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MORTGAGE

MIDWAY REALTY ASSOCIATES L.P. II

to

PROVIDENCE LIFE INSURANCE COMPANY,  
on behalf of its Harvest Real Estate Annuity Account (P)

. DEPT-01 RECORDING \$77.  
. T#4444 TRAN 0231 02/18/87 13:35:00  
. #669 # D \*--137--0 76219  
. COOK COUNTY RECORDER

County: Cook  
City: Addison  
State: Illinois

Dated: February 2, 1987

Permanent Tax Numbers 24-21-300-022, Volume 246

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Record and return by mail to:

DEMOV, MORRIS & HAMMERLING  
40 West 57th Street  
New York, New York 10019  
Attention: Lawrence A. Kestin, Esq.

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## MORTGAGE

THIS MORTGAGE, made as of the 2nd day of February, 1987, by MIDWAY REALTY ASSOCIATES L.P. II (the "Mortgagor") having an address at c/o Bernstein & Gershman, 300 Garden City Plaza, Garden City, New York 11530, to PROVIDENCE LIFE INSURANCE COMPANY, acting on behalf of Harvest Real Estate Annuity Account (P) (the "Mortgagee"), having an address at One Bridge Plaza, Fort Lee, New Jersey 07024.

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's note (herein called the "Note") dated the date hereof, in the principal sum of Four Million (\$4,000,000.00) Dollars, bearing interest at the rate specified therein together with Accrued Interest (as defined in paragraph 1 of the Note), Contingent Interest (as defined in paragraph 5 of the Note), Additional Contingent Interest (as defined in paragraph 6 of the Note) and Excess Interest (as defined in paragraph 12 of the Note) thereon, payable to the order of the Mortgagee, having a Maturity Date of the earlier of (i) July 1, 1998, or (ii) the acceleration of the indebtedness evidenced by the Note by reason of a default by Mortgagor under the Note, this Mortgage or under any of the other documents executed in connection with same, and otherwise in the form attached hereto as Exhibit A and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as

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herein or in the Note provided, are herein called the "Indebtedness Hereby Secured".

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10.00) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry rights, interests and property hereinafter described:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected or to be erected (the "Premises"), more particularly bounded and described in Schedule B annexed hereto and made a part hereof;

TOGETHER with all right, title and interest, if any, of the Mortgagor in and to (i) any land or vaults lying in the streets, roads, avenues or alleys, open or proposed, in front of and adjoining the Premises, (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Premises, (iii) any and all rights and interests of every name or nature forming part of or used in connection with and/or the operation and maintenance of the Premises, (iv) all easements, rights-of-way and rights used in connection with the Prem-

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ises or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;

TOGETHER with all fixtures, chattels, equipment, machinery appliances and other articles of property now or hereafter attached to or located in or upon the Premises, and used or usable in connection with any present or future operation or letting of the Premises or the activities at any time conducted therein (collectively, "Building Equipment"), including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other machinery, appliances, fittings, furniture, furnishings and fixtures of every kind used in the operation of the buildings standing or hereafter erected on the Premises, together with any and all replacements thereof and additions thereto, and all right, title and interest of the Mortgagor in and to any Building Equipment which may be subject to any security agreements, as defined in the Uniform Commercial Code of the State of Illinois ("Security Agreements"), superior in lien to the lien of this Mortgage; it being understood and agreed that all Building Equipment is part and parcel of the Premises and appropriated to the use thereof and, whether affixed or annexed to the Premises or not, shall, for the purpose of this Mortgage, be deemed conclusively to be real estate and mortgaged hereby; and the Mortgagor agrees to execute and deliver, from time to time, such further instruments (including further Security Agreements) as may be requested by the Mortgagee to confirm the lien of this Mortgage on any Building Equipment provided that the enumeration of any specific articles of Building Equipment set forth above shall

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in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Building Equipment" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

TOGETHER with all leasehold estates, right title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Premises or any portion thereof, now or hereafter existing or entered into, together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases (as defined in Article 27);

TOGETHER with all rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Premises under Leases or otherwise as referred to in Article 16 hereof, subject to the right, power and authority given to the Mortgagor in the Assignment referred to in said Article 16, to collect and apply the rents;

TOGETHER with any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Premises or other rights, interests, or properties comprising the Premises now owned or hereafter acquired;

TOGETHER with all the estates, interest, right title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to the proceeds of insurance in effect with respect to the Premises;

TOGETHER with any and all awards, including interest thereon, heretofore and hereafter made to the Mortgagor for the taking by eminent domain of the whole or any part of the Premises or any easement therein,

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including any awards for changes of grade of streets, which awards are hereby assigned to the Mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Indebtedness Hereby Secured, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all instruments sufficient for the purpose of confirming such assignment of such awards to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever; and

TOGETHER with the Mortgagor's rights further to encumber the Premises for debt; the Mortgagor hereby (1) representing as a special inducement to the Mortgagee to make the loan secured hereby that, as of the date hereof, there are no encumbrances to secure debt junior to this Mortgage and (2) covenanting that there are to be none as of the date when this Mortgage becomes of record and thereafter will be none, except, in either case, encumbrances having the prior written consent of the Mortgagee, subject to the provisions of Article 13(P).

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with such other rights and property described above and with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all rights to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the



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breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default (as hereinafter defined).

## FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest, Accrued Interest, Excess Interest, Contingent Interest and Additional Contingent Interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured; and
- (b) Performance and observance by the Mortgagor of all of the terms, provisions, covenants and agreements on the Mortgagor's part to be performed and observed under the Assignment referred to in Article 16 hereof;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed \$100,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND the Mortgagor covenants with the Mortgagee as follows:

1. The Mortgagor will pay the Indebtedness Hereby Secured.
2. (a) The Mortgagor will keep the building on the Premises and Building Equipment insured for the benefit of the Mortgagee (i) against loss by fire, (ii) against loss or damage by windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft,

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vehicle, vandalism and malicious mischief and smoke, by means of an extended coverage "all risk" endorsement (iii) against war risks as, when and to the extent such insurance is obtainable from the United States of America or an agency thereof, (iv) against loss of rentals due to any of the foregoing causes, (v) against loss by flood if the Premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the Flood Disaster Protection Act of 1973, (P.L. 93-234), (vi) by means of machinery and boiler explosion insurance covering the building on the Premises if such building contains a boiler, in an amount not less than \$100,000.00 and containing a New York standard mortgagee interest endorsement (or similar equivalent) naming the Mortgagee, (vii) by means of water damage legal liability insurance and (viii) when and to the extent required by the Mortgagee, against any other risk insured against by persons operating like properties in the locality of the Premises; and the Mortgagor will assign and deliver to the Mortgagee the policies of such insurance and the proceeds thereof; and the Mortgagor will reimburse the Mortgagee for any premiums paid for insurance made by the Mortgagee on the Mortgagor's default in taking out such insurance, or in so assigning and delivering the policies, together with interest thereon at the Default Rate (as defined in Article 6 hereof).

(b) Such insurance may be carried under a blanket policy or policies and shall be provided by policies written in terms and amounts and by companies, satisfactory to the Mortgagee, and losses thereunder shall be payable to the Mortgagee pursuant to a New York standard mortgagee endorsement (non-contributing) and such policies shall provide that each may not be cancelled unless the insurer gives the Mortgagee no

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less than thirty (30) days written notice of such cancellation. The aggregate amount of the policies of fire and extended coverage "all risk" insurance insuring the Premises shall not be in excess of that amount required to be obtained by all of the tenants of the Premises provided the amount of such insurance shall not be less than (x) the amount of the Indebtedness Hereby Secured and (y) an amount sufficient to obtain a waiver of co-insurance provision or the legal equivalent thereof.

(c) Regardless of the types or amounts of insurance required and approved by the Mortgagee, the Mortgagor will assign and deliver to the Mortgagee all policies of insurance acquired by the Mortgagor to insure against any loss or damage to the Premises, as additional security for the Indebtedness Hereby Secured.

(d) Notwithstanding the provisions of law to the contrary, but subject to the provisions of Article 2(h) hereof, the Mortgagee shall be entitled to retain and apply the proceeds of any insurance, whether against fire or other hazard, to the payment of the Indebtedness Hereby Secured or, if the Mortgagee, in its sole discretion shall so elect, the Mortgagee may hold any or all of such proceeds for application to payment of the cost of restoration.

(e) Not less than thirty (30) days prior to the expiration date of each policy furnished by the Mortgagor pursuant to this Article, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Mortgagee.

(f) In the event of a foreclosure of this Mortgage, or other similar extinguishment of the Indebtedness Hereby Secured, the purchaser of the Premises shall succeed to all the rights of the

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Mortgagor, including any rights to the proceeds of insurance and to unearned premiums, in and to all policies of insurance assigned and delivered to the Mortgagee pursuant to this Article.

(g) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor (provided, however, if at such time no Event of Default shall have occurred and be continuing, the Mortgagee shall not settle or adjust any such claim where the amount of such claim shall be less than \$50,000 without the participation and consent of the Mortgagor, which consent shall not be unreasonably withheld and with respect to a claim where the amount thereof is in excess of \$50,000, the Mortgagee shall not settle or adjust such claim without the participation of the Mortgagor) or (ii) 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 Five Thousand (\$5,000) Dollars; provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand.

(h) In the event the Premises shall be damaged or destroyed, in whole or in part, by fire or other casualty covered by insurance, the Mortgagor shall give the Mortgagee prompt written notice thereof and provided that (i) the Mortgagor is not in default under this Mortgage or

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the Note, (ii) in the Mortgagee's reasonable opinion, the Premises can economically and feasibly be repaired and restored to its condition immediately prior to such fire or other casualty, (iii) the Mortgagor diligently proceeds with the repair and restoration of the Premises as nearly as possible to the condition they were in immediately prior to such fire or other casualty, in accordance with the plans and specifications reasonably approved by the Mortgagee, (iv) all existing Leases remain in full force and effect, (v) the Mortgagor has received at or prior to the disbursement of the net proceeds (as hereinafter defined) an executed waiver of subrogation from any insurance carrier who claims that no liability exists to the insured under its policy, and (vi) the fire or other casualty results in damage to less than 50% of the building on the Premises as determined in the reasonable opinion of the Mortgagee, then, and in such event, notwithstanding the provisions of clause (d) of Article 2 hereof, all insurance proceeds received by the Mortgagee on account of such damage or destruction, less the actual cost, fees and expenses, if any, incurred by the Mortgagee in connection with the adjustment of the loss (the "net proceeds") shall be paid by the Mortgagee to the Mortgagor for the purpose of repairing and restoring the Premises. The net proceeds shall be paid from time to time during the course of repair and restoration, such payments to be made against properly certified vouchers of a competent architect in charge of the repair and restoration and approved by the Mortgagee. The Mortgagee shall advance out of the net proceeds toward each payment to be made by or on behalf of the Mortgagor, a percentage of such payment which shall not be more than the percentage determined by dividing the net proceeds held by the Mortgagee by the total estimated cost of repairing and restoring the

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Premises, provided however, the Mortgagee may, at its option, withhold from each amount to be so advanced by it an amount equal to ten (10%) percent of such advance until all repairs and restoration shall have been fully completed and proof furnished to the Mortgagee that no lien or liability has attached or will attach to the Premises in connection with such repair and restoration. If the total estimated cost of repair and restoration as determined by the Mortgagee shall exceed the amount of the net proceeds, the Mortgagee may, at its option, require the Mortgagor, prior to the commencement of such repair and restoration, to deposit with the Mortgagee cash, surety bond, or other collateral reasonably satisfactory to the Mortgagee having a value in an amount equal to such excess costs.

(i) Notwithstanding anything to the contrary herein contained, in the event of a fire or other casualty to 50% or more of the building on the Premises and an election by the Mortgagee not to make the net proceeds available to the Mortgagor to pay the cost of repairing and restoring the building on the Premises, the Mortgagor shall have the right to prepay the Indebtedness Hereby Secured, in whole only, without penalty or premium provided the Mortgagee shall receive notice of the Mortgagor's election to prepay the Indebtedness Hereby Secured within ten (10) business days after the Mortgagee shall have elected not to make such proceeds available and further provided that upon such prepayment, the Mortgagor pays to the Mortgagee all other sums otherwise due on the Maturity Date (as defined in the Note).

(j) The Mortgagee is hereby irrevocably appointed by the Mortgagor as attorney-in-fact of the Mortgagor to assign any policy in the

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event of foreclosure of this instrument or other similar extinguishment of the Indebtedness Hereby Secured.

3. That no building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered without the prior written consent of the Mortgagee, except that the Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such Building Equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any Security Agreement, and by such removal and replacement the Mortgagor shall be deemed to have subjected such Building Equipment to the lien of this Mortgage, or (b) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last installments due on the Indebtedness Hereby Secured, without any charge for prepayment.

4. That in the event of any default in the performance of any of the Mortgagor's covenants or agreements herein, the Mortgagee may, at the option of the Mortgagee, after ten (10) days prior written notice to the Mortgagor (except in the case of an emergency in the reasonable opinion of the Mortgagee, in which event no notice shall be required) pay or perform the same and the amount or cost thereof, with interest at a rate per annum (the "Default Rate") equal to 18% per annum shall immediately be due from the Mortgagor to the Mortgagee and secured by this Mortgage. If the principal sum of the Note shall not be paid at its maturity, or on its acceleration pursuant to Article 18 hereof or pursuant to any other provision hereof, interest thereon and on any other

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Indebtedness Hereby Secured shall thereafter be computed and paid at the Default Rate.

5. (a) That the Mortgagor will pay all taxes, assessments, water rates, sewer rents and other charges now or hereafter levied against the Premises or any part thereof, and also any and all license fees or similar charges which may be imposed by the municipality in which the Premises are situated for the use of walks, chutes, areas and other space beyond the lot line and on or abutting the public sidewalks and in front of or adjoining the Premises, together with any penalties or interest on any of the foregoing, and in default thereof the Mortgagee after ten (10) days prior written notice to the Mortgagor (which notice shall be deemed to have been given upon the giving of a notice of default under Article 18 hereof) may pay the same and the Mortgagor will repay the same with interest thereon at the Default Rate and the same shall be added to the Indebtedness Hereby Secured and be secured by this Mortgage; that upon request of the Mortgagee, the Mortgagor will exhibit to the Mortgagee receipts for the payment of all items specified in this Article prior to the date when the same shall become delinquent.

(b) That the Mortgagee may, at its option to be exercised by twenty (20) days written notice to the Mortgagor require that the Mortgagor deposit with the Mortgagee, on the first day of each and every month, simultaneously with the payment of the monthly installments of principal and/or interest then due under the Note, a sum equal to one-twelfth (1/12) of the annual real estate taxes, assessments, water rates, sewer rents and other charges specified in this Article 5 (collectively, "Taxes") plus one-twelfth (1/12) of the premiums required to keep in force for one year the insurance specified in Article 2 hereof

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(Taxes and such premiums hereinafter collectively, "Charges") provided, however, such option shall not be exercised by the Mortgagee with respect to such Charges as are required to be paid directly by the tenants under the Leases (as defined in Article 16 hereof) if (i) all Charges are paid in full on or prior to the due date thereof, (ii) the Mortgagor provides the Mortgagee with proof of payment of all Charges (and with respect to insurance premiums certificates evidencing such renewal as provided in Article 2) within a reasonable time after such payment and (iii) the Mortgagor is not otherwise in default hereunder. The Mortgagor shall also deposit with the Mortgagee, if such deposits shall be so required, at least thirty (30) days prior to the due date of each installment of Charges, such additional amount as may be determined by the Mortgagee in order to provide the Mortgagee with funds sufficient to pay such Charges. It is the intention of the parties that, if such deposits shall be so required, the Mortgagor shall deposit with the Mortgagee the necessary funds so that the Mortgagee, at all times until the full payment and satisfaction of this Mortgage, shall have on hand sufficient deposits covering the accrued amounts of Taxes and insurance premiums. If permitted by law, such funds shall bear no interest and may be commingled with other funds of the Mortgagee. The Mortgagee shall have no obligation to use such funds to pay an installment of Taxes prior to the last day on which payment thereof may be made without penalty or interest or to pay an insurance premium prior to the due date thereof. If the whole of the Indebtedness Hereby Secured shall be declared due and payable by the Mortgagee pursuant to Article 18 hereof or pursuant to any other provision hereof, all such deposits, at the option of the Mortgagee, may be applied in reduction of the Indebtedness Hereby Secured, as the Mortgagee shall

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elect. If a default exists in the performance of any of Mortgagor's covenants or agreements under the Note or this Mortgage or under any of the documents executed in connection with same, all such deposits, at the option of Mortgagee, may be applied to cure such default, as the Mortgagee shall elect. Upon an assignment of this Mortgage, the Mortgagee shall have the right to pay over the balance of such deposits in its possession to the assignee and the Mortgagee shall thereupon be completely released from all liability with respect to such deposits and the Mortgagor or owner of the Premises shall look solely to the assignee or transferee in reference thereto. This provision shall apply to every transfer of such deposits to a new assignee. Upon full payment and satisfaction of this Mortgage or at any prior time, at the election of the Mortgagee, the balance of the deposits in its possession shall be paid over to the record owner of the Premises and no other party shall have any right or claim thereto in any event. The Mortgagor agrees, at the Mortgagee's request, to make the aforesaid deposits with such servicer or financial institution as the Mortgagee shall from time to time designate. The Mortgagee may engage a tax searching and reporting service in connection with the payment of real estate taxes on the Premises and the obligations of the parties hereto with respect to such terms and the cost for such service shall be borne by the Mortgagor.

6. That the holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver, without bond or notice to the Mortgagor. The Mortgagor consents and agrees that:

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(a) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises;

(b) Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of the application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder, or any holder of the Note may be appointed as such receiver;

(c) Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period;

(d) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

(i) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or

(ii) The deficiency in case of a sale and deficiency.

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7. That the Mortgagor, within five (5) days upon request in person or within ten (10) days upon request by mail, will furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the mortgage debt. The Mortgagee, within fifteen (15) days after written request therefor shall furnish to the Mortgagor a statement of the amount due under the Mortgage and whether to the knowledge of the Mortgagee there exist any defaults under the Mortgage and if so, specifying the nature of such default, provided, however, no such statement shall be required more than once in any twelve (12) month period.

8. That all notices or other communications required or permitted to be given pursuant to the provisions of this Mortgage shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, addressed as follows: (i) to the Mortgagor, at the address first set forth above, with a copy to Newman Tannenbaum Helpern Syracuse & Hirschtritt, 900 Third Avenue, New York, New York 10017, Attention: Robert E. Helpern, Esq. and (ii) to the Mortgagee, at c/o Resources Variable Account Management Corp., 666 Third Avenue, New York, New York 10017, with a copy to Demov, Morris & Hammerling, 40 West 57th Street, New York, New York 10019, Attention: Lawrence A. Kestin, Esq.; or to such other address as each party may hereafter designate by notice delivered in accordance herewith. All such notices shall be deemed given two (2) business days after such notices or other communications shall have been deposited with the United States Postal Registry Clerk.

9. That the Mortgagor warrants the title to the Premises, subject to those liens, encumbrances and other matters of title set forth in the title policy issued to Mortgagee dated as of the date hereof.

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10. That in case of a foreclosure sale, or similar extinguishment of the Indebtedness Hereby Secured, the Premises, or so much thereof as may be affected by this Mortgage, may be sold in one or more parcels, or in several interests or portions or in any order or manner.

11. That if any action or proceeding be commenced (including an action to foreclose this Mortgage or to collect the Indebtedness Hereby Secured), in which the Mortgagee becomes a party or participates, by reason of being the holder of this Mortgage or the debt secured hereby, all sums paid by the Mortgagee for the expense of so becoming a party or participating (including attorneys' fees and disbursements) shall on notice and demand be paid by the Mortgagor, together with interest thereon at the Default Rate, and shall be a lien on the Premises, prior to any right or title to, interest in, or claim upon, the Premises subordinate to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note. In any action or proceeding to foreclose this Mortgage, or if the Note is not paid in accordance with its terms and is placed in the hands of an attorney for collection, the Mortgagee shall thereupon become entitled to, and the Mortgagor or any subsequent owner of the Premises shall pay, the attorneys' fees and disbursements of the Mortgagee in connection with such action, which sums shall be added to and collected in such action or proceeding in addition to and apart from the usual costs and allowances to which the Mortgagee may be entitled or awarded under any law or statute applicable to such action or proceeding. The provisions of this Article 11, in addition to any other rights of the Mortgagee hereunder, include the right of the Mortgagee to assess, tax and recover all disbursements, allowances and costs provided by law.

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12. That the Mortgagor will maintain the Premises and Building Equipment in good condition and repair, will not commit or suffer any waste thereof or the conduct of any nuisance or unlawful occupation or business on, or use of, the Premises, and will not permit or suffer the removal, demolition or material alteration of any building on the Premises or other properties now or hereafter covered by this Mortgage, and will comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Premises; that the Mortgagor will promptly repair, restore, replace or rebuild any part of the Premises or Building Equipment 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 proceeding of the character referred to in Article 13, and that the Mortgagor will not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Premises or any part thereof.

13. That notwithstanding any taking by eminent domain or other governmental action causing injury to, or decrease in value of, the Premises and creating a right to compensation therefor including, without limitation, the change of the grade of any street, the Mortgagor shall continue to pay interest, computed at the rate reserved in the Note, on the entire unpaid principal amount thereof, until the award or compensation for such taking or other action shall have been actually received by the Mortgagee and such award or compensation need not be applied by the Mortgagee in reduction of principal but may be applied in such proportions and priority as the Mortgagee, in the Mortgagee's sole discretion, may elect, to the payment of principal, interest or other sums secured by this Mortgage and/or to payment to the Mortgagor, on such terms as the

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Mortgagee may specify in its discretion, for the sole purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of any such taking or other action; and that if, prior to the receipt by the Mortgagee of such award or compensation, the Premises shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive such award or compensation to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall or may have been sought or recovered or denied, together with attorneys' fees and the costs and disbursements incurred by the Mortgagee in connection with the collection of such award or compensation.

14. That the Mortgagee and any persons authorized by the Mortgagee shall have the right to enter and inspect the Premises and the Mortgagor's financial books and records at all reasonable times; and that if, at any time after default by the Mortgagor in the performance of any of the terms, covenants or provisions of this Mortgage or of the Note, the management or maintenance of the Premises shall be determined by the Mortgagee to be unsatisfactory, the Mortgagor shall employ, for the duration of such default, as managing agent of the Premises, such person or firm as from time to time shall be approved by the Mortgagee and all costs and expenses incurred by the Mortgagee in connection therewith shall be reimbursed by the Mortgagor promptly upon demand therefor.

15. That the Mortgagor shall furnish to the Mortgagee: (i) annual financial statements of the Mortgagor certified as true and complete by a general partner of the Mortgagor and reviewed by a certified public accountant and; (ii) such other information as the Mortgagee deems necessary or appropriate in determining Contingent Interest (as defined in

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the Note), Additional Contingent Interest (as defined in the Note) or as otherwise reasonably required by the Mortgagee including without limitation, the following statements, certified by a general partner of the Mortgagor, to be delivered on or prior to March 1, 1987 and on each March 1 thereafter until the Maturity Date (as defined in the Note): (i) a current rent roll showing the names of all tenants occupying portions of the Premises, the fixed minimum annual rental and all additional rent, if any, calculated on the basis of the volume of the tenant's business activity at the Premises payable by each of such tenants for the prior lease year, the commencement and expiration dates of each of such Leases, subleases, or other agreements of occupancy pursuant to which such tenants occupy portions of the Premises, including any renewal options therein contained, and a description of all provisions in each of such Leases requiring the payment to Mortgagor of additional rent or other sums in relation to the premises occupied by such tenant; (iii) a list of each of the tenants occupying portions of the Premises who are delinquent in the payment of any rent or additional rent under such tenants respective Lease, including the due date of such delinquent payment and the amount thereof; (iv) a list of all operating expenses, real estate taxes and insurance costs relating to the Premises for the immediately preceding lease year. Such statements shall be prepared and reviewed at the expense of the Mortgagor in such manner as may be acceptable to the Mortgagee. If the statements furnished shall not be reasonably satisfactory to the Mortgagee or if the Mortgagor fails to furnish the same when due, the Mortgagee may audit or cause to be audited the books of the Premises and/or the Mortgagor and each such lessee (to the extent the Mortgagor shall have the right to do so), at the Mortgagor's expense, and the costs

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of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand.

16. That the Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Indebtedness Hereby Secured, the rents, issues and profits of the Premises, together with all leases and other documents evidencing such rents issues and profits now or hereafter in effect and any and all deposits held as security under such Leases, and shall, upon demand, deliver to the Mortgagee an executed counterpart of each such Lease or other document. Nothing contained in the foregoing sentence shall be construed to bind the Mortgagee to consent to any Lease or sublease or to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or other document or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any Lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises). The Mortgagor hereby further grants to the Mortgagee the right (i) to enter upon and take possession of the Premises for the purpose of collecting such rents, issues and profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to the Mortgagee, (iii) to let the Premises, or any part thereof, and (iv) to apply such rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness Hereby Secured. Such assignment and grant shall continue in effect until the Indebtedness Hereby Secured is paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of the Mortgagor to the entry upon and taking possession of the

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Premises by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. The Mortgagee, however, hereby waives the right to enter upon and take possession of the Premises for the purpose of collecting such rents, issues and profits, and the Mortgagor is hereby granted a license to collect and receive the same until the occurrence of a default by the Mortgagor which remains uncured beyond any applicable grace or cure period (except with respect to a default of the nature described in Article 18(1) or (m), in which event no such grace or cure period shall apply) under any of the covenants, conditions or agreements contained in this Mortgage. The Mortgagor agrees to use such rents, issues and profits in payment of principal and interest becoming due on this Mortgage and in payment of taxes, assessments, water rates, sewer rents and carrying Charges becoming due against the Premises. Such license of the Mortgagor to collect and receive such rents, issues and profits may be revoked by the Mortgagee upon any such default which remains uncured beyond any applicable grace or cure period (except with respect to a default of the nature described in Article 18(1) or (m), in which event no such grace or cure period shall apply) by the Mortgagor by giving not less than five (5) days written notice of such revocation. In the event of any default under this Mortgage which remains uncured beyond any applicable grace period, the Mortgagor will pay monthly in advance to the Mortgagee, on its entry into possession pursuant to the foregoing grant, or to any receiver appointed to collect such rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Premises or of such part thereof as may be in the possession of the Mortgagor, and upon default in any such payment will vacate and surrender the possession of the Premises or such part thereof, as the case may be, to the Mortgagee or to such receiver,

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and, in default thereof, may be evicted by summary proceedings. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

17. (a) That the Mortgagor has no right or power, as against the Mortgagee without its consent, to cancel, abridge or otherwise modify the Leases or subleases of the Premises or any of the terms, provisions or covenants thereof or to accept prepayments of installments of rent to become due thereunder more than one (1) month in advance thereof and the Mortgagor shall not do so without such consent. Upon notice and demand, the Mortgagor will, from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered to the Mortgagee, in form satisfactory to the Mortgagee, one or more separate assignments (confirmatory of the general assignment provided in Article 16 hereof) of the lessor's interest in any Lease or sublease now or hereafter affecting the whole or any part of the Premises, restricting the Mortgagor's right or power, as against the Mortgagee, without its consent, to cancel, abridge or otherwise modify, or accept prepayments of installments of rent to become due under, any lease or sublease hereafter in existence, which is of the character described in the second sentence of this Article 17. The Mortgagor shall pay to the Mortgagee on demand any expenses incurred by the Mortgagee in connection with the preparation and recording of any such assignment or agreement. With respect to any lease referred to in this Article 17 or which at any time is covered by any such agreement or any such assignment of lessor's interest in such Lease, the Mortgagor will (i) fulfill or perform each and every condition and covenant of the same to be fulfilled or performed by the lessor thereunder, (ii) give prompt notice to the Mortgagee of any notice of default by the lessor thereunder

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received by the Mortgagor together with a complete copy of any such notice, and (iii) enforce, short of termination thereof, the performance or observance of each and every covenant and condition thereof by the lessee thereunder to be performed or observed.

(b) All new Leases shall require the approval of the Mortgagee. The Mortgagor shall submit to the Mortgagee for its approval (i) the actual proposed Lease, (ii) a summary of the proposed financial terms of such Lease, and (iii) a description and identification of the proposed tenant. If Mortgagee does not give notice to Mortgagor of the disapproval of a proposed Lease within fifteen (15) business days following receipt by Mortgagee with the material required to be sent to it, such Lease shall be deemed approved by Mortgagee. In the event Mortgagee shall have expressly approved a proposed Lease or shall have failed to timely disapprove a proposed Lease, Mortgagee shall be deemed to have waived its right to contest that the fixed rentals under such Lease are less than the Fair Market Rental. All Leases must provide for fixed rentals not less than the Fair Market Rentals for the proposed tenant. For purposes of this Mortgage the term "Fair Market Rental" shall mean the fair market fixed minimum rent as of the date of letting, plus such escalations and other terms and conditions as is then customary with respect to comparable spaces to comparable tenants in the geographic vicinity of the Premises.

18. That all sums otherwise payable on the Maturity Date in accordance with the terms of the Note shall become due at the option of the Mortgagee: (a) after default in the payment of any installment of principal or interest or other sum due under the Note for ten (10) days; or (b) after default in the payment of any tax, water rate, sewer rent,

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assessment or vault license fee for ten (10) days after the last date upon which such tax, water rate, sewer rent, assessment or vault license fee may be paid without interest and/or penalty; or if the Mortgagor fails to furnish the Mortgagee promptly upon demand with receipted tax bills or other proof of payment of the aforesaid items by no later than the dates on which such items must be paid so as not to constitute a default hereunder; or (c) after default after twenty (20) days notice, either in assigning and delivering the policies of insurance herein described or referred to or in reimbursing the Mortgagee for premiums paid on such insurance, as hereinbefore provided; or (d) upon the actual or threatened waste, removal or demolition of any building or other property on the Premises, except as permitted by Article 3; or (e) upon assignment by the Mortgagor of the whole or any part of the rents, issues or profits arising from the Premises to any person without the written consent of the Mortgagee or if, without such consent, the Mortgagor shall further encumber the Premises or any portion thereof for debt (including, without limitation, secured transactions under the Uniform Commercial Code of the State of Illinois) except that notwithstanding the foregoing, the limited partners of Mortgagor may pledge their respective limited partnership interests, provided such pledge is being granted as security for an indebtedness not to exceed \$500,000 incurred by Mortgagor with its acquisition of the Premises (or any interest therein) and further provided that Mortgagee shall receive notice of such pledge, together with such documentation as Mortgagee shall reasonably require relating thereto; or (f) if the building on the Premises is not maintained in reasonably good repair; or (g) after failure to comply with any requirement, order or notice of violation of law or ordinance issued by any governmental

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department claiming jurisdiction over the Premises within three (3) months from the issuance thereof; or (h) if, on application of the Mortgagee, two (2) or more fire insurance companies lawfully doing business in the State of Illinois refuse to issue policies insuring the building on the Premises; or (i) after thirty (30) days notice to the Mortgagor in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Mortgage or the Note; or (j) if the Mortgagor shall fail to make payment of any other sums required to be paid hereunder within the period required by specific provision of this Mortgage, or, if no such period is so provided, by not later than ten (10) days after written notice; or (k) if the Mortgagor shall fail to comply with any other covenants or conditions contained in this Mortgage and, except with respect to failure to pay money, such failure shall continue unremedied for the period within which performance is required to be made by specific provision of this Mortgage, or, if no such period is so provided, for a period of thirty (30) days after notice thereof shall have been given by the Mortgagee or, with respect to any such default which, in the sole and exclusive judgment of the Mortgagee, shall be of such a nature that it cannot reasonably be cured or remedied within thirty (30) days, if the Mortgagor shall not promptly commence and exercise due diligence and continuous effort to remedy the same; or (l) if the Mortgagor shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iii) make an assignment for the benefit of creditors;



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(iv) consent to, or acquiesce in, the appointment of a receiver, liquidator or trustee of itself or of the whole or any substantial part of its properties or assets; (v) file a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy laws or any other applicable law; or (m) (i) if, without the Mortgagor's consent or acquiescence, a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver, liquidator, or trustee of the Mortgagor or of the whole or any substantial part of the property or assets of the Mortgagor and such order, judgment or decree shall remain unvacated, or not set aside, or unstayed for sixty (60) days, or (ii) if a petition shall be filed against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the federal bankruptcy laws or any other applicable law and such petition shall remain undismissed for sixty (60) days, or (iii) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Mortgagor or of the whole or any substantial part of its property or assets, and such custody or control shall remain unvacated or unstayed for sixty (60) days; or (n) if judgment for Fifty Thousand (\$50,000.00) Dollars or more shall be rendered against the Mortgagor which shall not be discharged or bonded pending appeal within thirty (30) days from the entry thereof; or (o) if any representation, warranty or statement contained in any writing delivered to the Mortgagee simultaneously with the execution and delivery hereof, shall prove to be incorrect in any material respect; or (p) if, without the prior consent of the Mortgagee (1) the Premises, or any part thereof, shall be sold or otherwise transferred by the Mortgagor,

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or (ii) if the Mortgagor shall be a corporation, a controlling amount of its voting stock shall be sold or otherwise transferred or pledged, hypothecated or otherwise transferred as security for debt, or (iii) if the Mortgagor shall be a partnership, joint venture, syndicate or other group, all or any portion of the interest of any general partner or member thereof shall be sold or otherwise transferred or pledged, hypothecated or otherwise transferred as security for debt except that the limited partners of the Mortgagor may transfer their interests and may pledge their respective partnership interests provided such pledge is being granted as security for an indebtedness not to exceed \$500,000 incurred by the Mortgagor in connection with its acquisition of the Premises (or any interest therein), and further provided the Mortgagee shall receive notice of such pledge, together with such documents as the Mortgagee shall reasonably require; or (q) at the option of the Mortgagee, if the Mortgagor shall fail to comply with any term or provision of any agreement executed by the Mortgagor with or in favor of the Mortgagee and delivered to the Mortgagee in connection with the execution hereof; or (r) if the Mortgagor shall fail to maintain in full force and effect, the policies of insurance required pursuant to the provisions of Article 2 hereof; or (s) if there is a cancellation or modification of or an amendment to or change in any Lease.

19. That any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to

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be performed by the Mortgagor; that neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor, or any other person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the Indebtedness Hereby Secured, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Mortgagee extending the time of payment or modifying the terms of the Note or this Mortgage without first having obtained the consent of the Mortgagor such other person, and in the latter event, the Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee; that, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, the Mortgagee may release the obligation of anyone at any time liable for any of the Indebtedness Hereby Secured or any part of the security held for the indebtedness without, as to the security or the remainder thereof, in anywise impairing or affecting the lien hereof or the priority thereof over any subordinate encumbrance; and that the Mortgagee may resort for the payment of the Indebtedness Hereby Secured to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

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20. That if at any time the United States of America, any state thereof or any governmental subdivision of such state, having jurisdiction, shall require internal revenue stamps to be affixed to the Note, or other tax paid on or in connection therewith (excluding income tax or the like payable by the Mortgagee), the Mortgagor will pay the same with any interest or penalties imposed in connection therewith.

21. That when and if the Mortgagor and the Mortgagee shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting Building Equipment or other property referred to or described herein, this Mortgage shall be deemed a Security Agreement as defined in the Uniform Commercial Code of the State of Illinois and the remedies for any violation of the covenants, terms and conditions of the agreement herein contained shall be (i) as prescribed herein, (ii) by general law, or (iii) as to such part of the security which is also reflected in such Financing Statement, by the specific statutory consequences now or hereafter enacted and specified in such Uniform Commercial Code, all at the Mortgagee's sole election. The filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and hereby stated intention of the parties hereto, that all items of Building Equipment and other property used in connection with the production of income from the Premises (furniture only excepted) or adapted for use therein and/or which is described or reflected in this Mortgage are, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be, regarded as part of the real estate irrespective of whether or not (i) any such item is physically attached to the improvements, (ii) serial numbers are used for

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the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future Lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to a Lease or otherwise, shall never be construed as in any way altering any of the rights of the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) or (3) that notice of the Mortgagee's priority of interest, to be effective against a particular class of persons, including but not limited to the Federal Government and any subdivisions or entity of the Federal Government must be filed in the Uniform Commercial Code records. Pursuant to the Uniform Commercial Code of the State of Illinois, the Mortgagor hereby authorizes the Mortgagee, without the signature of the Mortgagor, to execute and file Financing Statements if the Mortgagee shall determine that such are necessary or advisable in order to perfect its security interest in any fixtures, chattels or articles of personal property covered by this Mortgage, and shall pay to the Mortgagee on demand any expenses incurred by the Mortgagee in connection with the preparation, execution and filing of such statements and any continuation statements that may be filed by the Mortgagee.

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22. That the Mortgagor will not at any time insist upon or plead, or in any manner whatever claim or take any 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 the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

- (a) The Mortgagor 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 and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest or title to the Premises or beneficial interest in Mortgagor subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 12-124 and Para. 12-125 of the Illinois Statutes or other applicable law or replacement statutes;

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(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If the Mortgagor is a trustee, the Mortgagor represents that the provisions of this Article (including the waiver of redemption rights) were made at the express direction of the Mortgagor's beneficiaries and the persons having the power of direction over the Mortgagor, and are made on behalf of the Trust Estate of the Mortgagor and all beneficiaries of the Mortgagor, as well as all other persons mentioned above.

23. That the clauses and covenants contained herein shall afford rights supplemental to and not exclusive of the rights and remedies of Mortgagee conferred by the laws of the State of Illinois and shall not impair, modify, alter or defeat such rights notwithstanding that such clauses and covenants may relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as the clauses and covenants of the laws of the State of Illinois; that the rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and that no act of the Mortgagee shall be construed as an election to proceed under any one provision



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herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding. No delay in the exercise or omission to exercise any remedy or right by the Mortgagee, shall be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default, of the same or a different nature. Any such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee.

24. That the Mortgagor: (i) shall keep this Mortgage a valid mortgage lien upon the Premises; (ii) shall not at any time create or allow to accrue or exist any debt, lien or charge which would be prior to or on a parity with the lien of this Mortgage upon any part of the Premises; and (iii) shall not cause or permit the lien of this Mortgage to be diminished or impaired in any way.

25. That the Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect the Premises and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which Mortgagee, in its discretion, feels should be brought to protect its interest in the Premises.

26. That this Mortgage and the Note are to be construed and enforced in accordance with the laws of the State of Illinois.

27. That wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Lease" shall mean "tenancy, subtenancy, Lease, subLease or license", the word "Mortgagor" shall mean "Mortgagor and any subsequent owner or owners of the Premises", the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage", the word "person" shall mean "an individual, corporation, partnership or

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unincorporated association" and the word "Premises" shall include the real estate hereinbefore described, together with all Building Equipment, condemnation awards and any other rights or property interests at any time made subject to the lien of this Mortgage by the terms hereof.

28. That the Mortgagor shall pay all fees and charges incurred in the enforcement of the loan evidenced by the Note and secured by this Mortgage, including, without limitation, the fees and disbursements of the Mortgagee's attorneys, charges for appraisals, fees and expenses relating to examination of title, title insurance premiums, surveys and mortgage recording, documentary, transfer or other similar taxes and revenue stamps.

29. If the mortgagee purchases the Premises pursuant to a foreclosure under this Mortgage, or accepts an assignment of the Premises in lieu of a foreclosure, the Mortgagor hereby authorizes the Mortgagee to withhold the amount of tax, if any required to be withheld under Section 1445 of the Internal Revenue Code of 1954, as amended (or any successor provision thereto), out of any sums payable to the Mortgagor from such foreclosure sale or assignment in lieu thereof, as the case may be, after payment of all parties other than the Mortgagor who are entitled to be paid out of any foreclosure or assignment proceeds, as if the Mortgagor were a foreign person, unless the Mortgagor certifies its nonforeign status at the time of such foreclosure sale or assignment, as the case may be, by executing and delivering to the Mortgagee a certificate satisfactory to the Mortgagee.

30. That in the event for any reason whatsoever, any payment by or act of the Mortgagor pursuant to the terms hereof or pursuant to the Note shall result in payment of interest which would exceed the limit

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authorized by, or be in violation of the law of, the State of Illinois, then the excess amount shall be, at the Mortgagee's option, either (i) waived, (ii) upon notice to the Mortgagor, applied in reduction of the outstanding principal balance of the Indebtedness Hereby Secured or (iii) retained by the Mortgagee as additional cash collateral for the Indebtedness Hereby Secured.

31. That this Mortgage may not be changed or terminated orally; and the covenants contained in this Mortgage shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent encumbrancers, tenants and subtenants of the Premises, and shall inure to the benefit of the Mortgagee, the successors and assigns of the Mortgagee. The word "Mortgagor" shall be construed as if it read "Mortgagors" whenever the sense of this Mortgage so requires.

32. Except as may be expressly set forth to the contrary in the Note, by acceptance of this Mortgage, Mortgagee agrees that Mortgagor shall have no personal obligation for the payment of all or any portion of the Indebtedness Hereby Secured, or interest therein, or for the payment of any obligation of Mortgagor under this Mortgage or the Note or for any other default hereunder, it being agreed that the payment of the indebtedness and the payment of any obligation of the Mortgagor under this Mortgage and the Note may be enforced only against the interest of the Mortgagor in the Premises and the other property covered by this Mortgage, and against the rents, issues and profits thereof, and against any other security given to secure the Note, and the Mortgagee, by its acceptance hereof, agrees that no judgment shall, in any event, be entered against the Mortgagor in any sale or other action under the Mortgage or in any

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action upon the Note except to the extent the Mortgagor has received rentals or other revenues or payments in respect of the Premises ninety (90) days prior to any sale or other action under this Mortgage which are not applied by the Mortgagor to payments due under the Note or this Mortgage or for the payment of Charges provided, however, that the provisions of this Article shall in no way affect the Mortgagee's other remedies or the Mortgagee's rights or liens in and to the Premises, or any part thereof, for the payment of said principal, indebtedness, interest, or any other amounts payable under this Mortgage or for the enforcement of any other covenant under this Mortgage.

33. This Mortgage shall secure, in addition to the repayment of the indebtedness and interest thereon under the Note, the Accrued Interest, the Contingent Interest, the Excess Interest and the Additional Contingent Interest payable by the Mortgagor to the Mortgagee pursuant to the terms of the Note. The sum secured by this Mortgage shall not be deemed to have been paid in full, and the Mortgagor shall not be required to execute and deliver a satisfaction or assignment of this Mortgage, until receipt by the Mortgagor, in immediately available federal funds, of the indebtedness evidenced by the Note, including all Accrued Interest, the Contingent Interest, the Excess Interest and Additional Contingent Interest in accordance with the terms of the Note.

34. It is expressly understood and agreed, anything to the contrary notwithstanding, that although this Mortgage and the Note impose no obligation on the Mortgagee (other than as expressly provided herein), the liability of the Mortgagee for its obligations under or with respect to this Mortgage and the Note, if any, is limited to the assets of Harvest Real Estate Variable Annuity Account (P) ("Harvest"). In no event shall

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the Mortgagor look to, make any claim against commence any action against Providence Life Insurance Company, Resources Variable Account Management Corp. or any person or entity having any interest in Harvest or its assets, or any officer, director, shareholder, employee, agent or representative of any of such corporations, persons or entities, on account of the obligations of Mortgagee hereunder.

35. If any term, covenant or condition of the Mortgage shall be held to be invalid, illegal or unenforceable in any respect, the Mortgage shall be construed without such provision.

36. Wherever pursuant to this Mortgage, the Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that the arrangements are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive.

37. The Mortgagor will, at the sole cost of the Mortgagor, and without expense to the Mortgagee, do, execute acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, deeds of trust, assignments, notices of assignments, transfers and assurances as the Mortgagee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention of facilitating the performance of the terms of the Mortgagee and, on demand, will execute and deliver and hereby authorize the Mortgagee to execute in the name of the Mortgagor to the extent they may lawfully do

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so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Premises.

38. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and in connection therewith:

(a) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys's fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and

(b) All expenditures and expenses of the nature in this Article mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.



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39. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Article 38 hereof; second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; third, to interest remaining unpaid upon the Note; fourth, to the principal and all other sums and amounts remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns as their rights may appear.

40. No action for the enforcement of the lien or any provision or provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law or upon the Note.

41. It is understood and agreed that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 644 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor or, if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor as contemplated by said Section.

42. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of the Mortgagor; and without limiting the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in

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possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

43. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the building on the Premises, as aforesaid, 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; and:

(a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors, and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer; and

(b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to

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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.

44. The Mortgagor represents and agrees that the Indebtedness Hereby Secured, represented by the Note, represents the proceeds of a loan made and to be made by Mortgagee to Mortgagor pursuant to Commitment Dated September 18, 1986 as amended by the Amendment to the Commitment dated October 21, 1986 (herein, together with any Application for Loan referred to therein, being called the "Commitment"); and in connection herewith:

- (a) The Commitment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length;
- (b) If the Commitment runs to any person other than the Mortgagor, the Mortgagor hereby adopts and ratifies the Commitment and the Application referred to therein as its own act and agreement;
- (c) The Mortgagor hereby covenants and agrees to duly and punctually do and perform and observe all of the terms, provisions, covenants and agreements on its part to be done, performed or observed by the Mortgagor pursuant to the Commitment (and the Application forming a part thereof) and further represents that all of the representations and statements of or on behalf of Mortgagor in the Commitment (and the Application forming part thereof) and in any documents and

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certificates delivered pursuant thereto are true and correct.

45. Time is of the essence hereof and of the Note, Assignment and all other instruments delivered in connection with the Indebtedness Hereby Secured.

46. That it shall be an immediate default hereunder if, without the prior consent of the Mortgagee (i) the Premises, or any part thereof, shall be sold or otherwise transferred by the Mortgagor, or (ii) if the Mortgagor shall be a corporation, a controlling amount of its voting stock shall be sold or otherwise transferred or pledged, hypothecated or otherwise transferred as security for debt, or (iii) if the Mortgagor shall be a partnership, joint venture, syndicate or other group, all or any portion of the interest of any general partner or member thereof shall be sold or otherwise transferred or pledged, hypothecated or otherwise transferred as security for the debt, except that the limited partners of the Mortgagor may transfer their partnership interests and may pledge their respective partnership interests provided such pledge is being granted as security for an indebtedness not to exceed \$500,000 incurred by the Mortgagor in connection with its acquisition of the Premises, and further provided the Mortgagee shall receive notice of such pledge, together with such documents as the Mortgagee shall reasonably require.

47. Reference is made to that certain letter agreement (the "Letter Agreement") dated of even date herewith between the Mortgagor and the Mortgagee relating to additional undertakings of Mortgagor, a copy of which is annexed hereto as Exhibit C. The terms and conditions of the Letter Agreement are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length and the Mortgagee

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shall be entitled to exercise any and all of the rights and remedies set forth therein or herein in the event of a default thereunder.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the date first above written.

ATTEST:

MA Bernstein  
WITNESS:

Carol A. Miller

Carol A. Miller

MIDWAY REALTY ASSOCIATES L.P. II

By: MIIGP ASSOCIATES L.P. general partner

By:

Richard S. Gershman  
Richard S. Gershman, general partner

By:

MA Bernstein  
Marshall A. Bernstein, general partner

By: MRIIGP CORP., general partner

By:

M.A. Bernstein  
Its: Vice-president

THIS INSTRUMENT WAS PREPARED BY:

Lawrence Brownridge, Esq.  
Demov, Morris & Hammerling  
40 West 57th Street  
New York, New York 10019  
(212) 757-5050

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EXHIBIT A

## MORTGAGE NOTE

\$4,000,000.00

New York, New York  
February 2, 1987

FOR VALUE RECEIVED, the undersigned, MIDWAY REALTY ASSOCIATES L.P. II, a Texas limited partnership ("Maker"), having an address c/o Bernstein & Gershan, 300 Garden City Plaza, Garden City, New York, New York 11530, promises to pay to the order of PROVIDENCE LIFE INSURANCE COMPANY, a New Jersey insurance company acting on behalf of Harvest Real Estate Variable Annuity Account (P) ("Holder"), having its principal office at One Bridge Plaza, Fort Lee, New Jersey 07024, or at such other place as Holder may from time to time designate in writing, the principal sum of FOUR MILLION AND 00/100 (\$4,000,000.00) DOLLARS or so much thereof as may be outstanding from time to time (the "Principal"), with interest thereon at the rates hereinafter more specifically set forth and which shall be due and payable on the Maturity Date (as defined in paragraph 3 hereof).

1. Applicable Interest Rate. The Principal shall bear interest ("Interest") at the rate of 10% per annum for the period commencing as of the date hereof through and including the Maturity Date, of which Interest, (a) 2.5% per annum shall accrue for the period commencing as of the date hereof through and including February 28, 1990, (b) 2% per annum shall accrue for the period commencing March 1, 1990 through and including February 28, 1994 and (c) 1% per annum shall accrue for the period commencing March 1, 1994 through and including December 31, 1997. From and after January 1, 1998 through and including the Maturity Date, all Interest shall be paid on a current basis. That portion of the Interest which shall accrue in accordance with the foregoing (collectively, the "Accrued Interest") shall be compounded monthly and shall bear interest at the rate of 10% per annum and shall be payable on the Maturity Date.

2. Installment Payments. Maker shall pay to Holder monthly installments of interest ("Installment Payment(s)"), by wire transfer of immediately available federal funds into an account or accounts designated by Holder, (a) commencing on March 1, 1987 and on the first day of each

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calendar month thereafter ensuing through and including the Installment Payment due January 1, 1998, in an amount equal to interest on the Principal payable on a current basis as provided in paragraph 1 above, for the immediately preceding calendar month and (b) commencing on February 1, 1998 and on the first day of each calendar month thereafter ensuing through and including the Maturity Date in an amount equal to the aggregate of Interest on the Principal plus interest at the rate of 10% per annum on all Accrued Interest theretofore accrued as of December 31, 1997.

### 3. The Maturity Date.

(A) On the Maturity Date, the Principal, together with all accrued and unpaid Interest thereon, including without limitation (i) all Accrued Interest and any unpaid interest thereon, (ii) all accrued and unpaid Contingent Interest (as defined in paragraph 5 hereof), and (iii) all accrued and unpaid Additional Contingent Interest (as defined in paragraph 6 hereof) shall be due and payable in immediately available federal funds. Upon such payment by Maker, the Mortgage (as hereinafter defined) shall be satisfied of record.

(B) For the purposes of this Note, the "Maturity Date" shall mean the earlier of (i) July 1, 1998, or (ii) the acceleration by Holder of the indebtedness evidenced by this Note by reason of a default by Maker hereunder or under any of the other documents executed in connection with this Note (collectively, the "Loan Documents").

4. Security. This Note is secured, in part, by a certain first mortgage (the "Mortgage") dated of even date herewith made by Maker to Holder encumbering a certain parcel of real property and improvements thereon commonly known as Leaseway Transportation Warehouse, Alsip, Cook County, Illinois (the "Premises"). It is expressly agreed that the Principal, together with all other sums payable pursuant to this Note, the Mortgage and the other Loan Documents shall become due, at the option of Holder, upon the occurrence of any default which continues to exist beyond any applicable grace period or any event by which, under the terms hereof, of the Mortgage or of any other of the Loan Documents said principal may or shall become due or payable.

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## 5. Contingent Interest.

(A) For the purposes of this Note:

(i) "Gross Rents" shall mean all sums payable by tenants or other occupants, under all occupancy leases or other agreements for occupancy of space for portions of the Premises with respect to a particular Lease Year (as hereinafter defined), less the aggregate sums, if any, specifically paid by such tenants or occupants to Maker as reimbursement of expenses and costs incurred by Maker with respect to the Premises for common area maintenance, operating expenses, real estate taxes and assessments, repairs, insurance and utilities, provided, however, to the extent the aggregate amounts specifically paid to Maker as reimbursement for the foregoing expenses and costs shall exceed the actual expenses of Maker in respect of such items such excess shall be included in Gross Rents. Such aggregate sums specifically paid to Maker as reimbursement of increases in expenses and costs shall reduce Gross Rents provided that in the opinion of counsel to Holder such reduction from Gross Rents shall not thereby jeopardize Holder's status as a lender and the recognition of its income from this Note as interest for all purposes; and

(ii) "Threshold Amount" shall be the amount of \$361,170.00.

(B) Commencing with the partial calendar year commencing on the date hereof and ending on December 31, 1987 and for each calendar year or part thereof thereafter until the Maturity Date (each a "Lease Year"), Maker shall pay to Holder as additional interest an amount ("Contingent Interest") equal to 25% of the amount, if any, by which Gross Rents for the respective Lease Year exceeds the Threshold Amount.

(C) Payments of Contingent Interest shall be due and payable in immediately available federal funds on February 1, 1988 and on each February 1 thereafter until the Maturity Date. Notwithstanding the foregoing, Contingent Interest for the Lease Year during which the Maturity Date shall occur shall be due and payable in immediately available federal funds on the Maturity Date. In the event that any Lease Year is less than twelve (12) months long, the Threshold Amount shall be proportionately reduced.

(D) All leases shall require the prior written approval of Holder. Maker shall submit to Holder for its approval (i) the actual proposed lease, (ii) a summary of the proposed financial terms of such lease, and (iii) a description and identification of the proposed tenant. All leases must provide for a fixed rental not less than the Fair Market Rental (as hereinafter defined) for the proposed tenant. If Holder does not give notice to Maker of the disapproval of a proposed lease within

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fifteen (15) business days following receipt by Holder of the material required to be sent to it, such lease shall be deemed approved by Holder. In the event Holder shall have expressly approved a proposed lease or shall have failed to timely disapprove a proposed lease, Holder shall be deemed to have waived its right to contest that the fixed rentals under such lease are less than the Fair Market Rental. For purposes of this Note, the term "Fair Market Rental" shall mean the fair market rent as of the date of letting net of common area maintenance, real estate taxes and assessments, water and sewer charges, repairs, insurance, and utilities and containing such escalations and other terms and conditions as is then customary with respect to comparable space to comparable tenants in the geographic vicinity of the Premises.

(E) Holder shall have in addition to the right of approval, the right to contest that the rentals payable under new leases are less than the Fair Market Rental for the premises demised thereunder, in which event the following procedures shall be employed: Holder shall obtain an appraisal from a reputable real estate appraiser who is a member of the Appraisal Institute and familiar with properties in the general vicinity of the Premises having at least ten (10) years experience in real estate appraisal in Cook County, Illinois, setting forth such appraiser's opinion of the Fair Market Rental for the subject premises. In the event Holder fails to obtain such appraisal within forty-five (45) days from the date Holder receives a copy of an executed lease from Maker, Holder shall be deemed to have waived its right to contest the rentals payable under such executed lease. If such appraisal obtained by Holder indicates less than a ten (10%) percent difference between such appraiser's determination of the Fair Market Rental and the rentals payable under such executed lease, then for the purposes of computing Contingent Interest, the term "Gross Rents" shall be deemed to include, with respect to the subject premises, the rentals payable under such executed lease. In the event there is a ten (10%) percent or greater difference between the Fair Market Rental as indicated in Holder's appraisal and the rentals payable under such executed lease, upon written notice, Maker shall offer a similarly prepared appraisal prepared by an appraiser appointed by Maker and Holder's and Maker's Appraisers shall mutually choose a third appraiser who shall be instructed to make a similar appraisal and the average of those two

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appraisals which are closest in amount shall constitute the Fair Market Rental for the subject premises, provided, however, if both of such two closest appraisals indicate less than a ten (10%) percent difference in Fair Market Rental and the rentals payable under such executed lease, for purposes of computing the Contingent Interest, the term "Gross Rents" shall be deemed to include, with respect to the subject premises, the rentals payable under such executed lease. If the Fair Market Rental is more than ten (10%) percent higher than the rentals payable under such executed lease, then for purposes of computing the Contingent Interest, the term "Gross Rents" shall be deemed to include, with respect to the subject premises, the Fair Market Rental. Each of Maker and Holder shall pay all fees, costs and expenses of the appraisers each such party appoints and one-half (1/2) of the fees, costs and expenses of the third appraiser.

## 6. Additional Contingent Interest.

(A) In addition to the payment of Interest, Accrued Interest and Contingent Interest, on the Maturity Date, Maker shall pay to Holder, in immediately available federal funds, additional interest ("Additional Contingent Interest") in an amount equal to 50% of the amount by which the "Value of the Premises" (as hereinafter defined) on the Maturity Date shall exceed the sum of (i) the Principal and (ii) the Accrued Interest as compounded as of the Maturity Date.

(B) For the purposes of calculating Additional Contingent Interest, the following definitions and procedures shall be used:

(i) "Value of the Premises" shall mean the purchase price which would then be paid by a willing purchaser of the Premises free and clear of mortgage liens in an arms-length transaction consummated under the normal and customary circumstances surrounding similar sales, with such value to be calculated as if the sums payable for any space in the Premises pursuant to any lease between Maker and any affiliate or party related to Maker were deemed to be the greater of the Fair Market Rental or the actual rental payable for such space; in determining the Value of the Premises, the purchase price shall reflect the then existing lease(s) with any tenant(s) unrelated to Maker, provided such lease(s) shall have been approved (or deemed approved) by Holder; and

(ii) "Appraisers" shall mean three (3) independent MAI appraisers each having at least ten (10) years experience in commercial and industrial real estate appraisal in Cook County, Illinois. One appraiser shall be appointed by Maker ("Maker's Appraiser"), one appointed by Holder ("Holder's Appraiser"), and the two appraisers shall designate a third appraiser (the "Third Appraiser"); Each of Maker and Holder shall pay all fees, costs and expenses of the appraiser each such party appoints and one-half (1/2) of the fees, costs and expenses of the appraiser designated as the Third Appraiser.

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(C) Not less than six (6) months prior to the Maturity Date, Maker shall send to Holder a copy of an appraisal prepared by Maker's Appraiser ("Maker's Appraisal") setting forth the Value of the Premises calculated in accordance with the criteria set forth above and the information upon which such appraisal is based. If Holder shall agree with Maker's Appraisal or shall disagree but shall fail to send a notice indicating such disagreement ("Holder's Dispute Notice") to Maker within sixty (60) days of receipt of Maker's Appraisal, then in either of such events, the Value of the Premises shall be the amount set forth in Maker's Appraisal. If Holder shall disagree with Maker's Appraisal and shall timely deliver to Maker Holder's Dispute Notice, together with a copy of an appraisal prepared by Holder's Appraiser ("Holder's Appraisal"), Maker shall be afforded a period of thirty (30) days to either indicate in writing its acceptance or disagreement with Holder's Appraisal; the failure of Maker to timely respond in writing shall be deemed an acceptance of the Holder's Appraisal for the purpose of calculating the Value of the Premises. If Maker shall timely disagree with Holder's Appraisal, either Maker or Holder may instruct Maker's Appraiser and Holder's Appraiser to appoint the Third Appraiser as soon as possible. The Third Appraiser shall render his written opinion of the Value of the Premises (the "Third Appraisal") calculated in accordance with the criteria set forth above not less than thirty (30) days prior to the Maturity Date. The Value of the Premises that shall be binding and conclusive on both Maker and Holder for calculating Additional Contingent Interest shall be the average of the determination of the Value of the Premises set forth in the two appraisals that are closest in agreement.

7. Maximum Rate. It is not intended hereby to charge Interest, including Accrued Interest and any interest thereon, Contingent Interest and Additional Contingent Interest at a rate in excess of the maximum legal rate of interest permitted to be charged to Maker under the laws of the State of Illinois, but if, notwithstanding, interest in excess of said maximum legal rate, shall be paid hereunder, the excess shall be, at the option of the Holder, either (i) waived, (ii) upon notice to Maker, applied in reduction of the Principal, or (iii) retained by Holder as additional cash collateral for the Principal.



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8. Financial Statements. Maker shall deliver to Holder (i) annual financial statements of Maker certified as true and complete by a general partner of Maker and reviewed by a Certified Public Accountant and (ii) such other information as Holder deems necessary or appropriate in determining the payments to be made pursuant to the provisions of this Note including, without limitation, the following statements, certified by a general partner of Maker, to be delivered on or prior to February 1, 1987 and on each February 1 thereafter until the Maturity Date, whether or not Contingent Interest is then due and payable:

(i) a rent roll of the Premises indicating all of the tenants occupying portions of Premises, the fixed minimum annual rent and all additional rent calculated on the basis of the volume of the tenant's business activity at the Premises, if any, payable by each of such tenants for the prior Lease Year, the commencement and expiration dates of each of such leases, subleases or other agreements of occupancy pursuant to which such tenants occupy portions of the Premises, including any renewal options therein contained, and a description of all provisions in each of such leases requiring the payment to Maker of additional rent or other sums in relation to the premises occupied by such tenant;

(ii) a list of each of the tenants occupying portions of the Premises who are delinquent in the payment of any rent or additional rent under such tenant's respective lease, including the due date of such delinquent payment and the amount thereof; and

(iii) a list of all operating expenses, real estate taxes and insurance costs relating to the Premises for the immediately preceding Lease Year.

9. Waiver. Any waiver by Holder of any term or provision hereof or of the Mortgage or of any right, remedy or option under this Note or the Mortgage shall not thereafter be controlling, nor shall it prevent or estop Holder from thereafter enforcing such term, provision, right, remedy or option, and the failure or refusal of Holder to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Note or the Mortgage shall not be construed as a waiver or relinquishment for the future of any such term or provision, but the same shall continue in full force and effect, it being understood and agreed that Holder's rights, remedies and options under this Note and the Mortgage are and shall be cumulative and are in addition to all of the rights, remedies and options of Holder in law or in equity or under any other agreement.

10. Default Rate. At the option of Holder, from and after the Maturity Date (whether or not resulting from acceleration) the whole of

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the Principal sum shall, without further notice, bear interest at the rate of eighteen (18%) percent per annum.

## 11. Prepayment.

(A) Maker shall not have the right to prepay this Note, in whole or in part, at any time.

(B) Upon any default by Maker under this Note or the Mortgage and the election by Holder to accelerate payment of the sums otherwise due on the Maturity Date, a tender of payment thereof by Maker or by any other person made at or prior to the foreclosure sale shall constitute a violation of the prepayment prohibition, in which event such tender of payment, to the extent permitted by law, shall include a premium for such prepayment in the amount of \$3,800,000.00, plus all other amounts otherwise due on the Maturity Date, as if the date of payment were the Maturity Date. The aforesaid premium is intended by the parties to represent the best estimate of the amount of Contingent Interest and Additional Contingent Interest that will fail to accrue in the event of a prepayment, an amount difficult to ascertain as of the date hereof and such premium therefore represents liquidated damages for the loss estimated by Holder and Maker.

## 12. Miscellaneous.

(A) Maker hereby waives valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note.

(B) If this Note shall be executed by more than one maker, the singular shall include the plural and all the obligations of each signatory hereof. This Note cannot be modified or discharged orally. No requirements hereof may be waived at any time except by a writing signed by the party against whom the waiver shall be enforced nor shall any waiver be operative upon other than a single occasion unless to the contrary expressly stated therein. All rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available. All references herein to Maker and to Holder shall be deemed to include their respective personal representatives, distributees, successors and assigns.

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(C) This Note shall be construed in accordance with the laws of the State of Illinois.

(D) In the event any payment provided for in this Note or any of the Loan Documents shall be made more than ten (10) days after the due date thereof, in addition to its other remedies, Holder shall be entitled to charge and collect a late charge in an amount equal to six (\$.06) cents for each dollar of such delinquent payment to offset the expense of handling such delinquent payment.

(E) Subject to the provisions set forth below, neither Maker nor any of its partners or members shall have any personal liability under this Note or any instruments securing this Note. In the event of any default under this Note, Holder's remedies shall be limited to those provided in the Mortgage and any other instruments securing this Note and Maker's liability shall be limited to Maker's interest in the Premises and in no event may Holder seek to enforce the terms and conditions of this Note so as to obtain any personal liability against Maker, except to the extent Maker or any of its partners or members have received rentals or other revenues or payments in respect of the Premises less than 90 days prior to the commencement of foreclosure proceedings under the Mortgage which have not been applied to payments of debt service hereunder, real estate taxes, water and sewer charges and assessments and/or insurance premiums relating to the Premises.

(F) If this Note shall be referred to an attorney for collection, there shall be immediately due and payable Holder's attorneys' fees. Holder may take judgment for all costs and expenses of any action taken herein, including attorneys' fees.

(G) Nothing contained in this Note or the Mortgage or in any other Loan Documents executed in connection herewith shall be deemed or construed to create a partnership, joint venture or any other relationship between Maker and Holder or cause Holder to be responsible in any way for the debts or obligations of Maker, it being the intention that the only relationship between Holder and Maker is solely that of obligor and obligee.

(H) All payments (other than those which are required to be made by wire transfer of funds) and/or notices hereunder required or permitted to be made and/or given to Holder shall be made and/or given to

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(I) Holder c/o Resources Variable Account Management Corp., 666 Third Avenue, New York, New York 10017, with a copy to Demov, Morris & Hammerling, 40 West 57th Street, New York, New York 10019, Attention: Lawrence A. Kestin, Esq. and (ii) Maker to the address set forth above with a copy to Newman, Tannenbaum, Helpern, Syracuse & Hirschtritt, 900 Third Avenue, New York, New York 10022-4775, Attention: Robert E. Helpern, Esq. Any notices required to be given hereunder shall be given by registered mail with postage prepaid. Notice shall be deemed given two (2) business days after such notice shall have been deposited with the United States Postal Registry Clerk. Either party may change its address for notices hereunder (or such payments) by giving the other party a notice in accordance with the foregoing.

(I) It is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that although this Note and the Mortgage impose no obligations on Holder, the liability of Holder for its obligations under or with respect to this Note and the Mortgage, if any, is limited to the assets of Harvest Real Estate Variable Annuity Account (P) ("Harvest"). In no event shall Maker look to, make any claim against or commence any action against, Providence Life Insurance Company, Resources Variable Account Management Corporation or any person or entity having any interest in Harvest or its assets, or any officer, director, shareholder, employee, agent or representative of any of such corporations, persons or entities, on account of any of the obligations of Harvest hereunder.

(J) Maker represents that the indebtedness evidenced hereby is a business loan within the purview and intent of the Illinois Interest Act (Ill. Rev. Stat. Ch. 17 par. 6404), transacted solely for the purpose of

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owning and operating the business of Maker or the beneficiary of Maker as contemplated by said Act.

(K) In addition to the payment of Interest, Contingent Interest and Additional Contingent Interest, on November 2, 1987, Maker shall pay to Holder additional interest ("Excess Interest") in an amount equal to Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars, provided, however, no Excess Interest shall be due and payable if prior thereto Maker shall have completed to the reasonable satisfaction of Holder Borrower's Undertakings as defined in a certain letter agreement dated of even date herewith and annexed hereto as Exhibit A between Maker and Holder.

IN WITNESS WHEREOF, the undersigned has caused this Note to be duly executed by its general partners thereunto duly authorized, all on and as of the day and year first above written.

ATTEST:

MIDWAY REALTY ASSOCIATES L.P. II

By: MIIGP Associates L.P.,  
general partner

By: \_\_\_\_\_

Richard S. Gershman,  
general partner

By: \_\_\_\_\_

Marshall A. Bernstein,  
general partner

By: MIIGP Corp., general partner

By: \_\_\_\_\_

Its: \_\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY:

Lawrence S. Brownridge, Esq.  
Demov, Morris & Hammerling  
40 West 57th Street  
New York, New York 10019  
(212) 757-5050

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STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

On the 2nd day of February, 1987, before me personally came Richard S. Gershan, to me known, who, being by me duly sworn, did depose and say that he is a general partner of MRIIGP Associates, L.P., the limited partnership, described in and which executed the foregoing instrument and which executed same as a general partner of the Illinois limited partnership known as Midway Realty Associates L.P. II and that he signed his name thereto on behalf of said partnership as the free act and deed of said partnership.

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

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

On the 2nd day of February, 1987, before me personally came Marshall A. Bernstein to me known, who, being by me duly sworn, did depose and say that he is a general partner of MRIIGP Associates, L.P., the limited partnership, described in and which executed the foregoing instrument and which executed same as a general partner of the Illinois limited partnership known as Midway Realty Associates L.P. II and that he signed his name thereto on behalf of said partnership as the free act and deed of said partnership.

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

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

On the 2nd day of February, 1987, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of MRIIGP Corp., the corporation described in the foregoing instrument and which executed same as a general partner of the Illinois limited partnership known as Midway Realty Associates L.P. II and that he signed his name thereto by order of the board of directors of said corporation.

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

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EXHIBIT B

## SCHEDULE "A"

Land in the Cook County, State of Illinois, described as:

### PARCEL 3-A:

That part of the West two-thirds of the Southwest Quarter of Section 21, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows:

Beginning at the point of intersection of the East line of the West 33.00 feet of said Southwest Quarter of Section 21, with a line which is 1766.00 feet South from and parallel with the North line of said Southwest Quarter, and running

Thence South along said East line of the West 33.00 feet of the Southwest Quarter of Section 21, a distance of 373.00 feet to an intersection with a line which is 2139.00 feet South from and parallel with the North line of said Southwest Quarter of Section 21;

Thence East along said parallel line, a distance of 1137.78 feet to a point which is 599.85 feet, measured along said parallel line, West from the East line of said West two-thirds of the Southwest Quarter of Section 21;

Thence Southeastwardly along the arc of a circle, convex to the Northeast, Tangent to said parallel line, and having a radius of 420.0 feet, a distance of 529.45 feet to an intersection with a line which is 200.00 feet, measured perpendicularly, West from and parallel with the East line of the West two-thirds of the Southwest Quarter of Section 21, which point of intersection is 2430.79 feet, measured along said parallel line, South from the North line of said Southwest Quarter of Section 21;

Thence North along said last described parallel line, a distance of 373.00 feet;

Thence Northwestwardly along the arc of a circle, convex to the Northeast and having a radius of 420.00 feet, a distance of 529.45 feet to a point which is 1766 feet South from the North line of said Southwest Quarter of Section 21, and 599.85 feet, measured parallel with said North line of the Southwest Quarter, West from the East line of said West two-thirds of said Southwest Quarter; and

Thence West along a line which is 1766.00 feet South from and parallel with the North line of said Southwest Quarter (said parallel line being tangent to said last describe circle) a distance of 1137.70 feet to the point of beginning.

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MIDWAY REALTY ASSOCIATES L.P.II  
c/o Bernstein & Gershan  
300 Garden City Plaza  
Garden City, New York 11530

February 2, 1987

Providence Life Insurance Company  
c/o Resources Variable Account Management Corp.  
666 Third Avenue  
New York, New York 10017  
Attention: John J. Johnston, Jr., Esq.

Re: Providence Life Insurance Company (Harvest) (P) -  
\$4,000,000 First Mortgage Loan to Midway Realty  
Associates L.P. II  
Premises: Leaseway Transportation Warehouse  
Alsip, Cook County, Illinois

Gentlemen:

Reference is made to a certain loan (the "Loan") being made this day by Providence Life Insurance Company, on behalf of its Harvest Real Estate Variable Annuity Account (P) ("Harvest") to Midway Realty Associates L.P. II ("Borrower") in the original principal sum of \$4,000,000. The Loan is evidenced by Borrower's note in the amount of the Loan (the "Note") and is secured by, among other things, a first mortgage lien (the "Mortgage") encumbering the above-referenced premises (the "Premises"). Borrower hereby acknowledges that Harvest has agreed to consummate the Loan this day notwithstanding that certain conditions set forth in the commitment issued by Harvest (the "Commitment") have not been satisfied by Borrower or waived by Harvest. In connection therewith and as an inducement to Harvest to consummate the Loan this day, this letter shall set forth our understanding with respect to Borrower's undertaking to satisfy such unsatisfied conditions and with respect to other aspects of the Loan.

1. (A) Borrower hereby agrees that it shall promptly commence the items of work described in Exhibit A annexed hereto (collectively, the "Work") and Borrower shall complete the Work to the reasonable satisfaction of Harvest in a prompt and expeditious manner. All of the Work shall be completed at the sole cost and expense of Borrower.

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(B) Borrower hereby further agrees, that on or before November 2, 1987, it shall deliver to Harvest a party wall agreement (the "Party Wall Agreement") executed by Borrower and the owner of the Adjacent Premises (as hereafter defined), in proper form for recording and otherwise in form and content satisfactory to Harvest in its sole discretion relating to the party wall (the "Party Wall") located both on the Premises and on the immediately adjacent premises to the north of the Premises, known as Alsip 3, Alsip, Cook County, Illinois (the "Adjacent Premises"). The Party Wall Agreement shall set forth, in relevant part, in a manner satisfactory to Harvest, provisions relating to the respective rights and responsibilities of Borrower and the owner of the Adjacent Premises with respect to the Party Wall, which shall include the obligation of the parties to make repairs thereto if required and the obligation of the parties to reconstruct the Party Wall in the event of damage or destruction, together with access easements in favor of each of the parties to accomplish the foregoing.

(C) Borrower hereby further agrees that on or before November 2, 1987 it shall obtain and deliver to Harvest an agreement (the "Refinancing Agreement") executed by the owner of the Adjacent Premises in proper form for recording and otherwise in form and content satisfactory to Harvest in its sole discretion, whereby such owner agrees, upon no less than thirty (30) days prior written notice to such owner, and to the extent permitted therein without any prepayment penalty or premium, to repay the entire indebtedness(es) secured by the then mortgage(s) encumbering the Adjacent Premises, provided, however, that Harvest or an affiliate thereof shall refinance such existing indebtedness(es) upon the same terms and conditions as for the balance of the term(s) thereof. All costs and expenses incurred in connection with such repayment and refinancing shall be borne by Borrower.

(D) Borrower shall use its best efforts to obtain an agreement from the holder(s) of any mortgage(s) or other lien(s) encumbering the Adjacent Premises whereby such holder(s) agrees that such mortgage(s) or other lien(s) shall be subject and subordinate to the Party Wall Agreement. Nothing herein shall require Borrower to pay any sum in order to obtain such agreement, other than the normal and customary legal and/or processing expenses imposed by such holder(s) in connection therewith.

(E) The undertakings of Borrower set forth in paragraphs (A), (B) and (C) above shall be hereinafter collectively, "Borrower's Undertakings."

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(F) In the event Harvest (or a party affiliated with Harvest) shall acquire title to the Premises by reason of a foreclosure of the Mortgage or otherwise, Harvest (or its affiliate) shall permit Borrower or Bentley Blum or its or his agents, employees or contractors reasonable access to the Premises in order to complete Borrower's Undertakings, subject to the rights of tenants.

2. (A) As security for Borrower's obligation to pay Excess Interest (as defined in the Note) in accordance with the provisions of the Note, Borrower is herewith delivering to Harvest the amount of \$250,000.00 (the "Excess Interest Fund"). At such time when Excess Interest shall become due and payable under the Note, without notice to or demand upon Borrower, Harvest shall have the right to apply the Excess Interest Fund to the payment of Excess Interest under the Note. Harvest's election to apply the Excess Interest Fund to the payment of Excess Interest shall not relieve or release Borrower from its obligation to complete Borrower's Undertakings as provided in paragraph 1 above. If Borrower shall be relieved of the obligation to pay Excess Interest in accordance with the terms of the Note, Harvest shall forthwith return the Excess Interest Fund to Borrower. Harvest shall deposit the Excess Interest Fund in an interest bearing account and all interest thereon shall be added to and deemed a part of the Excess Interest Fund.

(B) Provided there exists no default under the Mortgage or any other of the documents executed and/or delivered by Borrower in connection with the Loan, Borrower may substitute the Excess Interest Fund with a clean, irrevocable and unconditional letter of credit in the amount of \$250,000.00 naming Harvest as the beneficiary thereunder (the "Letter"), which Letter shall be payable upon presentation by Harvest and shall be in form and issued by an institution satisfactory to Harvest in its sole discretion, and which Letter shall have an expiry date of no earlier than December 15, 1987. Harvest shall have the right to draw upon the Letter at any time when pursuant to the terms of this letter agreement and/or the Note Harvest shall have the right to take any action with respect to the Excess Interest Fund (other than the return thereof to Borrower) and the proceeds thereof shall be held as the Excess Interest Fund.

3. Prior to completion of Borrower's Undertakings, in the event of a default under the Note, the Mortgage or any other of the documents executed and/or delivered by Borrower in connection with the Loan, which default shall remain uncured beyond any applicable grace period, Harvest shall have the right, at its option, to either (1) apply the Excess Interest Fund in

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reduction of all sums secured by the Mortgage, or (ii) hold the Excess Interest Fund as additional collateral for the Loan.

4. In the event Borrower shall fail to complete Borrower's Undertakings by November 2, 1987, Harvest shall have the right, at its option, exercisable by notice given to Borrower in the manner prescribed in the Mortgage, to declare the entire principal amount and all other sums otherwise due on the Maturity Date (as defined in the Note) immediately due and payable; provided, however, such right to so declare the principal amount and such other sums due and payable shall remain in effect only until such time as Borrower shall have fully completed Borrower's Undertakings. Notwithstanding the foregoing, if Harvest shall exercise its right to declare payable the entire principal amount and such other sums, the amount that shall be then due shall not include the \$3,800,000 premium described in paragraph 11(B) of the Note.

5. Notwithstanding anything to the contrary contained in paragraph (e) of Exhibit A, in lieu of completing the Work described in said paragraph (e), Borrower may deliver to Harvest an amendment to a certain Grant of Easement for Water Tank System dated July 30, 1973 recorded against the Premises, as amended by the Amended Water Tank System Easement Agreement dated April 29, 1977 (said Grant, as amended, collectively, the "Water Agreement"), which amendment shall be duly executed by all of the Appropriate Parties (as defined below), and shall otherwise be in form satisfactory to Harvest in its sole discretion and shall provide, in relevant part, that the Premises shall be benefitted by an easement for the use, operation, maintenance and replacement, in perpetuity, of (i) the fire protection loop and pump house that provide water service to the Premises from the public utility serving the area where the Premises is located and (ii) all mains, pipes, valves, pumps and motors utilized directly or indirectly in connection with such water service. For purposes of this letter agreement, the term "Appropriate Parties" shall mean the owners of the parcels of land described in the Water Agreement and the holder(s) of any mortgage(s) or other lien(s) encumbering said parcels of land. Borrower's attempts to obtain the foregoing amendment shall constitute satisfaction of its undertaking to commence to complete the Work described in paragraph (e) of Exhibit A.

6. Borrower hereby agrees that it shall promptly pay to Harvest, upon demand by Harvest, all costs, expenditures, fees and expenses, including, but not limited to recording fees, engineer's fees and attorneys' fees and disbursements, which may be paid or incurred by or on behalf of Harvest in connection with or relating to this letter agreement.



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If the foregoing accurately sets forth your understanding, please so indicate where provided below.

Very truly yours,

MIDWAY REALTY ASSOCIATES L.P. II

By: MIIGP ASSOCIATES, L.P., general partner

By: \_\_\_\_\_, general partner

By: \_\_\_\_\_, general partner

By: MRIIGP CORP., general partner

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Accepted and agreed to this  
2nd day of February, 1987:

PROVIDENCE LIFE INSURANCE COMPANY, on behalf of its  
Harvest Real Estate Variable Annuity Account (P)

By: \_\_\_\_\_, Authorized Signer

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## EXHIBIT A

- (a) Installation of all equipment (including, but not limited to, new electric lines, a separate transformer and a meter) necessary to provide electrical service from the system of the public utility serving the area in which the Premises is located, from outside of said Premises directly into the building located upon them without traversing any other premises.
- (b) Installation of all equipment (including, but not limited to, new gas lines and a meter) necessary to provide gas service from the system of the public utility serving the area in which the Premises is located, from outside of said Premises directly into the building located upon them without traversing any other premises.
- (c) Installation of all equipment necessary to provide separate operation of fire protection sprinkler system serving the Premises as an integral unit on the mortgaged Premises and in accordance with applicable law or, in lieu thereof, a certification by a licensed architect or engineer which shall state, in relevant part, that the source of water for the fire protection system presently servicing the Premises is the existing water tank covered by the Water Agreement (which water tank is filled through the municipal water system) and that the fire sprinklers located in the Premises have independent risers servicing the Premises only. As partial satisfaction of the requirements of this paragraph (c) Borrower has delivered and annexed hereto as Exhibit B a certification from Jasbir Singh, P.E. which shall serve as satisfactory evidence that (i) the source of water for the fire protection system presently servicing the Premises is the existing water tank covered by the Water Agreement and (ii) the fire sprinklers located in the Premises have independent risers servicing the Premises only. The balance of the requirements of this paragraph (c) may be satisfied by Borrower, in lieu of installing the foregoing equipment, delivering to Harvest either a certification by a licensed engineer or architect or an original letter from the appropriate office of the Township of Alsip stating, in relevant part, that the water tank is filled through the municipal water system.
- (d) Installation of all equipment (including, but not limited to the installation of a new electric line) necessary to connect the electrical light on the pole in the parking lot on the Premises to the separate electrical system provided for in (a) above.

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- (e) Installation of all equipment necessary to provide water service from the public utility serving the area in which the Premises is located, from outside of said Premises directly into the building located upon them without traversing any other premises.
- (f) Installation of all equipment necessary to provide sewer service from the system of the public utility serving the area in which the Premises is located, from outside of said Premises directly into said Premises without traversing any other premises or, in lieu thereof, Borrower may deliver a certification from a licensed architect or engineer which shall state, in relevant part, that the existing sewer system servicing the Premises services the Premises only without traversing any other premises.

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1155 DuPAGE AVENUE  
LOMBARD, ILL. 60148  
TEL: (312) 495-3400  
TELEX: 721447

February 6, 1987

Attention: Mr. Richard Gershman  
General Partner

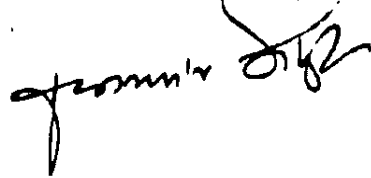
**GRINNELL FIRE  
PROTECTION  
SYSTEMS  
COMPANY, INC.**

RE: Leaseway Bldg.  
11701 S. Central  
Alsip, Illinois

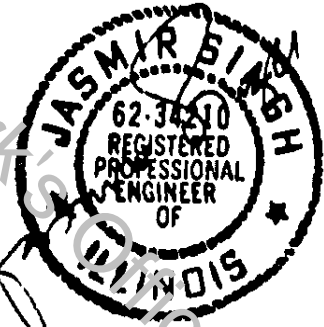
This is to certify that the source of water for the Fire Protection System presently servicing the premises is the existing water tank.

The Fire Sprinklers located in the premises have independent risers servicing the premises only.

GRINNELL FIRE PROTECTION  
SYSTEMS COMPANY, INC.



Jasmir Singh P.E.  
Manager Design Technicians



JS:vls

EXECUTIVE OFFICES  
PROVIDENCE, R. I.

SUBSIDIARY OF TYCO LABORATORIES, INC

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