

# UNOFFICIAL COPY

88-124927

## FIRST MORTGAGE

4 of 7

Property of Cook County Clerk's Office

DEPT-01

\$70.00

T#1111 TRAN 4387 09/16/88 13:48:00

#5428 # A \* 88-124927  
COOK COUNTY RECORDER

### LOCATION OF PREMISES:

209 West Jackson  
Chicago, Illinois

After recording, please return to:  
ROSENTHAL AND SCHANFIELD  
55 East Monroe, Suite 1620  
Chicago, Illinois 60603

Att: Martin K. Blonder

This instrument was prepared by the above named attorney.

88-124927

70.00  
*[Signature]*

Please return to: Nancy Lewis  
Ticor Title Insurance Co.  
203 N. LaSalle St., Suite 1400  
Chicago, IL 60601

Re: 16963-14 Box 15

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10/11/2017

10/11/2017

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## ARTICLE I Covenants of the Mortgagor

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

**Section 1.01. Payment of the Indebtedness.** The Mortgagor will punctually pay the Indebtedness in immediately available funds as provided herein and in the Note, all in the coin and currency of the United States of America which is legal tender for the payment of public and private debts.

**Section 1.02. Title to the Mortgaged Property.** The Mortgagor warrants that: (i) it has title to the Mortgaged Property subject only to those exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage; (ii) it has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth; (iii) it will own all fixtures and articles of personal property now or hereafter affixed and/or used in connection with the Premises, including any substitutions or replacements thereof, free and clear of liens and claims; (iv) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property, and (v) it will preserve such title, and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

**Section 1.03. Maintenance of the Mortgaged Property.** The Mortgagor shall maintain the Mortgaged Property in good repair, shall comply with the requirements of any governmental authority claiming jurisdiction over the Mortgaged Property within thirty (30) days after an order containing such requirement has been issued by any such authority and shall permit the Mortgagee to enter upon the Premises and inspect the Mortgaged Property at all reasonable hours and without prior notice. The Mortgagor shall not, without the prior written consent of the Mortgagee, threaten, commit, permit or suffer to occur any waste, material alteration, demolition or removal of the Mortgaged Property or any part thereof; provided, however, that fixtures and articles of personal property may be removed from the Premises if the Mortgagor concurrently therewith replaces same with similar items of equal or greater value, free of any lien, charge or claim of superior title.

**Section 1.04. Insurance; Restoration.** (a) The Mortgagor shall keep the buildings and improvements now or hereafter located within the Premises insured against damage by fire and the other hazards covered by a standard extended coverage insurance policy for the full insurable value thereof (which, unless the Mortgagee shall otherwise agree in writing, shall mean the full repair and replacement value thereof without reduction for depreciation or co-insurance). In addition, the Mortgagee may require the Mortgagor to carry such other insurance on the buildings and improvements now or hereafter located within the Premises, in such amounts as may from time to time be reasonably required by institutional lenders, against insurable casualties (including risks of war and nuclear explosion) which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the site and the type of the building, the construction, location, utilities and occupancy or any replacements or substitutions thereof. The Mortgagor shall additionally keep the buildings, improvements and equipment located therein and thereon now or hereafter located on the Premises insured 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 National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding Indebtedness or the maximum limit of coverage available with respect to the buildings under said Act, whichever is less, and will assign and deliver the policy or policies of such insurance to the Mortgagee, which policy or policies shall have endorsed thereon the standard New York (or local equivalent) mortgage clause in the name of the Mortgagee, so and in such manner and form that the Mortgagee and its successors and assigns shall at all times have and hold the said policy or policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness. In addition, from time to time, upon the occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, the Mortgagor shall, within five (5) days after demand by the Mortgagee, take out such additional amounts and/or such other kinds of insurance as the Mortgagee may reasonably require. Other than the Mortgagee shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to the Mortgagee in all respects. The proceeds of insurance paid on account of any damage or destruction to the Premises or any part thereof shall be paid over to the Mortgagee to be applied as hereinafter provided.

(b) If the Mortgagee and Mortgagor so elect, the Mortgagee shall apply all or a portion of any insurance proceeds Mortgagee may receive pursuant to this Section 1.04 to the restoration of the Premises and any such insurance proceeds not applied to such restoration (whether or not any proceeds are applied to such restoration) shall be applied to the payment of the Indebtedness. In the event that such proceeds are used for the restoration of the Premises, then such use of the proceeds shall be governed as hereinafter provided.

(c) In the event of damage or destruction to the Premises, the Mortgagor shall give prompt written notice thereof to the Mortgagee and shall promptly commence and diligently continue to perform repair, restoration and rebuilding of the Premises so damaged or destroyed (hereinafter referred to as the "work") to restore the Premises in full compliance with all legal requirements and so that the Premises shall be at least equal in value and general utility as they were prior to the damage or destruction, and if the work to be done is structural or if the cost of the work as estimated by the Mortgagee shall exceed Fifty Thousand Dollars (\$50,000) (hereinafter referred to as "major work"), then the Mortgagor shall, prior to the commencement of the work, furnish to the Mortgagee: (1) complete plans and specifications for the work (approved by all governmental authorities whose approval is required), for the Mortgagee's approval, which approval shall not be unreasonably withheld. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to the Mortgagee (hereinafter referred to as the "Architect") and shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the work; (2) certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the work; and (3) a surety bond for and/or guaranty of the payment for and completion of, the work, which bond or guaranty shall be in form satisfactory to the Mortgagee and shall be signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to the Mortgagee, and in an amount not less than the Architect's estimate of the entire cost of completing the work, less the amount of insurance proceeds, if any, then held by the Mortgagee for application toward the cost of the work.

(d) The Mortgagor shall not commence any of the work until the Mortgagor shall have complied with the applicable requirements referred to in subparagraph (c) above, and after commencing the work the Mortgagor shall perform the work diligently and in good faith in accordance with the plans and specifications referred to in subparagraph (c) (1) above, if applicable.

(e) All insurance proceeds recovered by the Mortgagee on account of damage or destruction to the Premises less the cost, if any, to the Mortgagee of such recovery and of paying out such proceeds (including attorneys' fees and costs allocable to inspecting the work and the plans and specifications therefor), shall, upon the written request of the Mortgagor, be applied by the Mortgagee to the payment of the cost of the work referred to in subparagraph (c) above and shall be paid out from time to time to the Mortgagor and/or, at the Mortgagee's option exercised from time to time, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons rendering services or materials for the work, as said work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which the Mortgagee may waive:

1. If the work to be done is structural or if it is major work, as determined by the Mortgagee, the Architect shall be in charge of the work;

\* with "vandalism and malicious mischief", "all risk of physical loss" and "completion and/or premises occupancy" endorsements

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2. Each request for payment shall be made on seven (7) days' prior notice to the Mortgagee and shall be accompanied by a certificate of the Architect if one be required under subparagraph (c) above, otherwise by an executive or fiscal officer of the Mortgagor, stating (i) that all of the work completed has been done in compliance with the approved plans and specifications, if any be required under said subparagraph (c), and in accordance with all provisions of law; (ii) the sum requested is justly required to reimburse the Mortgagor for payments by the Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the work (giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by the Mortgagee does not exceed the value of the work done to the date of such certificate; and (iii) that the amount of such proceeds remaining in the hands of the Mortgagee will be sufficient on completion of the work to pay for the same in full (giving in such reasonable detail as the Mortgagee may require an estimate of the cost of such completion);

3. Each request shall be accompanied by waivers of liens satisfactory to the Mortgagee covering that part of the work previously paid for, if any, and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Mortgagee, that there has not been filed with respect to the Premises any mechanic's lien or other lien or instrument for the retention of title in respect of any part of the work not discharged of record and that there exist no encumbrances on or affecting the Premises other than encumbrances, if any, which are set forth in the title policy issued to the Mortgagee insuring the lien of this Mortgage;

4. No lease affecting the Premises immediately prior to the damage or destruction shall have been cancelled, nor contain any still exercisable right to cancel, due to such damage or destruction;

5. There shall be no default on the part of the Mortgagor under this Mortgage or the Note or any other instrument securing the same, and

6. The request for any payment after the work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Premises legal.

Upon completion of the work and payment in full therefor, or upon failure on the part of the Mortgagor promptly to commence or diligently to continue the work, or at any time upon request by the Mortgagee, the Mortgagee may apply the amount of any such proceeds then or thereafter in the hands of the Mortgagee to the payment of the Indebtedness, provided, however, that nothing herein contained shall prevent the Mortgagee from applying at any time the whole or any part of such proceeds to the curing of any default under this Mortgage or the Note.

(f) In the event the work to be done is not structural or it is not major work as determined by the Mortgagee, then the net insurance proceeds held by the Mortgagee for application thereto shall be paid to the Mortgagor by the Mortgagee upon completion of the work, subject to the provisions of the foregoing subparagraphs (c), (d) and (e) except those which are applicable only if the work to be done is structural or it is major work as determined by the Mortgagee.

(g) If within one hundred twenty (120) days after the occurrence of any damage or destruction to the Premises requiring structural work or major work in order to restore the Premises, the Mortgagor shall not have submitted to the Mortgagee and received the Mortgagee's approval of plans and specifications for the repair, restoration and rebuilding of the Premises so damaged or destroyed (approved by the Architect and by all governmental authorities whose approval is required), or if, after such plans and specifications are approved by all such governmental authorities and the Mortgagee, the Mortgagor shall fail to commence promptly such repair, restoration and rebuilding, or if thereafter the Mortgagor fails diligently to continue such repair, restoration and rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or, in the case of any damage or destruction requiring neither structural work nor major work, as determined by the Mortgagee in order to restore the Premises, if the Mortgagor shall fail to repair, restore and rebuild promptly the Premises so damaged or destroyed then, in addition to all other rights herein set forth, and after giving the Mortgagor ten (10) days' written notice of the nonfulfillment of one or more of the foregoing conditions, the Mortgagee, or any lawfully appointed receiver of the Premises, may at their respective options, perform or cause to be performed such repair, restoration and rebuilding, and may take such other steps as they deem advisable to perform such repair, restoration and rebuilding, and upon twenty-four (24) hours' prior notice to the extent reasonably necessary for any of the foregoing purposes, and the Mortgagor hereby waives, for the Mortgagor and all others holding under the Mortgagor, any claim against the Mortgagee and such receiver arising out of anything done by the Mortgagee or such receiver pursuant hereto, and the Mortgagee may apply insurance proceeds (without the need to fulfill any other requirements of this Section 1.04) to reimburse the Mortgagee, and/or such receiver, for all amounts expended or incurred by them, respectively, in connection with the performance of such work, and any excess costs shall be paid by the Mortgagor to the Mortgagee upon demand.

(h) The Mortgagor shall (i) provide public liability insurance with respect to the Premises providing for limits of liability of not less than \$1,000,000 for both injury to or death of a person and for property damage, (ii) unless Mortgagee agrees otherwise in writing, provide rent insurance or business interruption insurance in an amount at least equal at all times to the annual rent value of the Premises or gross business earnings; and (iii) workmen's compensation insurance in amounts required by applicable law.

(i) All insurance policies required pursuant to this Section 1.04 shall be endorsed to name the Mortgagee as an insured thereunder, as its interest may appear, with loss payable to the Mortgagee, without contribution, under a standard New York (or local equivalent) mortgage clause. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State where the Premises are located, with a rating of "A-12" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by the Mortgagee. Without limiting the foregoing, each policy shall provide that such policy may not be cancelled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to the Mortgagee (ten (10) days in event of cancellation or non-renewal resulting solely from non-payment of premium) and that no act or thing done by the Mortgagor shall invalidate the policy as against the Mortgagee. In the event the Mortgagor fails to maintain insurance in compliance with this Section 1.04, the Mortgagee may, but shall not be obligated to, obtain such insurance and pay the premium therefor and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums, advances and expenses incurred in connection therewith. The Mortgagor shall deliver copies of all original policies, certified by the insurance company or authorized agent as being true copies to the Mortgagee together with the endorsements thereto required hereunder. Notwithstanding anything to the contrary contained herein or in Section 254 of the Real Property Law of the State of New York (if the Premises are located in the State of New York) or any other provision of applicable law of any other State, the proceeds of insurance policies coming into the possession on the Mortgagee shall not be deemed trust funds and the Mortgagee shall be entitled to dispose of such proceeds as herein provided.

**Section 1.05. Maintenance of Existence.** The Mortgagor will, so long as it is owner of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its incorporation, or formation, as the case may be, and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Mortgaged Property or any part thereof.

(i) The Mortgagee shall have the right to require that Mortgagor provide additional insurance with respect to the Premises, including, but not limited to: earthquake, damage due to faulty construction and/or error in design and/or faulty workmanship; and contingent liability from the operation of building laws pertaining to property that does not conform to local laws, statutes, codes or regulations, all in forms and amounts satisfactory to Mortgagee.

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**Section 1.06. Taxes and Other Charges.** (a) The Mortgagor shall pay and discharge when due all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, uses or possession thereof and, unless the Mortgagor is making monthly deposits with the Mortgagee in accordance with Section 1.14 hereof, the Mortgagor shall exhibit to the Mortgagee within five (5) days after the same shall have become due, validated receipts showing the payment of such taxes, assessments, water rates, sewer rents, levies, fees and other charges which may be or become a prior lien on the Mortgaged Property. Should the Mortgagor default in the payment of any of the foregoing taxes, assessments, water rates, sewer rents, or other charges, the Mortgagee may, but shall not be obligated to, pay the same or any part thereof and the Mortgagor shall, on demand, reimburse the Mortgagee for all amounts so paid.

(b) Nothing in this Section 1.06 shall require the payment or discharge of any obligation imposed upon the Mortgagor by subparagraph (a) of this Section 1.06 so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section 1.06 shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

**Section 1.07. Mechanics' and Other Liens.** The Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, the Mortgagor shall do, or cause to be done, at the cost of the Mortgagor and without expense to the Mortgagee, everything necessary to fully preserve the lien of this Mortgage. In the event the Mortgagor fails to make payment of such claims and demands, the Mortgagee may, but shall not be obligated to, make payment thereof, and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums so expended.

**Section 1.08. Condemnation Awards.** The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit such participation. All awards and compensation or other taking or purchase in lieu thereof, of the Premises or any part thereof, are hereby assigned to and shall be paid to the Mortgagee. The Mortgagor hereby authorizes the Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor and in the Mortgagee's sole discretion to apply the same toward the payment of the indebtedness, notwithstanding the fact that the indebtedness may not then be due and payable, or to the restoration of the Premises. In the event that any portion of the condemnation awards or compensation shall be used to reduce the indebtedness, same shall be applied to the then unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for herein or in the Note.

**Section 1.09. Mortgage Authorized.** The Mortgagor hereby warrants and represents that the execution and delivery of this Mortgage and the Note has been duly authorized and that there is no provision in its certificate of incorporation or by-laws (if the Mortgagor is a corporation) or its partnership agreement (if the Mortgagor is a partnership), as same may have been amended, requiring further consent for such action by any other entity or person, it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation, as the case may be, and has (a) all necessary licenses, authorizations, registrations and approvals and (b) full power and authority to own its properties and carry on its business as presently conducted; and the execution and delivery by and performance of its obligations under this Mortgage and the Note will not result in the Mortgagor being in default under any provision of its certificate of incorporation or by-law (if the Mortgagor is a corporation) or of its partnership agreement (if the Mortgagor is a partnership), as the same may have been amended, or of any mortgage, credit or other agreement to which it is a party.

**Section 1.10. Costs of Defending and Upholding the Lien.** If any action or proceeding is commenced to which action or proceeding the Mortgagee is made a party or in which it becomes necessary to defend or uphold the lien of this Mortgage, the Mortgagor shall, on demand, reimburse the Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and appellate attorneys' fees) incurred by the Mortgagee in any such action or proceeding. In any action or proceeding to foreclose this Mortgage or to recover or collect the indebtedness, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

**Section 1.11. Additional Advances and Disbursements.** The Mortgagor shall pay when due all payments and charges on all liens, encumbrances, ground and other leases, and security interests which may be or become superior or inferior to the lien of this Mortgage, and in default thereof, the Mortgagee shall have the right, but shall not be obligated, to pay, without notice to the Mortgagor, such payments and charges and the Mortgagor shall, on demand, reimburse the Mortgagee for amounts so paid. In addition, upon default of the Mortgagor in the performance of any other terms, covenants, conditions or obligations by it to be performed under any such prior or subordinate lien, encumbrance, lease or security interest, the Mortgagee shall have the right, but shall not be obligated, to cure such default in the name and on behalf of the Mortgagor. All sums advanced and reasonable expenses incurred at any time by the Mortgagee pursuant to this Section 1.11 or as otherwise provided under the terms and provisions of this Mortgage or under applicable law shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at an interest rate equal to ~~2 1/2~~ <sup>3 1/2</sup> per month, the Post-Default Rate provided in the Note.

**Section 1.12. Costs of Enforcement.** The Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and appellate attorneys' fees) of or incidental to the enforcement of any provision hereof, or the enforcement, compromise or settlement of this Mortgage or the indebtedness, and for the curing thereof, or for defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, the Mortgagor: (a) hereby waives trial by jury; (b) will not (i) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; (c) hereby expressly waives all benefit or advantage of any such law or laws, and (d) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

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**Section 1.13. Mortgage Taxes.** The Mortgagor shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon the Mortgagee by reason of its ownership of the Note or this Mortgage or any mortgage supplemental hereto, any security instrument with respect to any fixtures or personal property owned by the Mortgagor at the Premises and any instrument of further assurance, other than income, franchise and doing business taxes, and shall pay all stamp taxes and other taxes required to be paid on the Note. In the event the Mortgagor fails to make such payment within five (5) days after written notice thereof from the Mortgagee, then the Mortgagee shall have the right, but shall not be obligated, to pay the amount due, and the Mortgagor shall, on demand, reimburse the Mortgagee for said amount.

**Section 1.14. Escrow Deposits.** The Mortgagee, at its option, may require that the Mortgagor deposit with the Mortgagee, monthly, one-twelfth (1/12th) of the annual charges for ground or other rent, if any, insurance premiums and real estate taxes, assessments, water, sewer and other charges which might become a lien upon the Mortgaged Property and the Mortgagor shall, accordingly, make such deposits. In addition, if required by the Mortgagee, the Mortgagor shall simultaneously therewith deposit with the Mortgagee a sum of money which together with the monthly installments aforementioned will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date such payments are due. Should said charges not be ascertainable at the time any deposit is required to be made with the Mortgagee, the deposit shall be made on the basis of the charges for the prior year, and when the charges are fixed for the then current year, the Mortgagor shall deposit any deficiency with the Mortgagee. All funds so deposited with the Mortgagee shall be held by it without interest, may be commingled by the Mortgagee with its general funds and, provided that no Event of Default shall have occurred, shall be applied in payment of the charges aforementioned when and as payable, to the extent the Mortgagee shall have such funds on hand. Should an Event of Default occur, the funds deposited with the Mortgagee, as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the indebtedness or any other charges affecting the security of the Mortgagee, as the Mortgagee sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Mortgagee as herein provided. If deposits are being made with the Mortgagee, the Mortgagor shall furnish the Mortgagee with bills for the charges for which such deposits are required to be made hereunder and/or such other documents necessary for the payment of same, at least fifteen (15) days prior to the date on which the charges first become payable. In the event the Mortgagor fails to pay any such amount, the Mortgagee may, but shall not be obligated to, make payment thereof, and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums so expended.

**Section 1.15. Late Charges.** In the event any payment provided for herein or in the Note shall become overdue for a period in excess of ten (10) days, a late charge computed at an interest rate of 2 % per month on the payments so overdue shall become immediately due to the Mortgagee, at the Mortgagee's option, as liquidated damages for failure to make prompt payment. Late charges shall be payable with the next installment of principal and/or interest due under the Note.

**Section 1.16. Financial Statements.** The Mortgagor shall furnish and shall cause any guarantor of the Indebtedness (the "Guarantor") to furnish to the Mortgagee, ~~annually and~~ (i) annual financial statements of Mortgagor, the beneficiary of Mortgagor and any Guarantor; and (ii) monthly operating statements of the Mortgaged Property including income from all sources; all of which shall be delivered within 120 days after the end of such fiscal period and in scope and detail satisfactory to Mortgagee. All such statements shall be prepared in accordance with generally accepted accounting principles consistently applied and certified by the beneficiary of Mortgagor. Mortgagee shall have the right to examine such records, books and papers of the Mortgagor or such Guarantor which reflect upon its financial condition and the income and expense relative to the Premises, and the business conducted thereat. The Mortgagor further agrees that, within ten (10) days after request by the Mortgagee, it shall furnish or cause any Guarantor to furnish to the Mortgagee, but not more often than once in each calendar month a written statement of receipts and disbursements of the Premises for the twelve (12) months next preceding the first day of the month in which the request is made and a written statement containing the names of all tenants of the Premises, the terms of their respective tenancies, the spaces occupied and the rentals paid therefor. Each such written statement shall be certified by a principal officer or partner of the beneficiary of Mortgagor and such Guarantor. All financial statements of the beneficiary of Mortgagor and each Guarantor shall be delivered in duplicate, and, in the case of the Mortgagor, shall be accompanied by the certificate of a principal financial or accounting officer of the beneficiary of Mortgagor, dated within five (5) days of the delivery of such statements to the Mortgagee, stating that he knows of no Event of Default, nor of any event which after notice or lapse of time or both would constitute an Event of Default, which has occurred and is continuing, or, if such event or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that the Mortgagor has fulfilled all its obligations under this Mortgage which are required to be fulfilled on or prior to the date of such certificate.

under present leases or under  
Leases defined in the Note;

**Section 1.17. Restrictive Covenants.** Without the prior written consent of the Mortgagee, the Mortgagor shall not: (a) execute or permit to exist any lease of all or a substantial portion of the Premises except for occupancy by the lessee thereunder; (b) modify any lease affecting the Premises resulting in terms less favorable than those existing as of the date hereof; (c) discount any rents or collect the same for a period of more than one month in advance; (d) cancel any lease affecting the Premises except upon the default of the tenant thereunder; ~~reference is made to Section 201 f of the Real Property Law of the State of New York (if the Premises are located in the State of New York) or other applicable laws of other states to establish for the purposes of this Section the rights and benefits provided therein;~~ (e) execute any conditional bill of sale, chattel mortgage or other security instruments covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Premises or the appurtenances thereto, or covering articles of personal property placed in the Premises or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Mortgagor, free from encumbrances on delivery to the Premises; (f) further assign the leases and rents affecting the Premises; (g) sell, transfer, convey or assign any interest in the Mortgaged Property or any part thereof; or (h) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Mortgaged Property, or any part thereof.

(the beneficial interest in Mortgagor)

**Section 1.18. Estoppel Certificates.** The Mortgagor within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish to the Mortgagee a written statement, duly acknowledged, setting forth the amount due on this Mortgage, the terms of payment and maturity date of the Note, the date to which interest has been paid, whether any offsets or defenses exist against the Indebtedness and, if any are alleged to exist, the nature thereof shall be set forth in detail.

**Section 1.19. Trust Funds.** (a) The Mortgagor will receive the advances secured hereby, and will hold the right to receive such advances, as a trust fund to be applied first for the purpose of paying the cost of the improvements before using any part of such advances for any other purpose. ~~The covenants of subparagraph (a) of this Section 1.19 are made subject to and in compliance with the trust fund provisions of Section 12 of the Lien Law of the State of New York (if the Premises are located in the State of New York) or other applicable laws of other states.~~

(b) All lease securities of tenants of the Premises shall be treated as trust funds not to be commingled with any other funds of the Mortgagor. Within ten (10) days after request by the Mortgagee, the Mortgagor shall furnish to the Mortgagee satisfactory evidence of compliance with this subparagraph (b) of this Section 1.19 together with a statement of all lease securities deposited by the tenants and copies of all leases not theretofore delivered to the Mortgagee, certified by the Mortgagor.

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**Section 1.20. Assignment of Rents.** The Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Indebtedness, 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 said 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 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 or in any law of any applicable state 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), except that the Mortgagee shall be accountable for any money actually received pursuant to such assignment. 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 the said 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 said rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness. Such assignment and grant shall continue in effect until the Indebtedness 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 Premises by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default the Mortgagor shall be entitled to collect and receive said rents, issues and profits. The Mortgagor agrees to use said 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 right of the Mortgagor to collect and receive said rents, issues and profits may be revoked by the Mortgagee upon the occurrence of an Event of Default by giving not less than five (5) days' written notice of such revocation, served personally upon or sent by registered or certified mail to the record owner of the Premises.

**Section 1.21. Indemnity.** The Mortgagor will indemnify and hold the Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any proceeding instituted by any claimant alleging a violation by the Mortgagor or the Mortgagee of any section of Article 3-A of the Lien Law of the State of New York (if the Premises are located in the State of New York) or other applicable laws of other states.

~~**Section 1.22. Lease.** The Mortgagee, in connection with the Mortgage, (a) With respect to the lease more particularly described in Schedule B annexed hereto (the "Lease"), the Mortgagor hereby warrants and represents as follows: (i) it is in full force and effect, unmodified by any writing or otherwise, except as specifically set forth in Schedule B; (ii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof; (iii) the Mortgagor enjoys the quiet and peaceful possession of the property demised thereby; (iv) the Mortgagor is not in default under any of the terms thereof and, to the best of its knowledge, there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; (v) to the best of its knowledge the landlord under the Lease is not in default under any of the terms or provisions thereof on the part of the landlord to be observed or performed.~~

~~(b) Further, with respect to the Lease, the Mortgagor covenants and agrees as follows: (i) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions thereof on its part to be observed, performed and complied with, at the times set forth therein, without any allowance for grace periods, if any; (ii) not to do, permit, suffer or refrain from doing anything, as a result of which, there could be a default under or breach of any of the terms thereof; (iii) not to cancel, surrender, modify, amend or in any way alter or permit the alteration of any of the terms thereof; (iv) to give the Mortgagee immediate notice of any default by anyone thereunder and to promptly deliver to the Mortgagee of each notice of default and all other notices, communications, plans, specifications and other similar instruments received or delivered by the Mortgagor in connection herewith; (v) to furnish to the Mortgagee copies such information and evidence as the Mortgagee may reasonably require concerning the Mortgagor's due observance, performance and compliance with the terms, covenants and provisions thereof; (vi) that any default of the tenant thereunder shall constitute a default under this Mortgage.~~

~~(c) In the event of any default by the Mortgagor in the performance of any of its obligations under the Lease, including, without limitation, any default in the payment of rent and other charges and in positions made payable by the tenant thereunder, then, in each and every case, the Mortgagee may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of the Mortgagor thereunder in the name of and on behalf of the Mortgagor. The Mortgagor shall, on demand, reimburse the Mortgagee for all advances made and expenses incurred by the Mortgagee in curing any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at the rate provided for in Section 1.11 hereof from the date that an advance is made or expense is incurred, to and including the date the same is paid.~~

~~(d) The Mortgagor shall give the Mortgagee notice of its intention to exercise each and every option to extend the term of the Lease, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof. If the Mortgagor intends to extend the term of the Lease, it shall deliver to the Mortgagee with the notice of such decision, a copy of the notice of extension delivered to the landlord thereunder. If the Mortgagor does not intend to extend the term of the Lease, the Mortgagee may, at its option, exercise the option to extend in the name and on behalf of the Mortgagor. In any event, the Mortgagor hereby appoints the Mortgagee its attorney-in-fact to execute and deliver, for and in the name of the Mortgagor, all instruments and agreements necessary under the Lease or otherwise to cause any extension of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness remains unpaid.~~

~~(e) It is hereby agreed that the fee title and the leasehold estate in the property demised by the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the landlord thereunder, the Mortgagor or a third party, whether by purchase or otherwise. If the Mortgagor acquires the fee title or any other estate, title or interest in the property demised by the Lease, or any part thereof, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. The Mortgagor agrees to execute all instruments and documents which the Mortgagee may reasonably require to ratify, confirm and further evidence the Mortgagee's lien on the acquired estate, title or interest. Furthermore, the Mortgagor hereby appoints the Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of the Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness remains unpaid.~~

~~(f) If the Lease is cancelled or terminated, and if the Mortgagee or its nominee shall acquire an interest in any new lease of the property demised thereby, the Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created by such new lease.~~

~~(g) The Mortgagor shall use its best efforts to obtain and deliver to the Mortgagee within twenty (20) days after written demand by the Mortgagee, an estoppel certificate from the landlord under the Lease setting forth (i) the name of the tenant thereunder, (ii) that the Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such~~

\* Include Section 1.22 if the Mortgage encumbers a leasehold estate.  
Delete Section 1.22 if the Mortgage does not encumber a leasehold estate.

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modification), (iii) the basic rent payable under the Lease, (iv) the date to which all rental charges have been paid by the tenant under the Lease, and (v) whether there are any alleged defaults of the tenant under the Lease and, if there are, setting forth the nature thereof in reasonable detail.

(h) Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Lease within the meaning of any provision thereof prohibiting its assignment and the Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. The Mortgagor shall be liable for the obligations of the tenant arising under the Lease for only that period of time which the Mortgagee is in possession of the Premises or has acquired, by foreclosure or otherwise, and is holding all of the Mortgagor's rights, title and interest therein.

## ARTICLE II

### Default and Remedies

Subject to the provisions of Section 3.26 hereof,

**Section 2.01. Events of Default.** The following shall constitute Events of Default under this Mortgage: (a) default when and as the same shall become due and payable in payment of amounts required to be paid hereunder or a default in the payment of principal or interest on the Note whether by maturity or acceleration, which default has continued for a period of ten (10) days; or (b) default beyond any applicable grace period in the due observance or performance of any of the terms, covenants or conditions contained herein relating to other than the payment of money; or (c) should any representation made herein or any other document given in connection herewith prove to be untrue in any material respect; or (d) default beyond any applicable grace period under any obligation set forth in the Note other than for the payment of principal or interest; or (e) the further assignment or encumbrance by the Mortgagor of the leases or rents of the Premises or any part thereof without prior written consent of the Mortgagee; or (f) the lease by the Mortgagor of all or part of the Premises for purposes other than the actual occupancy by the lessee; or (g) the failure of the Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Mortgaged Property or become payable during the term of the Note or this Mortgage; or (h) the conveyance, assignment, sale or attempted sale, or other disposition of the Premises or the further mortgage, pledge or other encumbrance by the Mortgagor of the Mortgaged Property or any part thereof or any interest therein without the prior written consent of the Mortgagee; or (i) if a receiver, liquidator or trustee of the Mortgagor or any Guarantor or of any of its properties, shall be appointed; or (j) if a petition in bankruptcy, an insolvency proceeding or a petition for reorganization shall have been filed against the Mortgagor or any Guarantor and same is not withdrawn, dismissed, cancelled or terminated within sixty (60) days; or (k) if the Mortgagor or any Guarantor is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); or (l) if there is an attachment or sequestration of any of the property of the Mortgagor or any Guarantor and same is not promptly discharged or bonded; or (m) if the Mortgagor or any Guarantor files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Act or any other law, now or hereafter in effect, relating to the reorganization of the Mortgagor or such Guarantor or the arrangement or readjustment of the debts of the Mortgagor or such Guarantor; or (n) if the Mortgagor or any Guarantor shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of the Mortgagor or such Guarantor or of all or any part of its or his property; or (o) if default shall occur under, or any attempted withdrawal, cancellation or disclaimer of liability under any guaranty which guarantees payment of the Indebtedness or under any agreement giving security for said guaranty shall occur; or (p) if the Mortgagor or any Guarantor shall cause or institute any proceeding for the dissolution or termination of the Mortgagor or such Guarantor; or (q) if the Mortgagor or any Guarantor ceases to do business or terminates its business as presently conducted for any reason whatsoever; or (r) if the Mortgagor or any Guarantor defaults under any other agreement that it has with the Mortgagee; or (s) if a default shall occur under any mortgage which is subordinate to the lien of this Mortgage or the mortgage under any subordinate mortgage shall commence a foreclosure action in connection with said Mortgage, provided that this provision shall not be deemed to be a waiver of the provisions of Section 1.17 (h) or any other section of this Mortgage.

**Section 2.02. Remedies.** (a) Upon the occurrence of any Event of Default, the Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee: (1) declare the entire unpaid Indebtedness to be immediately due and payable; or (2) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess the Mortgagor and its agents and servants therefrom, and thereupon the Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (ii) complete any construction on the Premises in such manner and form as the Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of the Mortgagor with respect to the Premises, whether in the name of the Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof; and (v) apply the receipts from the Premises to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of the Mortgagee, its counsel, agents and employees; or (3) institute proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels; or (4) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due; or (5) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property; or (6) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note; or (7) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage; or (8) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Indebtedness; or (9) pursue such other remedies as the Mortgagee may have under applicable law.

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

- \*\* or the beneficial interest in Mortgagor
- \* or the beneficiary of Mortgagor
- # or of the beneficial interest in Mortgagor

*First:* To the payment of the costs and expenses of any such sale, including reasonable compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest as provided herein on all advances made by the Mortgagee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

*Second:* To the payment of the whole amount then due, owing or unpaid upon the Note for principal, together with any and all applicable interest and late charges.

including Base Interest, Deferred Base Interest, Participation Interest, Cash Flow Interest, Alternative Financing Fee

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

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

The Mortgagee and any receiver of the Mortgaged Property, or any part thereof, shall be liable to account for only those rents, issues and profits actually received by it.

(c) The Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Article II, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagee.

(e) In the event of any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(f) Upon any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

(g) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

**Section 2.03. Payment of Indebtedness After Default.** Upon the occurrence of any Event of Default and the acceleration of the maturity hereof, if, at any time prior to foreclosure sale, the Mortgagor or any other person tenders payment of the amount necessary to satisfy the Indebtedness, the same shall constitute an evasion of the payment terms hereof and shall be deemed to be a voluntary prepayment hereunder, in which case such payment must include the premium required under the prepayment provision, if any, contained herein or in the Note, or, if at that time there is no privilege of prepayment, then the payment will include a premium of five (5%) percent of the then unpaid Indebtedness. This provision shall be of no force or effect if at the time that such tender of payment is made the Mortgagor has the right under this Mortgage or the Note to prepay the Indebtedness without penalty or premium.

**Section 2.04. Possession of the Premises.** Upon the occurrence of any Event of Default hereunder, it is agreed that the then owner of the Premises, if it is the occupant of the Premises or any part thereof, shall immediately surrender possession of the Premises so occupied to the Mortgagee, and if such occupant is permitted to remain in possession, the possession shall be as tenant of the Mortgagee and, on demand, such occupant (a) shall pay to the Mortgagee monthly, in advance, a reasonable rental for the space so occupied and in default thereof, (b) may be dispossessed by the usual summary proceedings. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any part thereof. Nothing in this Section 2.04 shall be deemed to be a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Premises without the Mortgagee's consent.

**Section 2.05. Interest After Default.** If any payment due hereunder or under the Note is not paid when due, either as stated or accelerated maturity or pursuant to any of the terms hereof, then and in such event, the Mortgagor shall pay interest thereon from and after the date on which such payment first becomes due at the interest rate provided for in Section 1.11 hereof and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to the Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclosure this Mortgage. Nothing in this Section 2.05 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Indebtedness.

**Section 2.06. Mortgagor's Actions After Default.** After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the Indebtedness, or of any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property and of all the earnings, revenues, rents, issues, profits and income thereof.

**Section 2.07. Control by Mortgagee After Default.** Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now and hereafter covered by this Mortgage.

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## ARTICLE III Miscellaneous

**Section 3.01. Credits Waived.** The Mortgagor will not claim nor demand nor be entitled to any credit or credits against the Indebtedness for so much of the taxes assessed against the Mortgaged Property or any part thereof as is equal to the tax rate applied to the amount due on this Mortgage or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage or the Indebtedness.

**Section 3.02. No Release.** The Mortgagor agrees, that in the event the Mortgaged Property is sold and the Mortgagee enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, the Mortgagor shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by the Mortgagee.

**Section 3.03. Notices.** All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or sent by certified mail, return receipt requested, to any party hereto at its address above stated (in the case of the Mortgagee, to the attention of Manager—Real Estate Financing) or at such other address of which it shall have notified the party giving such notice in writing as aforesaid.

**Section 3.04. Binding Obligations.** The provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of the Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall mean the Mortgagor named herein, any subsequent owner of the Mortgaged Property, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

**Section 3.05. Captions.** The captions of the Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

**Section 3.06. Further Assurances.** The Mortgagor shall do, execute, acknowledge and deliver, at the sole cost and expense of the Mortgagor, all and every such further acts, deeds, conveyances, mortgages, assignments, estoppel certificates, notices of assignment, transfers and assurances as the Mortgagee may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto the Mortgagee, the rights now or hereafter intended to be granted to the Mortgagee under this Mortgage, any other instrument executed in connection with this Mortgage or any other instrument under which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage. The Mortgagor hereby appoints the Mortgagee its attorney-in-fact to execute, acknowledge and deliver for and in the name of the Mortgagor any and all of the instruments mentioned in this Section 3.06 and this power, being coupled with an interest, shall be irrevocable as long as any part of the Indebtedness remains unpaid.

**Section 3.07. Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

**Section 3.08. General Conditions.** (a) All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of Sections 254, 271, 272 of the Real Property Law of the State of New York (if the Premises are located in the State of New York), or any other applicable law of any other state.

(b) This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(c) No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagor in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of the Mortgagor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(d) No waiver by the Mortgagee will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by the Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals or any other charges affecting the Mortgaged Property, shall not constitute a waiver of the Mortgagor's default in making such payments and shall not obligate the Mortgagee to make any further payments.

(e) The Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of the Mortgagor which the Mortgagee, in its discretion, feels may adversely affect the Mortgaged Property or this Mortgage. The Mortgagee shall also have the right to institute any action or proceeding which the Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property or its rights hereunder. All costs and expenses incurred by the Mortgagee in connection with such actions or proceedings, including, without limitation, reasonable attorneys' fees and appellate attorneys' fees, shall be paid by the Mortgagor, on demand.

(f) In the event of the passage after the date of this Mortgage of any law of any governmental authority having jurisdiction, deducting from the value of land for the purpose of taxation, affecting any lien thereon or changing in any way the laws of the taxation or mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, the Mortgagor shall promptly pay to the Mortgagee, on demand, all taxes, costs and charges for which the Mortgagee is or may be liable as a result thereof, provided said payment shall not be prohibited by law or render the Note usurious, in which event the Mortgagee may declare the Indebtedness to be immediately due and payable.

(g) The Mortgagor hereby appoints the Mortgagee as its attorney-in-fact in connection with the personal property and fixtures covered by this Mortgage, where permitted by law, to file on its behalf any financing statements or other statements in connection therewith with the appropriate public office signed only by the Mortgagee, as secured party. This power, being coupled with an interest, shall be irrevocable so long as any part of the Indebtedness remains unpaid.

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(h) The information set forth on the cover hereof is hereby incorporated herein.

(i) The Mortgagor acknowledges that it has received a true copy of this Mortgage.

(j) For the purposes of this Mortgage, all defined terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular shall be construed as the plural and so that the masculine shall be construed as the feminine.

**Section 3.09. Promotional Material.** The Mortgagor hereby authorizes the Mortgagee to issue press releases, advertisements and other promotional materials in connection with the Mortgagee's own business promotional and marketing activities, describing the loan referred to in this Mortgage and the matters giving rise to such loan.

**Section 3.10. Legal Construction.** The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of Illinois. Nothing in this Mortgage, the Note or in any other agreement between the Mortgagor and the Mortgagee shall require the Mortgagor to pay, or the Mortgagee to accept, interest in an amount which would subject the Mortgagee to any penalty under applicable law. In the event that the payment of any interest due hereunder or under the Note or any such other agreement would subject the Mortgagee to any penalty under applicable law, then *ipso facto* the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law.

Mortgagee shall have the right during the term of the loan to place signs on the Mortgaged Property indicating Mortgagee as the source of financing the location of which shall be at the reasonable discretion of Mortgagee. If such signs are provided by Mortgagee, Mortgagor agrees: (a) to provide prominent and suitable locations for the display of such signs; (b) to cause at Mortgagee's expense the signs to be displayed in such places by suitably affixing the signs to structures at the Mortgaged Property and (c) to maintain the display of such signs for the duration of the development of the Mortgaged Property.

**Section 3.11. Additional Covenants.** In the event that Mortgagee shall advance any sums to cure a default of the Mortgagor hereunder, the amount of such advance shall bear interest at the Post Default Rate and shall be due and payable by the Mortgagor within five (5) days after notice from the Mortgagee and shall be deemed an additional indebtedness secured hereby.

**Section 3.12. Additional Remedies.** Without limiting the provisions of Section 2.9 hereof but in addition thereto and in amplification thereof, it is agreed as follows:

(a) When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, and shall not be paid, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included an 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 reasonable attorneys' 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 a 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 or the value of the Mortgaged Property. All expenditures and expenses of the nature in this subsection mentioned, and such expenses and fees as may be incurred in the protection of said Mortgaged Property 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 Mortgaged Property, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with accrued interest thereon at the Post Default Rate.

(b) 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 Mortgaged Property. 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 application for such receiver, and without regard to the

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then value of the Mortgaged Property 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. Such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and 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 Mortgaged Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property in his hands in payment in whole or in part of:

(i) The Indebtedness, 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 of such decree, provided such application is made prior to the foreclosure sale; or

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

**Section 3.13. Waiver.** The Mortgagor hereby expressly waives any and all rights of redemption under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest or title to the Mortgaged Property 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 applicable law.

### **Section 3.14. Environmental Matters.**

(a) The Mortgagor represents and covenants that (i) the Mortgagor has not caused or suffered to occur and the Mortgagor will not hereafter cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "spill"), or hazardous substance as those terms are used in applicable state or local statutes, ordinances, laws or regulations or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time (collectively the "Act"), at, upon, under or within the Mortgaged Property or any contiguous real estate which has been included in the property description of the Mortgaged Property within the preceding three (3) years; (ii) neither the Mortgagor nor, to the knowledge of its beneficiary, any other party has been, is or will be involved in operations at or near the Mortgaged Property which could lead to the imposition on the Mortgagor or any other owner of the Mortgaged Property of liability or the creation of a lien on the Mortgaged Property, under the Act or under any similar applicable laws or regulations; and (iii) the Mortgagor has not permitted and will not permit any tenant or occupant of the Mortgaged Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, the Mortgagor or any other owner of any of the Mortgaged Property, or the creation of a lien on the Mortgaged Property, under the Act or any similar applicable laws or regulations.

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(b) The Mortgagor shall comply strictly and in all respects with the requirements of the Act and related regulations and with all similar applicable laws and regulations and shall notify the Mortgagee promptly in the event of any spill or hazardous substance upon the Mortgaged Property, and shall promptly forward to the Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or any other matters relating to the Act or related regulations or any similar applicable laws or regulations, as they may affect the Mortgaged Property.

(c) The Mortgagor, promptly upon the written request of the Mortgagee from time to time, shall provide the Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to the Mortgagee. In connection with the opening of the Loan, Borrower has caused an Environmental Assessment (the "Environmental Assessment") of the Mortgaged Property dated September 8, 1988 by Air Quality Testing, Inc. Mortgagor covenants and agrees to abide by and effectuate all recommendations contained in the Environmental Assessment and in any other environmental site assessment or environmental audit report of the Mortgaged Property.

(d) The Mortgagor shall indemnify the Mortgagee and hold the Mortgagee harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the Mortgagee, whether as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of the Act or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Mortgaged Property whether or not the same originates or emanates from the Mortgaged Property or any such contiguous real estate, including any loss of value of the Mortgaged Property as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Mortgaged Property within the jurisdiction of the EPT or the DEP, it being understood that in the event a separate indemnification document is executed in connection herewith, and to the extent of a conflict with this Mortgage, the terms of such separate indemnity shall govern.

(e) In the event of any spill or hazardous substance affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any such contiguous real estate, and/or if the Mortgagor shall fail to comply with any of the requirements of the Act or related regulations or any other environmental law or regulation, the Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Mortgaged Property and/or take any and all other actions as the Mortgagee shall deem necessary or advisable in order to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Post Default Rate from the date of payment by the Mortgagee, shall be immediately due and payable by the Mortgagor to the Mortgagee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof.

(f) Contemporaneously with the execution and delivery of this Mortgage, the Mortgagee, the beneficiary of

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Mortgagor and certain individuals related to the beneficiary of Mortgage have entered into a certain Asbestos Abatement and Indemnity Agreement of even date herewith concerning the removal of asbestos located upon the Premises. Mortgagee hereby adopts the obligations of its beneficiary thereunder, and agrees that any default (other than a default by Mortgagee) thereunder shall be and become an Event of Default hereunder.

**Section 3.15. Miscellaneous.** Nothing in Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagee by Section 1.07 so long as the Mortgagee shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during such contest the Mortgagee shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagee's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagee by Section 1.07 shall become necessary to prevent the delivery of a deed conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagee shall pay the same in sufficient time to prevent the delivery of such deed.

**Section 3.16. Maximum Indebtedness.** The maximum amount secured by this Mortgage is One Hundred Million Dollars (\$100,000,000.00).

**Section 3.17 Right of First Offer:**

(a) Without limiting the terms of the Mortgage, in the event Mortgagee desires to effect a bona fide sale of the Mortgaged Property to a third person, Mortgagee may do so only by complying with the terms and conditions of this Section 3.17.

(b) Subject to the terms of subsection (c) below, Mortgagee may at any time, (i) accept a bona fide offer from a third person to purchase all, but not less than all, of the Mortgaged Property for sale on such terms as Mortgagee shall consider appropriate (the transfer contemplated by such an acceptance of offer being hereinafter referred to as a "Permitted Sale").

(c) Prior to the acceptance of a third person offer (except an offer allowed after Mortgagee has exercised its right under subsection (c)(ii) below, subject, however, to the reinstatement rights under subsection (e) below), or prior to the issuance of an offer to sell as described in subsection (b) above, Mortgagee shall give Mortgagee written notice of the terms of any proposed Permitted Sale. Such notice shall include the identity of any third person offeror and a copy of any offer or contract submitted by the offeror or the identity of any third person offeree, if known, and a copy of any offer of contract to be submitted by Mortgagee to such third person offeree, if any then exists, or if no such contract exists the terms of the contemplated Permitted Sale. Mortgagee shall have 30 days after its receipt of any such notice to give written notice to Mortgagee of its election either (unless Mortgagee has previously declined to purchase the Mortgaged Property within the preceding 180 days period and Mortgagee offers the Mortgaged Property to Mortgagee during such 180 day period, Mortgagee will have only 20 days to respond to the second or any subsequent offers during such 180 day period):

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(i) Purchase of Mortgaged Property: To purchase the Mortgaged Property on the terms of the Permitted Sale but for a purchase price equal to the purchase price of the Permitted Sale, less (1) an amount equal to the real estate brokerage commission payable by Mortgagor in the event of the sale to a third person offeror, (2) an amount representing customary closing costs to the extent Mortgagor does not incur them in connection with the transaction, and (3) any and all amounts owed to Mortgagee under this Note, and the other Loan Documents, including, without limitation, the Base Interest, Deferred Base Interest, Cash Flow Interest, and Participation Interest (it being the intent of the Mortgagor and Mortgagee that any sale to Mortgagee in accordance with this subsection (c)(i) be treated as if it were a sale to a third person with Mortgagor being obligated to pay to Mortgagee, in addition to all other amounts owed Mortgagee under this Note, any Deferred Base Interest, Cash Flow Interest and Participation Interest which would have been due Mortgagee in the event of a sale to such third person); or

(ii) No Purchase of Mortgaged Property: Not to purchase the Mortgaged Property and to accept a prepayment in full of the Loan, if, as, and when the transaction is closed, including, without limitation, the Base Interest, Deferred Base Interest, Cash Flow Interest and Participation Interest.

(d) Mortgagee shall be deemed to have elected its alternative under subsection (c)(ii) upon its failure to give to Mortgagor written notice of its election under subsection (c)(i) within such 30 day period.

(e) In the event Mortgagee shall elect or be deemed to have elected the consequences of subsection (c)(ii) above, Mortgagor shall have the right (i) to accept the third person offer on substantially the terms of the offer disclosed to Mortgagee pursuant to subsection (c) above, or (ii) to sell the Mortgaged Property upon substantially the terms of the contemplated offer to sell delivered to Mortgagee pursuant to subsection (c) above, as the case may be. If any Permitted Sale based upon acceptance by Mortgagor of a third person offer (with respect to which Mortgagee has elected to purchase under subsection (c)(i) above) shall not be closed in accordance with the terms of such offer within 180 days of the receipt by Mortgagee of written notice of such terms, or if any Permitted Sale based upon an offer by Mortgagor (with respect to which Mortgagee has elected not to purchase under subsection (c)(i) above) shall not be accepted by a third person and closed within 180 days of receipt by Mortgagee of written notice of such terms then in either case, the rights of Mortgagee under this section shall be deemed automatically reinstated.

(f) In the event the terms of any Permitted Sale are changed to be less favorable to Mortgagor in any material respect, or if any new offer is made within 180 days of an offer previously made under subsection (b) above and Mortgagor intends to accept such offer, then Mortgagor shall give Mortgagee written notice of the new terms of such Permitted Sale in accordance with subsection (c) above and Mortgagee shall have a right of first refusal with respect to the new terms of such sale or new offer in accordance with this Section 3.17.

(g) If Mortgagee shall have elected to purchase the Mortgaged Property in accordance with subsection (c)(i)

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above, the closing of such sale shall take place within 90 days after the exercise of the election to purchase on the part of Mortgagee. Title to the Mortgaged Property shall be subject only to the Title Matters. The sale to Mortgagee shall be for all cash. Customary prorations and adjustments, including prorations of rentals, real estate taxes, utility expenses and other items of income and expenses for the Mortgaged Property will be made as of the date of closing.

(h) Mortgagee shall not be charged with any real estate broker commission a result of the sale of the Mortgaged Property to Mortgagee in accordance with this Section 3.17.

(i) This Section 3.17 shall not apply to condemnations or sales in lieu of condemnation nor any foreclosure sale or any sale in lieu of foreclosure, nor shall this Section 3.17 survive any foreclosure sale or any sale in lieu of foreclosure.

**Section 3.18 Letter of Credit.** As additional security for payment of the indebtedness secured by this Mortgage, the Mortgagor shall deliver to the Mortgagee a letter of credit issued by The Exchange National Bank of Chicago (herein referred to as the "GECC Letter of Credit") in the amount of \$525,000.00.

The Mortgagee shall have the right to draw upon the GECC Letter of Credit or any renewal or extension thereof, in whole or in part, upon the occurrence of an Event of Default under this Mortgage or upon the occurrence of any one or more of the following events, each of which shall be deemed an additional Event of Default under this Mortgage, without notice or period of grace:

(a) The Mortgagor's failure to deliver to the Mortgagee, not less than thirty (30) days prior to the expiration date of the GECC Letter of Credit or any renewal or extension thereof, a further renewal or extension for a period of not less than one (1) year; or

(b) Any action with respect to the GECC Letter of Credit by the Mortgagor or the bank issuing the GECC Letter of Credit which, in Mortgagee's discretion reasonably exercised, may jeopardize the right of Mortgagee to draw upon the GECC Letter of Credit.

All letters of credit, including renewals thereof, are subject to Mortgagee's approval as to form, content and the issuing bank. A letter of credit shall not be deemed as having been delivered to Mortgagee until it has been approved as aforesaid.

The proceeds of any draw upon the GECC Letter of Credit may be applied by the Mortgagee to the payment of accrued interest (including any accrued interest the payment of which was otherwise deferred), late charges, principal (including any prepayment penalty occasioned by a principal payment), or any other obligation arising out of the Mortgagor's obligations to the Mortgagee under this Mortgage or the Note, in such manner as the Mortgagee, in its sole discretion, deems appropriate.

Mortgagee shall release its right in the GECC Letter of Credit and surrender the GECC Letter of Credit to the issuer upon the payment in full of all sums due under the Note and this Mortgage. Additionally, provided there is no Event of Default then existing under this Mortgage nor any fact or circumstance which, but for the furnishing of notice or the passage of time, would constitute an Event of Default hereunder the GECC Letter of Credit, to the extent not previously drawn upon, shall be

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released and surrendered if the annualized net operating income from not more than Ninety-Five Percent (95%) occupancy of the Premises is equal to or greater than the product of \$19,250,000.00 multiplied by the greater of (i) the then applicable Contract Index Rate, (ii) the then applicable Collectible Rate, or (iii) Ten and Fourteen-Hundredths Percent (10.14%) per annum.

The "Annualized Net Operating Income" shall mean, on an annualized basis, Net Operating Income (as defined in the Note).

**Section 3.19. Subordination.** This Mortgage may be subordinated upon the terms and conditions more fully provided in the Note.

**Section 3.20.** In the event that Mortgagee shall file suit against the Mortgaged Property to foreclose the lien hereof, and a decree of foreclosure shall be issued, it is hereby agreed that the amount of Mortgagee's Cash Flow Interest, which is secured by this Mortgage, shall be one million dollars.

**Section 3.21. Management Contracts.** Without the prior written consent of Mortgagee, Mortgagor may not enter into any agreement for the management and operation of the Mortgaged Property other than with The Hearn Company. In all events, including management by The Hearn Company, the management of the Mortgaged Property shall be under an agreement in form and content satisfactory to Mortgagee providing for management fees (not in any event to exceed five percent of collected gross receipts for the Mortgaged Property for the relevant period). A copy of any management agreement shall be sent to Mortgagee for its approval prior to its execution. The approved management agent shall submit to Mortgagee copies of all reports furnished to Mortgagor and such other information respecting the Mortgaged Property as Mortgagee may reasonably request from time to time. All agreements between Mortgagor and the management agent shall expressly provide that such agreements are subordinate in all respects to the loan and this Mortgage. No change in the management agent or modification of any approved management agreement shall be made without notice to and the prior approval of Mortgagee which approval shall not be unreasonably withheld. The approved management agent or management agreement shall not be modified or terminated without notice to and the prior approval of Mortgagee.

**Section 3.22. Not Joint Venture or Partnership.** The Mortgagor and the Mortgagee intend that the relationship created hereunder, under the Note and all other Loan Documents be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the Mortgagor and the Mortgagee, nor to grant the Mortgagee any interest in the Mortgaged Property other than that of mortgagee or lender; it being the intent of the parties hereto that Mortgagee shall not share in any losses whatsoever generated by the Mortgaged Property and that Mortgagee shall have no control over the day-to-day management and operation of the Mortgaged Property. Accordingly, Mortgagor hereby indemnifies and holds harmless Mortgagee for any claim, loss, liability, damage, cost or expense (including reasonable attorneys' fees through all appellate proceedings) to Mortgagee arising out of any claim, suit or allegation that the transactions contemplated by the Note and this Mortgage or otherwise establish a joint venture, tenancy-in-common, or partnership arrangement between Mortgagee and Mortgagor.

**Section 3.23. Leases.**

(a) Mortgagor shall during the existence of this Mortgage promptly submit to Mortgagee certified copies of

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all signed leases (including all exhibits and amendments), together with quarterly verified rent rolls indicating the name of each tenant, square footage, rate, security deposit, annual rent and term.

(b) Mortgagor shall perform all of Mortgagor's obligations, as landlord, under all leases.

(c) In connection with any leases hereafter executed in connection with the Mortgaged Property (herein called "Future Leases"), Mortgagor shall request each tenant to furnish to Mortgagee current financial statements of the tenant and, if received, Mortgagor shall deliver same to Mortgagee. Mortgagor covenants to use diligence to obtain same.

(d) Promptly upon the execution of a Future Lease, Mortgagor shall provide to Mortgagee a certified copy thereof. At the request of Mortgagee, Mortgagor shall provide a tenant estoppel certificate and subordination agreement, both in form and substance acceptable to Mortgagee and Mortgagee's counsel, from each approved lessee.

**Section 3.24. After-Acquired Property.** All right, title, and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes, and replacements of, and all additions and appurtenances to the Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled, or placed by Mortgagor on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement, or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurance, mortgages, conveyances, or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

**Section 3.25. Prepayment.** At such time as Mortgagor is not in default under the Note, this Mortgage, or any other Loan Document, the Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.

**Section 3.26. Permitted Transfers.** Notwithstanding the provisions of Section 2.01 hereof, subject to Mortgagee's consent, Mortgagor may transfer the Mortgaged Property, or the beneficiary of the Mortgagor may transfer the beneficial interest in Mortgagor, in either case subject to and provided that the following conditions have been satisfied and complied with:

(a) the proposed transferee shall be (i) Stephen G. Hearn and/or his spouse and/or children, or (ii) Stanley M. Hearn and/or his spouse and/or his children and/or the trustee of the Stanley M. Hearn Trust;

(b) Mortgagor shall pay all of Mortgagee's actual expenses, including but not limited to payment to Mortgagee's special counsel legal fees and disbursements, if any, incurred in connection with such permitted transfer.

**Section 3.27. Additional Notices.** Additional copies of all notices required to be delivered or sent to Mortgagee shall be delivered or sent to General Electric Capital Corporation, Two

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Galleria Tower, 13455 Noel Road, Dallas, Texas 75240 and to Rosenthal and Schanfield, 55 East Monroe, Suite 4620, Chicago, Illinois 60603, Attention: Martin K. Blonder.

Section 3.28. Notwithstanding the provisions of Section 1.04 hereof, this Mortgage is executed and delivered to GECC without an adequate review of insurance coverage upon the Premises; accordingly, Mortgagor agrees to cause to be delivered to Mortgagee within seven (7) days of the date hereof evidence satisfactory to Mortgagee that adequate insurance coverage upon the Premises exists, and in the event that, within such seven (7) days, Mortgagor shall have failed to provide such assurances to Mortgagee, or in the event that the insurance covering the Premises shall not be in compliance with Section 1.04 hereof, Mortgagor hereby authorizes Mortgagee, on Mortgagor's behalf, to purchase at Mortgagor's expense, such premiums of insurance from from an insurer of Mortgagee's choice which adequately insures the Premises in accordance with Section 1.04 hereof. Such amount expended by Mortgagee to review and purchase insurance shall be paid by Mortgagor within five (5) days after demand thereof, and shall bear interest until paid at the Post-Default Rate provided in the Note.

## ARTICLE IV

### ADVANCES OF THE RENOVATION HOLDBACK

Section 4.01 Definitions. For the purpose of this Article 4, the following definitions shall be applicable:

(a) Application for Advance. The term "Application for Advance" shall mean a written application on Mortgagee's prescribed forms, certified by Mortgagor, Inspecting Architects/Engineers, and General Contractor (and such other parties as Mortgagee may require) addressed to Mortgagee specifying by name, current address, and amount of all parties to whom Mortgagor is obligated for labor, materials, or services supplied for the Renovations and all other expenses incident to the Renovation Holdback, whether or not specified in the Approved Budget, requesting an Advance for the payment of such items, accompanied by such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents as Mortgagee may reasonably request.

(b) Approved Budget. The term "Approved Budget" shall mean a budget or cost itemization prepared by Mortgagor and approved by Mortgagee and the Inspecting Architects/Engineers, specifying the cost by item of (a) all labor, materials, and services necessary for the Renovations in accordance with the Plans and all governmental requirements, and (b) all other expenses, including interest costs during the period for the construction of the Renovations, anticipated by Mortgagor incident to the Renovation Holdback, the Mortgaged Property, and the Renovations. The amount of anticipated interest costs during the period for the construction of the renovations shall be determined solely by Mortgagee. Mortgagor shall have the right, subject to Mortgagee's approval, to reallocate line items of the Approved Budget.

(c) Bonds. The term "Bonds" shall mean collectively the Payment Bond and the Performance Bond.

(d) Commencement Date. The term "Commencement Date" shall mean the date of commencement of the Renovations, which shall be not later than November 15, 1988\* XXXXXXXXXXXX  
XX  
XX  
XX  
November 15, 1988 time being of the essence thereof.

\*with respect to design and permit phase and March 15, 1989 with respect to all other work

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(e) Completion Date. The term "Completion Date" shall mean the date of completion of the Renovations (except for tenant improvements), which shall not be later than March 15, 1990\*, (inclusive of all Unavoidable Delays), time being of the essence thereof. "Completion," as used in this Mortgage shall have occurred when all of the following have been delivered to Mortgagee: (1) final Certificate(s) of Occupancy (or its equivalent) from the appropriate governmental authority having jurisdiction over the Mortgaged Property, (2) certificate of substantial completion from the Inspection Architects/Engineers, (3) endorsement to Mortgagee's title insurance policy relating to completion of the Renovations and other exceptions specified by Mortgagee which may be deleted pursuant to applicable law or regulations, and (4) an affidavit and full release of liens in recordable form from the General Contractor, and, upon request by Mortgagee, from other contractors, subcontractors or materialmen who have performed work on or supplied materials for the Renovations.

(f) Construction Contract. The term "Construction Contract" shall mean the guaranteed maximum sum construction contract for the Renovations between Mortgagor and General Contractor, which Mortgagor shall deliver to Mortgagee within 120 days of the date hereof and which shall be in form and content satisfactory to Mortgagee.

(g) General Contractor. The term "General Contractor" shall mean such persons or other entity selected by Mortgagor, and approved by Mortgagee, to perform the functions of the General Contractor as contemplated by this Mortgage.

(h) Mortgagor's Deposit. The term "Mortgagor's Deposit" shall mean such cash sums as Mortgagee may deem necessary, from time to time until the Renovation Holdback is paid in full, in addition to the Renovation Holdback for the payment of the costs of labor, materials and services required for the Renovations and the marketing, management, operation, leasing and maintenance of the improvements, other costs and expenses specified in the Approved Budget, and other costs and expenses required to be paid in connection with the Renovations in accordance with the Plans, any governmental requirements, and the requirements of any lessee approved by Mortgagee, if applicable, and any other development and financing costs.

(i) Inspecting Architects/Engineers. The term "Inspecting Architects/Engineers" shall mean George A. Kennedy & Associates, having an office at 6 North Michigan, Chicago, Illinois, or its replacement as selected by Mortgagee.

(j) Payment Bond. The term "Payment Bond" shall mean a bond assuring the payment by General Contractor of all amounts to be paid by it under its Construction Contract, provided by General Contractor, from such company licensed to do business in the State of Illinois and in such form, content and amounts as are satisfactory to Mortgagee, naming Mortgagee as an additional obligee.

(k) Performance Bond. The term "Performance Bond" shall mean bonds assuring the performance of the Construction Contract provided by General Contractor and by each subcontractor whose subcontracts exceed \$50,000, from such companies from such company licensed to do business in the State of Illinois and in such form, content and amounts as are satisfactory to Mortgagee, naming Mortgagee as an additional obligee.

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(l) Plan. The term "Plans" shall mean the final working drawings and specifications, as approved by Mortgagee together with any amendments or modifications thereto, for the Renovations as approved by Mortgagee, Mortgagor and lessee(s) of the Mortgaged Property, if applicable, and any necessary governmental authority.

(m) Unavoidable Delays. The term "Unavoidable Delays" shall mean delays due to strikes, lockouts, acts of God, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental or regulatory body, enemy action, disturbance, fire, unavoidable hindrance, or any other act beyond the reasonable control of Mortgagor other than monetarily related.

(n) Renovations. The terms "Renovations" shall mean collectively the alterations and renovations contemplated to be made to the Premises in accordance with the Plans and the loan commitment, including without limitation roofing repairs, signage, HVAC improvements and repairs, landscaping, and cosmetic improvements, all of which are more particularly described on Exhibit C attached hereto and made a part hereof.

(o) Renovation Holdback. The term "Renovation Holdback" shall mean the sum of \$2,050,000 as disclosed on Exhibit C hereto being held back from the proceeds of the Loan, and shall be funded for the construction and completion of the Renovations. The Renovation Holdback shall be subject to and upon the satisfaction of the applicable terms of the Loan Documents.

Section 4.02 Disbursement of Renovation Holdback. Subject to the provisions hereof, and provided that an Event of Default hereunder or under any of the Loan Documents or an event which with the passage of time or the giving of notice, or both, has not occurred and that Mortgagee has not made demand for payment of the Note, Mortgagee will make Advances (as defined in the Note) of the Renovation Holdback to Mortgagor.

Section 4.03 General Conditions Precedent. The following must be satisfied to Mortgagee's satisfaction in its sole judgment as conditions precedent to Mortgagee's obligation to make any Advance of the Renovation Holdback at any time:

(a) All representations and warranties set forth in this Mortgage, in the Note, in each Application for Advance and in all other Loan Documents shall be true, correct and complete in all material respects on and as of the date of any such Advance, with the same effect as if made and repeated on that date.

(b) As of the date of any such Advance,

(i) Mortgagor is in full compliance with all of the covenants, agreements, obligations and undertakings required to be performed by Mortgagor under this Mortgage, the Note and under the other Loan Documents, and by guarantors under the Guaranty of Completion, unless compliance thereof shall have been waived in writing by Mortgagee;

(ii) No Event of Default as defined herein or in any other Loan Documents, and no event or condition which with the giving of notice or the passage of time or both as prescribed herein or in such other Loan Documents, would constitute any such Event of Default has occurred and remains uncured to Mortgagee's

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satisfaction;

(iii) There shall have been no material adverse change in the present or future net income or condition of the Mortgaged Property or in the business or financial conditions or management of Mortgagor or the guarantors under the Guaranty of Completion and there shall have occurred no work stoppage on the Renovations for a period which, in Mortgagee's reasonable opinion, renders completion of the Renovations impossible on or prior to the Completion Date; and the Mortgaged Property and improvements thereon shall not have suffered any significant damage by fire or other casualty and no condemnation or adverse zoning or usage change proceedings shall have been commenced or threatened, and no law, regulation, ordinance, moratorium, injunctive proceeding, restriction or similar matter shall have been enacted, adopted or threatened by any governmental authority having jurisdiction thereover, if the result of such law, regulation, ordinance, moratorium, injunctive proceeding, restriction or like matter would have the effect of materially and adversely affecting the expected benefits to be gained by Mortgagor in connection with the Mortgaged Property whether because of Mortgagor's being prohibited or delayed in completing the Renovations or otherwise;

(iv) All statements contained in Mortgagor's Application for Advance are true and complete, and all other certificates, statements and data furnished to Mortgagee by or on behalf of Mortgagor are true, correct and complete in all material respects, and there are no facts or events known to Mortgagor, which, if disclosed to Mortgagee, would make such statements, certificates or data untrue in any material respect; and

(v) All documentation shall at all times be in form and content acceptable to Mortgagee and its counsel, and all legal matters, whether or not specifically referred to in this Mortgage, shall be acceptable in all respects to Mortgagee and its counsel and shall be supported by such proof, evidence, assurance and documentation relating to legal matters as Mortgagee and its counsel in their sole judgement shall deem necessary, customary or appropriate for the transactions contemplated by this Mortgage.

(c) Mortgagee shall have received the approval of the Application for Advance by the inspecting Architects/Engineers.

**Section 4.04 Application for Advance.** Advances for the payment of costs of labor, materials, and services supplied for the Renovations shall be made by Mortgagee, not more frequently than once a month, unless Mortgagor and Mortgagee agree on more frequent Advances, upon compliance by Mortgagor with this Mortgage after actual commencement of Renovations for work actually done during the preceding period. Not more frequently than once a month, unless Mortgagor and Mortgagee agree on more frequent Advances, Mortgagor shall submit an Application for Advance to Mortgagee requesting an Advance for the payment of costs of labor, materials, and services supplied for the Renovations, and specified in the Approved Budget. Each Application for Advance shall be in an amount of not less than \$10,000.00 and shall be submitted by Mortgagor to Mortgagee in a reasonable time, but not less than ten (10) business days prior to the date on which an Advance is desired by Mortgagor. Upon receipt of the Application for Advance, Mortgagee shall request

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an inspection of and require a favorable report on the Renovations by the Inspecting Architects/Engineers prior to making any Advance. The Inspecting Architects/Engineers shall certify to Mortgagee that at the time an Application for Advance is made: (a) the Advance requested is in proportion to the work completed; (b) that all work has been performed in a good and workmanlike manner; (c) that the Renovations are proceeding diligently and in accordance with the Plans; and (d) there are sufficient funds remaining in the Renovation Holdback to complete the Renovations.

**Section 4.05 Aggregate of Advances.** Advances for payment of costs of the Renovations shall not exceed the aggregate of (a) the costs of labor, materials, and services incorporated into the improvements in a manner acceptable to Mortgagee, plus (b) if approved by Mortgagee, the purchase price of all uninstalled materials to be utilized in the Renovations stored on the Mortgaged Property, or elsewhere with the written consent of, and in a manner acceptable to Mortgagee, less (c) retainage, set forth in Section 4.13 below, and less (d) all prior Advances for payment of costs of labor, materials, and services for the Renovations.

**Section 4.06 Special Account.** The election of Mortgagee in its sole discretion, Mortgagor shall either (i) establish a construction escrow account acceptable to Mortgagee with a title company acceptable to Mortgagee or (ii) maintain one or more accounts (herein called, whether one or more a "Special Account") with a national banking association approved by Mortgagee, into which all Advances, excluding direct disbursements made by Lender pursuant to Section 4.09 hereof, shall be deposited on behalf of Mortgagor, which account shall be assigned by Mortgagor to Mortgagee as additional security for the payment of the Note and performance of all obligations specified herein and in the Loan Documents by instrument in form and content acceptable to Mortgagee and Mortgagee's counsel. In the event Mortgagee shall elect to require a Special Account, Mortgagor shall additionally deposit into the Special Account the Mortgagor's Deposit. Whenever funds from the Mortgagor's Deposit are on deposit in the Special Account, all Advances will be considered to be made by Mortgagee first from such funds until such funds are exhausted. Checks on the Special Account shall be drawn only for the payment of (a) costs of labor, materials and services supplied for the Renovations specified in the Approved Budget, and (b) other costs and expenses incident to the Renovation Holdback, the Mortgaged Property, and the Renovations. No payments other than those authorized above shall be drawn on the Special Account without the prior written approval of Mortgagee. If requested by Mortgagee, all checks to be drawn on the Special Account shall be prepared by Mortgagor and submitted to Mortgagee for disbursement to the individual payee. Without the prior written consent of Mortgagee, Mortgagor shall not deposit or permit to be deposited any other funds into the Special Account.

**Section 4.07 Use of Advances.** Mortgagor shall disburse all Advances for payment of costs and expenses incurred for the Renovations as specified in the Approved Budget, and most recently requested on an Application for Advance, and for no other purpose.

**Section 4.08 The Mortgagor's Deposit.** If Mortgagee at any time determines that the amount of the unadvanced portion of the Renovation Holdback will not be sufficient to pay fully for all costs required to complete the Renovations in accordance with the approved Plans, whether such deficiency is attributable to changes in the work of construction or in the Plans or to any other cause, Mortgagee may make written demand on Mortgagor to make the Mortgagor's Deposit in the Special Account (which may be in non-interest bearing funds) equal to the amount of the

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shortage determined by Mortgagee. Mortgagor shall then deposit the required funds in the Special Account within ten (10) days after the date of Mortgagee's written demand. No further Advances need be made by Mortgagee until the Mortgagor's Deposit is made by Mortgagor. Mortgagor shall promptly notify Mortgagee in writing if and when the cost of the Renovations exceeds, or appears likely to exceed, the amount of the unadvanced portion of the Renovation Holdback and the unadvanced portion of the Mortgagor's Deposit.

**Section 4.09 Direct Disbursement and Application by Mortgagee.** Mortgagee shall have the right, but not the obligation to disburse and apply the proceeds of any Advance to the satisfaction of any of Mortgagor's obligation hereunder directly to the title company (if it is acting as a disbursing agent), or upon five days' prior notice to Mortgagor except in the case of an emergency (in which case no prior notice is required) to General Contractor, or to any other person or firm to whom payment is due under this Mortgage or any other Loan Document. Any Advance by Mortgagee for such purpose, except Mortgagor's Deposit, shall be part of the Renovation Holdback and shall be secured by the Loan Documents. Mortgagor hereby authorizes Mortgagee to hold, use, disburse, and apply the Renovation Holdback and the Mortgagor's Deposit for payment of costs of the Renovations, expenses incident to the Renovation Holdback and the Mortgaged Property, and the payment or performance of any obligation of Mortgagor hereunder, including, without limitation, interest on the Renovation Holdback, any Renovation Holdback fees owing to Mortgagee, legal fees of Mortgagee's attorneys which are payable by Mortgagor, and such other sums as may be owing from time to time by Mortgagor to Mortgagee with respect to the Renovation Holdback. Such payments may be made by Mortgagee advancing all or any part of the amount of such payments in Mortgagor's Special Account and then invoicing Mortgagor therefor. No further direction or authorization from Mortgagor shall be necessary to warrant such direct Advances and all such Advances shall satisfy pro tanto the obligations of Mortgagee hereunder and shall be secured by this Mortgage as fully as if made directly to Mortgagor. Notwithstanding the other provisions of this paragraph, nothing in this Mortgage is intended to be for the benefit of, nor may be enforced by, nor should be relied upon by, any person, firm or corporation other than Mortgagor.

**Section 4.10 Advances Do Not Constitute A Waiver.** No Advance shall constitute a waiver of any of the conditions of Mortgagee's obligation to make further Advances nor, in the event Mortgagor is unable to satisfy any such condition, shall any such waiver have the effect of precluding Mortgagee from thereafter declaring such inability to be an Event of Default or an event which with notice and/or passage of time could be an Event of Default.

**Section 4.11 Conditions to Advances.** As a condition precedent to each Advance of the Renovation Holdback, in addition to all other requirements herein, Mortgagor must satisfy the following requirements and, if required by Mortgagee, deliver to Mortgagee evidence of such satisfaction:

(a) The general conditions set forth in Section 3.03 shall have been satisfied and continue to be satisfied as of the date of the disbursement of any Advance;

(b) Mortgagor shall deliver to Mortgagee an Application for Advance accompanied with the documents and schedules set forth below, together with such other schedules, affidavits, releases, waivers, statements, invoices, bills, and documents as Mortgagee may reasonably request:

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(i) A "Payment Request" on Mortgagee's prescribed form containing a detailed budget breakdown specifying:

(1) the amount of the Renovation Holdback proceeds allocated for each line item on the Approved Budget;

(2) the amount of the Advance requested from each line of the Approved Budget; and

(3) the total Advances to date from each line item of the Approved Budget;

(ii) A "Payee Schedule" on Mortgagee's prescribed form itemizing all parties to be paid with the Advance and the amounts to be paid to each;

(iii) A "Request for Fund Certification" on Mortgagee's prescribed form, executed by Mortgagor, Inspecting Architects/Engineers and General Contractor (and any subcontractor as required by Mortgagee), stating among other matters:

(1) the labor, services and/or materials covered by the Application for Advance have been performed upon or furnished in the Renovations;

(2) there have been no changes in the Approved Budget except those approved by Mortgagee in writing;

(3) all construction to date has been performed in accordance with the Plans, and there have been no changes in the Plans except as have been approved by Mortgagee in writing;

(4) there have been no changes in the scope of time of performance of the work, nor any extra work, labor or materials ordered or contracted for, nor are any such changes or extras contemplated, except as have been approved by Mortgagee in writing;

(5) the payments to be made with the Advance requested will pay all undisputed bills received and then due to date for any labor, materials and services furnished in connection with the Renovations;

(6) all Advances previously disbursed by Mortgagee for labor, services, and/or materials for the Renovations pursuant to previous Applications for Advances have been paid to parties entitled thereto; and

(7) all conditions precedent to an Advance have been fulfilled, and, to the knowledge of Mortgagor, no Event of Default has occurred and is continuing and no event which with notice or lapse of time or both would constitute such an Event of Default has occurred, or if any such event or Event of Default has occurred, giving the details of such event.

(c) The representations and warranties made in this Mortgage and the other Loan Documents shall be true and correct in all material respects on and as of the date of each Advance, with the same effect as if made on that date;

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(d) Mortgagor will procure and deliver to Mortgagee, if required by Mortgagee, releases or waivers of mechanic's liens, and invoices, or paid receipts if requesting reimbursements, of all parties who have furnished materials or services or performed labor of any kind in connection with the Renovations;

(e) That the Renovations not contingent on the signing of leases for space in the Mortgaged Property can be completed by the Completion Date, as that date may, at Mortgagee's sole discretion, be extended in writing by Mortgagee; and

(f) A paid endorsement to the mortgagee title insurance which was issued to Mortgagee insuring the lien of the Mortgage, which endorsement shall be in form satisfactory to Mortgagee in all respects and shall (1) increase the amount of coverage by, or provide such additional coverage on, an amount equal to one hundred percent (100%) of the advance and (2) indicate that since the last preceding advance, no lien, other encumbrance or other matter (other than for taxes not yet due and payable and title matters permitted under the Mortgage), not approved by Mortgagee, has been recorded and not discharged subsequent to the date hereof against the Mortgaged Property and there have been no other changes in the state of title to the Mortgaged Property and no survey exceptions have arisen which were not theretofore approved by Mortgagee.

Section 4.12 Conditions to the Final Advance of the Renovation Holdback. As a condition precedent to the final Advance of the Renovation Holdback hereunder, including all unreleased retainage, Mortgagor must satisfy all conditions precedent to subsequent Advances and deliver to Mortgagee the following:

(a) Evidence that all requirements of all governmental authorities having jurisdiction have been satisfied, including, but not limited to, delivery to Mortgagee of Certificates of Occupancy permitting the Renovations to be legally used and occupied;

(b) Evidence that (1) no mechanic's or materialmen's liens, or claims thereof or preliminary notices thereof, or other encumbrances have been filed and remain in effect against the Mortgaged Property and (2) such time shall have passed as required by applicable law so that inchoate lien claims, if any, which if timely filed would be senior to the lien of this Mortgage may no longer be so timely filed;

(c) Final lien releases or waivers by the Inspecting Architects/Engineers, General Contractor, and all subcontractors, materialmen, and other parties who have supplied labor, materials, or services for the Renovations, or who otherwise might be entitled to claim a contractual or statutory lien against the Mortgaged Property;

(d) Certificate of substantial completion satisfactory to Mortgagee executed by the Inspecting Architects/Engineers, General Contractor, and Mortgagee;

(e) A complete set of "as built" Plans; and

(f) Evidence that the title insurance policy heretofore delivery has been endorsed to remove any exception for liens of mechanics or materialmen.

Section 4.13 Retainage. An amount equal to ten percent (10%) of all items except for completed tenant improvements for leases approved by Mortgagee where the General Contractor or any

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subcontractor or materialman is supplying labor and/or materials pursuant to the Construction Contract or any subcontract, shall be retained by Mortgagee from each Application for Advance until such time as the work subject to such retainage is complete to Mortgagee's satisfaction, Mortgagee has received proof of payment for the specific retainage items and a lien waiver with respect to such items, and the title company has issued an endorsement insuring the lien priority of Mortgagee's security title and interest in and to the Mortgaged Property.

**Section 4.14 Conditions Precedent for the Benefit of Mortgagee.** All conditions precedent to the obligation of Mortgagee to make any Advance are imposed hereby solely for the benefit of Mortgagee, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Mortgagee will refuse to make any Advance in the absence of strict compliance with such conditions precedent. All requirements of this Mortgage may be waived by Mortgagee in whole or in part, at any time. In no event shall Mortgagee be obligated to see to Mortgagor's proper application of the proceeds of the Renovation Holdback advanced to Mortgagor under this Mortgage.

**Section 4.15 Subordination.** Mortgagee shall not be obligated to make, nor shall Mortgagor be entitled to, any Advance until such time as Mortgagee shall have received, to the extent requested, by Mortgagee, subordination or waiver agreements from General Contractor and all other persons furnishing labor, materials or services for the Renovations, subordinating to or waiving for the benefit of this Mortgage any lien, claim, or charge they may have against Mortgagor or the Mortgaged Property.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trustee on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained; provided, however, this clause shall not impair the enforceability of, or adversely affect the obligations of the signatories under, any separate instrument of guaranty; and provided further, that the foregoing limitations on personal liability with respect to principal and interest shall not impair the validity of the indebtedness secured by Mortgagee's collateral or the lien of or security interest of the collateral or the right of Mortgagee as Mortgagee or secured party to foreclose and/or enforce the collateral after default by the Mortgagor. Nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform of 1978, as at any time amended or reinstated, to file a claim for the full amount of the debt owing to Mortgagee in the event Mortgagor or its beneficiary should become the subject of a petition for bankruptcy or reorganization or to require that all collateral shall continue to secure all of the indebtedness owing to

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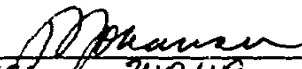
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Mortgagee in accordance with the loan documents.

IN WITNESS WHEREOF, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid has caused these presents to be signed by one of its Vice Presidents or Assistant Vice Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all as of the day, month and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as trustee as aforesaid

By:   
Its: TRUSTEE

Attest:   
Its: ASST SECY

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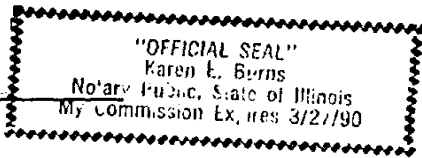
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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, KAREN E. BURNS, a Notary Public in and for the county and state aforesaid, do hereby certify that Peter M. Tolson (Vice) President of American National Bank and Trust Company of Chicago ("Bank"), a national banking association, and J. MICHAEL WHEELASS (Assistant) Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers of said corporation, respectively, appeared before me in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth, and the said (Assistant) Secretary of said Bank then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix such corporate seal to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16 day of SEP, 1988.

Karen E. Burns  
Notary Public



My Commission Expires:

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PROMISSORY NOTE

\$17,500,000.00

September 1, 1988

FOR VALUE RECEIVED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under trust agreement dated September 1, 1988 and known as Trust No. 106406-05 ("Borrower"), having an office c/o THE HEARN COMPANY, 100 North LaSalle Street, Chicago, Illinois 60602, promises to pay to the order of GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation, ("GECC"), having an office at 260 Long Ridge Road, Stamford, Connecticut 06904-8308, or any subsequent holder of this Note, the principal sum of SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$17,500,000), or so much thereof as may be advanced from time to time, with interest on the unpaid balance of such amount from the date of such advance at the rates of interest specified herein.

Certain Defined Terms: In addition to the terms defined elsewhere in this Note, as used herein, the following terms shall have the following meanings:

"Advance" shall mean any advance of proceeds of the Loan made by GECC pursuant to this Note or the GECC Mortgage.

"Affiliated Entities" shall mean, collectively, Borrower, Beneficiaries, or any of the partners of Beneficiary (the "Partners"), or any entity of which any of the Partners alone or in any combination is a general partner or a controlling director, managing officer or majority shareholder or has or have more than a ten percent beneficial interest therein. Any of the foregoing Affiliated Entities is individually called an "Affiliated Entity".

"Alternative Financing Fee" as such term is defined in Section 3(g) hereof.

"Alternative Mortgage" shall mean the first mortgage loan in respect of the Premises replacing or repaying the Loan.

"Alternative Mortgage Indebtedness" shall mean the outstanding principal indebtedness, accrued and unpaid interest, prepayment penalties, if any, on the Alternative Mortgage, as of the date on which such calculation is made.

EXHIBIT A

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"Alternative Mortgage Proceeds" shall mean with respect to the Alternative Mortgage, the maximum principal amount of the Alternative Mortgage less reasonable and customary closing costs actually incurred, including, without limitation, points, commitment fees, mortgage brokerage fees, and all other bona fide expenses actually incurred in connection with the closing of the Alternative Mortgage.

"Assignment" shall mean the Assignment of Rents and Leases dated as of even date herewith made by Borrower in favor of GECC.

"Base Interest" as such term is defined in Section 3(a) hereof.

"Base Interest Rate" shall mean the rate per annum equal to one and one-half percentage points in excess of the higher of either the Prime Rate or the Commercial Paper Rate.

"Beneficiary" shall mean the partnership which is the owner of the beneficial interest of Borrower, or such successor as shall have been approved by GECC.

"Bona Fide Costs" shall mean any commissions, costs, expenses or charges paid to any Affiliated Entity which (i) are actually paid by the Borrower for goods supplied or services rendered by the Affiliated Entity, (ii) are not more than the costs, expenses or charges that would be paid to an unrelated, independent third party,\* and (iii) if any such Affiliated Entity performs work or provides services for a number of properties, including the Premises, the allocation of such cost or expense to the Premises is appropriate and fair.

"Business Date" shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

"Capital Proceeds" shall mean the proceeds received by Borrower upon any of the following events: (i) any Sale or other disposition of any part of (but not all), or any interest in, the Premises, including, without limitation, any sale of any air, easement or mutual use rights (but nothing herein shall waive the prohibitions on transfer contained in the GECC Mortgage), (ii) any insurance proceeds paid in connection with the Premises, but excluding any insurance proceeds specifically paid to reimburse Borrower for loss of business revenue or rental income, and (iii) any condemnation proceeds received for the taking of any part of (but not all), or any interest, in the Premises and which

\*Leasing commissions paid in accordance with the Leasing Guidelines are Bona Fide Costs.

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are applied to reduce the Principal Sum or the outstanding principal indebtedness under the Alternative Mortgage.

"Cash Flow" shall mean the amount, if any, by which Net Operating Income for any calendar month (or partial calendar month) exceeds any Base Interest paid under this Note (exclusive of any Deferred Base Interest) or the Alternative Mortgage.

"Cash Flow Interest" as such term is defined in Section 3(e) hereof.

"Commercial Paper Rate" shall mean, for any month, the highest discount rate reported in the "Money Rates" column or section of The Wall Street Journal (the "Published Rate") published on the second Business Day of the month preceding the month in which payment of interest and/or principal is due on the Loan, as having been the rate in effect on high-grade unsecured notes having ninety-day maturities sold through dealers by major corporations in multiples of \$1,000 (whether or not such notes have actually been sold by such dealers at such rates), as of the first calendar day of each month for which such rate is published, adjusted to a per annum rate by applying the following formula:

$$\left( \frac{\text{Published Rate}}{4} \right) \text{ times } 1000 = X$$
$$\left( \frac{X}{1000 - X} \right) \text{ times } 4 = \text{Commercial Paper Rate}$$

In the event The Wall Street Journal (i) publishes more than one Published Rate, the higher or highest such rates shall apply, or (ii) publishes a retraction or correction of any such rate, the rate reported in such retraction or correction shall apply.

"Commitment" shall collectively mean the Loan Application dated July 15, 1988, the Commitment Letter dated August 12, 1988, and the acceptance letter dated August 25, 1988, all as modified by letters dated August 31, 1988 and September 7, 1988.

"GECC Mortgage" shall mean the first GECC Mortgage and Security Agreement of even date herewith mortgaging certain real and personal Chicago property described therein situated in the City of Chicago, Cook County, Illinois, commonly known as 209 West Jackson Boulevard.

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"Deferred Base Interest" as such term is defined in Section 3(b) hereof.

"Due Date" as such term is defined in Section 3(a) hereof.

"Economic Value" shall mean the value, as of the Maturity Date or such earlier date when such terms shall become applicable, of the Premises as if sold to a bona fide third party in an arms length transaction as though unencumbered by the GECC Mortgage or any other financings and without consideration of any costs, expenses, or taxes which would be incurred in connection with a Sale, as determined by an appraisal of the Premises by three independent appraisers who shall be members of the American Institute of Real Estate Appraisers and who shall have at least five (5) years experience in appraising properties similar to the Premises, one appointed by GECC and one appointed by Borrower (such appraisers to be appointed within ten days after the written request of either GECC or Borrower as provided below). The third appraiser shall be selected by the appointed appraisers. If either GECC or Borrower shall fail to timely appoint an appraiser, the appointed appraiser shall select the second appraiser within ten days after GECC's or Borrower's failure to appoint. If the two appraisers so appointed shall be unable to agree on the selection of a third appraiser within ten days after the two initial appraisers have been appointed, then either appraiser, on behalf of both, may request such appointment by either the American Arbitration Association or the presiding chief judge of the United States District Court for the Northern District of Illinois. No appraiser shall have any personal or financial interest as would disqualify such appraiser from exercising an independent and impartial judgment as to the value of the Premises. In determining the "Economic Value" of the Premises, the appraisers shall be instructed to utilize the discounted cash flow method of appraisal. The "Economic Value" of the Premises shall be equal to the arithmetic average of the valuation of the Premises as determined by each of such appraisers in accordance with the provisions hereof; provided, however, that if any valuation deviates by more than ten percent from the average of all such valuations, the "Economic Value" of the Premises shall be equal to the arithmetic average of the two closest valuations. The cost of such appraisals shall be divided equally between GECC and Borrower, and shall be submitted to GECC and Borrower within 30 days after the panel of three appraisers is constituted. The Economic Value shall be determined in accordance with the procedures set forth above upon the written request of GECC or Borrower made (a) at any time within six months prior to the Maturity

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Date but in no event later than 30 days prior to the Maturity Date or (b) at any time from and after the acceleration of the payment of the Loan pursuant to Section 9 hereof.

"Gross Revenues" shall mean the sum of the gross rental receipts and all other receipts and revenues generated by and from the use and operation of the Premises in respect of all or any part thereof, including, but not limited to, base rental income, expense pass-through charges, vending machine income, any non-refundable security deposits, rental and charges for space occupancy, the proceeds of any insurance proceeds specifically paid to reimburse Borrower for loss of business or rental income, but exclusive of (i) any proceeds of the Loan (ii) any Capital Proceeds, and (iii) expense pass-through charges paid by tenants and placed by Borrower or its beneficiary into a specifically designated reserve account, provided that final accounting of such expense is made within 45 days after the end of each calendar year and the excess amounts of reserved funds is included as Gross Revenues in the immediately-following operating period. Gross Revenues shall be determined in accordance with the cash basis method of accounting.

"Gross Sales Price" with respect to the Premises shall mean the total sales price paid (prior to adjustment for taxes, rents, expenses, or customary prorations) by a purchaser to Borrower for the purchase of the Premises, including, without limitation, cash, notes and all other property and consideration, and further including, without limitation, any and all payments and other consideration made, paid or given to Borrower, Beneficiary or any Affiliated Entities in connection with such sale for non-competition agreements, termination of management agreements and similar payments. For purposes of this paragraph, the term "Premises" shall include the beneficial interest in Borrower and partnership interests in the Beneficiary.

"Guaranty of Completion" shall mean the Unconditional Guaranty of Payment and Performance dated as of even date herewith made by Stephen G. Hearn and Stanley M. Hearn in favor of GECC.

"Initial Disbursement Date" shall mean the date on which proceeds of the Loan shall be initially disbursed.

"Lease" shall mean any lease for space in the Premises which satisfies all of the following requirements: (i) has been negotiated on an arms-length basis, (ii) (with respect to all future leases) is prepared upon a form which has previously been approved by GECC and in accordance with

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those leasing guidelines attached hereto as Exhibit A and made a part hereof; (iii) the tenant under any Lease, other than The Hearn Company, shall not be an Affiliated Entity or in any other manner affiliated with Borrower, either directly or indirectly.

"Loan" shall mean the loan evidenced by this Note, including without limitation, all principal, interest and other payments which shall become due and payable hereunder.

"Loan Amount A" shall mean the first eighty-five thousand (\$85,000.00) of the Loan disbursed hereunder.

"Loan Amount B" shall mean the remainder of the Loan from time to time disbursed and remaining unpaid.

"Loan Documents" shall mean this Note, the GECC Mortgage, the Assignment and all other documents, agreements and instruments evidencing, securing or in any way relating to the Loan, together with all amendments thereto which may hereafter exist.

"Loan Year" shall mean a period of 12 calendar months (except for the first and possibly the last Loan Year), with the first Loan Year beginning on the Initial Disbursement Date and ending on September 30, 1989, with each successive Loan Year commencing on the expiration of the prior Loan Year, except that the last Loan Year shall end on the Maturity Date, or such earlier date when this Note is paid in full.

"Maturity Date" shall mean, subject to Borrower's right to extend the Maturity Date as set forth in Section 3(f) hereof, the earliest to occur of (i) eighty-four (84) months after the Initial Disbursement Date, (ii) the date to which GECC accelerates the payment of the Loan pursuant to Section 9 hereof or (iii) September 30, 1995.

"Maximum Amount" as such term is defined in Section 14 hereof.

"Net GECC Mortgage Proceeds" as such term is defined in Section 3(f) hereof.

"Net Economic Value" shall mean the Economic Value less (i) all reasonable and customary bona fide closing costs (including, without limitation, brokerage commissions customary in the sale of property of the site and nature of the Premises, reasonable legal fees, and title insurance premiums) that would have been incurred and paid by Borrower in connection with the Sale of the Premises other than

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income or like taxes of the Borrower, (ii) reasonable prorrations to a purchaser or accrued items which the Borrower would be customarily obligated to pay or credit to a purchaser in connection with a Sale of the Premises, (iii) the Outstanding Loan except for the purpose of calculating Net Economic Value, Participation Interest shall be excluded from the Outstanding Loan. In the event the Principal Sum shall be prepaid in whole prior to the Maturity Date in accordance with Section 6(a) hereof, no deduction shall be made for the Alternative Mortgage Indebtedness and the Outstanding Loan shall be calculated as if the Principal Sum had not been previously prepaid. The Principal Sum in such event shall be calculated as if all holdbacks had been advanced for which Borrower would have qualified under the Loan if the Loan had not been prepaid.

"Net Operating Income" shall mean the amount, if any, by which Gross Revenues exceed Operating Costs.

"Net Outstanding Loan" shall mean the Outstanding Loan less that portion of Loan Amount A which is unpaid at the time and from time to time as the Net Outstanding Loan shall be calculated.

"Net Sales Proceeds" shall mean, with respect to a Sale of the Premises, the sales proceeds which the Borrower is entitled to receive after deducting from the Gross Sales Price the following (i) reasonable and customary closing costs (including, without limitation, all brokerage commissions not in excess of 2% of the Gross Sales Price, attorneys' fees, surveying costs, title insurance premiums and abstracting costs) incurred by Borrower and actually paid in connection with such Sale (excluding capital gains and other income-related taxes and any closing costs which are not Bona Fide Costs), (ii) any prorrations to the purchaser or accrual items which the Borrower is obligated to pay or credit to the purchaser, and (iii) the Outstanding Loan except for the purpose of calculating Net Sales Proceeds, Participation Interest shall be excluded from the Outstanding Loan. In the event the Principal Sum shall be prepaid in whole prior to a Sale in accordance with Section 6(a) hereof, no deduction shall be made for the Alternative Mortgage Indebtedness and the Outstanding Loan shall be calculated as if the Principal Sum had not been previously prepaid. The Principal Sum in such event shall be calculated as if all holdbacks had been advanced for which Borrower would have qualified under the Loan if the Loan had not been prepaid.

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"Note" shall mean this Promissory Note which evidences the Loan, together with all amendments thereto which may hereafter exist.

"Operating Costs" shall mean the following customary and reasonable bona fide expenses in respect of the Premises paid by or for the account of Borrower, all as determined in accordance with the cash basis method of accounting: (i) actual operating and fixed expenses for the Premises, including, without limitation, ad valorem taxes, insurance premiums, utility expenses, legal, accounting and other professional fees relating to the operation of the Premises, but exclusive of any non-cash charges for depreciation and other amortized items, (ii) reasonable expenses incurred in leasing space in the Premises, except to the extent funded or reimbursed under the Loan or the Alternative Mortgage, (iii) except for the costs of the Renovations, repair and restoration costs incurred in connection with the Premises, excluding, however, any such costs and expenses paid directly or indirectly through the use of any insurance proceeds, (iv) reasonable leasing commissions except to the extent funded under the Loan or the Alternative Mortgage, (v) a management fee, which may be paid to Borrower or an Affiliated Entity (not in any event to exceed five percent of collected gross receipts for the Premises for the relevant period), and (vi) a capital reserve as determined by GECC, in its sole and absolute discretion, which in no event will be less than 2% of Gross Revenues. Operating Costs shall not include any principal, interest or other amounts paid under any notes or deeds of trust relating to the Premises, including this Note. For the purpose of computing Operating Costs, no fees (other than the management fee which is limited as to amount as described above), commissions, charges, expenses or other amounts paid to any Affiliated Entity shall constitute an Operating Cost unless such fees, commissions or other amounts are Bona Fide Costs.

"Outstanding Loan" shall mean the Principal Sum, accrued interest (including Base Interest, Deferred Base Interest, Cash Flow Interest and Participation Interest), prepayment penalties and deferred interest, if any, on the Loan.

"Participation Interest" as such term is defined in Section 3(f) hereof.

"Pay Rate" shall mean the following rates of interest per annum for the Loan Years indicated.

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<u>Loan Year</u>	<u>"Pay Rate"</u>
First Loan Year	9.00%
Second Loan Year	9.00%
Third Loan Year	9.50%
Fourth Loan Year	9.50%
Fifth Loan Year	10.00%
Sixth Loan Year	10.00%
Seventh Loan Year	10.00%

"Permitted Sale" as such term is defined in Section 18(b) hereof.

"Post-Default Rate" shall mean the higher of the Prime Rate or the Commercial Paper Rate plus 5%, each change in the Post-Default Rate resulting from a change in the Prime Rate or the Commercial Paper Rate for such period to be effective and calculated in accordance with the terms hereof respecting the definitions of the Prime Rate and Commercial Paper Rate, respectively, provided, however, in no event shall the Post-Default Rate exceed the highest rate authorized by applicable law.

"Premises" shall have the meaning assigned in the GECC Mortgage to the term "Mortgaged Property."

"Prime Rate" shall mean, for any month, the prime rate (or base rate) reported in the "Money Rates" column or section of The Wall Street Journal published on the second Business Day of the month preceding the month in which a payment of interest and/or principal is due on the Loan, as having been the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) as of the first calendar day of such month for which such rate is published. In the event The Wall Street Journal ceases publication of the prime rate, then "Prime Rate" shall mean, for any month, the prime rate (or base rate) announced by Bankers Trust Company, New York, New York (whether or not such rate has actually been charged by such bank) in effect on the first calendar day of such month. In the event such bank discontinues the practice of announcing the prime rate, the term "Prime Rate" shall mean, for any month, the highest rate charged by such bank as of the first calendar day of such month on short-term, unsecured loans to its most creditworthy large corporate borrowers. In the event The Wall Street Journal (i) publishes more than one "Prime Rate," the higher or highest of such rates shall apply, or (ii) publishes a retraction or correction of any such rate, the rate reported in such retraction or correction shall apply.

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"Principal Sum" shall mean the entire outstanding principal balance of this Note as of the date upon which such calculation or determination shall be made exclusive of Deferred Base Interest.

"Renovation Holdback" shall mean the sum of money being held back from the proceeds of the Loan and shall be funded for the construction and completion of the Renovations, all as more fully set forth in the GECC Mortgage.

"Renovations" shall have the meaning ascribed in the GECC Mortgage.

"Sale" shall mean any sale, transfer, conveyance, assignment or other disposition (as a result of condemnation or otherwise) of all or any part of the Premises, the beneficial interest in Borrower or any partnership interests in the Beneficiary, whether directly or indirectly, by operation of law or otherwise, provided, however, a "Sale" shall not include any condemnation which is less than a Complete Taking (as defined in the GECC Mortgage) or a transfer permitted under the GECC Mortgage.

"Scheduled Maturity Date" shall mean the earlier of (i) eighty-four (84) months after the Initial Disbursement Date, or (ii) September 30, 1995.

2. Computation of Interest. Subject to the terms and conditions hereof, interest on the amounts so advanced hereunder, from time to time, shall be computed from and after the date of each Advance until the date of payment in full at the Base Interest Rate unless the Post Default Rate shall be applicable.

3. Payment and Calculation of Interest and Payment of Principal Balance:

(a) Base Interest. From and after the date hereof through and including the day on which this Note is paid in full, Borrower shall pay to GECC monthly in arrears commencing on October 1, 1988, and on the first day of each and every calendar month thereafter (such date for any particular month being hereinafter referred to as the "Due Date"), interest accrued for the preceding month on the Principal Sum, and on all Deferred Base Interest capitalized pursuant to Section 3(c) below, at the Base Interest Rate. The interest payable in accordance with this Section 3(a) is hereinafter called the "Base Interest."

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(b) Deferral of Interest. If the Borrower is not in default beyond any applicable grace period of any of its obligations hereunder or under any of the other Loan Documents, the Borrower may defer payment of that portion of Base Interest due and payable for any month which is in excess of the amount of interest which would have accrued during such month at the Pay Rate (such excess amount is hereinafter called the "Deferred Base Interest") so long as the aggregate amount of interest deferred under this Section 3(b) does not at any time exceed the lesser of (i) ten percent of the then Principal Sum or (ii) \$1,750,000.

(c) Capitalization of Deferred Base Interest. At the election of Borrower, exercised by written notice actually received by GECC at least ten (10) days prior to the expiration of each month during the term of the Loan the unpaid Deferred Base Interest for that month may be (i) paid in full, or (ii) added to the principal balance of the Loan as of the first day of the next succeeding month to accrue interest thereafter at the Base Interest Rate. In the absence of any written notice to GECC within the time set forth, Borrower will be deemed to have elected (ii) of this Subsection "(c)".

(d) Payment of Deferred Base Interest. From and after the date hereof, through and including the date on which this Note is paid in full, Borrower shall pay to GECC monthly on the first day of each calendar month any outstanding Deferred Base Interest, whether or not previously capitalized, to the extent that the interest which would have accrued at the Pay Rate during the preceding calendar month exceeds the Base Interest for such month. The entire unpaid balance of the deferred Base Interest, whether or not previously capitalized, shall be due and payable on the Maturity Date, or on such earlier date when the entire Principal Sum shall be payable (whether by reason of prepayment or otherwise). Borrower may at any time, and from time to time, pay all or any portion of the outstanding Deferred Base Interest.

(e) Cash Flow Interest. In addition to monthly payments of Base Interest as provided in Section 3(a) hereof, Borrower shall pay to GECC monthly in arrears on or before ten (10) days after the expiration of each calendar month or part thereof commencing with the calendar year 1988 through and including the date this Note is paid in full (inclusive of all then accrued Base Interest, all then accrued Cash Flow Interest, Alternative

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Financing Fee and Participation Interest), the applicable percentages of Cash Flow in the following order of priorities, amounts and for the purposes hereinafter set forth: (i) first, 100% of the Cash Flow for such previous calendar month or part thereof shall be paid to GECC, if and to the extent there is any Deferred Base Interest outstanding as of the last day of the previous calendar month, whether or not such Deferred Base Interest has been capitalized as provided in Section 3(c) hereof, to be applied to all and any unpaid Deferred Base Interest, (ii) second, forty percent (40%) of all remaining Cash Flow for such previous calendar month or part thereof shall be paid to GECC as additional interest (the "Cash Flow Interest") on Loan Amount A, and (iii) all remaining Cash Flow for such previous calendar month or part thereof shall be retained and distributed to Borrower. From time to time, Borrower and GECC shall promptly make an appropriate adjustment in the amount of Cash Flow and Cash Flow Interest paid to GECC if such adjustment is necessary after delivery of the financial statements delivered to GECC pursuant to the terms of the GECC Mortgage by GECC refunding any overpayment and Borrower paying to GECC any deficiency. All calculations of Cash Flow and Cash Flow Interest and its components shall be subject to audit and review by GECC, and any additional Cash Flow and Cash Flow Interest calculated by GECC to be payable by Borrower as a result of any such audit or review shall be due and payable to GECC on demand with interest at the Base Interest Rate from the date such Cash Flow and Cash Flow Interest should have been paid. If upon such audit and review, there is a discrepancy of greater than five percent between GECC's and Borrower's Cash Flow and Cash Flow Interest calculations, Borrower shall pay to GECC on demand the costs of GECC's audit and review. If Borrower disagrees with the amount of any additional Cash Flow and Cash Flow Interest determined by GECC to be payable under this subsection (e), then, upon written notice from Borrower to GECC, the matter shall be submitted to arbitration as follows: GECC and Borrower shall each appoint an accountant within ten days after Borrower's delivery of written notice requesting arbitration, and the two accountants so appointed shall select a third accountant within ten days after the two initial accountants have been appointed. If either GECC or Borrower shall fail to timely appoint an accountant, the appointed accountant shall select the second accountant within ten days after GECC's or Borrower's failure to appoint. If the two accountants shall be unable to timely agree on the selection of a third

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accountant, then GECC shall select an accountant from any of the "Big Eight" accounting firms to act as the third accountant. The additional Cash Flow and Cash Flow Interest, if any, to be due and payable under this subsection (e) shall be equal to the arithmetic average of the additional Cash Flow and Cash Flow Interest, if any, determined to be due by each of the accountants appointed hereunder; provided, however, that if any determination of such additional Cash Flow and Cash Flow Interest deviates by more than 10% from the average of all such determinations, the additional Cash Flow and Cash Flow Interest, if any, due to GECC hereunder shall be equal to the arithmetic average of the two closes determinations. The cost of the determinations by the accountants pursuant to this subsection (e) shall be divided equally between GECC and Borrower, and such determinations shall be submitted to GECC and Borrower within 30 days after the panel of three accountants is constituted. All accountants which are appointed to the panel of accountants shall be certified public accountants with at least five years of public accounting experience. Any payments due as a result of the arbitration procedure provided herein shall be paid within ten days after their final determination with interest at the Base Interest Rate from the date such Cash Flow and Cash Flow Interest should have been paid.

The obligations respecting Cash Flow Interest shall cease upon payment in full to GECC of Loan Amount A and all other sums secured by the GECC Mortgage.

(f) Participation Interest. In addition to the Base Interest, Deferred Base Interest, Cash Flow Interest and all other sums payable under this Note, Borrower shall pay to GECC (A) in the event of a Sale prior to the Maturity Date hereof, an amount equal to the greater of (i) \$1,250,000, or (ii) forty percent (40%) of the Net Proceeds of Sale or, (B) in the absence of a Sale, then at the Maturity Date hereof, an amount equal to the greater of (i) \$1,250,000, or (ii) forty percent (40%) of the Net Economic Value. Subject to the extension rights set forth in the second paragraph of this Subsection (f), the amount due GECC under this Subsection shall be due and payable on and calculated as of the first to occur of (I) a Sale, or (II) the Maturity Date. If (aa) on the date of any Sale, the Net Sales Proceeds have not been finally determined or (bb) on the Scheduled Maturity Date (not resulting from acceleration) the Net Economic Value has not been

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finally determined in accordance with the terms and conditions hereof, and Borrower desires a release of the GECC Mortgage and the other Loan Documents as security for the Participation Interest, GECC shall release the GECC Mortgage and the other Loan Documents as security for Participation Interest, provided Borrower shall either (x) pay to GECC the Participation Interest due to GECC as estimated by GECC within the reasonable exercise of its discretion or (y) provide to GECC collateral satisfactory to GECC securing the payment to GECC of the Participation Interest due to GECC as estimated by GECC within the reasonable exercise of its discretion. Promptly following the final determination of the Participation Interest due to GECC, if Borrower shall have paid to GECC the amount of estimated Participation Interest pursuant to (x) above, Borrower and GECC shall promptly make an appropriate adjustment, if such an adjustment is necessary, by GECC refunding any overpayment and Borrower paying to GECC any deficiency. If a sale shall result in any portion of the purchase price being deferred in the form of a purchase money deed of trust or other form of deferral acceptable to GECC, the Participation Interest due to GECC in such case shall be paid on a pro rata basis as and when the purchase price is paid, provided GECC shall receive cash or other form of collateral reasonably satisfactory to GECC securing the payment to GECC of the total Participation Interest due to GECC hereunder.

Notwithstanding anything to the contrary contained in this Note, and as more particularly set forth below, in the event Borrower shall desire to refinance the Loan with an Alternative Mortgage, Borrower shall give GECC notice thereof not less than 30 nor more than 60 days prior to refinancing; and GECC shall, at its sole option and in its sole discretion, elect either (i) to allow Borrower to prepay only Net Outstanding Loan and replace it with an Alternative Mortgage, or (ii) to require the Borrower to prepay the entire outstanding amount of this Loan in full in order to effect the refinance with the Alternative Mortgage, and GECC shall notify Borrower of its election within fifteen (15) days after its receipt of Borrower's notice of intent to refinance.

In the event that GECC shall elect to require Borrower to prepay the entire outstanding amount of this Loan pursuant to Subsection (ii) above, then and in any such event:

(x) The date of the refinancing of the Loan shall be and become the Maturity Date hereof;

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(y) Loan Amount A shall for all purposes hereof be deemed and become Loan Amount B.

In the event the GECC shall elect to allow Borrower to prepay only the Net Outstanding Loan pursuant to Subsection (i) above, then and in any such event:

(A) All provisions of this Note, the GECC Mortgage, and of the recorded Loan Documents, including without limitation the Cash Flow Interest, Participation Interest and First Offer provisions hereof and thereof, shall continue to apply and to be of full force and effect;

(B) Borrower shall prepay the Net Outstanding Amount in accordance with the prepayment requirements set forth in Section 6 hereof;

(C) Borrower shall have the right to extend the Scheduled Maturity Date to the earlier of (i) two (2) years after the Scheduled Maturity Date, or (ii) the maturity date of the Alternative Mortgage; Borrower shall exercise such extension right by notice to GECC given within five (5) days after GECC shall notify Borrower of GECC's election concerning the prepayment of Loan Amount A;

(D) If an Alternative Mortgage is obtained by Borrower either prior to, simultaneous with or subsequent to any prepayment permitted hereunder, in addition to Base Interest, Cash Flow Interest, Participation Interest and all other sums payable under this Note, and provided the Alternative Mortgage Proceeds exceed the Net Outstanding Loan (the difference between the Alternative Mortgage Proceeds and the Net Outstanding Loan being sometimes referred to herein as the "Net GECC Mortgage Proceeds"), Borrower shall pay to GECC on the dates of any funding of any portion of the Alternative Mortgage an amount equal to 40% of the Net GECC Mortgage Proceeds (the amount payable under this Subsection (D) is called the "Participation Credit Amount"). (For the purpose of calculating the Participation Credit Amount, Participation Interest shall be excluded from the Net Outstanding Loan). Notwithstanding, if the principal amount of the Alternative Mortgage is funded at various times due to holdbacks, retainages or any reason, the Alternative Financing Fee shall be recalculated to take into account any and all additional fundings of the Alternative

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Mortgage as of the date of any such fundings. At such later date which is the first to occur of a Sale or the Maturity Date hereof that Participation Interest shall be due and payable pursuant to Subsection (f) hereof, the Participation Credit Amount shall be credited toward the Participation Interest then due and payable hereunder, provided in any event that the amount of said credit shall in no event be greater than the amount of Participation Interest; and

(E) GECC shall have the right to consent to the terms and provisions of the Alternative Mortgage and the Alternative Mortgage Indebtedness, and in the event GECC consents thereto, GECC shall subordinate the GECC Mortgage and the other recorded Loan Documents to the Alternative Mortgage;

(g) First Offer. In addition to Base Interest and Participation Interest, and as an additional and material consideration and inducement to GECC to make and disburse the Loan, Borrower concurrently herewith conveys to GECC in the Mortgage herein referred to the right to receive the first offer to sell the Premises (the "First Offer") as more particularly set forth in Section 3.2 of the Mortgage;

(h) It is the understanding of the parties that the payment of Cash Flow Interest and Participation Interest and the First Offer are material considerations and inducements to GECC to make and disburse the Loan and shall continue to be secured by the GECC Mortgage and the other recorded Loan Documents until such time as such obligations shall have been paid in full;

(i) Maturity Date; Accelerated Maturity Date. The entire Principal Sum and all Deferred Base Interest, together with all accrued but unpaid interest thereon, including Base Interest, Cash Flow Interest and Participation Interest, and together with any and all unpaid late charges and interest due at the applicable Post-default Rate, shall be due and payable to GECC on the Maturity Date.

4. Survival of Payment of Obligations. The obligations respecting Participation Interest shall survive the repayment in full of the Principal Sum (or any component thereof) and all accrued interest then due to GECC under this Note, and shall be secured by the GECC Mortgage and the other recorded Loan Documents. GECC shall be under no



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obligation to satisfy or otherwise release the GECC Mortgage and the other recorded Loan Documents until the payment in full of the Principal Sum, Base Interest, Deferred Base Interest, Cash Flow Interest, Participation Interest, and all other amounts payable to GECC under this Note.

5. Payments and Computations. All payments on account of the Loan or this Note shall be made not later than noon (New York time) on the day when due in lawful money of the United States in same day or other immediately available funds. All payments under this Note are payable at GECC's office at 260 Long Ridge Road, Post Office Box 8308, Stamford, Connecticut 06904-8308, or at such other place as GECC shall notify the Borrower in writing. All computations of interest on a day-to-day basis shall be made by GECC on the basis of a year of 360 days for the actual number of days elapsed in the period for which such interest is payable (i.e., interest for each day any principal is outstanding shall be computed at the annual interest rate divided by 360).

6. Prepayment. This Note may not be prepaid in whole or in part prior to the date which is twenty-four months after the Initial Disbursement Date. Thereafter, Borrower shall be entitled to the following right of prepayment and the other:

(a) Loan Amount A may not be prepaid prior to the Scheduled Maturity Date hereof (being the earlier of (i) eighty-four (84) months after the Initial Disbursement Date or (ii) September 30, 1995); provided that GECC may require Loan Amount A to be prepaid at such time and in the event the Net Outstanding Loan is prepaid if borrower shall refinance the Loan and GECC shall elect to require prepayment of the entire Loan as more particularly set forth in Section 3(f) hereof;

(b) The Net Outstanding Loan may be prepaid in whole, but not in part, provided that concurrent with such prepayment, Borrower shall pay a premium equal to one percent (1%) of the principal amount prepaid if such prepayment is made between the commencement of the twenty-fifth month and the end of the thirty-sixth month following the Initial Disbursement Date, and thereafter without premium or penalty.

Any such prepayment shall not affect, reduce or terminate Borrower's obligations in respect of payment to GECC of the Participation Credit Amount, Cash Flow Interest and Participation Interest. Any permitted prepayment shall be preceded by not less than 30 days' prior written notice from Borrower

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to GECC. Any such prepayment shall terminate GECC's obligation to make any further Advances under this Note.

GECC and Borrower acknowledge and agree that GECC is relying on the development and management expertise of the Partners and that the restrictions on prepayment contained herein, together with the "due-on-sale" provision contained in the GECC Mortgage, are intended to insure that the Partners remain involved in the management of the Premises throughout the term of the Loan.

## 7. Application of Payments:

(a) All payments received by GECC under this Note shall be applied by GECC as follows: first, to the payment of fees and other charges then due or payable under the applicable provisions of this Note or GECC Mortgage; second, to the payment of any delinquency, Post-Default Rate or "late" charges, if any; third, to accrued and unpaid Base Interest; fourth, to the Deferred Base Interest, if any; fifth, to Cash Flow Interest, if any; sixth, to the Alternative Financing Fee, if any; seventh, to the payment of Participation Interest; eighth, to the payment of any prepayment premium provided in Section 6 hereof; ninth, to the payment of Loan Amount B; and finally, to the reduction of Loan Amount A.

(b) Notwithstanding anything to the contrary herein contained, in the event that there shall have occurred a default hereunder, GECC, in its discretion, may apply any payment under this Note in accordance with the provisions of the GECC Mortgage.

8. Late Payment. In the event Borrower fails to make any payment due under this Note, within five days after the same shall become due, whether by acceleration of prepayment or otherwise, GECC, in addition to its rights set forth in Section 9 hereof, may at its option impose a late charge on Borrower, payable upon demand, equal to the greater of:

(a) The amount resulting from applying an interest rate equal to the applicable Post-Default Rate to the unpaid payment, computed from the date such payment was due and payable to the date of receipt of such payment by GECC in good and immediately available funds, or

(b) An amount equal to five percent of the amount of such past due payment notwithstanding the date on which such payment is actually paid to GECC;

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provided, however, that if any such delinquency charge under subsections (a) or (b) of this Section 8 is not recognized as liquidated damages for such delinquency (as contemplated by Borrower and GECC), and is deemed to be interest in excess of the Maximum Amount, the amount actually collected by GECC in excess of such lawful amount shall be applied in accordance with the provisions of Section 15 hereof.

9. Acceleration of Indebtedness: In the event Borrower fails to pay any installment of principal and/or interest (including, without limitation, Base Interest, Deferred Base Interest, Cash Flow Interest, Alternative Financing Fee, and Participation Interest) on this Note, within ten days of the due date thereof, or upon the happening of any "Event of Default" as defined in any of the Loan Documents, then and in any such event, the Principal Sum (or, at GECC's option, only Loan Amount B) and all interest accrued thereon and all charges and fees which are part of the Loan and any other sums advanced by GECC under this Note and the other Loan Documents shall, at the option of GECC, and without notice, demand or presentment for payment to Borrower or any other person or entity, at once become due and payable and may be collected forthwith, regardless of the stipulated date of maturity, anything herein or in the other Loan Documents to the contrary notwithstanding, all without any relief whatever from any valuation or appraisal laws and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided to GECC in this Note, the GECC Mortgage, in any of the other Loan Documents, or by such other rights and remedies which GECC may have at law, equity or otherwise. Interest shall accrue on the Principal Sum from the date of any default hereunder (so long as such default shall continue), regardless of whether or not there shall have been an acceleration of the payment of principal as set forth herein, at the Post-Default Rate.

10. Collateral Security: The payment of this Note is secured by the GECC Mortgage and the other Loan Documents.

11. Expenses and Costs of Collection:

(a) Borrower shall pay for all costs and expenses (including without limitation, documentary taxes, intangible taxes, mortgage taxes, recording charges, title insurance premiums and reasonable attorneys' fees and disbursements) incurred by Borrower and GECC in connection with the preparation, modification, consolidation and recordation of the Loan Documents and any additional

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principal advanced under the Loan Documents in excess of the principal amount of this Note (including, without limitation, any Deferred Base Interest).

(b) Borrower shall also pay all costs and expenses of collection incurred by GECC, in addition to principal, interest and late or delinquency charges (including, without limitation, court costs and reasonable attorneys' fees and disbursements through and including any appellate proceedings and any special proceedings) and including all costs and expenses incurred in connection with the pursuit by GECC of any of its rights or remedies referred to in Section 9 hereof or the protection of or realization of collateral or in connection with any of GECC's collection efforts, whether or not suit on this Note, on any of the other Loan Documents or any foreclosure proceeding is filed, and all such costs and expenses shall be payable on demand (and subject to the charge referred to in Section 9 hereof) and also shall be secured by the GECC Mortgage and all other collateral at any time held by GECC as security for Borrower's obligations to GECC.

12. No Waiver or Oral Modification: No failure on the part of GECC to exercise any right or remedy hereunder, whether before or after the happening of a default, shall constitute a waiver of such default, any future default or of any other default. No failure to accelerate the debt evidenced hereby by reason of default hereunder, or acceptance of a past due installment, or indulgence granted from time to time shall be construed to be a waiver of the right to insist upon prompt payment or to impose late or delinquency charges thereafter or to impose such charges retroactively, nor shall it be deemed to be a novation by GECC of this Note or as a reinstatement by GECC of the debt evidenced hereby or as a waiver of such right of acceleration or any other right, nor be construed so as to preclude the exercise of any right which GECC may have, whether by the laws of the state governing this Note, by agreement or otherwise, and Borrower and each endorser hereby expressly waives the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom such agreement is sought to be enforced.

13. Waiver of Certain Notices: To the fullest extent permitted under Illinois law, Borrower, for itself and its successors and assigns, and each endorser, if any, of this Note, for its heirs, successors and assigns, hereby



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waives presentment, protest, notice of protest, demand, diligence, notice of dishonor and of nonpayment, and waives and renounces all rights to the benefits of any statute of limitations and any moratorium, appraisement, exemption and homestead now provided or which may hereafter be provided by any federal or state statute, including, but not limited to, exemptions provided by or allowed under any federal or state bankruptcy or insolvency laws, both as to itself and as to all of its property, whether real or personal, against the enforcement and collection of the obligations evidenced by this Note and any and all extensions, renewals and modifications hereof.

14. Interest Not To Exceed Maximum Permitted By Law: It is the intention of the parties to conform strictly to the usury and other laws relating to interest from time to time in force, and all agreements between Borrower and GECC, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, shall the amount paid or agreed to be paid to GECC, or collected by GECC or for the use, forbearance or detention of the money to be loaned hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein, in the GECC Mortgage or in the Assignment, in any other Loan Documents or in any other security agreement given to secure the indebtedness of Borrower to GECC, or in any other document evidencing, securing or pertaining to the indebtedness evidenced hereby, exceed the maximum amount permissible under applicable usury or such other laws (the "Maximum Amount"). If under any circumstances whatsoever fulfillment of any provision hereof or of the GECC Mortgage, the Assignment, any of the other Loan Documents or any other document, at the time performance of such provision shall be due, shall involve transcending the Maximum Amount, then ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Amount. For the purposes of calculating the actual amount of interest paid and/or payable hereunder, in respect of laws pertaining to usury or such other laws, all sums paid or agreed to be paid to the holder hereof for the use, forbearance or detention of the indebtedness of Borrower evidenced hereby, outstanding from time to time shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread from the date of disbursement of the proceeds of this Note until payment in full of all of such indebtedness, so that the actual rate of interest on account of such indebtedness is uniform through the term hereof. The terms and provisions of this Section 14 and Section 15 hereof shall control and supersede every other

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provision of all agreements between Borrower or any endorser and GECC.

15. Payment in Excess of Maximum Amount: If under any circumstances GECC shall ever receive an amount deemed interest by applicable law, which would exceed the Maximum Amount, such amount that would be excessive interest under applicable usury laws or such other laws shall be deemed a payment in reduction of the Principal Sum and shall be so applied or shall be applied to the principal amount of other indebtedness secured by the GECC Mortgage and not the payment of interest, or if such excessive interest exceeds the Principal Sum, and any other indebtedness of Borrower in favor of GECC, the excess shall be deemed to have been a payment made by mistake and shall be refunded to Borrower or to any other person making such payment on Borrower's behalf.

16. Limitation of Liability: Except as otherwise provided below, neither Borrower, the Beneficiary nor any of the Partners (collectively called the "Obligated Parties") shall be personally liable for the repayment of any of the principal or interest (including Base Interest, Deferred Base Interest, Cash Flow Interest, Alternative Financing Fee and Participation Interest) on, or prepayment fees or late charges, or other charges or fees, including, without limitation, attorneys' fees, due in connection with, the Loan (all such sums are hereinafter collectively called the "Loan Debt") or for any deficiency judgment which GECC may obtain after foreclosure of the GECC Mortgage after default by Borrower; provided, however, that the Obligated Parties shall not be exonerated or exculpated for any loss or damage or deficiency suffered by GECC and shall be personally liable for any liability, loss, or damage (including, without limitation, reasonable attorneys' fees and disbursements) (i) arising out of any fraud or material misrepresentation, misapplication of insurance proceeds, condemnation awards, security deposits or trust funds in violation of applicable law or the provisions of the GECC Mortgage; (ii) arising out of the failure to comply with the provisions of the GECC Mortgage prohibiting the sale or further encumbering of the Premises; (iii) arising out of willful attempts to interfere with GECC's rights under the assignment of rents or letter of credit requirements, if any, set forth in the Loan Documents; (iv) arising out of the failure of Borrower or Beneficiary to perform its obligations under the Loan Documents to preserve, protect and maintain the Premises and to apply proceeds of rents and other income of the collateral toward the costs of maintenance and operation of the Premises and to the payment of taxes, lien claims,

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insurance premiums and debt service and other indebtedness; (v) arising out of waste or the willful destruction or willful damage by the Obligated Parties (or any of them) to the Premises, or to the electrical, plumbing, heating or air conditioning systems or elevators of the Premises; (vi) arising out of any monies the Obligated Parties (or any of them) receives in connection with a modification of an existing or future lease or the entering into of a new lease in violation of the applicable provisions contained in the GECC Mortgage; (vii) incurred by GECC in connection with any claim, demand, order, consent decree, settlement, judgment or verdict arising in connection with the manufacture, deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or other placement or release in, on or about the Premises of a hazardous or toxic waste, waste product or substance as defined in 42 U.S.C. § 9601 or as defined in any other statute, rule or regulation governing such wastes, waste products or substances; or (viii) resulting from any claim, demand, determination, judgment, verdict or holding that the relationship of Borrower and GECC is that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor; and provided, further, that the foregoing limitations on personal liability with respect to the Loan Debt shall not impair the validity of the indebtedness secured by GECC, collateral or the lien on or security interest in the collateral or the right of GECC as mortgagee or secured party to foreclose and/or enforce the mortgage lien or security interest or other interest in the collateral or any part thereof after default. In the event any person, whether or not a partner or Borrower, or the Borrower itself, shall have guaranteed all or part of any aspect of the Loan or shall have indemnified GECC, by separate written guarantee or indemnification agreement, none of the foregoing limitations on Borrower's personal liability for payment of the Loan Debt shall modify, diminish or discharge the personal liability of any such guarantor or indemnitor as set forth in any such written guarantee or indemnification agreement. Nothing herein shall be deemed to be a waiver of any right which GECC may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform Act of 1978 or any successor thereto or similar provisions under applicable state law to file a claim for the full amount of the debt owing to GECC by Borrower or to require that all collateral shall continue to secure all of the indebtedness owing to GECC in accordance with the Loan Documents. In no event shall any personal liability be enforceable against the trustee signatory hereto.

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17. Governing Law and Consent to Jurisdiction. It is understood and agreed that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents. Borrower and GECC agree that, in all respects, including all matters of construction and performance, the obligations arising under the Loan Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Borrower does hereby irrevocably and unconditionally submit to the personal jurisdiction of the courts of the State of Illinois and does further irrevocably and unconditionally stipulate and agree that the Federal Courts in the State of Illinois or the Circuit Court of the State of Illinois in Cook County, Illinois, shall have jurisdiction to hear and finally determine any dispute, claim, controversy or action arising out of or connected (directly or indirectly) with the Loan and the Loan Documents. Borrower does hereby agree that final judgments in any action or proceedings shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Nothing in this Note shall affect the right of GECC to bring an action or proceeding against the undersigned or its property in the courts of any other jurisdiction. To the extent that Borrower has or hereafter may acquire any immunity from jurisdiction of any court of from any legal process (whether through service or notice, attachment prior to judgment, attachment and aid of execution, execution or otherwise), with respect to the Borrower's property, Borrower hereby unconditionally and irrevocably waives such immunity in respect of its obligations under the Loan and the Loan Documents. The foregoing consent, in advance, to the jurisdiction of the above-mentioned courts is a material inducement for GECC to make the Loan.

18. No Joint Venture; Indemnity. The provisions of this Note and the Loan Documents giving GECC rights in respect of Cash Flow Interest, Participation Interest and the First Offer, in addition to the right to receive repayment of the Loan in full, are additional considerations and inducements for GECC agreeing to furnish the financing requested, desired, and required by Borrower. Borrower and GECC intend that the relationship created under this Note, the GECC Mortgage and all other Loan Documents be solely that of debtor and creditor or mortgagor and mortgagee, as the case may be. Nothing herein or in the GECC Mortgage is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship among Borrower and GECC, nor to grant GECC any interest in the Premises other than that of creditor or mortgagee, it being the intent of the parties hereto that GECC shall have no liability whatsoever for any losses generated by or incurred with respect

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to the Premises nor shall GECC have any control over the day to day management for operations of the Premises. Borrower further acknowledges and agrees that the value of the Cash Flow Interest payable to GECC hereunder substantially depends upon the success of the enterprise in which the proceeds of the Loan shall be utilized. The terms and provisions of this Section shall control and supersede over every other provision and all other agreements among and GECC. Borrower hereby agrees to indemnify and hold GECC harmless and defend GECC against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements) and all claims, actions, procedures and suits arising out of or in connection with any construction of the relationship of borrower and GECC as that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor, or any assertion that such a construction should be made. The foregoing indemnity shall survive the repayment of this Note and the satisfaction of the GECC Mortgage and shall continue so long as any liability for which the indemnity is given may exist or arise.

19. Time of Essence: Time is of the essence of this Note and of each provision in which time is an element.

20. Waiver of Jury Trial: BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY: THIS WAIVER BEING A MATERIAL INDUCEMENT FOR GECC TO ACCEPT THIS NOTE.

21. Date of Performance: If the date for the performance of any term, provision or condition (monetary or otherwise) under this Note shall happen to fall on a Saturday, Sunday or non-Business Day, the date for the performance of such term, provision or condition shall, at the option of Borrower or GECC, be extended to the next succeeding Business Day immediately thereafter occurring, with interest on the Principal Sum at the Base Interest Rate provided in this Note to such next succeeding Business Day if such term, provision or condition shall result in the extension of any monetary payment due to GECC.

22. Effect of Disbursement of Monies: Base Interest under this Note shall commence to accrue as of the date of disbursal or wire transfer by GECC, notwithstanding



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whether Borrower shall receive the benefit of such monies as of such date and even if such monies are held in escrow pursuant to the terms of any escrow arrangement or agreement. If so requested by Borrower in writing, all Advances under this Note which are made to Borrower (and not to GECC or directly to any third party) shall be made by wire transfer pursuant to such written wire transfer instructions as may be provided by Borrower to GECC, for which instructions Borrower shall have sole responsibility. When monies are disbursed by wire transfer, then such monies shall be considered advanced at the time of the transmission of the wire, rather than the time of receipt thereof by the receiving bank. With regard to the repayment of the Loan, Base Interest shall continue to accrue on any amount repaid until such time as the repayment has been received and cleared by GECC. Any payment which is made by wire transfer or other immediately available funds and which is actually received by GECC prior to 2:00 p.m. shall be deemed to have been received and cleared by GECC on the date of receipt.

23. Binding upon Successors and Assigns: The provisions of this Note shall bind borrower and its successors and assigns; provided, however, that nothing herein shall be construed as permitting borrower to take any action in violation of the GECC Mortgage.

24. Disclaimer: The Loan Documents are intended solely for the benefit of Borrower and GECC and no third party shall have any rights or interest in any provision of the Loan Documents or as a result of any action or inaction of GECC in connection therewith. Without limiting the generality of the foregoing, any and all obligations to make advances are imposed solely and exclusively for the benefit of Borrower and no other person (including, but not limited to, Borrower's successors, assigns or successors in title to the Premises, any creditor of Borrower or any representative of Borrower) shall have standing to require satisfaction and compliance with such obligations. Any actions taken by GECC or any representative of GECC (to review plans and specifications, to inspect the Premises or otherwise) are solely for GECC's protection and neither the Borrower nor any other person shall be entitled to rely upon any such action.

25. Participations: At no cost to Borrower, GECC may sell participations in the Loan, and the borrower authorizes GECC to disclose to any purchaser or prospective purchaser of any interest in the Loan any financial or other information pertaining to the Borrower or the Premises.

26. Prior Agreements: Except for the commitment, the Loan Documents supersede and cancel all prior loan

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applications, commitments, agreements and understandings, whether oral or written, with respect to the Loan, and, except for the Commitment, all prior agreements and understandings are merged into the Loan Documents.

27. Survival of Note: Notwithstanding anything contained in or inferable from this Note or any other Loan Documents, the terms and provisions of this Note shall survive the release of the lien of the GECC Mortgage or any other collateral granted by Borrower as security for the Note until the payment in full to GECC of all outstanding principal of this Note, Base Interest, Deferred Base Interest, Cash Flow Interest, Alternative Financing Fee and Participation Interest.

28. Headings: The headings used in this Note are for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Note.

29. Severability: Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

30. Number and Gender: Whenever the singular or plural number, or the masculine, feminine or neuter gender is used herein, it shall legally include the other.

31. Consent to Extensions and Releases of Collateral: The Borrower and any endorsers, sureties, guarantors and all others who are or may become liable for the payment hereof (a) expressly consent to all extensions of time, renewals, postponements of time of payment of this Note or other modifications hereof from time to time prior to or after the Maturity Date without notice, consent or consideration to any of the foregoing, (b) expressly agree to any substitution, exchange, addition or release of any party of person primarily or secondarily liable hereon, and (c) expressly agree that GECC shall not be required first to institute any suit, or to exhaust its remedies against the undersigned or any other person or party to become liable hereunder or against the other Loan Documents in order to enforce the payment of this Note.

32. Words Hereunder, Hereof, etc.: The words "herein," "hereof," "hereunder" and other words of similar