment of the Indebtedness Hereby Secured, without the payment of premium or additional interest, with any proceeds in excess of that amount necessary to fully pay the Indebtedness Hereby Secured to be paid to Mortgagor.

In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction in accordance with plans and specifications to be first submitted to and approved by the Mortgagee. In the event Mortgagor shall fail within a reasonable time, subject to delays beyond its control (but in no event in excess of sixty [60] days), to restore or rebuild the Improvements, then Mortgagee, at its option, may, but under no circumstance shall be obligated to, restore and rebuild said Improvements, for or on behalf of the Mortgagor, and for such purpose may do all necessary acts including, without limitation, using the insurance proceeds or any other amounts deposited by the Mortgagor.

Any portion of the insurance proceeds remaining after deduction for all expenses incurred in the collection and administration of the insurance proceeds (including attorneys' fees) and after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction.

No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee.

4.8 Condemnation and Eminent Domain. The Mortgagor shall give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (generally "Taking"), of all or any part of the Premises or affecting any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceeding.

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Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any and all Awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said Awards and is further authorized to give appropriate receipts and acquittances therefor.

If, in the judgment of the Mortgagee:

- (a) the general area of the Premises is not incompatible for the use of the Premises for industrial warehouse purposes and the Premises can be restored to an architectural and economic unit of the same character and not less valuable than existed prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured;
- (b) no Event of Default shall have occurred and be then continuing and no circumstance or event shall exist which, with the service of notice or the passage of time, or both, would constitute an Event of Default;
- (c) all existing leases shall continue in full force and effect without reduction or abatement of rentals (except during the period of untenantability, except for that part of Improvements taken by condemnation); and
- (d) Mortgagee is given an architect's certificate acceptable to Mortgagee indicating the Premises may be reconstructed at least 30 days prior to the Maturity Date;

the Award shall be applied, consistent with the provisions of paragraph 4.9 hereof, to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking as provided for hereinafter.

If in the judgment of Mortgagee, the conditions for Restoring, as set forth immediately above, have not been satisfied, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be due and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become immediately due and payable, and Mortgagee may collect all such Awards and apply the same in the next following paragraph.

Except as provided for above, Mortgagee shall apply any Award (including the amount not required for Restoring effected in accordance with the above) upon the Indebtedness Hereby Secured in such order or manner as Mortgagee may elect; Provided, that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid.

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In the event that any Award shall be made available to the Mortgagor for Restoring that part of the Premises remaining after a Taking, Mortgagor hereby covenants to restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as existed prior to such Taking, all to be effected in accordance with the provisions for disbursement as hereinafter set forth. In the event the Mortgagor shall fail within a reasonable time, subject to delays beyond its control, to commence and complete the Restoring, Mortgagee may, but under no circumstance shall become obligated to, rebuild the Premises for or on behalf of the Mortgagor and for such purpose may do all necessary acts including, without limitation, using the Awards. The insufficiency of any such Award shall not relieve Mortgagor from its obligation to restore the Premises after the taking.

Any part of any Award remaining, after deduction for all expenses incurred in the collection and administration of the Award (including attorneys' fees) and after payment in full of the Indebtedness Hereby Secured, shall be paid to Mortgagor or as ordered by a court of competent jurisdiction.

No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

Notwithstanding anything contained herein or in Note or other Security Documents, Mortgagor agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and other instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor for any Taking, either permanent or temporary, under any such proceeding.

4.9 Disbursement of Insurance Proceeds and Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidences of costs and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may require that all contractors and subcontractors, in addition to all plans and specifications for such Restoring, be approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time. Funds other than proceeds of insurance or Award shall be disbursed prior to disbursement of such proceeds, except as may

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otherwise be provided in any loan agreement expressly approved by the Mortgagee. At all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the Restoring, shall be at least sufficient, in the reasonable judgment of the Mortgagee, to pay for the cost of completion of the Restoring, free and clear of all liens or claims for liens. The insufficiency of such proceeds shall not relieve Mortgagor of its obligation to repair and restore the Improvements.

4.10 Restrictions on Transfer. Mortgagor shall not, without prior written consent of the Mortgagee, create, effect, contract for, commit to or consent to nor suffer or permit any conveyance, sale, assignment, transfer, hypothecation, lien, pledge, mortgage, security interest, or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Premises or any part thereof, or interest therein or title thereto (excepting, however the disposition of "Obsolete Collateral" which shall be sales or other dispositions of Collateral (as hereinafter defined) no longer useful in connection with the operation of the Premises, provided, that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral subject to the prior lien and with the same priority hereof, with at least equal value and utility), and:

- (a) if the Mortgagor is a land trustee ("Trustee Mortgagor"), no beneficiary of the Mortgagor shall create, effect, contract for, commit to, or consent to, or shall suffer or permit, any sale, assignment, collateral assignment, transfer, lien, pledge, mortgage, security interest, removal or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;
- (b) if the Mortgagor is a corporation or if any corporation is a beneficiary of a Trustee Mortgagor, no shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest, removal or other encumbrance or alienation of any such shareholder's shares in such corporation;
- (c) if the Mortgagor is a partnership or joint venture or if any beneficiary of a Trustee Mortgagor is a partnership or joint venture, no general partner or joint venturer in such partnership or joint venture shall create, effect or consent or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest, removal or other encumbrance or alienation of any part of the

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partnership interest or joint venture interest, as the case may be, of such partner or joint venturer;

- (d) at all times until the Indebtedness Secured Hereby is paid in full, DAVID M. ROSENTHAL, a general partner of PENTAGULL EQUITY PARTNERS, an Illinois limited partnership, a general partner of Beneficiary, shall retain a one per cent (1%) interest in the cash flow, profits and losses (subject to any special allocation of losses) in Beneficiary and a twenty five per cent (25%) interest in the net proceeds resulting from the sale of the Premises;
- (e) Mortgagor shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld), terminate the services of the present managing agent of Premises or amend the management agreement executed with said managing agent, and
- (f) Mortgagor shall not allow any change in control (by way of stock ownership, partnership interests or otherwise) in any corporation or partnership constituting or included within the Mortgagor which directly or indirectly controls any corporation or partnership constituting or included within the Mortgagor that results in a material change in the identity of the person(s) in control of such entity.

The foregoing provisions of this Paragraph shall not apply to:

- (i) liens securing the Indebtedness Hereby Secured;
- (ii) the lien of current Taxes not in default; or
- (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in the Mortgagor or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.

Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of the Mortgagee in the future to insist upon strict compliance with the provisions hereof.

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In the event Mortgagee gives its written consent to the sale or transfer, whether by operation of law, voluntarily or otherwise, of all of any part of the Premises, (x) Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to the Premises, the Indebtedness Hereby Secured, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from any of its covenants hereunder, and without waiving Mortgagee's right of acceleration as provided herein, (y) the proposed documents of transfer shall be submitted to Mortgagee and, within ten (10) business days following such transfer, copies of the executed documents of transfer shall be delivered to Mortgagee, and (z) any party succeeding to title to Premises, including the beneficiary of any land trust holding title to Premises (but excluding the land trustee) shall, by separate document, assume and agree to be liable for the matters specified in the exculpation provision hereof.

Mortgagee may condition any consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may, in its sole discretion, require.

The provisions of this Paragraph shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or in such beneficial interest of stock of, or partnership or joint venture interest in the Mortgagor or any beneficiary of a Trustee Mortgagor.

4.11 Change in Tax Laws. If, by the laws of the United States of America, or of any state, county, or municipal governmental subdivision having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order, or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of Mortgages or deeds or debts secured by Mortgages or deeds of trust or the interest of Mortgagor or Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, or the Indebtedness Hereby Secured, then Mortgagor shall, upon demand by Mortgagee or any subsequent holder of the Note, pay said taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness Hereby Secured shall be due and payable within thirty (30) days after written demand by Mortgagee. Nothing

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in this Paragraph shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

4.12 Inspection of Premises. The Mortgagor shall at all reasonable times permit the Mortgagee and its agents and designees, to enter on and inspect the Premises; deliver to the Mortgagee certified copies of all Leases, agreements creating or evidencing Personal Property, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates the Premises; permit access by the Mortgagee to its books and records, construction progress reports, tenant registers, sales records, offices, insurance policies, supporting data, vouchers and other papers for examination and audit and the making of copies and extracts; and prepare such schedules, summaries, reports and progress schedules as the Mortgagee may request.

4.13 Certified Annual Operating Statements. Beneficiary, at Mortgagor's expense, shall furnish:

- (a) an annual statement of the operation of the Premises prepared by a certified public accountant acceptable to Mortgagee, in accordance with generally accepted accounting principles and certified by a general partner of Beneficiary, showing in reasonable detail satisfactory to Mortgagee, among other things, total rents and other income received and total expenses together with an annual balance sheet and profits and loss statement, within ninety (90) days after the close of each fiscal year of Beneficiary, beginning with the fiscal year first ending after the date of delivery of this Mortgage;
- (b) interim statements of the operation of the Premises showing, in reasonable detail satisfactory to Mortgagee, among other things, total rents and other income received and total expenses, for the previous quarter, certified by a general partner of Beneficiary;
- (c) copies of the Mortgagor's annual State and Federal Income Tax filings within thirty (30) days of filing; and
- (d) annual financial statements of Beneficiary prepared by a certified public accountant acceptable to Mortgagee and certified by a general partner of Beneficiary, including a balance sheet showing assets and liabilities, all in reasonable detail satisfactory to Mortgagee, within ninety (90) days after the close of each fiscal year of Beneficiary.

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Mortgagee may, by notice in writing to the Mortgagor, require that the same be prepared and certified, pursuant to audit, by a firm of independent certified accountants satisfactory to Mortgagee, in which case such accountants shall state whether or not, in their opinion, any Event of Default exists hereunder or under the Note. If the statements furnished shall not be prepared in accordance with generally accepted accounting principles consistently applied or if the Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of the Premises, the Mortgagor and/or Beneficiary, at Mortgagor's expense, and the costs of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, with all payable immediately upon demand.

4.14 Acknowledgement of Debt. Mortgagor within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish:

- (a) a written statement duly acknowledged of all amounts due on any Indebtedness Hereby Secured, whether for principal or for interest on the Note or otherwise, and stating whether any offsets or defenses exist against the Indebtedness Hereby Secured and covering such other matters as Mortgagee may reasonably require; and
- (b) a certificate of Beneficiary setting forth the names of all lessees under any Leases, the terms of their respective Leases, the space occupied, the rents payable thereunder, the dates through which any and all rents have been paid and such other leasing and rental data as Mortgagee may reasonably require.

4.15 Other Amounts Secured. At all times, regardless of whether any proceeds of the Loan have been disbursed, this Mortgage shall secure any advances made pursuant hereto and to other Security Documents and any other amounts as provided herein, and the payment of any and all commissions, service charges, liquidated damages, expenses, and advances due to be paid or incurred by Mortgagee in connection with the Loan, all in accordance with commitment issued by the Mortgagee dated October 16, 1987, in favor of DAVID M. ROSENTHAL, for the benefit of Beneficiary, as amended by letter amendments dated October 26, 1987 and October 29, 1987 ("Commitment"), and the application therefor.

4.16 Assignment of leases and Rents, Subordination. All right, title and interest of the Mortgagor in and to all present leases affecting the Premises, and including and together with any and all future leases upon all or any part of the Premises, and together with all of the Rents, from or due or arising out of the Premises have been transferred and assigned simultaneously herewith to the

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Mortgagee as further security for the payment of the Indebtedness Hereby Secured under provisions of a certain instrument captioned Assignment of Leases and Rents ("Assignment of Rents"), of even date herewith, executed by Mortgagor and to be recorded concurrently with the recording of this Mortgage, the terms, covenants, and conditions of which are hereby expressly incorporated herein by reference and made a part hereof, with the same force and effect as though the same were more particularly set forth herein. After an Event of Default, Mortgagee shall have such powers and rights as are contained in the Assignment of Rents in addition to any non-conflicting rights and powers as provided herein. All future leases affecting the Premises shall:

- (a) conform with the minimum leasing criteria specified in Paragraph O. of special mortgage provisions attached as Exhibit "A" to Commitment and otherwise be on a lease form approved by the Mortgagee;
- (b) be submitted by the Mortgagor to the Mortgagee for its approval prior to the execution thereof and if the Mortgagee does not advise the Mortgagor of its disapproval within five (5) days following receipt of such leases, the same shall be deemed approved by Mortgagee; and
- (c) all approved and executed leases shall be specifically assigned to the Mortgagee by instrument in form satisfactory to Mortgagee and shall, at the option of Mortgagee, be paramount or subordinate to the lien of this Mortgage and Mortgagee shall have such power to cause and perfect said leases as paramount or subordinate as are granted in the Assignment of leases.

This Mortgage shall not merge with the Assignment of Rents or any other interest of Mortgagee in the Premises, or any part thereof, now or hereafter existing, and whether before or after any Event of Default or foreclosure of the lien of this Mortgage unless Mortgagee shall consent in writing to such merger.

4.17 Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code as enacted in the State of Illinois ("Code") with respect to any and all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage ("Deposits"), and any property included in the granting clauses of this Mortgage, which property may not be deemed to form a part of the Premises described in Schedule A attached hereto or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property,

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additions to such property, and the proceeds thereof (all of said property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness Hereby Secured and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have the option of proceeding with respect to the Collateral as to both real and personal property in accordance with its rights and remedies with respect to the Premises, in which event the default provisions of the Code shall not apply. The Mortgagor and Mortgagee agree that, in the event the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five (5) days notice of the sale of the Collateral shall be reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but shall not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral, except that so long as no Event of Default shall have occurred, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other collateral at least equal in value to the initial value to that disposed of, and in such a manner so that said Collateral shall be subject to the security interest of the Mortgagee and shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest secured by the lien of this Mortgage. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefore or additions thereto, unless the Mortgagee otherwise consents, will be, free and clear of liens, encumbrances or the security interest of others.

4.18 Future Advances. This Mortgage also secures:

- (a) future advances and loans from Mortgagee to Mortgagor, as provided in the Commitment and other Security Documents and all advances, disbursements and other payments required pursuant hereto or to other Security Documents are obligatory advances and shall, to the fullest extent permitted by law, have priority over any and all mechanics' lien claims and

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other liens and encumbrances arising after the date of the recording of this Mortgage; and

- (b) all other sums due and owing pursuant to Note and this Mortgage and advanced by Mortgagee to protect Premises or to preserve the priority of the lien established hereby (PROVIDED THAT such other sums shall not exceed one hundred fifty per cent (150%) of Loan).

4.19 Prepayment Privilege. Provided that no Event of Default shall have occurred, the Mortgagor shall have the privilege of fully prepaying the Indebtedness Hereby Secured, in accordance with the terms, limitations and conditions, if any, set forth in the Note, but not otherwise.

4.20 Effect of Extensions of Time, Amendments on Junior Liens and Others. If the payment of the Indebtedness Hereby Secured, or any part thereof, shall be extended or varied, or if any of the security shall be released, all persons now in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation having a junior Mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Note, the Security Documents or any other document or instrument evidencing, securing or guarantying the Indebtedness Hereby Secured and to vary the rate of interest and the method of computing the same and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this paragraph contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

4.21 Mortgagee's Right to Modify. Mortgagor consents to any and all renewals and extensions in the time of payment of the Indebtedness Hereby Secured and agrees further that at any time and from time to time, without notice, the terms of payment provided for in the Note may be modified or the Premises released (in whole or in part) or increased, changed or exchanged by agreement between the Mortgagee and any owner of the Premises, without in anywise affecting the liability of any party to the Note, or any person liable or to become liable with respect to the Indebtedness Hereby Secured. No sale of the Premises, or any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by

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applicable law, shall be a waiver of or preclude the exercise of any right or remedy hereunder, nor shall any sale of the Premises in anywise affect the liability of any party to the Note, or any person liable or to become liable with respect to the Indebtedness Hereby Secured.

4.22 Usury; Reduction of Interest. Notwithstanding anything to the contrary contained herein or in the Note, any other Security Document or in any other document or agreement executed and delivered pursuant to Commitment or required by Security Documents, whether now existing or hereafter arising and whether written or oral, it is agreed that the aggregate of all interest and any other charges constituting interest, or adjudicated as constituting interest, and contracted for, chargeable or receivable under the Note or otherwise in connection with the debt evidenced thereby, shall under no circumstances exceed that permitted by law. In the event the maturity of the Note is accelerated by reason of an election by the holder thereof resulting from a default thereunder or under any other Security Documents, or by voluntary prepayment by Mortgagor or otherwise, then earned interest may never include more than permitted by law. If from any circumstance any holder of the Note shall ever receive interest or any other charges constituting interest, or adjudicated as constituting interest, the amount, if any, which would exceed that permitted by law, (the "Excess Interest") shall be applied to the reduction of the principal amount owing on the Note, and not to the payment of interest. If the Excess Interest exceeds the unpaid principal balance of the Note, then the Excess Interest shall be refunded to Mortgagor. All sums paid or agreed to be paid to the holder of the Note for the use, forbearance or detention of the indebtedness of Mortgagor to the holder of the Note shall be amortized, prorated, allocated and spread throughout the full term of such indebtedness.

4.23 Mechanics' Liens. Mortgagor shall not permit any mechanic's, laborer's or materialmen's liens to stand against the Premises. If any such lien shall at any time be recorded against the Premises, then Mortgagor shall give written notice thereof promptly to Mortgagee, and cause the same to be discharged of record within thirty (30) days after the date of recording of the same, either by payment or by deposit or bond, in amounts or in form satisfactory to Mortgagee. If Mortgagor fails to discharge any such lien within such period, then Mortgagee, in addition to any other right or remedy hereunder, shall have the option (but not the obligation) to procure the discharge of such lien either by depositing the amount claimed to be due in court, or by bonding. Any amount paid or deposited by Mortgagee to discharge such lien, and all costs and other expenses, including all reasonable attorneys' fees, incurred in defending any action to foreclose such lien shall be deemed a part of the Indebtedness Hereby Secured, shall be immediately due and payable, without demand, and shall bear interest at the Default Rate.

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Notwithstanding the foregoing, in the event Mortgagor desires to contest the validity of any such lien, it shall:

- (a) on or before fifteen (15) days prior to the due date thereof, notify Mortgagee, in writing, that it intends to so contest the same;
- (b) on or before the due date thereof, on demand, deposit with Mortgagee security (in form and content satisfactory to Mortgagee) for the payment of the full amount of such lien, or any balance thereof then remaining unpaid (or provide to Mortgagee such other indemnity as may be reasonably acceptable to it); and
- (c) from time to time, deposit additional security or indemnity, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of the lien remaining unpaid, together with all interest, penalties, costs and charges accrued or accumulated thereon.

If the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien by appropriate legal proceedings, which shall operate to prevent the collection thereof and the sale of Premises, or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien until such time as the same has been decreed, by court order, to be a valid lien on Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid lien, to prevent the sale or forfeiture of Premises or non-payment of such lien, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien for which such deposit was made. Any surplus deposit retained by Mortgagee, after the payment of the lien for which the same was made, shall be repaid to Mortgagor, unless an Event of Default exists, in which event, such surplus shall be applied by Mortgagee to cure such Event of Default.

4.24 Partial Payments. Acceptance by the Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment, shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest therein, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent, except and to the extent otherwise provided by law.

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5. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an event of default (collectively "Events of Default") pursuant to this Mortgage:

- (a) the failure of Mortgagor to pay an amount due herein or secured hereby, interest thereon, or any installment of principal thereof or interest thereon within ten (10) days of the date the same becomes due and payable whether at maturity or by acceleration or otherwise under this Note, this Mortgage, or any of the other Security Documents; or
- (b) the failure of Mortgagor to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage or in the other Security Documents after the expiration of any grace period expressly allowed in said instrument relative to the cure of such default (including, but not limited to the restrictions on transfer contained in paragraph 4.10 hereof), and such default is not cured within fifteen (15) days of written notice and demand to cure from Mortgagee to Mortgagor (provided that in the event of a default which is not capable of being cured within said fifteen (15) day period, the same shall not be considered a default if Mortgagor shall, within said fifteen (15) day period, initiate and diligently pursue a course of action necessary and required to cure the same but, in all events, such default must be cured within ninety (90) days following notice of the occurrence thereof); or
- (c) an untruth or material deceptiveness of any representation, covenant or warranty contained in any of the Security Documents or in the affidavit of the Beneficiary, or Mortgagor's or Beneficiary's omission of any fact which under the circumstances made said statements misleading; or
- (d) the filing by Mortgagor of a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect; or the Mortgagor's consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Mortgagor or for any part of the Premises, or any substantial part of the Mortgagor's general

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assignment for the benefit of their respective creditors, or the failure by the Mortgagor generally to pay their respective debts as they become due, or the taking of any action in furtherance of any of the foregoing; or

- (e) the admission by Mortgagor in writing or the filing of an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay their respective debts as they become due; or
- (f) the entry, by court having jurisdiction, of a decree or order for relief in respect of the Mortgagor in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law or hereafter in effect, or Mortgagor's consent to or failure to oppose any such proceeding, or any such court entering a decree or order appointing a receiver, liquidator, assignee, custodian, mortgagee in possession, sequestrator (or similar official) of the Mortgagor or for any part of the Premises, or any substantial part of the Mortgagor's property, or ordering the winding up or liquidation of the affairs of the Mortgagor, and, in the case of any of the foregoing, such decree or order shall not be dismissed within sixty (60) days after the entry thereof; or
- (g) Mortgagor's failure to pay any money judgment against it within thirty (30) days following the day the same becomes a lien against the Premises; or
- (h) any termination or voluntary suspension of the transaction of the business of the Mortgagor or all or a substantial part of the Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within sixty (60) days; or
- (i) the failure of Mortgagor to cause the payment, when due and within any applicable grace period, of any indebtedness secured by the Premises, the beneficial interest of Mortgagor, any stock of any corporation if the beneficiary is a corporation or any partnership interests, limited or general, if the beneficiary of Mortgagor is a partnership, or the exercise of any remedies provided in the documents which evidence and secure such indebtedness; or
- (j) without the prior written consent of Mortgagee in each instance:

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- (i) the dissolution or termination of existence of Mortgagor, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or otherwise;
- (ii) the amendment to or modification of, in any respect, of the agreement establishing Mortgagor; or
- (iii) the distribution of any of the Mortgagor's capital, except for distributions of the proceeds of the Loan and cash from operations (any cash of the Mortgagor earned from the operation of the Premises, but not from a sale or refinancing of the Premises or from borrowing, available after paying all ordinary and necessary current expenses of the Mortgagor, including expenses incurred in the maintenance of the Premises and after establishing reserves to meet current or reasonably expected obligations of the Mortgagor); or
- (k) any other event occurring (including, without limitation, default in order to avoid prepayment penalty or premium) or failing to occur which, pursuant to the Security Documents or any other document or instrument referenced herein or related hereto, constitutes a default by Mortgagor or gives Mortgagee the right to accelerate the maturity of the Indebtedness Hereby Secured, or any part thereof; or
- (l) the Mortgagor or the Beneficiary shall abandon the Premises.

For the purposes of Subparagraphs (d) through (l) only immediately above, the term "Mortgagor" shall mean and include any beneficiary of a Trustee Mortgagor, any general partner in a partnership Mortgagor or in a partnership which is a beneficiary of a Trustee Mortgagor, any owner of more than ten percent (10%) of the stock in a corporate Mortgagor or a corporation which is the beneficiary of a Trustee Mortgagor and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained in any of the Security Documents.

5.2 Acceleration of Maturity. At any time during the existence of any Event of Default, Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice, all Indebtedness

Hereby Secured (which shall include any prepayment premium or penalty provided for in the Note), to be immediately due and payable whether such Event of Default is thereafter remedied by the Mortgagor and the Mortgagee may, whether or not said declaration is made, to immediately proceed to foreclose the lien of this Mortgage and/or exercise any right, power or remedy provided herein and in other Security Documents, or by law or in equity conferred, whether or not such Event of Default is thereafter remedied by the Mortgagor.

5.3 Foreclosure of Mortgage. Upon occurrence of any Event of Default, or at any time thereafter, Mortgagee may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the State of Illinois.

5.4 Remedies Cumulative and Non-Waiver. No remedy or right of the Mortgagee hereunder, or under the Note, or under any other of the Security Documents or otherwise available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or any Security Documents or any other written agreement or instrument relating to any of the Indebtedness Hereby Secured or any security therefor.

5.5 Litigation Expenses. In any suit or proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee pursuant to any of the Security Documents, or in any other proceeding whatsoever in connection with any of the Security Documents or any of the Premises in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree for sale resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee including, without limitation, attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, photocopy expenses, stenographers' charges, mail and telephone costs, publication costs, survey cost, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Premises as Mortgagee may deem reasonably necessary either to

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prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises. All expenses and fees of the foregoing nature as may be incurred in the protection of any of the Premises and the maintenance of the lien of this Mortgage thereon in any litigation affecting the Note, this Mortgage, the Security Documents or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the applicable rate specified in the Note.

5.6 Mortgagee's Performances of Mortgagor's Obligations. In case of any Event of Default herein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured, or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein, in the Note, any other of the Security Documents, or any document or instrument related thereto which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on any permitted prior mortgage or encumbrances; purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any Taxes and may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. The Mortgagee may, but shall not be required to, notify any person obligated to the Mortgagor under or with respect to any Third party Agreements of the existence of the Event of Default and require that performance be made directly to the Mortgagee at the Mortgagor's expense and advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder; and Mortgagor agrees to cooperate with the Mortgagee to accomplish the foregoing. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof, or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate. The Mortgagee is hereby authorized to make any payment with respect to:

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- (a) Taxes, according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof;
- (b) the purchase, discharge, compromise or settlement or any other prior lien, without inquiry as to the validity or amount of any claim for lien which may be asserted; and
- (c) the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof;

and may do so in such amounts and to such persons as Mortgagee may deem appropriate and may either enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

5.7 Appointment of Receiver. Upon, or at any time after the filing, of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after foreclosure sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness Hereby Secured; without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to take possession, control, and care of the Premises and to collect all Rents thereof during the pendency of such foreclosure suit, and, in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such Rents and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management, and operation of the Premises during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court with such rights and powers as are provided herein, it being understood and agreed that any such Leases, and the options or other such provision to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge or indebtedness, satisfaction of foreclosure decree, or issuance of certificate of sale or deed to any purchaser.

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5.8 Foreclosure Sale. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

5.9 Application of Proceeds. The proceeds of any foreclosure sale of the Premises, or any part thereof, shall be distributed and applied in the following order of priority:

- (a) on account of all costs and expenses incident to the foreclosure proceedings;
- (b) on account of all other items that, under the terms of this Mortgage, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest thereon at the Default Rate;
- (c) on account of the Indebtedness Hereby Secured, in the order of priority specified by Mortgagee in its sole discretion; and
- (d) the balance to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.10 Application of Deposits. Upon the occurrence of any Event of Default, Mortgagee may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Note, this Mortgage, or any of the other Security Documents, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises.

5.11 Insurance Upon Foreclosure. In the event of

- (a) an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any shall be paid as the court may direct;
- (b) the occurrence of a casualty or a taking by eminent domain following the institution of foreclosure proceedings, all insurance proceeds or condemnation awards, if any, if not applied as specified herein, shall be used to pay the amounts due in accordance with any decree of foreclosure which may be entered in any such proceedings and the balance, if any,

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shall either be paid to the owner of the equity redemption, if such owner shall be entitled to the same, or as the court may direct; and

- (c) a foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

5.12 Waiver of Redemption Rights; No Marshaling. To the full extent permitted by law, Mortgagor:

- (a) shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisal of Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Premises so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof;
- (b) hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law;
- (c) agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted; and

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(d) for itself and all who or which claim by, through or under Mortgagor, waives any and all right to have Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose the lien of this Mortgage may order Premises sold as an entirety.

5.13 Premises to be Sold as One Unit. Mortgagor hereby waives its rights, if any, to require that the Premises be sold as separate tracts or units in the event of foreclosure.

5.14 Corrective Documents. Mortgagor shall, at the request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or omission.

5.15 Consent of Mortgagee: The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date and, except with respect to any request to extend credit or grant additional time to cure an Event of Default, Mortgagee shall reasonably consider all requests for its consent or approval.

Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and not be deemed to constitute Mortgagee a venturer or partner with Mortgagor whatsoever nor shall privity of contract be presumed to have been established with any such third party.

If Mortgagee deems it to be to its best interest to retain the assistance of persons, firms or corporations (including, but not limited to, attorneys, appraisers, engineers and surveyors) with respect to a request for consent, Mortgagor shall reimburse Mortgagee for all reasonable costs incurred in connection with the employment of such persons, firms or corporations.

6. PARTIAL RELEASES. The lien of this Mortgage may be released as to parts of Premises from time to time, without affecting the validity or priority of the lien hereof as to the remainder of Premises.

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7. LETTER OF CREDIT. As additional security for the payment of Loan, Mortgagor has delivered to Lender "Letter of Credit" (as such term is defined in Commitment), which shall be replaced, presented for collection and returned to Mortgagor as provided in separate agreement between Beneficiary and Lender ("Letter of Credit Agreement").

8. MISCELLANEOUS.

5 J Notices, Consents and Approvals. Any notice, consent or approval that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address set forth below or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice, consent or approval shall be deemed to have been received on the date of delivery thereof in person, by Federal Express or comparable "overnight" courier service or express mail, or two (2) business days after mailing by United States registered or certified mail, return receipt requested, or when delivered in person with written acknowledgment of the receipt thereof. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

(a) If to Mortgagee:

HFC Commercial Realty, Inc.
2700 Sanders Road
Prospect Heights, Illinois 60070
Attn: Vice President, Loan Administration

with a copy to:

HFC Commercial Realty, Inc.
2700 Sanders road
Prospect Heights, Illinois 60070
Attn: Commercial Real Estate General Counsel

and

(b) If to Mortgagor:

Harris Trust and Savings Bank
115 West Monroe Street
Chicago, Illinois 60690

with copies thereof to:

Bryson Properties XI, an Illinois limited partnership

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660 LaSalle Place, Suite 2A, Highland Park,
Illinois 60635

and

Rosenthal and Schanfield
55 East Monroe Street
Chicago, Illinois 60603
Attn: Henry M. Morris, Esq.

8.2 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage.

8.3 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Premises.

8.4 Law; Venue; Jurisdiction. This Mortgage is, and shall be deemed to be, a contract entered into and pursuant to the laws of the State of Illinois and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State, without regard to its conflict of laws principles; and no defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of said State and the undersigned agrees to submit to personal jurisdiction in said State in any action or proceeding arising out of this Mortgage and, in furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction of any court located in said state and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by certified mail to or by personal service at the last known address of the Mortgagor, whether such address be within or without the jurisdiction of any such court.

8.5 Severability. If any provision of this Mortgage or the application thereof to any entity, person, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of its provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

8.6 Headings. The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

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8.7 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

8.8 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the Indebtedness Hereby Secured or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

8.9 Non-Discrimination. Mortgagor covenants and agrees at all times to be in full compliance with the provisions of law prohibiting discrimination on the basis of race, color, creed or national origin, including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act or any substitution, amendment or replacement thereof.

8.10 Limited Liability. This Mortgage is executed by Mortgagor, not personally but solely as trustee under the terms of the aforesaid Trust Agreement, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Mortgagor hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that notwithstanding anything contained herein or in the Note or other Security Documents, it is expressly understood and agreed that there shall be no personal liability upon Mortgagor or Beneficiary, personally, for payment of the Note, and the Mortgagee will not seek or obtain any deficiency judgment against the Mortgagor or Beneficiary (following the application of the Premises and any other security [including the guaranty agreement executed by DAVID M. ROSENTHAL, a general partner of PENTAGULL EQUITY PARTNERS, an Illinois limited partnership, a general partner of Beneficiary] or property given as security for the payment of the Indebtedness [collectively "Other Security"] and the proceeds thereof), but will seek to satisfy payment of Indebtedness out of the Premises and Other Security and the proceeds thereof; PROVIDED, HOWEVER, that nothing contained herein shall limit or affect Mortgagee's rights or remedies pursuant hereto and to Note and other Security Documents, either at law or in equity, including, without limitation, Mortgagee's rights against the Premises or liability or guarantee of any guarantor, and Mortgagee's agreement not to pursue the personal liability of Beneficiary, individually, shall become null and void and of no further force and effect in the event all or only part of, or any interest in, the Premises shall be further encumbered by a mortgage or deed of trust lien securing an obligation upon which

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Mortgagor and/or Beneficiary shall be personally liable for repayment, and nothing contained herein shall be deemed to prejudice the rights of Mortgagee to recover from Beneficiary and others, except Mortgagor:

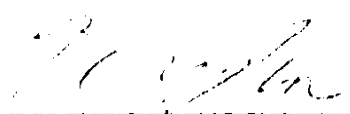
- (a) all funds, damages or costs (including, without limitation, attorneys' fees) incurred by the Mortgagee as a result of fraud or material misrepresentation by or on behalf of Beneficiary; and
- (b) all condemnation awards or insurance proceeds which are not utilized in accordance with the terms and conditions of the Security Documents; and
- (c) all rents, revenues, income, issues, proceeds or profits of the Premises held or collected by or on behalf of Beneficiary following an Event of Default and the expiration of the applicable time to cure the same and not applied to the costs of operating the Premises or the Indebtedness Hereby Secured; and
- (d) all funds, damages or costs incurred by the Mortgagee as a result of any material waste of the Premises; and
- (e) any and all costs, expenses, damages or liabilities incurred by the Mortgagee, including, but not limited to, all reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Premises of any materials, wastes or substances defined or classified as hazardous or toxic pursuant to federal, state or local laws or regulations, including without limitation, asbestos, lead, PCB's and herbicides.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its duly authorized officers as of the day and year hereinabove first written.

HARRIS TRUST AND SAVINGS BANK, not personally, but solely as Trustee aforesaid

By: 

Title _____

ATTEST: 

Title _____

UNOFFICIAL COPY

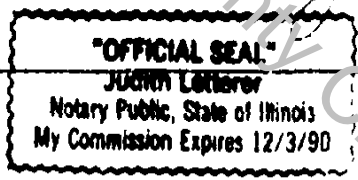
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Donald H. Gustafson, Asst. VICE PRESIDENT of HARRIS TRUST AND SAVINGS BANK ("Bank") and WALTER E. PIEKUT, ASSISTANT SECRETARY thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Donald H. Gustafson and WALTER E. PIEKUT, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of Bank for the uses and purposes therein set forth; and the said WALTER E. PIEKUT did also then and there acknowledge that as custodian of the corporate seal of Bank, did affix the said corporate seal thereof to said instrument as his own free and voluntary act, and as the free and voluntary act of Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 1st day of December, 1987.

Judith Lettner
Notary Public

My Commission Expires _____



COOK COUNTY, ILLINOIS
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Property of Cook County Clerk's Office

OFFICIAL SEAL
Judith L. Evers
County Public Administrator
The Commission Expires

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EXHIBIT "A" SECURITY DOCUMENTS

The term "Security Documents," as used in this Mortgage, shall be deemed to mean the Mortgage to which this Exhibit is attached, together with the following documents and any other documents previously, now, or hereafter given to evidence, secure, or govern the disbursement of the Indebtedness Hereby Secured, including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto:

1. The Commitment;
2. The Note;
3. Assignment of Leases and Rents of even date with the Mortgage executed by Mortgagor and Beneficiary, in favor of the Mortgagee, assigning to Mortgagee all of Mortgagor's and Beneficiary's right, title, and interest in, to and under the leases described therein and the rents payable pursuant to such leases;
4. Security Agreement of even date with Mortgage, executed by Mortgagor and Beneficiary, perfected by Uniform Commercial Code Financing Statements, pertaining to the personal property described in the Mortgage;
5. Irrevocable Right to Approve Trust Documents, executed by Beneficiary in favor of Mortgagee;
6. Guaranty of David M. Rosenthal;
7. Letter of Credit and Letter of Credit Agreement.
8. Agreement of Beneficiary assuming personal liability for the matters specified in exculpation.

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