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THIS INSTRUMENT PREPARED BY:  
John S. Griffith  
Wildman, Harrold, Allen & Dixon  
225 W. Wacker Drive, Chicago, IL 60606  
WHEN RECORDED MAIL TO  
HOME SAVINGS OF AMERICA  
P.O. BOX 7075  
PASADENA, CALIFORNIA 91109-7075

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

90399533

1990 AUG 16 AM 10:45

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ALL NOTICES TO LENDER SHALL BE  
MAILED OR DELIVERED TO THE ABOVE  
ADDRESS.

Mortgage, Assignment of Rents and Security Agreement

1900  
BOX 333

This Mortgage (the "Instrument") is made this 15th day of August, 1990, between American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement, dated May 15, 1989 and known as Trust Number 106425-02 (the "Mortgagor"), whose address is

33 North LaSalle St., 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 the City of Chicago, Cook County, Illinois, the street address of which is 4344-56 N. Winchester and 1945-55 West Montrose, Chicago, Illinois 60613 and which is more particularly described as:

LOTS 1 TO 4 IN BLOCK 3 IN FOSTER'S MONTROSE BOULEVARD SUBDIVISION, BEING A RESUBDIVISION OF PART OF THE NORTH WEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 18, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY AND EXCEPT STREETS HERETOFORE DEDICATED, REFERENCE BEING HAD TO THE PLAT OF SAID SUBDIVISION RECORDED MAY 9, 1905 AS DOCUMENT NO. 3692294, IN COOK COUNTY, ILLINOIS

PIN: 14-18-400-017  
14-18-400-018

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 or 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 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 of 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 of 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:

(1) Payment of the sum of \$1,150,000.00 with interest thereon, according to the terms of a promissory note of even date herewith and having a final maturity date of August 15, 2005 made by Mortgagor payable to Lender

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Property of Cook County Clerk's Office

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or 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 Mortgagor contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Mortgagor 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 Mortgagor of each of the covenants and agreements required to be kept and performed by Mortgagor as lessee pursuant to the terms of the lease and any and all other Instruments creating Mortgagor's leasehold interest in or defining Mortgagor's rights as lessee in respect to the Property; (5) performance by Mortgagor of each and every monetary obligation to be performed by Mortgagor under any recorded covenants, conditions and restrictions pertaining to the Property; (6) performance of all agreements of Mortgagor 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 inducing Lender to make the loan secured hereby, Mortgagor hereby represents and warrants that: (a) Mortgagor 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, Mortgagor is the sole legal and beneficial owner of such estate), except for exceptions to title previously approved by Lender in writing, and Mortgagor will defend such title to the Property against all other claims and demands; (b) Mortgagor 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 Mortgagor's making nor the performance of and compliance 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 Mortgagor or any of its properties is bound. All of the foregoing representations and warranties shall survive the funding of the loan secured hereby and shall remain continuing representations and warranties until the indebtedness secured by this Instrument is paid in full.

## TO PROTECT THE SECURITY OF THIS INSTRUMENT, MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

(1) **Payment of Principal and Interest.** Mortgagor 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 this Instrument.

(2) **Funds for Taxes, Insurance and Other Charges.** Upon request by Lender, Mortgagor shall pay to Lender on the day monthly installments of principal and/or interest are 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 of: (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Property; (b) the yearly premium installments for hazard insurance, business interruption 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 initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Mortgagor pay such Funds may be revoked by Lender, in Lender's sole discretion, at any time upon notice in writing to Mortgagor. Lender may require Mortgagor to pay to Lender, in advance, such sums for other taxes, charges, premiums, assessments and impositions relating to Mortgagor or the Property payment of which Lender reasonably shall deem necessary to protect any of the liens or security interests of Lender covered by this Instrument ("Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid to Lender by Mortgagor 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, Mortgagor shall pay to Lender any amount necessary to make up the deficiency within thirty days after written notice from Lender to Mortgagor 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 due credit for sums received by Lender. Nothing contained herein shall constitute Lender a trustee of the Funds. Lender may commingle the Funds with its own funds, and shall not be obligated to pay Mortgagor interest on the Funds unless required to do so by applicable state law. Upon assignment of Lender's beneficial interest in this Instrument, any Funds then in Lender's possession shall be turned over to the assignee, and any responsibility of Lender therefor shall terminate. The Funds are hereby pledged as additional security for the indebtedness secured by this Instrument.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Instrument, Lender may apply, in any amount and in any order as Lender shall determine, in Lender's sole discretion, 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 Mortgagor any unapplied Funds held by Lender.

(3) **Application of Payments.** Unless applicable law requires otherwise, all payments received by Lender from Mortgagor 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 Mortgagor 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 or advances made pursuant to paragraph 11 hereof; and (f) any other sums secured by this Instrument.

(4) **Charges; Liens.** Mortgagor shall pay all water and sewer rates, rents, 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 Mortgagor 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, Mortgagor shall promptly furnish to Lender all notices of a amount's due under this paragraph 4, and in the event Mortgagor shall make payment directly, Mortgagor shall promptly furnish to Lender receipts evidencing such payments. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Mortgagor shall not encumber nor permit the encumbrance of the Property with any lien other than the lien of this instrument, including, without limitation, judgment liens and mechanics', materialmen's, contractors', subcontractors' 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, Mortgagor shall promptly discharge such lien.

(5) **Insurance.** (a) Mortgagor shall at all times provide, maintain and keep in force all of the following policies of insurance: (i) insurance of the type commonly known as the "broad 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, air, air, vehicles and smoke, and all other risks covered by an all perils endorsement, in an amount sufficient to prevent Lender or Mortgagor from becoming a co-insurer under the terms of the applicable policies and at least equal to one hundred percent (100%) of the then full replacement cost of the improvements thereon without deduction for physical depreciation. Each such policy shall contain a replacement cost endorsement; (ii) 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; (iii) 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 or ways, with a single limit of coverage in an amount approved by Lender, but in no event less than One Million Dollars (\$1,000,000); (iv) workmen's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Mortgagor engaged on or with respect to the Property, in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in the amounts so established; (v) during the course of any construction or repair of improvements on the Property, builder's "completed value" insurance against "all risks of physical loss," including collapse and transit coverage, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, containing the "permission to occupy upon completion of work or occupancy" endorsement, and covering Lender's interest in the Property, as it may appear; (vi) if required by Lender, insurance against any damage by flood or similar occurrences, in the event such insurance is available pursuant to the provisions of the Flood Disaster Protection Act of 1973, or other applicable law, in an amount equal to the lesser of one hundred percent (100%) of the insurable value of the Property or the maximum amount obtainable under such law; (vii) if required by Lender, environmental liability insurance covering loss and damages resulting from contamination of the Property by Hazardous Materials (as hereinafter defined); and (viii) 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 Mortgagor, and located in the same or similar area as the Property, or as Lender or any governmental or quasi-governmental authority having jurisdiction over Mortgagor 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 Mortgagor 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 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 waivers 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 Mortgagor making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

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Mortgagee 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 maintenance of a policy continuing in force in accordance with the terms of the policy. If the Real Property includes a leasehold estate, Mortgagee 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 Mortgagee, in the event Mortgagee fails to provide, maintain, keep in force, or deliver to Lender the policies of insurance required by this instrument, Lender may, at its option, without notice or demand upon Mortgagee, procure such insurance (or single-interest insurance coverage) with a company selected by Lender and Mortgagee shall pay all premiums thereon without notice or demand upon Mortgagee, promptly upon demand by Lender.

Mortgagee acknowledges that the insurance required to be maintained under this paragraph 5 is necessary to protect Lender's security. Mortgagee, 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 Mortgagee 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, Mortgagee shall give immediate written notice to the insurance carrier and to Lender. Mortgagee hereby authorizes and empowers Lender as attorney-in-fact for Mortgagee 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.

(e) **Condemnation.** Mortgagee 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 Mortgagee shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Mortgagee authorizes Lender, at Lender's option, as attorney-in-fact for Mortgagee, to commence, appear in and prosecute, in Lender's or Mortgagee's name, any action or proceeding relating to any 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, shall be paid to Lender, subject to the proceeds of the Property, or any part thereof, or for conveyances in lieu of condemnation, in connection with any such condemnation or other taking of the Property, or any part thereof, or for conveyances in lieu of condemnation, in connection with any such condemnation to Lender, subject to the Real Property includes a leasehold estate, to the rights of the lessor under the ground lease.

Mortgagee agrees to execute such action or proceeding as Lender may require.

(7) **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 in connection with the transaction, including in whole or in part by the insured loaned to Mortgagee by Lender, or in connection with or affecting the Property, or any part thereof, or any cause 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. Mortgagee agrees to execute any further assignments and other instruments as from time to time may be necessary, or 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 Mortgagee, 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 and then in such order and proportion as Lender may determine in its sole and absolute discretion, subject to the Real Property, including 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 (ii) (b) and (c) unless Mortgagee and Lender otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installment entered thereunder in paragraphs 1 and 2 hereof or change the amount of such installments. (b) In the event that Lender elects to make any proceeds received by Lender sufficient to pay the full cost of restoring or repairing the Property, available to Mortgagee for payment of the costs and expenses of repair and restoration of the Property, such proceeds shall be disbursed to Mortgagee only upon satisfaction of the following terms and conditions: (i) Mortgagee 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 appraisals of all governmental authorities having jurisdiction; and (C) the general contractor proposed to be engaged to perform such work; (iv) the net proceeds received by Lender are sufficient to pay the full cost of restoring or repairing the Property. Mortgagee shall deposit with Lender sufficient additional funds to insure a 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. Mortgagee hereby acknowledges that the specific conditions described in this paragraph (b) are reasonable. (c) Upon satisfaction of all conditions set forth in paragraph (b), Mortgagee 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 customary and usual in the construction lending industry in the geographic area where the Property is located, including: (i) submission by Mortgagee 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 Mortgagee of performance and payment bonds to which such coverage is in full force and effect; and (iii) if required by Lender, the retention of up to ten percent (10%) of the costs of repair and restoration until (A) completion of such work in accordance with the 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 materials' liens, and that all governmental approvals required for occupancy of the Property, have been obtained. (d) Any additional funds deposited by Mortgagee pursuant to paragraph (b) shall be disbursed prior to disbursement of the proceeds held by Lender. No funds or proceeds held by Lender under this paragraph (b) shall bear or accrue interest. If the conditions set forth in paragraph (b) are not satisfied within ninety (90) days after Lender's receipt of such proceeds, or if restoration is not diligently completed in accordance with paragraph (b), 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 action pursuant to such notice. (e) (i) If such 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 amount of such installments. (ii) Lender acquires title to the Property, Lender thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Mortgagee 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.** Mortgagee (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 or loss thereof, 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 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 management company; (g) in addition to any obligations specifically set forth in this instrument, shall do any and all acts and actions which are 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 for purposes to affect the Property, the security of this instrument or the rights or powers of Lender. Neither Mortgagee 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 of like kind.

(10) **Use of Property.** Mortgagee 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.

take such other steps as shall effectively set-off or deduct... (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...

(18) Leases of the Property. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all Leases. Mortgagor, at Lender's request, shall furnish Lender with executed copies of all Leases now existing or hereafter made, and all Leases now or hereafter entered into...

(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 which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code...

(16) Escrowed Certificates. Mortgagor shall within ten days of a written request, from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this instrument and such other information concerning the indebtedness secured hereby as Lender may request.

(15) Forfeiture by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. No waiver by Lender of any right under this instrument shall be effective unless in writing.

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

(13) Books and Records. Mortgagor shall keep and maintain at all times at Mortgagor'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, including, without limitation, for the purpose of ascertaining the status of compliance with Environmental Laws. Mortgagor agrees to indemnify and hold Lender harmless from any liability, loss or damage which may be incurred as a result of any such entry, investigation or inspection.

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in case of commercial leases, upon Lender's request, Mortgagee shall procure and deliver to Lender a subordination, non-disturbance and attornment agreement in a form satisfactory to Lender from each lessee, tenant and occupant of the Property or any portion thereof. (18) **Assignment of Rents and Leases; Appointment of Receiver; Lender in Possession.** As part of the consideration for the loan secured hereby, Mortgagee hereby absolutely and unconditionally assigns and transfers to Lender the Rents and all of Mortgagee'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 and possessible of the Property. Lender hereby grants to Mortgagee a license to collect, receive and hold the Rents as they become due and payable. Mortgagee 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 Mortgagee's breach of any covenant or agreement of this instrument, the license granted herein shall automatically terminate, and upon such termination Lender, regardless of the adequacy of the Rents, including, but not limited to, Rents then due but unpaid, without notice to or demand upon Mortgagee and without taking possession of the Property; (b) shall be entitled to receive payment from Mortgagee of all Rents held by Mortgagee, which Mortgagee 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 thereof on any business or businesses then being conducted by Mortgagee 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 Mortgagee's breach of any covenant or agreement of this instrument, Mortgagee hereby expressly consents to the appointment of such receiver.

Mortgagee represents and covenants that Mortgagee has not executed any prior assignment of Rents or Leases, that Mortgagee has not performed, and will not perform, any acts or has not performed, any instrument which would preclude 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. Mortgagee further covenants that Mortgagee will not thereafter collect or accept payment of any Rents more than two months prior to the due dates of such Rents. Mortgagee or its assigns shall be entitled to 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 or repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharge of any obligation or liability of Mortgagee 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 able 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 Mortgagee to Lender secured by this instrument pursuant to paragraph 11 hereof. Lender and Mortgagee agree in writing to other terms of payment, such amounts shall be immediately due and payable by Mortgagee 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 Mortgagee under applicable law.

Lender shall not be liable for any loss sustained by Mortgagee resulting from Lender's failure to let the Property or any part thereof 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 Mortgagee 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, Lender shall be obligated to reimburse Lender for the amount of such claims or demands, including costs, expenses and reasonable attorneys' fees, this assignment or in defense of any such claims or demands. The amount of such claims or demands, including costs, expenses and reasonable attorneys' fees shall become additional indebtedness of Mortgagee 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 Mortgagee 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 Mortgagee's duties or obligations hereunder. Any interfering upon and taking and maintaining 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, statement of Lender or any officer, agent or authorized representative 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. Mortgagee hereby authorizes and directs each and every lessee named in a Lease or any other or future lease or occupant of the Property or any part thereof to do so until otherwise notified in writing by Lender. 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 Mortgagee, any guarantor or 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 successor federal statute relating to bankruptcy, insolvency, arrangement 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 Mortgagee, 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 Mortgagee, any Guarantor or any Partner in any voluntary or involuntary bankruptcy proceeding, or if a trustee or receiver shall be appointed for Mortgagee, 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 Mortgagee, 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 Mortgagee'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 Mortgagee, and Lender may invoke any remedies permitted by paragraph 22 of this instrument. Lender shall not exercise this option in the case of: (i) transfer 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 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 Mortgagee or a Partner, provided that such sales or transfers, together with any prior sales or transfers of beneficial interests in Mortgagee 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 Mortgagee 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.** Mortgagee 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 Mortgagee's breach of any covenant or agreement of this instrument, including, but not limited to, the failure 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 evidence and expert witnesses, stenographers' 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 immediately be 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 proceedings to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this instrument or for any instrument or for any suit for foreclosure hereon or for any threatened suit or other accrual of such right to foreclosure whether or not actually commenced; (c) preparations for the defense of any threatened suit or proceeding which might affect the property or the security hereof, whether or not actually commenced; (d) any efforts for collection of any past due indebtedness secured hereby. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first on account of all costs and expenses incurred in the foreclosure proceedings, including all such items as are mentioned in this paragraph; second, all other items which under the terms hereof constitute indebtedness secured by this instrument; third, any surplus to Mortgagee, its successors or assigns, as their rights may appear.

Upon or at any time after the filing of a complaint to foreclose this instrument the court in which such complaint is filed may appoint Lender as mortgagee in possession or may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, to the solventcy or insolvency at the time of application of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the value of the Property or whether the same shall be then occupied as a homestead or not. Such receiver or mortgagee in possession shall have power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit, as well as during any further time when Mortgagee, its successors or assigns, except for the intervention of such receiver, would be entitled to collect 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 Property during the whole or any part thereof from time to time may authorize the receiver or mortgagee in possession to apply the net income held by either of them in payment of whole or in part of the indebtedness and other sums secured hereby, or in payment of any tax, special assessment or other lien which may be or become superior to the lien hereof or superior to an order foreclosing this instrument, provided such application is made prior to foreclosure sale. In case of a judicial sale, the Property, or so much thereof as may then be affected by this instrument, may be sold in one parcel.

(24) Remedies Cumulative. Each remedy hereby 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 any obligation secured hereby, Lender may enforce the sale thereof at Lender's option, either before, contemporaneously with, or after the sale is made hereunder.

(25) Notice. Except for any notice required under applicable law to be given in another manner, all notices and other communications requested 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 shall be deemed received on the third business day after deposit in the mail in the continental United States, postage prepaid, addressed to the party to receive such notice at the address set forth above. Notice of change of address shall be given by written notice in the manner set forth in this paragraph 25.

(26) Successors and Agents Bound; Joint and Several Liability. Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereof 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 or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized 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. This instrument shall be governed by the laws of the United States and the rules and regulations promulgated thereunder. If any provision, clause or provision of 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 provisions of this instrument, the Note or other notes or obligations secured by this instrument, the Note and any other obligation and provisions of this instrument or the Note or other notes or obligations secured by this instrument, shall not affect the remaining paragraphs, clauses and provisions of this instrument, the Note or other notes or obligations secured by this instrument, and to the extent permitted by law, Mortgagee waives all present or future statutes or provisions 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.

(28) Waiver of Statute of Limitations. Time of the essence for all of Mortgagee's obligations hereunder, and to the extent permitted by law, Mortgagee waives all present or future statutes or provisions 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, 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 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 may retain any monies so received by it or any part thereof as Lender may elect. Lender may, at its option, appear in its own name in any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Mortgagee 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.

(30) Offsets. 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 cross claim, whether liquidated or unliquidated, 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 benefit 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 between the 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 its answer the defense of payment in that the 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 Nondisclosure. 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 misrepresentation 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 \$60.00 or such greater maximum amount as is allowed by law for furnishing any statement of obligation, beneficiary's statement, beneficiary's demand and any other statement regarding the condition of or balance owing under the Note secured by this instrument.

(33) Waiver of Marshalling. 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 of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are 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 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 or 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 right of homestead exemption in or relating to the Property.

(36) General Provisions. (a) This instrument applies to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors and, 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 herein; and (c) wherever 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 beneficiary to and hereby does waive any and all rights of redemption from sale under any order of foreclosure on its own behalf and on behalf of each and every person, except decedent or judgment creditor of the Mortgagee acquiring an interest in or title to the Property subsequent to the date of this Mortgagee.

(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, corrosivity, flammability, reproductive toxicity, infectiousness or other harmful properties or effects, including all chemicals, substances, materials or wastes that are now or hereafter may be regulated in any manner, classified as dangerous or toxic, or as pollutants or contaminants, or by any Environmental Law, or restricted or restricted by any federal, state or local governmental agency, board or public authority or by any Environmental Law.

"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, charges, expenses and other liabilities that are not Hazardous Materials Claims, whether attributed, made, sought, brought, imposed, completed, threatened, incurred or suffered, directly or indirectly arising out of or attributable to any act by Mortgagee or any of its directors, officers, employees, agents, contractors or representatives respecting the Property.

(40) **Compliance with Environmental Laws.** (a) Mortgagee 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 disclosures required by Environmental Laws. Mortgagee 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 transfer to or from the Property any Hazardous Materials in a manner or quantity so as to be in violation of any Environmental Law. (b) Mortgagee shall immediately advise Lender in writing of Mortgagee'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 serving 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. Mortgagee shall also provide to Lender copies of all notices concerning Hazardous Materials received by Mortgagee and all responses to such notices, including all reports, studies, analyses, data, test results, consultants' reports, laboratory analyses and/or remedial action plans and other materials prepared by or on behalf of Mortgagee. (c) Mortgagee 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 attorney's fees in connection therewith paid by Mortgagee.

(41) **Environmental Report.** Upon Lender's request from time to time Mortgagee shall, at Mortgagee'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 applicable, due to the existence of Hazardous Materials, set forth clean-up objectives required by the Illinois Environmental Protection Agency ("IEPA"); (iii) assess Mortgagee's and the Property's compliance with the requirements of the Environmental Law; 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, and all other applicable federal, state or other governmental laws, regulations and standards. Mortgagee 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, Mortgagee 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 Mortgagee'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 cost 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 Mortgagee 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, at all reasonable costs and expenses thereof, or incur in connection therewith, shall become part of the indebtedness secured hereby. Mortgagee 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 Mortgagee's compliance with paragraphs 41 and 42, and such inspections may include borings, studies, sampling, and other tests. Mortgagee shall cooperate with Lender in the conduct of such inspections. Mortgagee 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 Mortgagee or any third party to select, review, inspect, examine, supervise, pass judgment upon or inform Mortgagee 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 paragraph 41, 42 and 43; (ii) any Environmental Report; or (iii) the presence of any other matters or items the review, inspection, examination or approval of which is contemplated by this instrument. Any such selection, review, inspection, examination and the like is solely for the purpose of determining whether or not Mortgagee'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 Mortgagee or any third party for the suitability, 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 Mortgagee or any third party against negligence, liability, inadequate or defective building or construction or the existence of any environmentally hazardous condition in any manner arising out of or relating to the presence of any Hazardous Materials on the Property, and Lender shall not be responsible or liable to Mortgagee or any other party. (c) By accepting Hazardous Materials on the Property, and Lender shall not be responsible or liable to Mortgagee or any other party. (d) By accepting or approving anything required to be observed, performed or furnished, 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 (hereof) 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 Mortgagee 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.** Mortgagee represents and warrants that, except as otherwise disclosed to Lender in writing: (a) Mortgagee, 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 (ii) the presence of any abatement or improvement 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 Mortgagee 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 Mortgagee is subject to any Hazardous Materials Claim. (d) Neither Mortgagee 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) Mortgagee 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 Hazards, 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. Mortgagee 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. Mortgagee 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



83566309

Notary Public

day of August, 1990

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

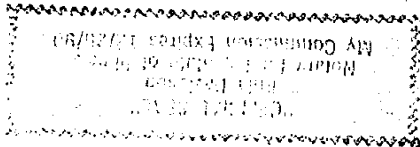
said company, for the uses and purposes therein set forth. Secretary's own free and voluntary act and as the free and voluntary act of the said company to said instrument as said Secretary, as custodian of the corporate seal of said company, did affix the corporate seal of said instrument as their free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

, 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) appeared before me this day in person, and acknowledged that subscribed to the foregoing instrument, appeared before voluntary act, for the uses and purposes therein set forth. Given under my hand and official seal, this day of August, 1990

Notary Public

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

Peter Johanson  
KULA DAVIDSON

State of Illinois  
County ss: Cook

Loan #011936309

BY \_\_\_\_\_

ATTEST: American National Bank and Trust Company of Chicago, and for personally or individually as Trustee as aforesaid, and for personally or individually

IN WITNESS WHEREOF, MORTGAGOR has executed this instrument or has caused the same to be executed by its representatives and their respective personal representatives, successors and assigns.

The term Mortgage shall mean the American National Bank and Trust Company of Chicago

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 vested to it as such Trustee, and it is expressly understood and agreed by the Lender herein 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 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.

(47) Disclosure of Information. Lender reserves the right to disclose any and all information, including, without limitation, information relating to Hazardous Materials, gathered pursuant to the terms of this instrument to the appropriate federal, state or local authorities when advised by its counsel that such disclosure is required under any applicable Environmental Law, or that there is a risk of common-law liability or regulatory enforcement action against Lender for a failure to disclose such information. This Mortgage is executed by American National Bank and Trust Company of Chicago

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