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THIS INSTRUMENT PREPARED BY:  
L. DECMAN

90312004

WHEN RECORDED MAIL TO  
HOME SAVINGS OF AMERICA  
P.O. BOX 7075  
PASADENA, CALIFORNIA 91109-7075

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

1990 JUN 29 AM 11:43

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ALL NOTICES TO LENDER SHALL BE  
MAILED OR DELIVERED TO THE ABOVE  
ADDRESS.  
LOAN NO. 1227019-5

**BOX 333 - GG Mortgage, Assignment of Rents and Security Agreement**

7/2/90  
2/27/90  
1

This Mortgage (the "Instrument") is made this 25th day of JUNE, 1990 between

HARRIS TRUST AND SAVINGS BANK  
(the "Mortgagor"), whose address is

111 WEST MONROE STREET  
CHICAGO, IL. 60690

and HOME SAVINGS OF AMERICA, F.A., a federally chartered savings and loan association (the "Lender"), whose address is P.O. Box 7075, Pasadena, California 91109-7075.

WITNESSETH: Mortgagor irrevocably grants, conveys, transfers and assigns to Lender that real property in COOK County, Illinois, the street address of which is

7255 NORTH RIDGE BOULEVARD CHICAGO, IL. 60645

and which is more particularly described as:

LOTS 1, 2 AND 3 IN DECHERS AND SANNERS RESUBDIVISION OF LOTS 19 TO 22 IN BLOCK 12 IN CONGDON'S RIDGE ADDITION TO ROGERS PARK A SUBDIVISION OF THE SOUTH 50 ACRES OF THE SOUTH WEST FRACTIONAL 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 7255 NORTH RIDGE BOULEVARD, CHICAGO, IL. 60645

PTN: 11-30-323-050-0000

TOGETHER with all interest which Mortgagor now has or may hereafter acquire in or to said property, and in and to: (a) all buildings, structures, improvements and tenements now or hereafter located on such real property (together with such property, the "Real Property"); (b) all fixtures, machinery, equipment, furniture, furnishings, building materials, appliances, apparatus, communications and utility systems and facilities, landscaping and goods of every nature whatsoever now or hereafter located in, on, or used or intended to be used in connection with, the Real Property, whether or not physically affixed to the Real Property; (c) all privileges and other rights now or hereafter made appurtenant to the Real Property, including, without limitation, all right, title and interest of Mortgagor in and to all streets, curbs, gutters, sidewalks, sewers, storm drains, roads and public places, open or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Real Property; (d) all rights to minerals, oil and gas and other hydrocarbon substances; water, irrigation and drainage rights; and water stock, air rights and development rights relating to the Real Property; and all damages, royalties and revenues of every kind, nature and description whatsoever that Mortgagor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas and mineral rights and reservations of the Real Property; (e) Mortgagor's rights under and interest in and to any and all leases, tenancies or occupancy agreements now or hereafter affecting the Real Property, together with all renewals, extensions, modifications, amendments, assignments and subleases thereof, and all guaranties thereof (collectively, the "Leases"); (f) all rents, income, issues, profits, accounts receivable, royalties, proceeds and revenues of or relating to the Real Property or the business conducted thereon, including, without limitation, any right to payment for goods sold or leased or for services rendered, and all security deposits made by tenants (collectively, "Rents"); (g) all insurance and insurance policies insuring the Real Property or any activity thereon or interest therein, and all proceeds thereof; all compensation, awards, damages, rights of action and proceeds arising from condemnation or other taking of the Real Property or any part thereof; all causes of action and claims for injury or damage to, or any loss or diminution in value of, the Real Property or any part thereof; all advance payments of insurance premiums made by Mortgagor with respect to the Real Property; all deposits made with or other security given by Mortgagor to governmental authorities or utility companies with respect to the Real Property or proposed improvements thereon; all claims or demands with respect to insurance or such deposits or security; and all rights to refunds or rebates of any such deposits, or taxes or assessments relating to the Real Property; (h) all licenses (including, but not limited to, liquor licenses, operating licenses or similar licenses), contracts, management contracts or agreements, franchise agreements, building, occupancy and other governmental permits, approvals, authorities, consents or certificates acquired or used in connection with the construction, use, ownership, management, operation, occupancy, maintenance, repair, improvement, development or conduct of business on, the Real Property; (i) all accounts receivable, general intangibles and contract rights relating to the development or use of the Real Property; all names, trade names, trademarks, service marks, and logos by which the Real Property or improvements are known or operated, all rights to conduct business under any such name or any variation thereof, and all goodwill in any way relating to the Real Property; (j) all loan proceeds held by Lender, whether or not disbursed; the Funds (as hereinafter defined) and all deposit accounts of Mortgagor with Lender; (k) all shares of stock in any water company or other utility supplying water or utility services to the Real Property, all shares of stock or other evidence of ownership of any part of the Real Property that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar organization having responsibility for management or operation of the Real Property; (l) all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into by or on behalf of Mortgagor for the sale of all or any portion of the Real Property; (m) all books, records, accounts and other documents relating to the construction, ownership, use, management, operation, leasing, maintenance, repair, improvement, or development of, or conduct of business on, the Real Property; (n) all other personal property of Mortgagor, whether tangible or intangible, wherever located and used or to be used in any way in connection with or in any way relating to the Real Property or the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, development of, or conduct of business on, the Real Property and whether now owned or hereafter acquired or created (including, but not limited to, equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights, as all such terms are used in the Uniform Commercial Code), and all fixtures of Mortgagor now owned or hereafter in existence, or hereafter acquired or created, on, or relating to the Real Property; (o) all supplements, modifications and amendments to any of the foregoing and all substitutions, replacements, additions, and accessions to any of the foregoing and all proceeds of all of the foregoing; and The foregoing grant, transfer and assignment in trust is made subject and subordinate to (i) the absolute assignment to Lender of Rents and Leases contained in paragraph 19 and (ii) the security interest in personal property and all other rights of enforcement granted to Lender in paragraph 17. All of the properties described in paragraphs (b) through (o), above, together with the Real Property, are hereinafter referred to collectively as the "Property." Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to evidence or confirm the lien of this Instrument on any of the Property.

FOR THE PURPOSE OF SECURING:

565,200.00

(1) Payment of the sum of \$ even date herewith and having a final maturity date of JULY 10, 2005 with interest thereon, according to the terms of a promissory note of made by Mortgagor payable to Lender

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order, and all modifications, extensions or renewals thereof (the "Note"); (2) payment of such additional sums with interest thereon as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Lender under any provision of this instrument; (3) performance of each agreement of Mortgagee contained herein or incorporated herein by reference or contained in any other agreements or covenants excused by Mortgagee relating to the loan secured hereby, unless such agreement or covenant expressly provides that it is not secured by this instrument (together with the Note and this instrument, the "Loan Documents"); (4) if the Real Property includes a leasehold estate, performance and keeping by Mortgagee of each of the covenants and agreements required to be kept and performed by Mortgagee as lessee pursuant to the terms of the lease and any and all other instruments creating Mortgagee's leasehold interest in or defining Mortgagee's rights as lessee in respect to the Property; (5) performance by Mortgagee of each and every monetary obligation to be performed by Mortgagee under any recorded covenants, conditions and restrictions pertaining to the Property; (6) performance of all agreements of Mortgagee to pay fees and charges to Lender relating to the loan secured hereby; and (7) payment of charges, as allowed by law when such charges are made, for any statement issued by Lender regarding the obligation secured hereby.

For the purpose of including Lender to make the loan secured hereby, Mortgagee hereby represents and warrants that: (a) Mortgagee has fee simple title to the Real Property, subject to no lien, charge, or encumbrance, condition subsequent, defeasance or reversionary right (or, if the Real Property includes a leasehold estate, Mortgagee is the sole legal and beneficial owner of such estate), except for encumbrances to the Real Property approved by Lender in writing, and Mortgagee will defend such title to the Property against all other claims and demands; (b) Mortgagee owns the Property in which the security interest is granted in paragraph 17; (c) this instrument is and shall remain a valid and enforceable lien on the Property; (d) neither Mortgagee's making nor the performance of this instrument with this instrument has resulted or will result in any violation of, or be in conflict with, or result in the creation of any lien, encumbrance or charge, or constitute a default under any indenture, contract, agreement, instrument, franchise or permit by which Mortgagee or any of its properties is bound. All of the foregoing representations and warranties until the indebtedness secured by this instrument is paid in full.

**TO PROTECT THE SECURITY OF THIS INSTRUMENT, MORTGAGEE COVENANTS AND AGREES AS FOLLOWS:**

(1) **Payment of Principal and Interest.** Mortgagee shall pay when due the principal of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by Lender, Mortgagee shall pay to Lender on the day monthly installments of principal and/or interest as payable under the Note (or on another day designated in writing by Lender), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth (1/12) of the yearly premium installments for hazard insurance, rent, loss insurance, comprehensive general liability insurance, and such other insurance as Lender may require pursuant to paragraph 5 hereof; (c) the yearly premium installments for mortgage insurance, if any; and (d) if the Real Property includes a leasehold estate, the yearly rents under the lease, all as reasonably estimated, monthly and from time to time by Lender on the basis of assessments and bills of assessments and bills of reasonable estimates thereof. Any waiver by Lender of a requirement that Mortgagee pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Mortgagee. Lender may require Mortgagee to pay to Lender, in advance, such sums for other taxes, charges, premiums, assessments and impositions relating to Mortgagee or the Property covered by the instrument ("Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid to Lender by Mortgagee in a lump sum or in periodic installments, at Lender's option.

If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Mortgagee shall pay to Lender any amount necessary to make up the deficiency within the thirty day after written notice from Lender to Mortgagee requesting payment thereof. The collection of Funds by Lender is solely for Lender's protection and shall impose no obligations upon Lender other than those expressly provided herein, and in the event of payment in full of the indebtedness secured by this instrument, to allow the due credit for sums received by Lender. Nothing contained herein shall constitute Lender a trustee of the Funds. Lender may commit the Funds with its own funds, and shall not be obligated to pay Mortgagee interest on the Funds. Lender's possession shall be limited over to the assignee, and any responsibility of Lender (herein "Mortgagee") shall terminate. The Funds are hereby pledged as additional security for the indebtedness secured by this instrument.

Upon Mortgagee's breach of any covenant or agreement of Mortgagee in this instrument, Lender may apply, in any amount and in any order as Lender shall determine, in Lender's sole discretion, or any Funds held by Lender at the time of application, (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions, which then are due; or (ii) as a credit against any indebtedness secured by this instrument. Upon payment in full of all sums secured by this instrument, Lender shall promptly refund to Mortgagee any unapplied Funds held by Lender.

(3) **Application of Payments.** Unless applicable law requires otherwise, all payments received by Lender from Mortgagee under the Note or this instrument shall be applied by Lender in such order as Lender, in Lender's sole and absolute discretion, may determine to: (a) amounts payable to Lender by Mortgagee under paragraph 2 hereof; (b) interest payable on the Note; (c) principal of the Note; (d) interest payable on advances made pursuant to paragraph 11 hereof; (e) principal of advances made pursuant to paragraph 11 hereof; and (f) any other sums secured by this instrument.

(4) **Charges.** Lender, Mortgagee shall pay all water and sewer rates, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option, in the manner provided under paragraph 2 hereof, or, if not paid in such manner, by Mortgagee making payment, when due, directly to the appropriate payee thereof, or in such other manner as Lender may designate in writing. When required to do so by Lender, Mortgagee shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Mortgagee shall make payment directly, Mortgagee shall promptly furnish to Lender receipts evidencing such payments. Mortgagee shall permit the encumbrance of the Property with any lien other than the lien of this instrument, including without limitation, judgment liens and mechanics' liens, materialmen's, contractors' and suppliers' liens of any kind, or other liens for material supplied or labor performed on the Property. Should any such lien encumber the Property, Mortgagee shall promptly discharge such lien.

(5) **Insurance.** (a) Mortgagee shall at all times provide, maintain and keep in force all of the following: (i) insurance or other type commonly known as the "extended form of extended coverage," insuring the Property against loss or damage by fire, lightning, vandalism, malicious mischief, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke, and all other risks covered by an all perils endorsement, in an amount sufficient to prevent Lender or Mortgagee from becoming a co-insurer under the terms of the applicable policies and all depreciation. Each such policy shall contain a replacement cost of the improvements (iii) if required by Lender, business interruption insurance and insurance against the loss of "rental value" of the improvements on a "rented or vacant basis" arising out of fire or the perils of the broad form of extended coverage, in an amount satisfactory to Lender; (ii) comprehensive broad form general public liability insurance, insuring against claims and liability for personal injury, death or property damage arising from the use, occupancy, disuse or condition of the Property and the adjoining areas and damages resulting from contamination of the Property by Hazardous Materials (as hereinafter defined); and (iii) such other policies of insurance (including but not limited to boiler and machinery, plate glass, or earthquake insurance), as, and in such amounts as, under good insurance practices, from time to time, are carried by persons engaged in the similar type of business as Mortgagee, and located in the same or similar area as the Property, or as Lender or any governmental or quasi-governmental authority having jurisdiction over Mortgagee or the Property, shall from time to time require. Each insurance policy required by this paragraph 5 shall: (i) be primary and noncontributory with any other insurance Mortgagee may carry; (ii) name or be endorsed to name Lender as an additional insured and/or loss payee thereunder as its interest may appear; (iii) contain mortgagee endorsements acceptable to Lender; (iv) be issued by companies authorized to conduct business in the state in which the Real Property is located; (v) be subject to the written approval of Lender as to insurer, form, content and expiration date; (vi) provide for or be endorsed to provide that the policy (including all endorsements thereto) shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Lender; and (vii) shall contain a waiver of subrogation in form and substance acceptable to Lender. The premiums on such insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Mortgagee making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

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Mortgagor shall furnish Lender with (i) a copy, certified by the appropriate insurance broker or carrier, of each policy required under this paragraph 5 or a certificate for each such policy, in form and substance satisfactory to Lender, and (ii) at least thirty (30) days prior to the expiration of each such policy, evidence satisfactory to Lender of the payment of premiums and the reissuance of a policy continuing in force the coverage provided by the expiring policy. If the Real Property includes a leasehold estate, Mortgagor shall furnish Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied to Lender by Mortgagor. In the event Mortgagor fails to provide, maintain, keep in force, or deliver or furnish to Lender the policies of insurance required by this instrument, Lender may, at its option, without notice or demand upon Mortgagor, procure such insurance (or single-interest insurance covering Lender's interest) with a company selected by Lender and Mortgagor shall pay all premiums thereon without notice or demand upon Mortgagor, promptly upon demand by Lender.

Mortgagor acknowledges that the insurance required to be maintained under this paragraph 5 is necessary to protect Lender's security.

(b) Mortgagor, for itself and on behalf of its Insurers, hereby releases Lender from any liability (including liability by way of contribution, indemnity, or subrogation) for: (i) damages for injury to or death of persons; (ii) any loss or damage to property, including, without limitation, the property of any tenant or licensee of the Property; (iii) any loss or damage to improvements comprising the Property; (iv) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is covered by the insurance required to be carried by Mortgagor hereunder; or (v) claims arising by reason of any of the foregoing, regardless of any negligence on the part of Lender which may have contributed to such loss or damage.

In the event of any loss covered by any such policies, Mortgagor shall give immediate written notice to the insurance carrier and to Lender. Mortgagor hereby authorizes and empowers Lender as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

(6) **Condemnation.** Mortgagor shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect or whether by eminent domain or otherwise, of the Property, or any part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Mortgagor authorizes Lender, at Lender's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Lender's or Mortgagor's name, any action or proceeding relating to any such condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any such condemnation or other taking of the Property, or any part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender, subject, if the Real Property includes a leasehold estate, to the rights of the lessor under the ground lease.

Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

(7) **Injury to Property.** All causes of action of Mortgagor, whether accrued before or after the date of this instrument for damages or injury to the Property or any part thereof, or in connection with the transaction financed in whole or in part by the funds loaned to Mortgagor by Lender, or in connection with or affecting the Property, or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option, assigned to Lender, and the proceeds thereof shall be paid to Lender. Lender may, at its option, appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Mortgagor agrees to execute any further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

(8) **Disposition of Insurance, Condemnation and Other Proceeds.** (a) Any proceeds received by Lender pursuant to this instrument in respect of any insurance maintained by Mortgagor, any action or proceeding relating to any condemnation or other taking of the Property or any claim assigned to Lender pursuant to paragraph 7 shall be first applied to reimburse Lender for costs and expenses incurred in connection with obtaining any proceeds hereunder, and then in such order and proportion as Lender may determine in its sole and absolute discretion, subject, if the Real Property includes a leasehold estate, to the rights of the lessor under the ground lease, (i) applied to the payment of the indebtedness secured by this instrument, whether or not then due and to such components thereof as Lender shall determine; and/or (ii) disbursed to Mortgagor to pay the costs and expenses of necessary repairs or restoration of the Property subject to paragraphs 8(b), (c) and (d). Unless Mortgagor and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. (b) In the event that Lender elects to make any proceeds net of Lender's costs and expenses incurred in connection with obtaining such proceeds available to Mortgagor for payment of the costs and expenses of repair and restoration of the Property, such proceeds shall be disbursed to Mortgagor only upon satisfaction of the following terms and conditions: (i) Mortgagor shall not be in breach of any of its covenants or agreements under this instrument; (ii) Lender shall be satisfied, in its sole discretion, that the portion of the Property damaged, lost or destroyed can and shall be fully restored to the equivalent of its original condition and value, or such other condition as Lender may approve, within a reasonable period of time and in any event prior to maturity of the Note; (iii) Lender shall have approved: (A) a detailed budget and cost breakdown for the repair and reconstruction work; (B) the plans and specifications for the repair and reconstruction work and accompanying approvals of all governmental authorities having jurisdiction; and (C) the general contractor proposed to be engaged to perform such work; (iv) if the net proceeds received by Lender are insufficient to pay the full cost of restoring or repairing the Property, Mortgagor shall deposit with Lender sufficient additional funds to insure payment of all costs and expenses of repair or restoration, and such funds as Lender may require during the period of repair and restoration; and (v) satisfaction of such additional conditions as Lender may reasonably require to protect its security interest in the Property. Mortgagor hereby acknowledges that the specific conditions described in this paragraph 8(b) are reasonable. (c) Upon satisfaction of all conditions set forth in paragraph 8(b), Mortgagor shall cause the work of repair and restoration to be promptly commenced and diligently pursued to completion in accordance with such approved plans and specifications and all applicable laws, ordinances, rules and regulations. Lender shall disburse such proceeds and any such additional funds subject to Lender's usual construction loan disbursement procedures which are the customary and usual in the construction lending industry in the geographic area where the Property is located, including: (i) submission by Mortgagor and the general contractor of vouchers with such architect's certificates and/or other supporting information as requested by Lender, all in form and content satisfactory to Lender, evidencing the work for which disbursement is requested and the cost thereof; (ii) procurement by Mortgagor of performance and payment bonds, where required by any applicable governmental authority, and builders' risk insurance, and receipt by Lender of evidence satisfactory to it that such coverage is in full force and effect; and (iii) if required by Lender, the retainage by Lender of up to ten percent (10%) of the costs of repair and restoration until (A) completion of such work in accordance with approved plans and specifications, and (B) Lender's receipt of satisfactory evidence that the period for filing mechanics' liens has expired, that the Property is free from mechanics' and materialmen's liens, and that all governmental approvals required for occupancy of the Property have been obtained. (d) Any additional funds deposited by Mortgagor pursuant to paragraph 8(c) shall be disbursed prior to disbursement of the proceeds held by Lender. No funds or proceeds held by Lender under this paragraph 8 shall bear or accrue interest. If the conditions set forth in paragraph 8(c) are not satisfied within ninety (90) days after Lender's receipt of such proceeds, or if restoration is not diligently commenced in accordance with paragraph 8(c), or if any such funds or proceeds remain after completion of the repair or restoration, then Lender may apply such funds and proceeds held to reduce the indebtedness secured by this instrument and to such components thereof as Lender shall determine in its sole discretion. Any such application of proceeds and funds shall not cure or waive any event of default or notice of default under this instrument or invalidate any act done pursuant to such notice. (e) If proceeds are applied to the payment of the sums secured by this instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If Lender acquires title to the Property, Lender thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to any proceeds resulting from, or which may be payable as a consequence of, any damage to the Property prior to such sale or acquisition.

(9) **Preservation and Maintenance of Property.** Mortgagor: (a) shall not commit waste or permit any physical deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery, and appliances on the Property when necessary to keep such items in good repair; (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (f) if required by Lender, shall provide for professional management of the Property by a rental property manager satisfactory to Lender pursuant to a contract approved by Lender in writing; (g) in addition to any obligations specifically set forth in this instrument, shall do all acts which, from the character or use of the Property, may be reasonably necessary to protect and preserve the security of Lender, including, without limitation, if the Property includes improvements in which space is rented to others, operate and maintain the Property in a manner to ensure maximum rentals; and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this instrument or the rights or powers of Lender. Neither Mortgagor nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property, or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery or appliances with items of like kind.

(10) **Use of Property.** Mortgagor shall not, without first obtaining Lender's written consent, change the use for which all or any part of the Property was intended at the time this instrument was executed; initiate, join in, consent to or acquiesce in any change in any private restrictive covenant, zoning ordinance or zoning classification of the Property, or other public or private restrictions limiting the uses which may be made of the Property or any part thereof; or do or suffer any act or thing which would impair the security for the indebtedness secured by this instrument or Lender's lien on the Property.

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without set-off or deduction.

(ii) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against Rent; (iii) notify Lender thereof and take such other steps as shall effectively discharge the obligations of such set-off and shall continue to be payable

(18) Lessees of the Property. Mortgagee shall comply with and observe Mortgagee's obligations as landlord under all Leases... (17) Uniform Commercial Code Security Agreement; Fixture Filing. This instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property...

(16) Forfeiture by Lender Not a Waiver. Any forfeiture by Lender in exercising any right or remedy hereunder, or otherwise accorded by applicable law, shall not be a waiver of or prejudice of any other right or remedy. No waiver by Lender of any right... (15) Escrow Certificates. Mortgagee shall within ten days of a written request from Lender furnish Lender with a written statement...

(14) Mortgagee and Lien Not Released. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Mortgagee, Mortgagee's successors or assigns or any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Mortgagee's breach of any covenant or agreement of Mortgagee in this instrument, extend the time for payment of the indebtedness secured by this instrument or any part thereof...

(13) Books and Records. Mortgagee shall keep and maintain at all times at Mortgagee's address stated above, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, budgets, change orders, leases and other instruments which affect the Property... (12) Inspection. Lender may make or cause to be made, but is under no obligation to make or cause to be made, reasonable entries upon and inspections and investigations of the Property for any purpose relating to Lender's interest in the Property...

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In case of commercial leases, upon Lender's request, Mortgagor shall procure and deliver to Lender, a subordination, nondisturbance and attornment agreement in a form satisfactory to Lender from each lessee, tenant and occupant of the Property, or any portion thereof.

(19) **Assignment of Rents and Leases; Appointment of Receiver; Lender in Possession.** As part of the consideration for the loan secured hereby, Mortgagor hereby absolutely and unconditionally assigns and transfers to Lender the Rents and all of Mortgagor's rights under and interest in the Leases. This assignment is intended as an absolute assignment and not an assignment as additional security, and Lender's right to Rents is not contingent upon, and may be exercised without, possession of the Property. Lender hereby grants to Mortgagor a license to collect, receive and hold the Rents as they become due and payable. Mortgagor shall apply the Rents so collected, before using any part of such Rents for any other purpose, to pay operating expenses of the Property; to the cost of maintenance and repair of the Property; to satisfaction of other obligations under Leases; and to payment of obligations under the Loan Documents. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, the license granted herein shall automatically terminate, and upon such termination Lender, regardless of the adequacy of Lender's security: (a) may collect and retain the Rents, including, but not limited to, Rents then due but unpaid, without notice to or demand upon Mortgagor and without taking possession of the Property; (b) shall be entitled to receive payment from Mortgagor of all Rents held by Mortgagor, which Mortgagor shall, upon termination of the license, hold as trustee for Lender; and (c) may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take possession and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof and the conducting thereon of any business or businesses then being conducted by Mortgagor including, but not limited to, the execution, cancellation or modification of Leases, the collection of all Rents, including those past due and unpaid, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property or the conducting of such businesses thereon, all on such terms as are deemed best to protect the security of this Instrument, and Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property. In the event Lender elects to seek the appointment of a receiver for the Property upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Mortgagor hereby expressly consents to the appointment of such receiver.

Mortgagor represents and covenants that Mortgagor has not executed any prior assignment of Rents or Leases, that Mortgagor has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph 19, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the Rents for more than two months prior to the due dates of such Rents. Mortgagor covenants that Mortgagor will not hereafter collect or accept payment of any Rents more than two months prior to the due dates of such Rents. Mortgagor further covenants that Mortgagor will execute and deliver to Lender such further assignments of Rents and Leases as Lender may from time to time request.

All Rents collected subsequent to termination of the license granted herein shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those Rents actually received.

If the Rents are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall become indebtedness of Mortgagor to Lender secured by this Instrument pursuant to paragraph 11 hereof. Unless Lender and Mortgagor agree in writing to other terms of payment, such amounts shall be immediately due and payable by Mortgagor and shall bear interest from the date of disbursement at the rate as adjusted from time to time in accordance with the terms of the Note, compounded monthly, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law.

Lender shall not be liable for any loss sustained by Mortgagor resulting from Lender's failure to let the Property or any part thereof or from any other act or omission of Lender in managing the Property, unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge, nor does Lender undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this assignment, and Mortgagor agrees to indemnify Lender for, and to hold Lender harmless from, any liability, loss or damage which may be incurred under the Leases or under or by reason of this assignment and from any claims and demands which may be asserted against Lender by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Lender incur any such liability under the Leases or under or by reason of this assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall become additional indebtedness of Mortgagor secured by this Instrument pursuant to paragraph 11 hereof. This assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by any tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

No action undertaken by Lender with respect to any of the obligations of Mortgagor evidenced by the Note and this Mortgage, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to said obligations shall in any manner affect, impair or prejudice any of Lender's rights and privileges under this assignment or discharge, release or modify any of Mortgagor's duties or obligations hereunder. Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of Rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein.

This assignment of Rents and Leases shall terminate upon payment in full of the indebtedness secured hereby; provided, however, that the affidavit, certificate, letter or statement of Lender or any officer, agent or attorney of Lender showing any part of the principal, interest or other indebtedness being unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this assignment and any person may, and is hereby authorized to, rely thereon. Mortgagor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof, upon receipt of written notice from Lender, to pay to Lender all Rents accruing under the Leases or from the Property, and to continue to do so until otherwise notified in writing by Lender.

(20) **Acceleration in Case of Insolvency.** If Mortgagor, any guarantor of the obligations secured hereby ("Guarantor"), or any Partner shall voluntarily file a petition under the Federal Bankruptcy Code, as such code may from time to time be amended, or under any similar or successor federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Mortgagor, any Guarantor or any Partner shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of such person within 60 days after such proceedings are commenced, or if an order for relief is entered against Mortgagor, any Guarantor or any Partner in any voluntary or involuntary bankruptcy proceeding, or if a trustee or receiver shall be appointed for Mortgagor, any Guarantor or any Partner or any property of any such person, or if the Property shall become subject to the jurisdiction of a federal bankruptcy court or similar state court, or if Mortgagor, any Guarantor or any Partner shall make an assignment for the benefit of creditors, or if there is an attachment, execution or other judicial seizure of any portion of Mortgagor's, any Guarantor's or any Partner's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Mortgagor, and Lender may invoke any remedies permitted by paragraph 22 of this Instrument. Any attorneys' fees and other expenses incurred by Lender in connection with any such bankruptcy proceeding or any of the other aforesaid events shall be additional indebtedness of Mortgagor secured by this Instrument pursuant to paragraph 11 hereof.

(21) **Transfers of the Property or Beneficial Interests in Mortgagor.** On sale, transfer or encumbrance of: (a) all or any part of the Property, or any interest therein; or (b) any ownership or beneficial interest in Mortgagor or any Partner (if Mortgagor or such Partner is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 22 of this Instrument. Lender shall not exercise this option in the case of: (i) transfers by devise or descent or by operation of law upon the death of a joint tenant; (ii) the grant of a leasehold interest (or, if the Real Property includes a leasehold estate, a subleasehold interest) in a part of the Property of three years or less, including all renewal options (or such longer lease term as Lender may permit by prior written approval), unless such leasehold interest includes an option to purchase; (iii) sales or transfers of beneficial interests in Mortgagor or a Partner provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Mortgagor or such Partner, but excluding sales or transfers under subparagraphs (i) and (ii) above, do not result in more than 25% of the beneficial interests in Mortgagor or such Partner, as applicable, having been sold or transferred since the date hereof; and (iv) sales or transfers of fixtures or any personal property when incident to their replacement with fixtures or personal property of like kind.

(22) **Creation of Other Liens.** Mortgagor shall not create or suffer to be created a mortgage, lien, charge or encumbrance upon any portion of either the Property or the Real Property prior to, on a parity with or subordinate to the lien of this Instrument without the prior written consent of Lender.

(23) **Acceleration; Remedies.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, including, but not limited to, the covenants to pay when due any sums secured by this instrument, or the institution of judicial foreclosure or other proceedings to enforce any other mortgage, security interest, lien or encumbrance of any kind upon the Property or any portion thereof, Lender, at Lender's option, may declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may invoke the remedies permitted by applicable law or provided herein. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, attorneys' fees and costs of documentary evidence, abstracts and title reports.

When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order of foreclosure or sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication cost and costs of procuring all

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expenses of the nature mentioned in this paragraph shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Note secured hereby. Such expenses and expenses shall include expenditures made in connection with: (a) any proceeding to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this instrument or any indebtedness hereby secured; (b) preparation of any suit for foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; (c) preparation of any deed, mortgage or other instrument which may be required to carry out the purposes of this instrument; (d) any efforts for collection of any part of the indebtedness secured hereby, including all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph; second, all other items which Lender may heretofore constitute indebtedness secured by this instrument; third, any items to be added to the Note or to any other instrument which Lender may hereafter execute or amend, including all such items as are mentioned in this paragraph; and fourth, any other items which Lender may hereafter execute or amend, including all such items as are mentioned in this paragraph. Each remedy herein provided shall be distinct and cumulative to all other rights or remedies provided for herein or now or hereafter existing by law, and may be exercised concurrently, independently or successively in any order whatsoever. Every power or remedy hereby given to Lender or to which Lender may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Lender, and may pursue inconsistent remedies. If Lender holds any additional security for or any obligation secured hereby, Lender may enforce the sale thereof at Lender's option, either before, contemporaneously with, or after the sale is made pursuant to the Note.

(25) Notice. Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this instrument shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, and mailed to the party to be notified at the address set forth in this paragraph 25.

(26) Successors and Assigns Bound; Joint and Several Liability; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Mortgagee, subject to the provisions of paragraph 21 hereof. All covenants and agreements of Mortgagee shall be joint and several, in exercising any rights hereunder by Lender. The captions and headings of the paragraphs of this instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

(27) Governing Law; Severability. The loan contract between the parties, including this instrument, the Note and any other obligation which this instrument secures, is made pursuant to and shall be construed and governed by the laws of the United States and the rules and regulations promulgated thereunder. If any paragraph, clause or provision of this instrument, the Note or any other obligations secured by this instrument is found to be unenforceable, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of this instrument or the Note or other notes or obligations secured by this instrument.

(28) Waiver of Status or Limitations. Time is of the essence for all of Mortgagee's obligations hereunder, and to the extent permitted by law, Mortgagee waives all present or future status of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this instrument or any rights or remedies hereunder.

(29) Injury to Property. All causes of action of Mortgagee, whether accrued before or after the date of this instrument for damages or injury to the Property or any part thereof, or in connection with the transaction financed in whole or in part by the funds loaned to Mortgagee by Lender, in connection with or affecting the Property, or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option, assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all its expenses, including reasonable attorneys' fees, may apply such proceeds to the sums secured by this instrument or to any deficiency under this instrument or to any release any monies so received by it or any part thereof as Lender may elect. Lender may, at its option, appear in its own name to bring any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Mortgagee agrees to execute any instrument or assignment and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

(30) Offset. No indebtedness secured by this instrument shall be deemed to have been offset or compensated by all or part of any claim, cause of action, counterclaim or crossclaim, whether judicial or non-judicial, which Mortgagee, now or hereafter may have or may claim to have against Lender, and, in respect to the indebtedness now or hereafter secured hereby, Mortgagee waives to the fullest extent permitted by law, the benefits of any applicable law, regulation or procedure which substantially provides that where cross-demands for money have existed between persons at any point in time when neither demand was barred by the applicable statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated insofar as they equal each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the applicable statute of limitations.

(31) Misrepresentation or Non-disclosure. Mortgagee has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the Note or notes which this instrument secures, and in the event that Mortgagee has made any material misrepresentations or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this instrument, irrespective of the maturity date specified in the Note or notes, immediately due and payable.

(32) Statement of Obligation. Lender may collect a fee of \$50.00 or such greater maximum amount as is allowed by law for furnishing any statement of obligation, notwithstanding the existence of any other security interests in the Property held by Lender or by any other party under the Note secured by this instrument.

(33) Waiver of Marshaling. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereof shall be satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagee, any party who consents to this instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

(34) Request for Notice. Mortgagee requests that copies of any notice of default and notice of sale hereunder be sent to Mortgagee at Mortgagee's address stated above.

(35) Waiver of Homestead. Mortgagee hereby waives all rights of homestead exemption in or relating to the Property.

(36) General Provisions. (a) This instrument applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors and assigns, and is subject to paragraph 21 hereof, their successors and assigns; (b) the term "Lender" shall mean the owner and holder (including a pledgee) of the Note or notes secured hereby, whether or not named as Lender hereon; and (c) whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and vice versa.

(37) Adjustable Rate Mortgage Provisions. The Note contains provisions which permit: (a) increases and decreases to the rate of interest provided in the Note; (b) increases and decreases to the payment of principal and interest; (c) a limitation on increases and decreases to said payment amount; and (d) increases in the outstanding principal amount due on the loan. Reference is made to the Note for a complete description of the adjustable rate terms of the indebtedness secured by this instrument. In no case shall the unpaid interest added to the principal exceed one hundred and fifty percent (150%) of the original principal indebtedness. Mortgagee agrees that at Lender's request it shall provide to Lender additional title insurance to the full amount of the outstanding principal indebtedness due hereunder if the principal indebtedness has increased by reason of negative amortization as provided in the Note.

(38) Waiver of Right of Redemption. Mortgagee has been directed by its board of directors to and hereby does waive any and all rights of redemption from sale under any order of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, except as provided in this Mortgage.

(39) Definitions. "Hazardous Material" means any chemical, substance, object, condition, material or waste which is or may be hazardous to human health or safety or to the environment, due to its radioactivity, ignitability, corrosivity, flammability, reactivity, toxicity, infectiousness or other harmful properties or effects, including all chemicals, substances, materials or wastes that are now or hereafter regulated in any manner, classified as dangerous, hazardous or toxic, or as pollutants or contaminants, or to which exposure is prohibited or restricted by any federal, state or local governmental agency, board or public authority or by any Environmental Law.

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"Environmental Law" means any federal, state or local law, ordinance or regulation or any rule adopted or guideline promulgated pursuant thereto, or any order, ruling or directive of any federal, state, local, executive, judicial, legislative, administrative or other governmental agency, board or public authority relating to health, industrial hygiene, the environment, or the occupational or environmental conditions on, under or about the Property (including ambient air, soil, soil vapor, groundwater, surface water or land use), whether now or hereafter in force.

"Hazardous Materials Claims" means any and all claims, causes of action, demands, liens, losses, damages (including all foreseeable and unforeseeable consequential damages), injuries to persons and/or property, judgments, penalties, fines, suits, citations and notices, proceedings, defenses, offsets, obligations, duties, costs (including all remedial, removal, response, abatement, cleanup, compliance, legal, investigative and monitoring costs and other related costs, expenses and disbursements, such as attorneys', paralegals' and experts' fees), charges, expenses and other liabilities whether instituted, made, sought, brought, imposed, completed, threatened, incurred or suffered, directly or indirectly arising out of or attributable to (a) the use, generation, manufacture, production, transportation, treatment, storage, release, threatened release, discharge, disposal, or presence of, or exposure of any person or property to, a Hazardous Material on, under, or about the Property; (b) the migration, escape, seepage, leakage, spillage, emission or release of a Hazardous Material from the Property or any other property legally or beneficially owned by Mortgagor; or (c) the violation by Mortgagor or any predecessor in title to Mortgagor of any Environmental Law.

"Other Claims" means any and all claims, causes of action, demands, liens, losses, damages (including all foreseeable and unforeseeable consequential damages), injuries to persons and/or property, judgments, penalties, fines, suits, citations and notices, proceedings, defenses, offsets, obligations, duties, costs, charges, expenses and other liabilities that are not Hazardous Materials Claims, whether instituted, made, sought, brought, imposed, completed, threatened, incurred or suffered, directly or indirectly arising out of or attributable to any act by Mortgagor or any of its directors, officers, employees, agents, contractors or representatives respecting the Property.

(40) **Compliance with Environmental Laws.** (a) Mortgagor shall at all times keep and maintain the Property in compliance with, and shall not cause or permit the Property or any activities conducted thereon to be in violation of, any Environmental Law, and shall give all notices and warnings and make all disclosure required by Environmental Laws. Mortgagor shall not, and shall not permit any tenant, lessee or other occupant of, or any contractor, subcontractor or any other person present on the Property to use, generate, manufacture, store, produce, distribute, treat, release, discharge, dispose of or otherwise permit the presence of, on, under or about the Property or transport to or from the Property any Hazardous Materials in a manner or quantity so as to be in violation of any Environmental Law. (b) Mortgagor shall immediately advise Lender in writing of Mortgagor's discovery of or receipt of notice of: (i) any and all Hazardous Materials Claims; (ii) any use, generation, manufacture, production, release, discharge, treatment, storage, disposal or presence of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the Property or within any improvements located thereon or into the sewer, septic, waste treatment, storage or disposal system servicing the Property; (iii) any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Environmental Law. Mortgagor shall also provide to Lender copies of all notices concerning Hazardous Materials received by Mortgagor and all responses to such notices, including all reports, studies, analyses, data, test results, consultants' reports, laboratory analysis and/or remedial action plans and other materials prepared by or on behalf of Mortgagor. (c) Mortgagor shall not, without Lender's prior written consent, enter into any settlement agreement, consent decree, or other compromise in respect to any actual or potential Hazardous Materials Claim which settlement, consent or compromise might, in Lender's judgment, impair the value of Lender's security. Lender shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions involving Hazardous Materials Claims and have its attorneys' fees in connection therewith paid by Mortgagor.

(41) **Environmental Report.** Upon Lender's request from time to time Mortgagor shall, at Mortgagor's sole cost and expense, cause to be prepared and submitted to Lender a comprehensive environmental survey and report (the "Environmental Report") concerning the Property prepared by or in conjunction with a qualified environmental engineering firm approved by Lender. The Environmental Report shall: (i) determine the existence of any Hazardous Materials on, under or about the Property; (ii) if appropriate, due to the existence of Hazardous Materials, set forth clean-up objectives required by the Illinois Environmental Protection Agency ("IEPA"); (iii) assess Mortgagor's and the Property's compliance with the requirements of all Environmental Laws; and (iv) if necessary, set forth recommendations and procedures for the containment, removal or cleanup of any Hazardous Materials and the maintenance, repair or decontamination of the Property in a manner consistent with Environmental Laws, any clean-up objectives set by the IEPA, and all other applicable federal, state or other governmental laws, regulations and standards. Mortgagor shall, at its sole cost and expense, comply with all requirements and procedures contained in the Environmental Report.

(42) **Remedial Work.** In the event that any investigation, site monitoring, abatement, containment, cleanup, removal, restoration, response or other remedial work of any kind or nature with respect to the Property (the "Remedial Work") is required under any Environmental Law or recommended in any Environmental Report, Mortgagor shall within thirty (30) days after written demand for performance thereof by Lender (or such shorter period of time as may be required under any applicable Environmental Law): (a) commence to perform, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work at Mortgagor's sole cost and expense; and (b) provide Lender with a bond, letter of credit or similar financial assurance acceptable to Lender evidencing that funds are available to pay for the costs of such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Lender, shall achieve any clean-up objectives set by the IEPA and shall be in compliance with applicable Environmental Laws. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Lender may, but shall not be required to, cause such Remedial Work to be performed and all reasonable costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured hereby. Mortgagor hereby specifically grants to Lender and its agents and employees a license to enter upon the Property for the purpose of exercising its rights under this paragraph or under paragraph 43.

(43) **Inspection and Tests.** Lender is authorized by itself, its agents, employees or workmen to enter at any reasonable time upon any part of the Property for the purposes of inspecting the same for Hazardous Materials and Mortgagor's compliance with paragraphs 41 and 42, and such inspections may include borings, studies, sampling, and other tests. Mortgagor shall cooperate with Lender in the conduct of such inspections. Mortgagor agrees to reimburse Lender, upon demand, for all reasonable expenses, costs or other amounts incurred by Lender in performing any such inspection.

(44) **Nonliability of Lender.** (a) Lender neither undertakes nor assumes any responsibility or duty to Mortgagor or any third party to select, review, inspect, examine, supervise, pass judgment upon or inform Mortgagor or any third party of the quality, adequacy or suitability of: (i) the presence of any Hazardous Materials on the Property or any other matter set forth in paragraphs 40, 41, 42 and 43; (ii) any Environmental Report; or (iii) any other matters or items the review, inspection, examination or approval by Lender or which is contemplated by this Instrument. Any such selection, review, inspection, examination and the like is solely for the purpose of: (i) determining whether or not Mortgagor's obligations under this instrument are being properly discharged; and (ii) protecting Lender's security and preserving Lender's rights under this instrument, and such selection, review, inspection, examination and the like shall not render Lender liable to Mortgagor or any third party for the sufficiency, accuracy, completeness, or legality thereof and shall not operate to waive any rights of Lender hereunder. (b) Lender owes no duty of care to protect or inform Mortgagor or any third party against negligence, faulty, inadequate or defective building or construction or the existence of any environmentally hazardous condition in any manner arising out of or related to the presence of any Hazardous Materials on the Property, and Lender shall not be responsible or liable to Mortgagor or any other party therefor. (c) By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Lender pursuant hereto, including, but not limited to, any financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same; or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to anyone with respect thereto by Lender. The consent or approval by Lender to or of any act by Mortgagor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

(45) **Representations and Warranties.** Mortgagor represents and warrants that, except as otherwise disclosed to Lender in writing: (a) Mortgagor, after reasonable investigation, has no knowledge of: (i) any past or ongoing use of or on the Property or any property adjacent to the Property that has resulted or may result in the presence of any Hazardous Materials on, under or about the Property or on the real property adjacent thereto, or of any aboveground or underground storage tanks or containers on the Real Property or any real property adjacent thereto; (ii) the presence of any asbestos in any improvements comprising part of the Property; or (iii) the presence of any other Hazardous Materials on, under or about the Property or any property adjacent thereto. (b) The Property, its present use and the use contemplated by Mortgagor comply with all applicable Environmental Laws, as well as all federal, state and local land use and zoning laws and regulations. (c) Neither the Property nor Mortgagor is subject to any Hazardous Materials Claim. (d) Neither Mortgagor nor any tenant on the Property has obtained and such persons are not required by any applicable Environmental Law to obtain any license, permit or similar authorization to construct, occupy, operate or use any improvement, fixture or equipment that is part of, or is located on, the Property or to operate any business that is being conducted or intended to be conducted on the Property.

(46) **Indemnity.** (a) Mortgagor shall protect, defend, indemnify and hold harmless Lender, any successor to Lender, any assignee of Lender's interest in and to the Loan, the directors, officers, shareholders, employees and agents of such entities, and their respective heirs, executors, administrators, legal representatives, successors and assigns from and against any and all Hazardous Materials Claims, and also from and against any and all Other Claims. Mortgagor understands and agrees that its obligations under this paragraph shall arise upon the discovery or assertion of any Hazardous Materials Claim or Other Claim, the amount of which may be contingent or unliquidated, and not upon the realization of loss or damage. Mortgagor agrees to pay to Lender from time to time, upon Lender's request, an amount equal to the out-of-pocket expenses incurred by Lender as a result of any Hazardous Materials Claim or Other Claim. Such amounts shall become part of

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Notary Public

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this

day of

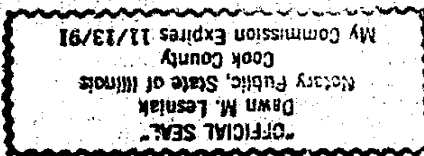
the said company, for the uses and purposes therein set forth. Secretary, as custodian of the corporate seal of said company, did affix the corporate seal of said company to said instrument as such Secretary, respectively, of subscribed in the foregoing instrument as such appeared before me this day in person and being first duly sworn by me severally acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth and the said Secretary, as custodian of the corporate seal of said company, did affix the corporate seal of said company to said instrument as such Secretary, respectively, of personally known to me to be the same persons whose names are President and

a Notary Public, in and for and residing in

County, in the State aforesaid, DO HEREBY CERTIFY THAT

STATE OF ILLINOIS  
COUNTY OF

SS:



My commission expires:

personally known to me to be the same person(s) whose name(s) they are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the same instrument as their free and voluntary act, for the uses and purposes therein set forth. Given under my hand and official seal, this 26th day of June, 19 90

Notary Public

*[Signature]*

JAMES J. PERNER AND KENNETH E. PIKUT

a notary public in and for said county and state, do hereby certify that

Dawn M. Lesniak

State of Illinois County ss:

LOAN NO. 1227819-5

ATTEST: HARRIS TRUST AND SAVINGS BANK  
By *[Signature]* its  
As Trustee as aforesaid, and not personally or individually  
By *[Signature]* its  
VICE PRESIDENT

The term Mortgage shall mean the HARRIS TRUST AND SAVINGS BANK, TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1990, AND KNOWN AS TRUST NUMBER 94746 as Trustee and where the context permits, or requires the owners of the beneficial interest in Trust No. 94746 and their respective personal representatives, successors and assigns. IN WITNESS WHEREOF MORTGAGOR has executed this instrument or has caused the same to be executed by its representatives thereunto duly authorized.

This Mortgage is executed by HARRIS TRUST AND SAVINGS BANK not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested to it as such Trustee, and it is expressly understood and agreed by the Lender herein and by every person now and hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage shall be construed as creating any liability on said Trustee personally to pay said Note or any interest that may accrue thereon, on any indebtedness accruing hereunder or to perform any covenants either express or implied herein contained, all such liability, if any, being expressly waived, and that any recovery for any breach of any warranty contained in this Mortgage and any recovery on this Mortgage and the Note secured hereby shall be solely against and out of the Property hereby conveyed by enforcement of the provisions hereof and of said Note, and any other instrument given to secure said Note, but this waiver shall in no way affect the personal liability of any cosigner, endorser or guarantor of said Note.

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