

# UNOFFICIAL COPY

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This Instrument Prepared by  
and Return to:  
Susan M. Hollingsworth  
Reed Smith Shaw & McClay  
P.O. Box 2009  
Pittsburgh, PA 15230

*\$54.00*

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made this 23  
day of December, 1988 between AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, a national banking association, not personally  
but solely as Trustee under Trust Agreement dated June 15, 1981  
and known as Trust No. 24809 (hereinafter called "Mortgagor") and  
MELLON BANK, N.A., a national banking association having an office  
at 350 One Mellon Bank Center, Pittsburgh, Pennsylvania 15258-  
0001 (hereinafter called "Mortgagee"),

### W I T N E S S E T H :

WHEREAS, in and by a certain Mortgage Note executed by  
Mortgagor and maturing on the Maturity Date as set forth in the  
Note (hereinafter called the "Note"), bearing even date herewith,  
Mortgagor is indebted to Mortgagee in the principal sum of  
THIRTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND (\$13,750,000) lawful  
money of the United States of America, with interest thereon at  
the rates set forth in the Note being due and payable as provided  
in the Note, conditioned upon the keeping, observance, performance  
and compliance with all the other terms, conditions and agreements  
on Mortgagor's part to be kept, observed and performed under the  
Note and this Mortgage;

NOW, THEREFORE, in order further to secure, ratably and  
equally the payment of all sums due or to become due under the  
Note, or under the terms of this Mortgage and any other loan  
documents (the Note, Mortgage and such other loan documents are  
herein collectively called the "Loan Documents"), or any  
extensions or modifications thereof, whether or not Mortgagor is  
personally liable for any such payments, as well as to secure the  
performance of all Mortgagor's covenants and agreements contained  
in this Mortgage and the other Loan Documents or any amendments  
thereof, and in consideration of the premises and the further sum  
of One Dollar (\$1.00) to Mortgagor in hand well and truly paid by  
Mortgagee at and before the sealing and delivery hereof, the  
receipt whereof is hereby acknowledged, Mortgagor has granted,  
mortgaged, conveyed, aliened, enfeoffed, released, confirmed,  
assigned, transferred and set-over, and by these presents does  
grant, mortgage, convey, alien, enfeoff, release, confirm, assign,  
transfer and set-over unto Mortgagee, its successors and assigns,

*71-40-866-02 1206358 TRACT 1*

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Mortgagor's interest in that certain tract of land situate in the County of Cook, State of Illinois more particularly described in Exhibit A attached hereto and made a part hereof (the "Land").

TOGETHER with the tenements, hereditaments, appurtenances and all the estates and rights of Mortgagor in and to the Land.

TOGETHER with all the right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, adjoining the Land, and all easements and rights of way, public or private, now or hereafter used in connection with the Land.

TOGETHER with all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Land to the extent of the interest of Mortgagor therein, now or hereafter acquired.

TOGETHER with all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with the Land.

TOGETHER with all buildings, structures and improvements (the "Improvements") of every kind and description now or hereafter erected or placed on the Land.

TOGETHER with all fixtures, fittings, appliances, including ovens, stoves and refrigerators, apparatus, furnishings, equipment, machinery, chattels, building materials and articles of personal property of every kind and character, together with the renewals, replacements and substitutions thereof, additions and accessions thereto (hereinafter collectively called the "Fixtures"), now or at any time hereafter affixed to or attached to or placed upon or used in any way in connection with the complete and comfortable use, enjoyment or occupancy for operation and maintenance of the Improvements (excepting any personal property owned by any tenant or unit owner occupying any of the Improvements and used by such tenant or unit owner in the use or occupancy of the space occupied by it to the extent the same does not become the property of Mortgagor under the lease or other agreement with such tenant or unit owner or pursuant to applicable law), all of which now or hereafter so affixed, placed or used are intended to be subject to the lien of this Mortgage as if part of the real estate, and all cash and noncash proceeds thereof.

TOGETHER with all right, title and interest of Mortgagor in and to any and all deposits made under any conditional bill of sale, chattel mortgage or security interest (other than that

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created hereby) to which any Fixtures are or shall be subject, and all deposits made thereunder, together with the benefit of any payments now or hereafter made thereon.

TOGETHER with all right, title and interest of Mortgagor as lessee under any and all leases relating to any Fixtures, together with any options to purchase the Fixtures which are subject to such leases and together with the benefit of any payments now or hereafter made thereon.

TOGETHER with the reversions, remainders, easements, rents, issues and profits arising or issuing from the Land and from the Improvements thereon, including, but not limited to, the rents, issues and profits arising or issuing from all leases and subleases now or hereafter entered into covering all or any part of said Land and for the Improvements, all of which leases, subleases, rents, issues and profits are hereby assigned and, if requested by Mortgagee, shall be caused to be further assigned to Mortgagee by Mortgagor. The foregoing assignment shall include without limitation, cash or securities deposited under leases to secure performance by lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more installments of rent coming due prior to the expiration of such terms. Mortgagee, or any officer of Mortgagee, is hereby irrevocably appointed attorney-in-fact for Mortgagor to collect such rents, issues and profits after default by Mortgagor. Mortgagor will execute and deliver to Mortgagee on demand such assignments and instruments as Mortgagee may require to implement, confirm, maintain and continue the assignment hereunder.

TOGETHER with any and all awards, damages, payments and other compensation and any and all claims therefor and rights thereto which may result from taking or injury by virtue of the exercise of the power of eminent domain of or to, or any damage, injury or destruction in any manner caused to, the Land, the Improvements, or any part thereof, or from any change of grade or vacation of any street abutting thereon, all of which awards, damages, payments, compensation, claims and rights are hereby assigned, transferred and set over to Mortgagee to the full extent that Mortgagor may under the law so do. Mortgagee is hereby irrevocably appointed attorney-in-fact for Mortgagor to settle for, collect and receive any such awards, damages, payments and compensation from the authorities making the same, to appear in and prosecute any proceeding therefor, and to give receipts and acquittances therefor.

TOGETHER with all right, title and interest of Mortgagor in and to all contracts and agreements relative to the construction, use and occupancy of the Improvements.

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TOGETHER with all right, title and interest of Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor.

TOGETHER with all proceeds of the conversion, voluntary or involuntary, of any or all of the foregoing into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards.

ALL of which property and rights therein hereinabove described or mentioned being hereinafter collectively called, the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors and assigns, forever free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Mortgaged Property after the occurrence of any Event of Default (as hereinafter defined).

AND at all times until the entire unpaid principal indebtedness of the Note, including all sums now or hereafter due Mortgagee under the terms hereof and thereof, are fully paid, together with all interest thereon, Mortgagor covenants, promises and agrees with Mortgagee as follows:

## ARTICLE I

### Covenants As To Payment, Performance and Title

SECTION 1.01. Mortgagor shall pay to Mortgagee, without offset, counterclaim or defense, the entire unpaid principal indebtedness of the Note, including all sums now or hereafter due Mortgagee under the terms hereof or of the other Loan Documents, together with all interest thereon, punctually as and when the same shall become due by the terms thereof or hereof. Mortgagor will fully and faithfully observe and perform all of the terms, provisions, conditions, covenants and agreements on the part of Mortgagor to be observed and performed under the Note and the other Loan Documents.

SECTION 1.02. Mortgagor represents that: (i) Mortgagor has good and marketable title to the Land, in fee simple, subject only to matters approved in writing by Mortgagee; (ii) Mortgagor has good title to each applicable portion of the Fixtures; and (iii) this Mortgage is a first and prior lien on and security interest in and to the Mortgaged Property subject to no other lien and subject to no other encumbrances except those, if any,

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permitted in writing by Mortgagee. Mortgagor shall not, without the prior written consent of Mortgagee, install in or locate on the Mortgaged Property any equipment or fixtures which are subject to any security interest, lien or title retention arrangement of any kind other than that created hereby. Mortgagor warrants that neither the rents, issues and profits of the Mortgaged Property nor any part thereof have been previously assigned or will be assigned hereafter, except to Mortgagee as further security for the obligations secured hereby. Mortgagor shall preserve such title as herein described 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. The Mortgaged Property does not contain any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or in any regulations promulgating pursuant thereto, or in any other applicable law (collectively, "Hazardous Substances"). As used herein the term "Law" means any law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any Official Body, including those relating to zoning, subdivision, building, safety, fire protection or environmental matters. As used herein the term "Official Body" means any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

SECTION 1.04. Mortgagor agrees to provide Mortgagee (i) no later than forty five (45) days after the end of each semiannual period and no later than ninety (90) days after the end of each fiscal year of Inland Real Estate Corporation, an Illinois corporation (the "Company"), a balance sheet and a statement of retained earnings of Company for such fiscal period, all in reasonable detail acceptable to Mortgagee and reviewed by a Chief Financial Officer of Company and (ii) such other information concerning the financial condition, operations and business of Company as Mortgagee may reasonably request.

SECTION 1.05. INTENTIONALLY OMITTED.

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## ARTICLE 2

### Covenants As To Taxes, Assessments, Etc.

SECTION 2.01. Mortgagor will, at least five (5) days prior to the date on which any interest or penalties shall commence to accrue thereon, pay, discharge and furnish to Mortgagee proper receipts for all taxes, general and special, water and sewer rent charges, excise levies, vault and other license or permit fees, city taxes, transit taxes, levies and assessments of every kind and all charges for utilities and utility services, and which may have been or may hereafter be charged, assessed, levied, confirmed, imposed upon, or grow or become due and payable out of, or in respect to, or against, the Mortgaged Property, or any part thereof, or any appurtenance thereto (collectively, the "Impositions"), by any lawful authority or public utility or which may become a lien thereon, unless the same shall have been fully paid to Mortgagee as provided in Section 2.02 hereof.

SECTION 2.02. Upon the occurrence of an Event of Default as hereinafter defined or an event which, with the passage of time or the giving of notice would become an Event of Default, and if requested by Mortgagee, Mortgagor will pay to Mortgagee contemporaneously with each monthly payment of interest, principal or principal and interest a sum equal to one-twelfth (1/12th) of the real estate taxes and premiums for insurance required by Article 3 hereof so as to enable Mortgagee to pay the same at least thirty (30) days before they become due. Amounts so paid shall be deemed not to be trust funds but may at the option of Mortgagee be commingled with general funds of Mortgagee. Such amounts shall bear interest for the account of Mortgagor at the rate from time to time set by Mortgagee as its corporate customers earnings rate. If, pursuant to any provision of this Mortgage, the whole amount of the principal debt remaining or any installment of interest, principal or principal and interest becomes due and payable prior to its originally scheduled maturity, Mortgagee shall have the right, at its election, to apply any amounts paid to Mortgagee under this Section 2.02, with accrued interest thereon, against all or any part of the indebtedness secured by this Mortgage, any interest thereon or in payment of the premiums or payments for which the amounts were paid. If the real estate taxes and insurance premiums required to be escrowed pursuant to this Section hereof shall exceed the estimate therefor and the amounts paid into escrow under this Section 2.02, Mortgagor shall on demand forthwith make good the deficiency. Mortgagor will furnish to Mortgagee tax and insurance bills in sufficient time to enable Mortgagee to pay such taxes and premiums, before interest and penalties accrue thereon.

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SECTION 2.03. Unless the same shall have been fully paid to Mortgagee as provided in Section 2.02 hereof, Mortgagor, upon request of Mortgagee, will furnish to Mortgagee within forty-five (45) days after the date when any Impositions would become delinquent, official receipts of the appropriate taxing authority or other authority to which the charge is payable, or other evidence reasonably satisfactory to Mortgagee evidencing the payment thereof.

SECTION 2.04. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, of nonpayment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

## ARTICLE 3

### Insurance

SECTION 3.01. Mortgagor agrees, at Mortgagor's sole cost and expense, to keep the buildings, structures, improvements and Fixtures included in the Mortgaged Property insured at all times throughout the term of this Mortgage (including any period or periods of time during which any such buildings, structures, improvements or Fixtures are in the course of remodeling or construction) and to furnish the following to Mortgagee:

A. Policies of insurance against loss or damage by fire, lightning, windstorm, explosion, riot, riot attending a strike, civil commotion, damage from aircraft and vehicles, and smoke damage and loss or damage from such hazards as are presently included in so-called "extended coverage" and against vandalism and malicious mischief and against such other insurable hazards, including but not limited to flood, as, under good insurance practices, from time to time are insured against for improvements having similar functions and uses in the area where the Mortgaged Property is located. The amount of such insurance shall be not less than the greater of (1) 100% of the "Full Replacement Cost" of such buildings, structures, improvements and Fixtures without deduction for depreciation; (2) an amount sufficient to prevent Mortgagee and/or Mortgagor from becoming a coinsurer within the terms of the applicable policies; or (3) the original principal amount of this Mortgage. "Full Replacement Cost," as used herein, means the cost of replacing all such buildings, structures, improvements and Fixtures, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Such Full Replacement Cost shall be determined from time to time (but

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not more frequently than once in any 24 calendar months) at the request of Mortgagee by an insurer or by an appraiser, engineer, architect or contractor designated by Mortgagor and approved in writing by Mortgagee and paid by Mortgagor. No omission on the part of Mortgagee to request any such determination shall relieve Mortgagor of any of its obligations under this Article 3. Each policy shall contain a "Replacement Cost Endorsement."

B. If required by Mortgagee, policies of insurance against loss or damage to the major components of the air conditioning and/or heating system, flywheels, steam pipes, steam turbines, steam engines, steam boilers, other pressure vessels, high pressure piping and machinery, if any, such as are installed in the buildings and improvements in such amounts as are satisfactory to Mortgagee. Such policies shall also insure against physical damage to the Mortgaged Property arising out of an accident covered thereunder.

C. Policies of comprehensive general liability insurance on an occurrence basis against claims for bodily injury, including personal injury or death occurring upon or in the Mortgaged Property or the elevators therein and on or in the streets adjoining the Mortgaged Property to afford protection to the limit of not less than \$3,000,000 in the event of bodily injury, personal injury, or death of any number of persons or of damage to property arising out of one occurrence. Mortgagor and Mortgagee shall be named insureds under such policies, as their interests may appear.

D. If the Land or any part thereof is situate in an area designated by the Federal Emergency Management Agency (or any successor thereto) as an area of special flood hazard for purposes of the National Flood Insurance Program, such policies of flood insurance as Mortgagee shall request, so as to enable Mortgagee to be in compliance with all regulatory requirements with respect to flood insurance coverage for the Mortgaged Property from time to time applicable to Mortgagee.

E. If requested by Mortgagee, business interruption insurance and/or loss of "rental value" insurance for a period of 12 months in such amounts as are satisfactory to Mortgagee.

F. Such other insurance on the Mortgaged Property or any replacements or substitutions therefor, or additions thereto, and in such amounts as may from time to time be required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of buildings and improvements, their construction, location, use and occupancy.



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SECTION 3.02. Mortgagor may effect for its own account any insurance not required under the provisions of this Mortgage, but any insurance effected by Mortgagor on the Mortgaged Property, whether or not required under this Article 3, shall be for the mutual benefit of Mortgagor and Mortgagee, and shall be subject to all other provisions of this Article 3 and of Article 10 hereof and Mortgagor shall provide Mortgagee written notice of such insurance prior to it being effected along with a photocopy of all such policies promptly upon their issuance.

SECTION 3.03. All insurance shall be subject to the approval of Mortgagee as to insurance companies, amounts, content and form of policies and expiration dates, and shall contain a mortgagee clause, in favor of Mortgagee, in form and substance satisfactory to Mortgagee. Such policies shall provide for the payment of all costs and expenses incurred by Mortgagee in the event of any contested claim and shall not be cancelled or otherwise terminated without at least ten (10) days prior written notice to Mortgagee.

SECTION 3.04. Mortgagor will deliver originals of all such policies to Mortgagee, and, not less than fifteen (15) days prior to the expiration date of each such policy, will deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. Mortgagor will not permit any condition to exist on the Mortgaged Property which would wholly or partially invalidate the insurance thereon. In the event of the occurrence of any loss or damage to the Mortgaged Property, Mortgagor will give immediate written notice thereof to Mortgagee, and Mortgagee may make proof of loss thereof if not made promptly by Mortgagor. Mortgagee may on behalf of Mortgagor adjust and compromise any claims under such insurance and collect and receive the proceeds thereof and endorse drafts and Mortgagee is hereby irrevocably appointed attorney-in-fact of Mortgagor for such purposes; provided, however, that so long as neither Mortgagor nor Company is in default under any of the Loan Documents, Mortgagor shall have the right to approve any such adjustment and/or compromise, which approval shall not be unreasonably withheld. Mortgagee shall apply such proceeds of all casualty insurance in accordance with the provisions of Article 10 of this Mortgage. Mortgagee may deduct from such proceeds any expense incurred by Mortgagee in collecting the same (including reasonable counsel fees).

## ARTICLE 4

### Repairs, Maintenance And Removal

SECTION 4.01. Except as provided herein, Mortgagor will not cause or permit any building, structure or improvement or other property now or hereafter covered by the lien of this

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Mortgage and comprising part of the Mortgaged Property to be removed, or demolished or structurally changed or altered, in whole or in part, or any Fixture comprising part of the Mortgaged Property to be removed, severed or destroyed, without the prior written consent of Mortgagee. Simultaneously with, or prior to, any such permitted removal any such Fixtures shall be replaced with other Fixtures to perform the function of the Fixtures removed and of a value at least equal to that of the Fixtures replaced and free from any title retention or security agreement or other encumbrance. By such removal and replacement Mortgagor shall be deemed to have subjected such Fixtures to the lien and security interest of this Mortgage. Mortgagor will not abandon or cause or permit any waste to the Mortgaged Property. Mortgagor will pay all license fees and similar municipal charges for the use of the Mortgaged Property and the vaults or other areas now or hereafter comprising part thereof or used in connection therewith and will not, unless so required by any governmental agency having jurisdiction, discontinue such use without prior written consent of Mortgagee.

SECTION 4.02. Throughout the term of this Mortgage, Mortgagor, at its sole cost and expense, will take good care of the Mortgaged Property and the sidewalks, curbs and vaults, if any, adjoining the Mortgaged Property and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and unforeseen and foreseen. All repairs made by Mortgagor shall be equal in quality and class to the original work. The necessity for and adequacy of repairs to the buildings and improvements pursuant to this Article hereof shall be measured by the standard which is appropriate for facilities and buildings of similar construction and class, provided that Mortgagor shall in any event make all repairs necessary to avoid any structural damage or injury to the buildings, structures and improvements and to keep the buildings, structures and improvements in a proper condition for their intended uses.

SECTION 4.03. Mortgagor will permit Mortgagee and Mortgagee's representatives to enter the Mortgaged Property at reasonable times to inspect the same. In case any Event of Default shall occur, Mortgagee may, at its option, enter the Mortgaged Property to protect, restore or repair any part thereof. Mortgagee shall not be liable to Mortgagor or any person in possession under Mortgagor if it does enter the Mortgaged Property.

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## ARTICLE 5

### Compliance With Laws, Ordinances, Etc.

SECTION 5.01. Throughout the term of this Mortgage, Mortgagor, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Mortgaged Property or any part thereof and the sidewalks, curbs and vaults adjoining the Mortgaged Property or to the use or manner of use of the Mortgaged Property whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over the streets adjacent to the Mortgaged Property, or onto or over property contiguous or adjacent thereto.

SECTION 5.02. Mortgagor shall have the right, after prior written notice to Mortgagee, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Mortgagee, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 5.01 hereof, and which does not subject Mortgagee to any criminal or civil liability, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien or charge of any kind against the Mortgaged Property (as may be determined in Mortgagee's sole judgment), Mortgagor may delay compliance therewith until the final determination of such proceeding.

(b) If any lien or charge against the Mortgaged Property would or might be incurred by reason of any such delay (as may be determined in Mortgagee's sole judgment), Mortgagor nevertheless may contest as aforesaid and delay as aforesaid, provided Mortgagor (i) furnishes to and maintains with Mortgagee security, at all times reasonably satisfactory to Mortgagee, against any loss or injury by reason of such contest or delay, and (ii) prosecutes such contest with due diligence.

SECTION 5.03. Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting

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the Mortgaged Property, noncompliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon Mortgagor or any lessee or other occupant of the Mortgaged Property or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

## ARTICLE 6

### Changes And Alterations By Mortgagor

SECTION 6.01. Subject to any provisions of Articles 10 or 11 hereof to the contrary, Mortgagor shall have the right from time to time during the term of this Mortgage to make, at its sole cost and expense, changes and alterations in or to the buildings, structures or improvements included in the Mortgaged Property, subject, however, to the following:

(a) No change or alteration involving an estimated cost of more than \$50,000 for any single change or alteration, nor \$100,000 for all such changes and alterations in the aggregate while the Mortgage shall remain unsatisfied of record, shall be undertaken without Mortgagee's prior written consent, which consent shall not be unreasonably withheld.

(b) No change or alteration shall be undertaken until Mortgagor shall have procured and paid for, so far as the same may be required from time to time all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction.

(c) Any structural change or alteration involving an estimated cost of more than \$50,000 shall be conducted under the supervision of an architect and/or engineer selected by Mortgagor and approved in writing by Mortgagee, and no such structural change or alteration shall be made except in accordance with detailed plans and specifications and cost estimates prepared and approved in writing by such architect and/or engineer and approved in writing by Mortgagee.

(d) Any change or alteration shall, when completed, be of such a character as not to materially reduce the economic value of the Mortgaged Property below its value immediately before such change or alteration.

(e) Any change or alteration, once commenced, shall be made promptly (unavoidable delays excepted) and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and

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with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body hereafter exercising functions similar to those of any of the foregoing.

(f) If the estimated cost of any such change or alteration shall be in excess of \$50,000, Mortgagee shall have the right to require Mortgagor, before commencement of work, to furnish to Mortgagee a performance bond or other security reasonably satisfactory to Mortgagee, in an amount at least equal to the estimated cost of such change or alteration, guaranteeing the completion thereof within a reasonable time, free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale, and other charges, and in accordance with the plans and specifications approved by Mortgagee.

(g) Mortgagor shall pay to Mortgagee all reasonable fees and expenses incurred by Mortgagee in connection with such change or alteration, including but not limited to the fees and expenses of any architect selected by Mortgagee to review the plans and specifications and inspect the work on behalf of Mortgagee.

(h) No change or alteration shall, when completed, tie in or connect the Mortgaged Property with any other building, in whole or in part, on adjoining property not covered by this Mortgage.

## ARTICLE 7

### Mechanics' And Other Liens

SECTION 7.01. Mortgagor will pay, or bond, or cause to be paid or bonded, from time to time when the same shall become due, all 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 and profits arising therefrom. Mortgagor will do or cause to be done everything necessary so that the lien and priority hereof shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee.

SECTION 7.02. Mortgagor agrees that should the Mortgaged Property at any time without the prior written consent of Mortgagee be or become subject to the lien of any mortgage or deed of trust in connection with which payments on account of the indebtedness secured hereby are to be made directly or indirectly by or through the mortgagee or beneficiary thereunder, regardless

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of such mortgagee or beneficiary, the whole of the principal and interest and other sums hereby secured at the option of Mortgagee shall immediately become due and payable.

SECTION 7.03. Except as otherwise permitted herein, Mortgagor will not, without the written consent of Mortgagee, create or suffer to be created any security interest under the Illinois Uniform Commercial Code (the "Code"), together with any amendments or supplements thereto, or other encumbrance in favor of any party other than Mortgagee, or create or suffer any reservation of title by any such other party, with respect to any Fixtures, nor shall any such Fixtures or property be the subject matter of any lease or other transaction whereby the ownership or any beneficial interest in any of such property is held by any person or entity other than Mortgagor (or Mortgagee as provided herein). All such property shall be purchased for cash or in such manner that no lien shall be created thereon except the lien of this Mortgage, unless Mortgagee shall agree in writing to the contrary before a contract to purchase any such property is executed.

SECTION 7.04. Mortgagor will not, without the written consent of Mortgagee, create or permit to accrue upon all or any part of the Mortgaged Property any debt, lien or charge except the lien of this Mortgage, and shall promptly cause to be paid and discharged, any debt, lien or charge whatsoever which by any present or future law may be or become superior to, or on a parity with or subordinate to this Mortgage, either in lien or in distribution out of the proceeds of any judicial sale of the Mortgaged Property, or any part thereof, except for liens subordinate to the lien of this Mortgage if such liens are diligently contested in good faith by legal proceedings, which legal proceedings shall operate to prevent any execution on the Mortgaged Property with respect to such liens.

## ARTICLE 8

### Use Of Property

SECTION 8.01. Mortgagor will use, or cause to be used, the Mortgaged Property principally and continuously as residential apartment complex, as contemplated by Mortgagor and Mortgagee. Mortgagor shall not use, or permit the use of the Mortgaged Property for any other principal use without the prior written consent of Mortgagee. Mortgagor shall not use or permit the use of the Mortgaged Property or any part thereof for any other purpose which in the reasonable opinion of Mortgagee would adversely affect the then value or character of the Mortgaged Property or any part thereof.

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SECTION 8.02. Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof.

## ARTICLE 9

### Leases - Annual Statements

SECTION 9.01. Any and all leases (which, for purposes of this Article 9, shall include subleases) of all or any part of the Mortgaged Property which do not substantially comply with a lease approved by Mortgagee shall be subject in all respects to the prior written approval of Mortgagee except as otherwise provided.

SECTION 9.02. Except as is customary under prudent management practices of properties similar in nature to the Mortgaged Property, Mortgagor shall not modify, abridge or terminate any leases of any portion of the Mortgaged Property nor shall any surrender thereof be accepted by Mortgagor without the prior written consent of Mortgagee, nor shall Mortgagor collect rent under any of said leases for more than one month in advance.

SECTION 9.03. Upon request from Mortgagee, Mortgagor shall deliver to Mortgagee, within fifteen (15) days after the end of each month, (i) a rent roll certified by Mortgagor or Company showing each tenant, the term of the lease, the rentable area demised thereunder and the fixed annual rent, and percentage rent, if any, payable thereunder and (ii) a statement of the income and expenses for the Mortgaged Property, satisfactory to Mortgagee.

SECTION 9.04. Mortgagor covenants and agrees that no lease or any rentals under any lease, or any rents, issues or profits issuing from the Mortgaged Property, shall be sold, assigned, transferred, mortgaged, pledged or otherwise disposed of or encumbered, except to Mortgagee, whether by operation of law or otherwise, without the prior written consent of Mortgagee in each instance first had and obtained and any attempt to do so shall be null and void.

SECTION 9.05. Mortgagor will not execute any lease for all or any substantial portion of the Mortgaged Property except for actual occupancy by the lessee thereunder. Mortgagor will perform faithfully the lessor's covenants under any existing or future lease affecting the Mortgaged Property, or any part

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thereof, and neither do, nor neglect to do, nor permit to be done or left undone, anything, other than pursuing the enforcement of the terms of such leases in the exercise of the lessor's remedies thereunder following default on the part of any tenant in the performance of its prescribed obligations, which may cause the modification or termination of any said lease, or of the obligations of any tenant or any person claiming through such tenant, or which may diminish or impair the value of any lease, or the rents provided for therein, or the interest of the lessor or of the Mortgagee therein or thereunder. Mortgagor will not permit any assignment of any lease by the tenant thereunder or any subletting of all or any part of the premises demised by any lease without the prior written consent of Mortgagee. Mortgagor will not execute a mortgage or create or permit a lien which may be or become superior to any lease affecting the Mortgaged Property, or any part thereof without the prior written consent of Mortgagee. Mortgagor will give Mortgagee prompt notice by certified mail, return receipt requested, of any notice of default, the nature of which would permit cancellation or termination of any lease, or notice of cancellation received from any tenant of the Mortgaged Property or any part thereof.

SECTION 9.06. If any leases of any portion of the Mortgaged Property provide for the giving by the lessee of certificates with respect to the status of such leases, each Mortgagor shall exercise its right to request such certificates within ten (10) days of any demand therefor by Mortgagee.

## ARTICLE 10

### Damage Or Destruction

SECTION 10.01. In case of casualty to the Mortgaged Property resulting in damage or destruction, Mortgagor shall promptly give written notice thereof to Mortgagee.

SECTION 10.02. Unless Mortgagee elects to apply insurance proceeds to reduce the indebtedness secured hereby, then, regardless of the amount of any such damage or destruction, Mortgagor shall at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace, rebuild or alter the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction or with such changes or alterations as may be made at Mortgagor's election in conformity with and subject to the conditions of Article 6 hereof. Such restoration, repairs, replacements, rebuilding or alteration shall be commenced promptly and prosecuted with reasonable diligence. If (i) estimates received, and/or made, by Mortgagee disclose that the cost of restoration would be in excess of the amount of the insurance proceeds available therefor, or (ii)



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during the period of restoration by Mortgagor the amount of the insurance proceeds shall not be sufficient to complete such restoration, then in either of such events, Mortgagor shall deposit with Mortgagee the amount required to complete such restoration or such other security as shall be satisfactory to Mortgagee.

SECTION 10.03. All proceeds of and payments under insurance policies with respect to any casualty event shall be paid to Mortgagee and applied by Mortgagee first to payment of the actual costs, fees and expenses, if any, incurred by Mortgagee in connection with adjustment of the loss and settlement with the insurance company. The remainder of such insurance proceeds shall be applied by Mortgagee, at the sole discretion of Mortgagee, either (i) in reduction of the outstanding indebtedness secured by this Mortgage, principal and interest, as Mortgagee may elect, or (ii) to the payment of the cost of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs and the cost of protection of property pending the completion of permanent restoration, repairs, replacement, rebuilding or alterations (all of which temporary and permanent repairs, restoration, replacement, rebuilding, alterations and protection of property are hereinafter collectively referred to as the "restoration").

SECTION 10.04. If under the provisions of this Article 10 insurance proceeds are to be applied to the cost of restoration, Mortgagee shall hold such insurance proceeds, together with any amounts deposited with Mortgagee pursuant to Section 10.02 hereof, and advance the same for application to the cost of the restoration from time to time as the restoration progresses. Such amounts so deposited with Mortgagee shall bear interest for the account of Mortgagor at the rate from time to time set by Mortgagee as its corporate customer's earnings rate. Such funds will be advanced upon the written request of Mortgagor and upon Mortgagor's compliance with such reasonable requirements therefor as Mortgagee shall impose. Upon completion of all of the restoration in a good and workmanlike manner and substantially in accordance with any plans and specifications therefor which Mortgagee may have required, and upon receipt by Mortgagee of evidence satisfactory to Mortgagee that the restoration has been completed and paid for in full and that the Mortgaged Premises are not and will not become subject to any mechanic's or materialmen's liens on account of the restoration or any part thereof, any balance of the insurance proceeds or sums deposited with Mortgagee pursuant to Section 10.02 hereof and not applied to the cost of restoration or applied to reduce the indebtedness secured by this Mortgage, if any, shall be paid over to Mortgagor.

SECTION 10.05. Notwithstanding any provision of this Article 10 to the contrary, if at any time during any restoration of the Mortgaged Property Mortgagor shall be in default under any provision of this Mortgage or the other Loan Documents, Mortgagee

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shall have no obligation to continue to apply insurance money to restoration and may apply such insurance money in any such manner as Mortgagee in its sole discretion may determine, including without limitation application to reduction of the indebtedness secured hereby.

Section 10.06. In no event shall the application to the obligation of Mortgagor, whether or not then due or payable, of any insurance proceeds postpone, abate or reduce any of the periodic installments of principal and interest thereafter to become due under the Note until the Note is paid in full. If Mortgagee shall acquire title to the Mortgaged Property either by virtue of a deed in lieu of foreclosure or a judicial sale thereof pursuant to proceedings under the Note or this Mortgage, then all of Mortgagor's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in Mortgagee.

## ARTICLE 11

### Condemnation

SECTION 11.01. Mortgagor shall give Mortgagee immediate notice of any actual or threatened commencement of condemnation proceedings or the exercise of the right of eminent domain. In the event that the Mortgaged Property, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (hereinafter called collectively, "condemnation proceedings"), Mortgagee may on behalf of Mortgagor participate in any such condemnation proceedings and may on behalf of Mortgagor adjust, contest, accept, reject or compromise any proposed award and collect and receive the proceeds thereof and endorse drafts, and Mortgagee is hereby irrevocably appointed attorney-in-fact of Mortgagor for such purposes. The decision of Mortgagee with regard to the adjustment, contest, acceptance, rejection or compromise of any proposed award issued in connection with any condemnation proceedings shall be binding upon Mortgagor. The award that may be made in any such proceeding or the proceeds thereof shall be deposited with Mortgagee and distributed in the manner set forth in this Article 11. The parties agree to execute any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit with Mortgagee.

SECTION 11.02. If at any time during the term of this Mortgage title to the whole or materially all of the Mortgaged Property shall be taken in condemnation proceedings or by agreement between Mortgagor and Mortgagee and those authorized to exercise such right, Mortgagee shall apply such award or proceeds which it receives pursuant to Section 11.01 hereof to payment of the indebtedness secured by this Mortgage and any balance then

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remaining shall be paid to Mortgagor. In the event that the amount of the award or proceeds received by Mortgagee shall not be sufficient to pay the then unpaid principal balance of the said indebtedness, with the accrued interest thereon, and any other sums secured by this Mortgage, Mortgagor shall, within ten (10) days after the application of the award or proceeds as aforesaid pay such deficiency to Mortgagee. For the purposes of this Section 11.02 "materially all of the Mortgaged Property" shall be deemed to have been taken if the portion of the Mortgaged Property taken shall preclude, in Mortgagee's sole judgment, the effective use of the Mortgaged Property as an economically viable unit for the purposes permitted by Article 8 hereof.

SECTION 11.03. If at any time during the term of this Mortgage title to less than the whole or materially all of the Mortgaged Property shall be taken as aforesaid, all of the award or proceeds collected by Mortgagee pursuant to Section 11.01 hereof, shall, at the option of the Mortgagee, (i) be applied to reduce the indebtedness secured by this Mortgage or (ii) be held by Mortgagee and applied and paid over toward the cost of demolition, repair and restoration, substantially in the same manner and subject to the same conditions as those provided in Article 10 hereof with respect to insurance and other monies. Any balance remaining in the hands of Mortgagee after payment of such costs of demolition, repair and restoration shall be retained by Mortgagee and applied in reduction of the indebtedness secured by the Mortgage. In the event that the costs of such demolition, repairs and restoration shall exceed the net amount collected by Mortgagee, Mortgagor shall pay the deficiency.

SECTION 11.04. If at any time during the term of this Mortgage the temporary use of the whole or any part of the Mortgaged Property shall be taken in condemnation proceedings, all of the award or proceeds collected by Mortgagee pursuant to Section 11.01 hereof shall be held by Mortgagee and applied by Mortgagee toward the payment of the monthly interest payment or of the monthly payments of principal and interest due on the indebtedness secured by this Mortgage and such other sums as are due to Mortgagee under the Note and this Mortgage until such time as the indebtedness secured by this Mortgage and such other sums as are due to Mortgagee under the Note and this Mortgage are completely satisfied and paid, except that, if such taking by condemnation proceedings results in changes and alterations to the Mortgaged Property or any part thereof which would necessitate an expenditure to restore the Mortgaged Property or any part thereof to its former condition, then such portion of the award or proceeds as in Mortgagee's reasonable estimation shall be necessary to cover the cost of restoration shall at the option of Mortgagee be retained by Mortgagee, without application as aforesaid, and be applied and paid over toward the restoration of the Mortgaged Property, or any part thereof, to its former condition in substantially the same manner and subject to the same conditions as those provided in Article 10 hereof with respect to

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insurance and other monies. In the event that the costs of such restoration shall exceed the net amount collected by Mortgagee, Mortgagor shall pay the deficiency.

SECTION 11.05. Mortgagor shall not be entitled to share or retain any award or awards made in condemnation proceedings for consequential damages or for the taking of rights in, under or above the streets adjoining said lands, or the rights and benefits of light, air or access to said streets, or for the taking of space, or rights therein, below the surface of, or above, the Mortgaged Property, provided however, that any award or compensation received by Mortgagee for any such taking shall at the option of Mortgagee be either applied to the reduction of the indebtedness secured hereby, or paid over toward the cost of such demolition, repair and restoration of the Mortgaged Property as shall be necessitated by such taking, substantially in the same manner and subject to the same conditions as those provided in Article 10 hereof with respect to insurance and other monies, and any balance remaining in the hands of Mortgagee shall be retained by Mortgagee, and applied in reduction of the indebtedness secured by this Mortgage in the same manner as provided in Section 11.03 with respect to the balance of the award or awards therein referred to.

SECTION 11.06. In the case of any taking covered by the provisions of this Article 11, Mortgagor and Mortgagee (to the extent that Mortgagee has not been reimbursed therefor by Mortgagor) shall be entitled as a first priority to reimbursement out of any award or awards for all reasonable costs, fees, reimbursements to Mortgagee and expenses incurred in the determination and collection of any such awards.

SECTION 11.07. Notwithstanding any taking by condemnation proceeding, Mortgagor shall continue to pay interest on the entire principal sum secured by this Mortgage at the rate provided in the Note until any such award or payment shall have been actually received by Mortgagee and applied to the principal sum as provided in this Article 11, if it is to be applied under this Article 11. Any reduction in the principal sum resulting from Mortgagee's application of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such application. If prior to Mortgagee's receipt of such award or payment the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, plus the reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment and in establishing the deficiency.

SECTION 11.08. In no event shall the application to the obligation secured hereby of any payment to Mortgagee pursuant to this Article 11 postpone, abate or reduce any of the periodic

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installments of principal or interest thereafter to become due under the Note until the Note is paid in full.

## ARTICLE 12

### Notices

SECTION 12.01. All notices, demands, requests and consents required under this Mortgage shall be in writing. All such notices, demands, requests and consents shall be deemed to have been properly given if sent by United States certified or registered mail with return receipt requested and postage prepaid, addressed to Mortgagor at the address set forth below its signature hereto, with a copy to Company at 2901 Butterfield Road, Oak Brook, Illinois 60521, Attention: Robert H. Baum and addressed to Mortgagee at 350 One Mellon Bank Center, Pittsburgh, Pennsylvania 15258-0001, Attention: Capital Markets Department or at such other address or addresses as any party may hereafter designate in writing to the other parties hereto.

SECTION 12.02. Notices, demands and requests which shall be served by certified or registered mail upon Mortgagor or Mortgagee, in the manner aforesaid, shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed by United States registered or certified mail with return receipt requested as aforesaid in any Post Office or Branch Post Office regularly maintained by the United States Postal Service.

SECTION 12.03. Except as provided in Section 12.01 hereof, if at any time during the term of this Mortgage more than one person or corporation shall be the owner of the Mortgaged Property, then any notices, demands or requests given by Mortgagee to any one of such persons or corporations shall be deemed to have been duly given to Mortgagor for all purposes under this Mortgage, and any notices, demands or requests given by any one of such persons or corporations owning the Mortgaged Property to Mortgagee shall be deemed to have been duly given by Mortgagor for all purposes under this Mortgage, it being the intention that each person or corporation owning the Mortgaged Property irrevocably designates all other such persons or corporations, or any one of them, as their, his, her or its agent for the purpose of giving and receiving all notices, demands and requests required to be given or received under the provisions of this Mortgage.

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## ARTICLE 13

### COVENANTS

SECTION 13.01. Mortgagor and Company hereby covenant with Mortgagee that:

(a) Company shall furnish to Mortgagee within thirty (30) days of the date hereof an Environmental Audit Phase I (the "Environmental Audit") covering such items as requested by Mortgagee, which Environmental Audit shall be prepared by an engineer acceptable to Mortgagee and shall be acceptable in all respects to Mortgagee in its sole discretion; and

(b) If Hazardous Substances are discovered on the Mortgage Property pursuant to the Environmental Audit and Mortgagee elects in its sole discretion to permit Mortgagor to remove such Hazardous Substances, Mortgagor shall immediately commence such removal and shall complete such removal within one hundred and eighty days (180).

## ARTICLE 14

### Events of Default and Remedies

SECTION 14.01. If any of the following events (herein called "Events of Default") shall occur and be continuing, that is to say:

(a) if default shall be made in the payment of any installment of the principal of, or interest on, the indebtedness secured by this Mortgage or any other sum which is payable under the Note, this Mortgage or any other Loan Document and such default shall continue beyond any applicable period of grace provided in the instrument or document requiring such payment; or

(b) if default shall be made by Mortgagor or Company in the performance of, or compliance with, any of the provisions, warranties, covenants, agreements, promises, terms or conditions contained in Section 13.01 of this Mortgage; or

(c) if default shall be made by Mortgagor or the Company in the performance of, or compliance with, any of the other provisions, warranties, covenants, agreements, promises, terms or conditions contained in this Mortgage and such default shall continue for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor provided that, if such default is non-monetary and cannot

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with due diligence be cured within such thirty (30) day period, the Mortgagor shall have such additional time (not to exceed sixty (60) days from the date of such notice) as is necessary to cure the default if the Mortgagor promptly commences such cure after receipt of such notice and diligently and continuously proceeds with such cure to completion; or

(d) any representation or warranty made by and on behalf of Mortgagor or Company herein, in that certain Guaranty and Suretyship Agreement (the "Guaranty") of even date herewith or any other Loan Document or in any certificate, financial statement or other document furnished to Mortgagee pursuant to the provisions hereof or of any other Loan Document, shall prove to have been false or misleading in any material respect when made or a material adverse change in the financial condition of Mortgagor or Company shall occur from the date of the last financial statements furnished Mortgagee; or

(e) Mortgagor or Company or Guarantor, as applicable shall default in the performance or observance of any covenant, condition or provision contained in the Guaranty or in any other Loan Document beyond the applicable period of grace, if any, provided therein with respect to such default; or

(f) INTENTIONALLY OMITTED

(g) if the Environmental Audit is not submitted to Mortgagee within thirty (30) days of the date hereof or is found to be unsatisfactory to Mortgagee in its sole discretion; or

(h) Mortgagor or Company shall (i) apply for a consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its assets, (ii) be generally unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to the relief of debtors, (vi) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; or

(i) a proceeding or case shall be commenced, without the application or consent of Mortgagor or Company, seeking (i) the liquidation, reorganization, dissolution, winding-up

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or composition or readjustment of debts of Mortgagor or Company, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Mortgagor or Company or of all or a substantial part of its assets, or (iii) similar relief in respect of Mortgagor or Company under any law providing for the relief of debtors, and such proceeding or case shall continue undismissed, or unstayed and in effect, for a period of 60 consecutive days; or an order for relief against Mortgagor or Company shall be entered in an involuntary case under such Bankruptcy Code; or

(j) failure to procure or maintain insurance on the Mortgaged Property pursuant to Section 3.01 hereof, which shall be an immediate Event of Default without notice; or

(k) the transfer, sale, conveyance or assignment, either voluntary, involuntary or by operation of law, of any of the Mortgaged Property, or of any of the beneficial interest of the Company in the aforesaid trust without the prior written consent of Mortgagee, except as may be permitted under Article 17 of this Mortgage which shall be an immediate Event of Default without notice;

then upon the happening of any one or more of said Events of Default, the entire unpaid balance of the principal, the accrued interest, and all other sums secured by the Note or this Mortgage shall, at the option of Mortgagee, become immediately due and payable without notice or demand, and in any such Event of Default Mortgagee may forthwith, and without further delay undertake any one or more of the following:

(1) Foreclosure. Institute an action of mortgage foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid balance of the principal indebtedness, with interest, at the rates and pursuant to the methods of calculation specified in the Note and this Mortgage to the date of default and thereafter at the Default Rate provided in the Note together with all other sums secured by this Mortgage, all costs of suit, including, but not limited to, 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 the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Mortgaged

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Property, with interest at the Default Rate (as defined in the Note) on any judgment obtained by Mortgagee from and after the date of any Sheriff's Sale of the Mortgaged Property (which may be sold in one parcel or in such parcels, manner or order as Mortgagee shall elect) until actual payment is made by the Sheriff of the full amount due Mortgagee, and an attorneys' reasonable commission for collection, without further stay, any law, usage or custom to the contrary notwithstanding;

(2) Entry. Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property, and each and every part thereof, and may exclude Mortgagor, its agents and servants wholly therefrom without liability for trespass, damages or otherwise and Mortgagor agrees to surrender possession to Mortgagee on demand after the happening of any Event of Default; and having and holding the same, may use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid, may complete the construction of the buildings, structures and improvements and in the course of such completion may make such changes in the contemplated or completed buildings, structures and improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgaged Property, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become

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payable, whether by acceleration or otherwise, and second, to the payment of any other sums required to be paid by Mortgagor under this Mortgage or under any other Loan Document.

(3) Receivership. 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 Mortgagor or any other person who may be legally or equitably liable to pay moneys secured hereby at the time of application for such receiver, and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Mortgagor and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Such Receiver shall have the power to collect the earnings, revenues, income, rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when 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. Should Mortgagee or any receiver collect earnings, revenues, rents, issues, profits or income from the Mortgaged Property, the moneys so collected shall not be substituted for payment of the debt nor can they be used to cure the default, without the prior written consent of Mortgagee. Mortgagee shall be liable to account only for earnings, revenues, rents, issues, profits and income actually received by Mortgagee. 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:

(a) The indebtedness hereby secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale and with the prior written consent of Mortgagee; or

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

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(4) Sale of personal property. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Mortgaged Property is located (herein called the "Code") with respect to any part of the Mortgaged Property which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this section called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this section shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.

(b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Mortgaged Property for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Mortgaged Property.

(c) The Collateral will be kept at the real estate comprised in the Mortgaged Property, and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.

(d) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statement and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the indebtedness hereby secured, subject to no adverse liens or encumbrances; and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

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(e) If an Event of Default shall occur and be continuing, Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on Mortgaged Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in Article 12 of this Mortgage at least five (5) days before the time of the sale or disposition. Mortgagee may buy at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Mortgaged Property, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in reduction of the indebtedness secured by the Note and the Mortgage.

(f) The remedies of Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed

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part of the realty upon any foreclosure thereof so long as any part of the indebtedness secured by the Note and the Mortgage remains unsatisfied.

(g) The terms and provisions contained in this section shall, unless the context or definitions contained in this Mortgage otherwise require, have the meanings and be construed as provided in the Code.

(5) Sale of the Mortgaged Property. Mortgagee may sell any of the Mortgaged Property, not specifically designated as personal property and subject to subparagraph (4) above, in such a manner as it deems appropriate and in accordance with any applicable law. Mortgagee shall apply the proceeds of any such sale first to the payment of the reasonable costs and expenses incurred by Mortgagee in connection with such sale or collection, including reasonable attorney's fees and legal expenses, second to the payment of the indebtedness evidenced by the Note, whether on account of principal or interest or otherwise as Mortgagee in its sole discretion may elect, and then to pay the balance, if any, as required by law.

SECTION 14.02. Upon the occurrence of an Event of Default hereunder, Mortgagee in pursuance of the foregoing remedies, or in addition thereto, (i) shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as Mortgagee may think fit without impairing Mortgagee's lien in, or rights to, any of such securities and without affecting the liability of any person, firm or corporation for the sums secured hereby, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by Mortgagee from the proceeds of such security; (ii) may, in Mortgagee's sole discretion, release for such consideration, or none, as Mortgagee may require, any portion of the Mortgaged Property without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage, or the priority thereof, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release; and/or (iii) may accept the assignment or pledge of any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienor.

SECTION 14.03. Mortgagor hereby waives and releases (a) all errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage, (b) all benefit that might accrue to Mortgagor by virtue of any present or future laws exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from

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civil process, or extension of time for payment, (c) all benefits that might accrue to Mortgagor from requiring valuation or appraisal of any part of the Mortgaged Property levied or sold on execution of any judgment recovered for the indebtedness secured hereby, and (d) all notices not herein elsewhere specifically required, of Mortgagor's default or of Mortgagee's exercise, or election to exercise, any option under this Mortgage. Mortgagor further agrees to waive the issuance and service of process and enter its voluntary appearance in any action, suit or proceeding brought in connection with any Event of Default and if required by Mortgagee, to 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. Mortgagor will not at any time insist upon, or plead, or in any manner whatever, claim or take any benefit or advantage of any right under any statute heretofore or hereafter enacted to redeem the property so sold, or any part thereof, and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. 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.

SECTION 14.04. No covenant, agreement, provision, term or condition of this Mortgage to be performed or complied with by Mortgagor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Mortgagee. No waiver of any breach shall affect or alter this Mortgage, but each and every covenant, agreement, provision, term and condition of this Mortgage shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

SECTION 14.05. In the event of any breach or threatened breach by Mortgagor of any of the covenants, agreements, terms or conditions contained in this Mortgage, Mortgagee shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though other remedies were not provided for in this Mortgage.

SECTION 14.06. No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any matter 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 Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

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SECTION 14.07. In the event that Mortgagee shall have the right to foreclose this Mortgage, Mortgagor authorizes Mortgagee at its option to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the indebtedness secured hereby or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

## ARTICLE 15

### Non Waiver, Etc.

SECTION 15.01. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms, covenants, agreements, conditions and provisions hereof shall not be deemed to be a waiver of any of the terms, covenants, agreements, conditions, promises and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms, covenants, agreements, conditions, promises and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for the indebtedness and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage, or both, without, as to the security or the remainder thereof, in any way impairing or affecting the lien of this Mortgage or the priority

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of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Property whether or not such lease be subordinate to this Mortgage. For the payment of the indebtedness secured hereby Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

SECTION 15.02. If the payment of the indebtedness hereby secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Mortgaged Property or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify and supplement this Mortgage, the Note and the Loan Documents, and to extend the Maturity Date, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

SECTION 15.03. If any term or provision of this Mortgage or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Mortgage shall be valid and be enforced to the fullest extent permitted by law; provided, however, that if any provision requiring the payment of money by Mortgagor is to any extent invalid or unenforceable Mortgagee may at its option and without notice declare the indebtedness secured hereby immediately due and payable.

SECTION 15.04. Any act to be performed by Mortgagor under this Mortgage or any other Loan Document shall be performed by Mortgagor at Mortgagor's sole cost and expense.

SECTION 15.05. If Mortgagor shall fail to pay any Impositions when and as required by Article 2 hereof, or fail to procure, pay for and deliver to Mortgagee any policy or policies of insurance when and as required by Article 3 hereof, or fail to maintain, protect, restore or repair the Mortgaged Property as required by Article 4 hereof, or fail to pay and discharge any lien, encumbrance or security interest when and as required by Article 7 hereof, or fail to fully and timely perform any other obligation of Mortgagor hereunder or under any of the other Loan

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Documents, Mortgagee shall be under no obligation to take action to correct such failures. However, at its option, Mortgagee may take such action and expend such sums as Mortgagee reasonably deems necessary to correct such failures or any consequences thereof, but such action or payment by Mortgagee shall not constitute a waiver by Mortgagee of the performance of said act, and Mortgagee may declare Mortgagor's failure to perform such act an Event of Default notwithstanding Mortgagee's having undertaken the performance of the act. Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any prior lien or payment of any claim, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted; or (c) in connection with the completion of rehabilitation, furnishing or equipping of the Improvements or Mortgaged Property or the rental, operation or management of the Mortgaged Property or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself. Mortgagor will repay to Mortgagee promptly upon demand any amounts expended by Mortgagee to correct such failure or any consequences thereof, and all expenses of Mortgagee in taking such action, with interest at the Default Rate set forth in the Note from the incurring of such expense or the making of such payment, as the case may be. The payment of such amounts to Mortgagee shall be secured by this Mortgage and Security Agreement.

## ARTICLE 16

### Miscellaneous

SECTION 16.01. If Mortgagor is a corporation, Mortgagor represents and warrants that the execution of this Mortgage has been duly consented to by the stockholders of Mortgagor (if such consent is required by law) and has been duly authorized by its board of directors.

SECTION 16.02. Mortgagor within three days upon request in person or within ten days upon request by mail will furnish a duly acknowledged written statement in form satisfactory to Mortgagee setting forth the amount of the debt then secured by this Mortgage, and stating either that no offsets or defenses exist against the Mortgage indebtedness, or if such offsets or defenses are alleged to exist, the nature and extent thereof.

SECTION 16.03. Mortgagor shall promptly pay upon request all expenses and costs incurred by Mortgagee, including reasonable attorney's fees, together with interest thereon at the

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Default Rate as provided in the Note from the date of the payment thereof by Mortgagee, in connection with any action, proceeding, litigation or claim instituted or asserted by or against Mortgagee or in which Mortgagee becomes engaged, including without limitation bankruptcy, reorganization, arrangements, receivership or similar proceedings, wherein it becomes necessary in the opinion of Mortgagee to protect Mortgagee's interest in the Mortgaged Property or the security afforded hereby, or to defend or uphold the lien of this Mortgage, or the validity or effectiveness of any assignment of any claim, award, payment, property damage insurance policy or any other right or property conveyed, encumbered or assigned by Mortgagor to Mortgagee hereunder, or the priority of any of the same, and all such expenses and costs, and said interest thereon, shall be added to and become part of the principal indebtedness of Mortgagor hereunder and be secured in all respects hereby as if part of the original indebtedness evidenced by the Note; provided, however that in any action to foreclose this Mortgage or to recover or collect the sums due hereunder the provisions of law and of this Mortgage relative to the recovery of costs, disbursements, commissions, allowances and attorneys' fees, shall prevail unaffected by this Section 16.03.

SECTION 16.04. In the event of the passage after the date of this Mortgage of any law of the State where the Land is located, deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, or debts secured thereby, for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee, then and in such event, Mortgagor shall bear and pay the full amount of such taxes, provided that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the Note, or this Mortgage, or otherwise Mortgagee may, at Mortgagee's option, declare the whole sum secured by this Mortgage, with interest thereon, to be immediately due and payable, or Mortgagee may, at Mortgagee's option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

SECTION 16.05. This Mortgage creates a security interest in the Fixtures and other personalty referred to above and shall constitute a Security Agreement under the Code. Mortgagor agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refileing of any instrument or document which Mortgagee may require in order to perfect and maintain Mortgagee's security interest under the Code upon such

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collateral including the charges for examining title and the attorneys' fee for rendering an opinion as to the priority of this Mortgage as a valid and subsisting first lien. Such costs and expenses shall be paid with interest at the rate provided in the Note from the date of payment, and the same shall be secured by this Mortgage. Neither a request made by Mortgagee to Mortgagor to execute any instrument or document to perfect or maintain Mortgagee's security interest nor the failure of Mortgagee to make such a request shall be construed as a release of such collateral or any part thereof from the lien of and the security interest granted by this Mortgage, it being understood and agreed that this covenant and any such security delivered to Mortgagee are cumulative and given as additional security. Mortgagor will execute and deliver to Mortgagee on demand, and hereby irrevocably appoints Mortgagee or any officer of Mortgagee the attorney-in-fact of Mortgagor to execute, deliver and file, such financing statements and other instruments as Mortgagee may require in order to perfect and maintain such security interest under the Code upon the aforesaid collateral.

SECTION 16.06. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean the party executing this instrument, its heirs, personal representatives, successors and assigns or any subsequent owner or owners of the Mortgaged Property, the word "Mortgagee" shall mean the party to whom this Mortgage is given or any subsequent holder or holders of this Mortgage, the word "Note" shall mean the Note or bond secured by this Mortgage, the word "person" shall mean an individual, corporation, general partnership, limited partnership, unincorporated association, or any other legal entity; the singular shall include the plural and the plural the singular; the masculine or feminine or neuter gender shall each include the other genders.

SECTION 16.07. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

SECTION 16.08. The captions of this Mortgage are for convenience and reference only and in no way define, limit or describe the scope or intent of this Mortgage nor in any way affect this Mortgage.

SECTION 16.09. This Mortgage shall be construed and enforced in accordance with the laws of the State where the Land is located.

SECTION 16.10. Mortgagor and Company shall, at its sole cost and expense, promptly upon request of Mortgagee: (i) do all acts and things, including but not limited to the execution and delivery of any further deeds, conveyances, mortgages, assignments and further assurances, reasonably deemed necessary by Mortgagee,

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to establish, confirm, maintain and continue the lien created and intended to be created hereby, all assignments made or intended to be made pursuant hereto, and all other rights and benefits conferred or intended to be conferred on Mortgagee hereby, and Mortgagor shall pay all costs incurred by Mortgagee in connection therewith, including all filing and recording costs, cost of searches, and reasonable counsel fees incurred by Mortgagee; and (ii) furnish Mortgagee with a written certification signed by Mortgagor, as to all then existing leases covering any part of the Mortgaged Property, the names of the tenants, the rents payable thereunder and the dates to which such rents are paid, together with executed copies of all such leases.

SECTION 16.11. Mortgagor represents to Mortgagee that (i) it is duly organized, existing and in good standing under the laws of the state in which it is organized, (ii) it is duly qualified to do business and is in good standing in the state in which the Mortgaged Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by this Mortgage and the Note and (iv) the execution and delivery of and the carrying out of the transactions contemplated by this Mortgage, the execution and delivery of the Note and this Mortgage, and the performance and observance of the terms, covenants, agreements and provisions of all of the foregoing, have been duly authorized by all necessary actions of Mortgagor and will not conflict with or result in a breach of the terms or provisions of any existing law or any existing rule, regulation or order of any court or governmental body or of the Certificate of Incorporation or the By-laws of Mortgagor or Company.

SECTION 16.12. Mortgagor represents and warrants to Mortgagee that the Improvements are 95% leased as of the date hereof.

SECTION 16.13. At such time as Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, 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, and to the extent, set forth in the Note, but not otherwise.

SECTION 16.14. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies shall not be applied in rebuilding or restoring the Improvements, but shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance

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policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redepton may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

SECTION 16.15. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from 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 to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of Mortgagor 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 Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 77, Section 18(a) and 18(b) of the Illinois Statutes. Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws have been made or enacted.

SECTION 16.16. Mortgagor and the Company have, concurrently herewith, executed and delivered to Mortgagee that certain Assignment of Rentals and Leases (the "Lease Assignment") dated as of the date hereof, wherein and whereby, among other things, Mortgagor has assigned to Mortgagee all of the rents, issues and profits of any and all leases and/or the rights of management of the Mortgaged Property, all as therein more specifically set forth, which said Lease Assignment is hereby incorporated herein by reference as fully and with the same effect

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as if set forth herein at length. Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Lease Assignment. Mortgagor further agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all leases of and parts of the Mortgaged Property to the end that no default on the part of lessor shall exist thereunder. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of lessor under any lease of the Mortgaged Property, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all liability, loss or damage which Mortgagee may or might incur under any lease of the Mortgaged Property or by reason of the Lease Assignment; and any and all such liability, loss or damage incurred by Mortgagee, together with the costs and expenses, including reasonable attorney's fees, incurred by Mortgagee in the defense of any claims or demands therefor (whether successful or not), shall be so much additional indebtedness secured by the Note and this Mortgage and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest at the Default Rate from the date of demand to the date of payment.

SECTION 16.17. In the event that the ownership of the Mortgaged Property becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Loan Documents in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section 16.18 contained shall vary or negate the provisions of Article 17 hereof.

SECTION 16.18. It is understood and agreed that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes, transacted solely for the purpose of carrying on or acquiring the business of Mortgagor or, if Mortgagor is Trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of Mortgagor as contemplated by said Section.

SECTION 16.19. This Mortgage and each and every covenant, agreement and other provisions hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may

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enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee. Mortgagee shall have right to grant participations in its rights hereunder or under the Note. Mortgagor and Company hereby expressly authorize Mortgagee to discuss with and furnish to any proposed or existing assignee or participant all financial statements, audit reports and other information relating to the Mortgagor or Company. Mortgagee shall promptly notify Mortgagor or Company of its intent to sell any participation, but failure to give such notice shall not impair the validity thereof or otherwise affect the rights of Mortgagee.

SECTION 16.20. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

SECTION 16.21. The sum of \$78,570 shall be held in reserve by Mortgagee and shall not be advanced to Mortgagor (i) until such time as Mortgagee receives a satisfactory Environmental Audit Phase I. Any funds not advanced to Mortgagor may be applied in the sole discretion of Mortgagee for the payment of costs incurred in the removal of any Hazardous Substances found to be on the Mortgaged Property as indicated by the Environmental Audit Phase I. Any such advances shall be payable by Mortgagee and shall be secured by this Mortgage as if made on the date hereof.

## ARTICLE 17

### Transfer of Mortgaged Property, Etc.

SECTION 17.01. It shall be an immediate Event of Default and default hereunder if, without the prior written consent of Mortgagee, any of the following shall occur:

(a) Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage (except this Mortgage), security interest or other encumbrance or alienation of the Mortgaged Property or any part thereof, or interest therein; provided, however, Beneficiary (as defined in the Joinder to this Mortgage) may transfer its beneficial interest in and to the Mortgaged Property to any entity which is wholly owned by The Inland Group, Inc. ("Inland") or controlled by Inland or Company; or

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(b) If Mortgagor is trustee, then if any beneficiary of Mortgagor shall create, effect or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in Mortgagor.

The provisions of this Section shall be binding upon any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Mortgaged Property, or such beneficial interest in, or partnership or joint venture interest in, the Mortgagor or any beneficiary of the Mortgagor.

## ARTICLE 18

### Limited Liability

SECTION 18.01. This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but as trustee as aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said trustee personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such personal liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the trustee is concerned, the Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to the Mortgaged Property and other collateral conveyed by this Mortgage and the other Loan Documents for the payment thereof, by the enforcement of the lien hereby and thereby created, in the manner herein, therein and in the Note provided, or by action to enforce the personal liability of the Company and/or any guarantor or co-maker.

PROVIDED ALWAYS, that if Mortgagor shall pay all the sums secured by this Mortgage at the times and in the manner provided herein and the Note, and shall keep, observe, perform and comply with all of the provisions of this Mortgage and the Note, to be kept, observed, performed or complied with by Mortgagor, then this Mortgage and the estate and interest hereby granted shall cease and have no further effect; and in such case, Mortgagee, on demand of and at the sole cost and expense of Mortgagor, shall execute proper instruments in recordable form acknowledging satisfaction and discharge of this Mortgage and shall release or assign all of Mortgagee's right, title and interest of, in and to the Mortgaged Property, and shall deliver to Mortgagor any other property then pledged to and held by



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Mortgagee pursuant to the terms of the Note and this Mortgage including all policies of title, fire and property damage insurance theretofore furnished or assigned to Mortgagee and any monies not theretofore applied by Mortgagee in accordance with the Note or this Mortgage.

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound hereby, has caused this Mortgage to be duly executed, on the day and year first above written, intending the same to be a sealed instrument.

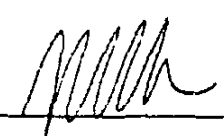
ATTEST:

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

By



By



Its

Asst. Secy

Its

Vp

[Corporate Seal]

Address:

33 North LaSalle Street  
Chicago, Illinois 60690

COOK COUNTY, ILLINOIS  
FILED  
1989 DEC 28 PM 2:30

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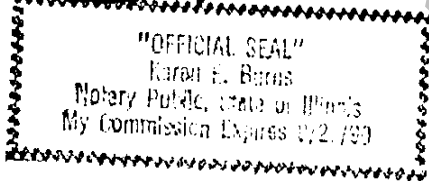
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STATE OF ILLINOIS )  
COUNTY OF Cook ) SS:

I, KAREN E. BURNS, a Notary Public, in and for said County in the State aforesaid, do hereby certify that J. MICHAEL WHELAN, the VICE PRESIDENT and SUZANNE G. BAKER the REGISTERED SECRETARY of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, who personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ and \_\_\_\_\_, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid for the uses and purposes therein set forth; and the said \_\_\_\_\_ then and there acknowledged that, as custodian of the corporate seal of said Company did affix the Corporate seal of said Company to said instrument as his own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 19 day of December 1988.



[Signature]  
Notary Public

(Notarial Seal)

My Commission Expires:

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## JOINDER

CARLISLE LIMITED PARTNERSHIP, an Illinois limited partnership ("Beneficiary") hereby joins in the foregoing Mortgage and Security Agreement (the "Mortgage") dated the date hereof between American National Bank and Trust Company of Chicago, as trustee ("Mortgagor"), and Mellon Bank, N.A. ("Mortgagee"), represents and warrants that the representations and warranties of Mortgagor contained therein are true and correct, and covenants and agrees with Mortgagee that:

(a) The Beneficiary will perform on behalf of Mortgagor, and will observe and be bound by, all of the terms, covenants and provisions of the Mortgage, with the same force and effect as if the Beneficiary executed the Mortgage as a Mortgagor thereunder; provided, however, that the foregoing shall not be deemed to impose any personal liability on the Beneficiary, it being understood that Mortgagee's recourse in the event of a default shall be limited to the remedies as provided in the Mortgage and recourse against any Guarantor of the Note.

(b) The Beneficiary hereby subjects to the lien of and security interest granted by the Mortgage all right title and interest of Beneficiary, if any, in and to the Mortgaged Property (as defined in the Mortgage), with the same force and effect as if the Beneficiary executed the Mortgage as a Mortgagor thereunder.

WITNESS the due execution hereof as of December 23,

1988.

CARLISLE LIMITED PARTNERSHIP, an  
Illinois limited partnership

By Inland Real Estate Corporation,  
its general partner

By: 

Its SENIOR VICE PRESIDENT

88596812

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EXHIBIT A  
LEGAL DESCRIPTION FOR  
THE CARLISLE APARTMENTS  
COOK COUNTY, ILLINOIS

PARCEL 1:

LOT 7 IN FREDRICH WEINSHAUSEN'S DIVISION OF LANDS IN SECTION 15 AND 16,  
TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN,  
ACCORDING TO THE PLAT THEREOF RECORDED MARCH 28, 1898 AS DOCUMENT  
2664878

PARCEL 2:

THAT PART OF THE SOUTH EAST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE  
12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:  
COMMENCING AT A POINT IN THE NORTH LINE OF SAID QUARTER SECTION, 26  
CHAINS AND 54 LINKS WEST OF THE NORTH EAST CORNER OF SAID QUARTER  
SECTION; THENCE SOUTH 19 CHAINS AND 35 LINKS TO THE CENTER OF BALLARD  
ROAD; THENCE WEST ALONG THE CENTER LINE OF SAID ROAD, 5 CHAINS AND 17  
LINKS; THENCE NORTH 19 CHAINS AND 35 LINKS TO THE NORTH LINE OF SAID  
QUARTER SECTION; THENCE EAST ALONG THE NORTH LINE OF SAID QUARTER  
SECTION, 3 CHAINS AND 17 LINKS TO THE PLACE OF BEGINNING (EXCEPTING  
THEREFROM THAT PART THEREOF NORTH OF THE CENTER LINE OF BALLARD ROAD,  
OF THE EAST 31.71 CHAINS OF THE SOUTH EAST 1/4 OF SECTION 15 AFORESAID,  
DESCRIBED AS BEGINNING AT THE POINT OF INTERSECTION OF SAID CENTER LINE  
OF BALLARD ROAD WITH THE WEST LINE OF SAID EAST 31.71 CHAINS AND  
RUNNING THENCE EASTWARDLY ALONG SAID CENTER LINE OF ROAD, A DISTANCE OF  
104 FEET; THENCE NORTH, PARALLEL WITH SAID WEST LINE OF SAID EAST 31.71  
CHAINS OF SAID QUARTER SECTION, A DISTANCE OF 419.07 FEET; THENCE  
WESTWARDLY, PARALLEL TO SAID CENTER LINE OF BALLARD ROAD, A DISTANCE OF  
104 FEET TO SAID WEST LINE OF SAID EAST 31.71 CHAINS AND THENCE SOUTH,  
ALONG SAID WEST LINE, A DISTANCE OF 419.07 FEET TO THE PLACE OF  
BEGINNING:

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 2 FOR THE PURPOSES OF THE USE  
OF ALL WALKWAYS, PARKING AREAS, RECREATION AREAS, OPEN SPACE AREAS AND  
UTILITY CONDUITS AND DRAINAGE RIGHTS IN EXISTENCE AS OF JUNE 30, 1981  
OVER AND IN CERTAIN SPECIFIED ADJOINING PREMISES, AS DESCRIBED AND  
GRANTED IN THE CROSS EASEMENT DECLARATION EXECUTED BY CENTRAL NATIONAL  
BANK IN CHICAGO, AS TRUSTEE UNDER TRUST NUMBERS 24809 AND 24810 DATED  
JUNE 30, 1981 AND RECORDED AUGUST 19, 1981 AS DOCUMENT 25973422.

P.I.N. 09-15-400-008  
09-15-400-016  
09-15-400-017

Address: Church & Ballard Streets, Des Plaines

88596812