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. DEPT-01 RECORDING \$91.50  
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. #6664 + CG \*-95-545032  
. COOK COUNTY RECORDER

COMMONLY KNOWN AS:  
1701 GOLF ROAD  
ROLLING MEADOWS, ILLINOIS

Lawyers Title Insurance Corporation

91-02389  
BA

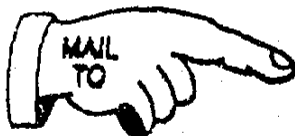
SUPPLEMENTAL FIRST MORTGAGE  
AND SECURITY AGREEMENT  
(Continental Towers)

Dated June 1, 1995

from FIRST BANK N.A. as successor trustee to NATIONAL BOULEVARD  
BANK OF CHICAGO, a national Banking association, not personally but  
solely as Trustee under Trust Agreement dated September 27, 1976  
and known as Trust Number 5602 (the "Mortgagor")

to GENERAL ELECTRIC CAPITAL CORPORATION (the "Mortgagee")

After recording, please return to:



Rosenthal and Schanfield  
55 East Monroe Street  
46th Floor  
Chicago, Illinois 60603  
Attention: Lester Rosen, Esq.

This instrument was prepared by the above-named attorney.

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SUPPLEMENTAL FIRST MORTGAGE  
AND SECURITY AGREEMENT  
(CONTINENTAL TOWERS)

THIS SUPPLEMENTAL FIRST MORTGAGE AND SECURITY AGREEMENT made as of this 1st day of June, 1995, by FIRST BANK N.A., as successor in trust to NATIONAL BOULEVARD BANK OF CHICAGO, a national banking association, as Trustee under Trust Agreement dated September 27, 1976 and known as Trust No. 5802 (herein called "Mortgagor") whose address is c/o CONTINENTAL TOWERS ASSOCIATES-I, Two Continental Towers, 1701 Golf Road, Suite 100, Rolling Meadows, Illinois 60008 to GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation (herein called "Mortgagee") whose address is 209 West Jackson Boulevard, Suite 200, Chicago, Illinois 60606.

W I T N E S S E T H, That:

A. WHEREAS, concurrently herewith AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated July 26, 1977 and known as Trust No. 40935 (herein called "Borrower") has executed and delivered to Mortgagee its six separate promissory notes (herein together collectively called the "Notes"), each dated October 1, 1991 and amended and restated as of June 1, 1995, each payable to the order of Mortgagee, each due on October 1, 1998, as follows:

(1) Borrower's 1995 Promissory Note A-1 in the principal sum of \$55,477,387;

(2) Borrower's 1995 Promissory Note A-2 in the principal sum of \$30,000,000;

(3) Borrower's 1995 Promissory Note A-3 in the principal sum of \$4,200,000;

(4) Borrower's 1995 Promissory Note A-4 in the principal sum of \$10,000,000;

(5) Borrower's 1995 Promissory Note B in the principal sum of \$16,222,613;

(6) Borrower's 1995 Promissory Note C in the principal sum of \$40,406,073;

all evidencing a loan (herein called the "Loan") in an aggregate principal sum not to exceed \$156,306,073 made and to be made by Mortgagee to Borrower; and

B. WHEREAS, the Notes are issued under and pursuant to a certain Loan Modification and Amended and Restated Loan Agreement

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dated as of June 1, 1995 (herein called the "Modification Agreement") being executed and delivered concurrently herewith by and among Borrower, CONTINENTAL TOWERS ASSOCIATES-I, an Illinois limited partnership (herein called "Borrower's Beneficiary"), RICHARD A. HEISE, ROLAND A CASATI, CASATI-HEISE PARTNERSHIP, an Illinois general partnership, and Mortgagee, which Modification Agreement has been duly filed for record and recorded in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. \_\_\_\_\_; and

C. WHEREAS, terms defined in the Modification Agreement, when used herein, shall have the meanings so defined; and

D. WHEREAS, the Loan is secured, among other things, by a Mortgage upon the Present Property (as defined in the Modification Agreement), being a tract of land adjacent to the Mortgaged Property as hereinafter defined; and

E. WHEREAS, Mortgagee requires as a condition to (i) executing and delivering the Modification Agreement, (ii) accepting the Notes in substitution for the Present Notes (as defined in the Modification Agreement), and (iii) advancing to Borrower undisbursed portions of the Loan, that Mortgagor execute and deliver to Mortgagee this Supplemental Mortgage mortgaging and encumbering the Mortgaged Property (as hereinafter defined), as security for the Loan; and

F. WHEREAS, it will be of substantial economic benefit to Mortgagor and its beneficiary that Mortgagee (i) execute and deliver the Modification Agreement, (ii) accept the Notes in substitution for the Present Notes (as defined in the Modification Agreement), and (iii) advance to Borrower undisbursed portions of the Loan.

NOW, THEREFORE, to secure:

(a) the payment of the Loan in lawful money of the United States to be paid according to the Notes in the form attached as Exhibits B-1, B-2, B-3, B-4, B-5 and B-6 to the Modification Agreement, which are by this reference incorporated herein and made a part hereof;

(b) all of the obligations and liabilities due or to become due to Mortgagee pursuant hereto, pursuant to the Modification Agreement and pursuant to the Loan Documents referred to therein (herein together with this Supplemental Mortgage and the Notes generally called the "Loan Documents");

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(c) all amounts, sums and expenses paid hereunder by the Mortgagee according to the terms hereof; and

(d) all interest upon the foregoing amount as provided for herein, in the Notes, in the Modification Agreement and in the other Loan Documents;

all of the foregoing being herein collectively called the "Indebtedness"); and to further secure the performance and observance by Mortgagor, Borrower and Borrower's Beneficiary of all of their obligations, covenants, agreements and undertakings set forth herein, in the Notes, in the Modification Agreement and in the other Loan Documents (herein called the "Obligations"), the Mortgagor hereby MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, ALIENS, REMISES, RELEASES, ASSIGNS, SETS OVER AND CONFIRMS unto the Mortgagee the following described piece, parcel or tract of land, to-wit:

LOT 3 IN CASATI-HEISE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTH EAST 1/4 OF SECTION 17 AND PART OF THE NORTH WEST 1/4 OF SECTION 16, BOTH IN TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 27, 1988 AS DOCUMENT 88592766, IN COOK COUNTY, ILLINOIS

(herein called the "Real Estate"). 08-16-100-036

TOGETHER with the buildings and improvements (herein called the "Improvements") now or hereafter located on the Real Estate and all right, title and interest, if any, of the Mortgagor in and to the streets and roads abutting said land to the center lines thereof, and strips and gores within or adjoining said land, the air space and right to use said air space above said land, all rights of ingress and egress by motor vehicles to parking facilities on or within said land, all easements now or hereafter affecting said land, royalties and all rights appertaining to the use and enjoyment of said land, including, without limitation, alley, drainage, mineral, water, oil and gas rights (the Real Estate, together with said building and improvements, the property and other rights, privileges and interests encumbered or conveyed hereby, are hereinafter collectively referred to as the "Supplemental Premises");

TOGETHER with all fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, owned by the Mortgagor and now or

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hereafter attached to, contained in, or used in connection with the Supplemental Premises or placed on any part thereof, though not attached thereto. Without limiting the foregoing, the Mortgagor hereby grants to the Mortgagee a security interest in all of the Mortgagor's present and future "equipment" and "general intangibles" (as said quoted terms are defined in the Uniform Commercial Code of the State of Illinois (the Supplemental Premises and said fixtures and articles of personal property and said "equipment" and "general intangibles" encumbered and conveyed hereby are hereafter sometimes called the "Supplemental Mortgaged Property") and the Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by the Mortgagor to the Mortgagee, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code. To the extent permitted under applicable law, this Supplemental Mortgage shall be deemed to be a "security agreement" (as defined in the aforesaid Uniform Commercial Code). Of the lien of this Supplemental Mortgage is subject to a security interest covering any such personal property, then all of the right, title and interest of the Mortgagor in and to any and all such property is hereby assigned to the Mortgagee, together with the benefits of all deposits and payments now or hereafter made thereon by the Mortgagor;

TOGETHER with all leases, lettings and licenses of the Supplemental Premises or any part thereof now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash and securities deposited thereunder and the right to receive and collect the rents, issues and profits payable thereunder;

TOGETHER with all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by the Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Supplemental Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Supplemental Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Supplemental Mortgaged Property or any easement therein, including awards for any change of grade of streets;

TOGETHER with all right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Supplemental Mortgaged Property, hereafter

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acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Supplemental Mortgaged Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Supplemental Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Supplemental Mortgaged Property unto the Supplemental Mortgagee and its successors and assigns until the Indebtedness is paid in full.

## ARTICLE I

### Covenants of the Mortgagor

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

Section 1.01. Payment of the Indebtedness. The Mortgagor will punctually pay or cause to be paid by Borrower or Beneficiary the Indebtedness in immediately available funds as provided herein and in the Notes, all in the coin and currency of the United States of America which is legal tender for the payment of public and private debts.

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

Section 1.03. Maintenance of the Supplemental Mortgaged Property. The Mortgagor shall maintain all Improvements now or

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

Section 1.04. Insurance. The Mortgagor shall provide public liability insurance with respect to the Supplemental Premises providing for limits of liability of not less than \$5,000,000 for both injury to or death of a person and for property damage. All liability insurance policies shall designate Mortgagee as an additional insured. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State where the Supplemental Premises are located, with a rating of "A-IX" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by the Mortgagee. Without limiting the foregoing, each policy shall provide that such policy may not be cancelled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to the Mortgagee [ten (10) days in event of cancellation or non-renewal resulting solely from non-payment of premium] and that no act or thing done by the Mortgagor shall invalidate the policy as against the Mortgagee. In the event the Mortgagor fails to maintain insurance in compliance with this Section 1.04, the Mortgagee may, but shall not be obligated to, obtain such insurance and pay the premium therefor and the Mortgagor shall, on demand, reimburse the Mortgagee for all sums, advances and expenses incurred in connection therewith. The Mortgagor shall deliver copies of all original policies, certified by the insurance company or authorized agent as being true copies to the Mortgagee together with the endorsements thereto required hereunder. Notwithstanding anything to the contrary contained herein or in Section 254 of the Real Property Law of the State of New York (if the Supplemental Premises are located in the State of

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New York) or any other provision of applicable law of any other State, the proceeds of insurance policies coming into the possession of the Mortgagee shall not be deemed trust funds and the Mortgagee shall be entitled to dispose of such proceeds as herein provided.

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

## Section 1.06. Taxes and Other Charges.

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

(b) Nothing in this Section 1.06 shall require the payment or discharge of any obligation imposed upon the Mortgagor by subparagraph (a) of this Section 1.06 so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Supplemental Mortgaged Property or any part thereof to satisfy the same; provided that during such contest

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the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section 1.06 shall become necessary to prevent the delivery of a tax deed conveying the Supplemental Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

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

Section 1.08. Condemnation Awards. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit such participation. All awards and compensation or other taking or purchase in lieu thereof, of the Supplemental Premises or any part thereof, are hereby assigned to and shall be paid to the Mortgagee. The Mortgagor hereby authorizes the Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor and in the Mortgagee's sole discretion to apply the same toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Premises. In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, same shall be applied to the then unpaid installments of principal due under the Notes in the order and manner set forth in the Notes. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid awards and compensation

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to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment by the Mortgagor of interest at the applicable rate provided for herein or in the Notes.

**Section 1.09. Supplemental Mortgage Authorized.** The Mortgagor hereby represents that the execution and delivery of this Supplemental Mortgage has been duly authorized and that this Mortgage creates a valid lien upon the Supplemental Mortgaged Property as security for the Obligations and Indebtedness.

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

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

**Section 1.12. Costs of Enforcement.** The Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and

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

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

Section 1.14. Escrow Deposits. The Mortgagee, at its option, may require that the Mortgagor deposit with the Mortgagee,

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

Section 1.15. Late Charges. Mortgagor shall pay late charges as provided for in the Notes.

Section 1.16. Intentionally Omitted.

Section 1.17. Restrictive Covenants. Without the prior written consent of the Mortgagee, the Mortgagor shall not: (a) execute or permit to exist any lease of all or any substantial portion of the Supplemental Premises; (b) discount any rents or collect the same for a period of more than one month in advance; (c) cancel any lease affecting the Supplemental Premises except upon the default of the tenant thereunder; reference is made to

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Section 291-f of the Real Property Law of the State of New York (if the Supplemental Premises are located in the State of New York) or other applicable laws of other states to establish for the Mortgagee the rights and benefits provided therein; (d) execute any conditional bill of sale, chattel mortgage or other security instruments covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Supplemental Premises or the appurtenances thereto, or covering articles of personal property placed in the Supplemental Premises or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in the Mortgagor, free from encumbrances on delivery to the Supplemental Premises; (e) further assign the leases and rents affecting the Supplemental Premises; (f) sell, transfer, convey or assign any interest in the Supplemental Mortgaged Property or any part thereof; or (g) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Supplemental Mortgaged Property or any part thereof.

Section 1.18. Intentionally Omitted.

Section 1.19. Intentionally Omitted.

Section 1.20. Assignment of Rents. The Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Indebtedness, the rents, issues and profits of the Supplemental Premises, together with all leases and other documents evidencing such rents, issues and profits now or hereafter in effect and any and all deposits held as security under said leases, and shall, upon demand, deliver to the Mortgagee an executed counterpart of each such lease or other document. Nothing contained in the foregoing sentence shall be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Supplemental Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Supplemental Premises), except that the Mortgagee shall be accountable for any money actually received pursuant to such assignment. The Mortgagor hereby further grants to the Mortgagee the right (i) to enter upon and take possession of the Supplemental Premises for the purpose of collecting the said rents, issues and profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to the Mortgagee, (iii) to let the Supplemental

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Premises, or any part thereof, and (iv) to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness. Such assignment and grant shall continue in effect until the Indebtedness is paid, the execution of this Supplemental Mortgage constituting and evidencing the irrevocable consent of the Mortgagor to the entry upon and taking possession of the Supplemental Premises by the Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default the Mortgagor shall be entitled to collect and receive said rents, issues and profits. The Mortgagor agrees to use said rents, issues and profits in payment of principal and interest becoming due on this Supplemental Mortgage and in payment of taxes, assessments, water rates, sewer rents and carrying charges becoming due against the Supplemental Premises. Such right of the Mortgagor to collect and receive said rents, issues and profits may be revoked by the Mortgagee upon the occurrence of an Event of Default by giving not less than five (5) days' written notice of such revocation, served personally upon or sent by registered or certified mail to the record owner of the Supplemental Premises.

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

Section 1.22. Intentionally Omitted.

## ARTICLE II

### Default and Remedies

Section 2.01. Events of Default. The following shall constitute Events of Default under this Supplemental Mortgage: (a) default when and as the same shall become due and payable in payment of amounts required to be paid hereunder or a default in the payment of principal or interest on the Notes whether by maturity or acceleration, which default has continued for a period of ten (10) days; or (b) default beyond any applicable grace period in the due observance or performance of any of the terms, covenants or conditions contained herein relating to other than the payment of money; or (c) should any representation made herein or any other

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document given in connection herewith prove to be untrue in any material respect; or (d) default shall occur beyond any applicable grace period under any obligation set forth in the Notes other than for the payment of principal or interest; or (e) the execution of any Lease of the Supplemental Premises or the further assignment or encumbrance by the Mortgagor of the leases or rents of the Supplemental Premises or any part thereof, in each case without prior written consent of the Mortgagee; or (f) the construction or commencement of construction of any Improvement upon the Supplemental Premises without Mortgagee's prior written consent; or (g) the failure of the Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Supplemental Mortgaged Property or become payable during the term of the Notes or this Supplemental Mortgage or the Mortgagor enters into any agreement either written or oral, which has the effect of deferring the payment of any taxes or other charges which are or can be assessed, levied, confirmed, imposed or become a lien on the Supplemental Mortgaged Property or become payable during the term of the Notes or this Supplemental Mortgage; or (h) the conveyance, assignment, sale or attempted sale, or other disposition of the Supplemental Premises or any transfer or encumbrance of the beneficial interest in Mortgagor or the further mortgage, pledge or other encumbrance by the Mortgagor of the Supplemental Mortgaged Property or any part thereof or any interest therein without the prior written consent of the Mortgagee; (i) the occurrence of any Event of Default under the Modification Agreement or under any of the Loan Documents therein described or referred to; (j) if a receiver, liquidator or trustee of the Mortgagor or any beneficiary of Mortgagor or of any of its properties, shall be appointed, or (k) if a petition in bankruptcy, an insolvency proceeding or a petition for reorganization shall have been filed against the Mortgagor or any beneficiary of Mortgagor and same is not withdrawn, dismissed, cancelled or terminated within sixty (60) days; or (l) if the Mortgagor or any beneficiary of Mortgagor is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); or (m) if there is an attachment or sequestration of any of the property of the Mortgagor or any beneficiary of Mortgagor and same is not promptly discharged or bonded; or (n) if the Mortgagor or any beneficiary of Mortgagor files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Act or any other law, now or hereafter in effect, relating to the

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reorganization of the Mortgagor or such beneficiary of Mortgagor or the arrangement or readjustment of the debts of the Mortgagor or such beneficiary of Mortgagor; or (o) if the Mortgagor or any beneficiary of Mortgagor shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of the Mortgagor or such beneficiary of Mortgagor or of all or any part of its or his property; or (p) if default shall occur under, or any attempted withdrawal, cancellation or disclaimer of liability under any guaranty which guarantees payment of the Indebtedness or under any agreement giving security for said guaranty shall occur; or (q) if the Mortgagor or any beneficiary of Mortgagor shall cause or institute any proceeding for the dissolution or termination of the Mortgagor or such beneficiary of Mortgagor; or (r) if the Mortgagor or any beneficiary of Mortgagor ceases to do business or terminates its business as presently conducted for any reason whatsoever; or (s) if the Mortgagor or any beneficiary of Mortgagor defaults under any other agreement that it has with the Mortgagee; or (t) if a default shall occur under any mortgage which is subordinate to the lien of this Supplemental Mortgage or the mortgagee under any subordinate mortgage shall commence a foreclosure action in connection with said Supplemental Mortgage, provided that this provision shall not be deemed to be a waiver of the provisions of Section 1.17(h) or any other section of this Supplemental Mortgage.

## Section 2.02. Remedies.

(a) Upon the occurrence of any Event of Default, the Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Supplemental Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee: (1) declare the entire unpaid Indebtedness to be immediately due and payable; or (2) enter into or upon the Supplemental Premises, either personally or by its agents, nominees or attorneys and dispossess the Mortgagor and its agents and servants therefrom, and thereupon the Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Supplemental Premises and conduct the business thereat; (ii) complete any construction on the Supplemental Premises in such manner and form as the Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and

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improvements to or on the Supplemental Mortgaged Property; (iv) exercise all rights and powers of the Mortgagor with respect to the Supplemental Premises, whether in the name of the Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Supplemental Premises and every part thereof; and (v) apply the receipts from the Supplemental Premises to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Supplemental Mortgaged Property, as well as just and reasonable compensation for the services of the Mortgagee, its counsel, agents and employees; or (3) institute proceedings and enforce all rights and remedies afforded by the Illinois Mortgage Foreclosure Act for the foreclosure of this Supplemental Mortgage in which case the Supplemental Mortgaged Property may be sold for cash or upon credit in one or more parcels; or (4) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings and enforce all rights and remedies afforded by the Illinois Mortgage Foreclosure Act for the partial foreclosure of this Supplemental Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Supplemental Mortgage for the balance of the Indebtedness not then due. Upon foreclosure sale of less than all of the Supplemental Mortgaged Property, this Supplemental Mortgage shall continue as a lien on the remaining portion of the Supplemental Mortgaged Property; or (6) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes; or (7) recover judgment on the Notes either before, during or after any proceedings for the enforcement of this Supplemental Mortgage; or (8) apply for the appointment of a trustee, receiver, liquidator or conservator of the Supplemental Mortgaged Property, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of the Mortgagor, any beneficiary of Mortgagor or of any person, firm or other entity liable for the payment of the Indebtedness; or (9) pursue such other remedies as the Mortgagee may have under applicable law.

(b) The proceeds or avails of any foreclosure sale made under or by virtue of this Article II, together with any other sums which then may be held by the Mortgagee under this

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Supplemental Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

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

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

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

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

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

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

(d) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Supplemental Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Supplemental Mortgage upon the Supplemental Mortgaged Property or any part thereof, or any liens, rights,

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powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

## Section 2.03. Intentionally Omitted.

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

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

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

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

## ARTICLE III

### Miscellaneous

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

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

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

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

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Mortgagor, all their undertakings hereunder shall be deemed joint and several.

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

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

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

## **Section 3.08. General Conditions.**

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

(b) This Supplemental Mortgage cannot be altered, amended, modified or discharged orally and no executory

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agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

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

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

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

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

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

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

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

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

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

**Section 3.10. Legal Construction.** The enforcement of this Supplemental Mortgage shall be governed, construed and interpreted by the laws of the State of Illinois. Nothing in this

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Supplemental Mortgage, the Notes or in any other agreement between the Mortgagor and the Mortgagee shall require the Mortgagor to pay, or the Mortgagee to accept, interest in an amount which would subject the Mortgagee to any penalty under applicable law. In the event that the payment of any interest due hereunder or under the Notes or any such other agreement would subject the Mortgagee to any penalty under applicable law, then ipso facto the obligations of the Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law.

**Section 3.11. Additional Event of Default.** It shall be an additional Event of Default under Section 2.01 hereof, without notice or period of grace, if there shall be a conveyance, assignment, sale or attempted sale, or other disposition for collateral purposes or otherwise, of all or any portion of (i) the beneficial interest in Mortgagor, (ii) partnership interests in the beneficiary of Mortgagor, or (iii) corporate stock of any corporate partner of the beneficiary of Mortgagor.

**Section 3.12. Additional Covenants.** In the event that Mortgagee shall advance any sums to cure a default of the Mortgagor hereunder, the amount of such advance shall bear interest at the Post Default Rate and shall be due and payable by the Mortgagor within five (5) days after notice from the Mortgagee and shall be deemed an additional indebtedness secured hereby.

**Section 3.13. Indemnification.** Mortgagor hereby indemnifies and holds harmless Mortgagee against, and agrees to pay on demand, any brokerage commission or finder's fee claimed by any broker or other party in connection with the loan transaction contemplated by this Supplemental Mortgage and the Notes retained or alleged to have been retained by or on behalf of Mortgagor or its beneficiary.

**Section 3.14. Additional Remedies.** Without limiting the provisions of Article II hereof but in addition thereto and in amplification thereof, it is agreed as follows:

(a) When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, and shall not be paid, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of a decree) of procuring all such



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abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Supplemental Mortgaged Property. All expenditures and expenses of the nature in this subsection mentioned, and such expenses and fees as may be incurred in the protection of said Supplemental Mortgaged Property and the maintenance of the lien of this Supplemental Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Supplemental Mortgage, the Notes or the Supplemental Mortgaged Property, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with accrued interest thereon at the Post Default Rate.

(b) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Supplemental Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Supplemental Mortgaged Property or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Supplemental Mortgaged Property during the pendency of such foreclosure suit and during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Supplemental Mortgaged Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Supplemental Mortgaged Property in his hands in payment in whole or in part of:

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

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

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Section 3.15. Waiver. The Mortgagor hereby expressly waives any and all rights of redemption under any order or decree of foreclosure of this Supplemental Mortgage, on its own behalf and on behalf of each and every person acquiring any interest or title to the Supplemental Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of applicable law.

Section 3.16. Intentionally Omitted.

Section 3.17. Maximum Indebtedness. Notwithstanding anything to the contrary herein contained the maximum amount of the Indebtedness secured hereby shall at no time exceed \$500,000,000.

Section 3.18. Not Joint Venture or Partnership. The Mortgagor and the Mortgagee intend that the relationship created hereunder, under the Notes and all other Loan Documents be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the Mortgagor and the Mortgagee, nor to grant the Mortgagee any interest in the Supplemental Mortgaged Property other than that of mortgagee or lender; it being the intent of the parties hereto that Mortgagee shall not share in any losses whatsoever generated by the Supplemental Mortgaged Property and that Mortgagee shall have no control over the day-to-day management and operation of the Supplemental Mortgaged Property. Accordingly, Mortgagor hereby indemnifies and holds harmless Mortgagee for any claim, loss, liability, damage, cost or expense (including reasonable attorneys' fees through all appellate proceedings) to Mortgagee arising out of any claim, suit or allegation that the transactions contemplated by the Notes and this Supplemental Mortgage or otherwise establish a joint venture, tenancy-in-common, or partnership arrangement between Mortgagee and Mortgagor, and arising out of a claim, assertion or litigation directly or indirectly brought by or on behalf of Mortgagor, the beneficiary of Mortgagor, its partners or their partners.

Section 3.19. Management Contracts. Mortgagor agrees that neither it nor its beneficiary shall enter into any agreement for the management, leasing and/or operation of the Supplemental Mortgaged Property without Mortgagee's prior written consent, which consent shall not be unreasonably withheld and, once so approved, said agreement shall not be modified without Mortgagee's further consent.

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Section 3.20. After-Acquired Property. All right, title, and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes, and replacements of, and all additions and appurtenances to the Supplemental Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled, or placed by Mortgagor on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement, or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by Mortgagor, shall become subject to the lien of this Supplemental Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurance, mortgages, conveyances, or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Supplemental Mortgage.

Section 3.21. Prepayment. The Mortgagor shall have the privilege of making prepayments on the principal of the Notes (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Notes, but not otherwise.

Section 3.22. Additional Notices. Additional copies of all notices shall be delivered or sent by United States certified or registered mail, postage prepaid:

Notices to Mortgagee:

Rosenthal and Schanfield  
55 East Monroe  
Suite 4620  
Chicago, Illinois 60603

Attention: Lester Rosen, Esq.

and to

General Electric Capital Corporation  
260 Long Ridge Road  
Stamford, Connecticut 06902  
Attention: CRE Legal Operations - 6035

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Notices to Mortgagor:

Sidley & Austin  
One First National Plaza  
Chicago, Illinois 60603

Attention: Albert Ritchie, Esq.

**Section 3.23. Contest of Liens.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any real estate taxes and assessments imposed or assessed upon the Supplemental Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Supplemental Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

(b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Supplemental Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Post Default Rate until paid, and payable upon demand); and

(d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwith-

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standing any such contest, the Supplemental Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

**Section 3.24. Limitation of Liability.** It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

Neither the beneficiary ("Beneficiary") of the Mortgagor nor any of the general partners of (i) the Beneficiary or (ii) a general partner of Beneficiary (collectively called the "Obligated Parties") shall under any circumstances be personally liable for the repayment of any of the principal of, interest on, or prepayment fees or late charges, or other charges or fees, including, without limitation, attorneys' fees, due in connection with, the Loan or any other amounts due hereunder or for any deficiency judgment which Mortgagee may obtain after foreclosure of this Supplemental Mortgage after default by Mortgagor (all such

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sums are hereinafter collectively called the "Loan Debt"); provided, however, that the Obligated Parties shall be personally responsible for any liability, loss, or damage (including, without limitation, reasonable attorneys' fees and disbursements but excluding principal and interest payable hereon) (i) arising out of any fraud or material misrepresentation, misapplication of insurance proceeds, condemnation awards, security deposits or trust funds in violation of applicable law or the provisions of this Supplemental Mortgage, (ii) arising out of the failure to comply with the provisions of this Supplemental Mortgage prohibiting the sale or further encumbering of the Supplemental Premises, (iii) arising out of willful attempts to interfere with Mortgagee's rights under the assignment of rents or letter of credit requirements, if any, set forth in the Loan Documents, (iv) arising out of the failure of Mortgagor to perform its obligations under the Loan Documents to preserve, protect and maintain the Supplemental Premises and to apply the proceeds of rents and other income of the collateral toward the costs of maintenance and operation of the Supplemental Premises, and debt service and other indebtedness, (v) arising out of waste or the willful destruction or willful damage by the Obligated Parties (or any of them) to the Supplemental Premises, or to the electrical, plumbing, heating or air conditioning systems or elevators of the Supplemental Premises, (vi) incurred by Mortgagee in connection with any claim, demand, order, consent decree, settlement, judgment or verdict arising in connection with the manufacture, spilling, leaking or other placement or release in, on or about the Supplemental Premises of a hazardous or toxic waste, waste product or substance as defined in 42 U.S.C. § 9601 or as defined in any other statute, rule or regulation governing such waste, waste products or substances, or arising as a result of the presence of asbestos or asbestos containing materials in, on, or at the Supplemental Premises, (vii) arising out of Mortgagor's collection of rentals for periods of more than one (1) month in advance under leases of the Supplemental Premises, (viii) arising out of the receipt by Mortgagor of monies in connection with the modification of any existing or future lease or the entering into of a new lease in violation of the applicable provisions of this Supplemental Mortgage, or (ix) resulting from any claim, demand, determination, judgment, verdict or holding that the relationship of Mortgagor and Mortgagee is that of joint venturers, partners, tenants in common, joint tenants or any relationship other than that of debtor and creditor and arising out of a claim, assertion or litigation directly or indirectly brought by or on behalf of Mortgagor, its beneficiary, its partners or their partners; and provided, further, that the foregoing limitations on personal liability with respect to the Loan Debt shall not impair the validity of the indebtedness secured by Mortgagee's collateral or the lien on or security interest in the

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collateral or the right of Mortgagee as mortgagee or secured party to foreclose and/or enforce the mortgage lien or security interest or other interest in the collateral or any part thereof after default. In the event any person, whether or not a partner of Mortgagor, or the Mortgagor itself, shall have indemnified all or part of any aspect of the Loan or shall have indemnified Mortgagee, by separate written guarantee or indemnification agreement, none of the foregoing limitations on the personal liability of Mortgagor or the Obligated Parties for payment of the Loan Debt shall modify, diminish or discharge the personal liability of any such guarantee or indemnification agreement. Nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Reform Act of 1978 or any successor thereto or similar provisions under applicable state law to file a claim for the full amount of the debt owing to Mortgagee by Mortgagor or to require that all collateral shall continue to secure all of the indebtedness owing to Mortgagee in accordance with the Loan Documents.

FIRST BANK N.A. as successor in trust, as Trustee as aforesaid

Attest:

By

Vice President

PERSONAL TRUST ADMINISTRATOR



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## JOINDER

The undersigned is the Beneficiary described in Section 3.24 aforesaid, and is substantially financially or otherwise interested in the modification of the Loan described in the foregoing Supplemental Mortgage and the execution of the Modification Agreement disbursement of the loan ("Loan") secured by this Supplemental Mortgage.

As a material inducement for Mortgagee to execute and deliver the Modification Agreement, the undersigned hereby joins in the within and foregoing Supplemental Mortgage and, jointly and severally with the Mortgagor, agrees to duly and punctually perform and agrees to be bound by all obligations and covenants of the Obligated Parties described in Section 3.24 hereof (but subject to the exculpatory provisions described in Section 3.24 of the Supplemental Mortgage).

CONTINENTAL TOWERS ASSOCIATES-I,  
an Illinois limited partnership  
By: CASATI-HEISE PARTNERSHIP

By: 

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## JOINDER

The undersigned is the Beneficiary described in Section 3.24 aforesaid, and is substantially financially or otherwise interested in the modification of the Loan described in the foregoing Supplemental Mortgage and the execution of the Modification Agreement disbursement of the loan ("Loan") secured by this Supplemental Mortgage.

As a material inducement for Mortgagee to execute and deliver the Modification Agreement, the undersigned hereby joins in the within and foregoing Supplemental Mortgage and, jointly and severally with the Mortgagor, agrees to duly and punctually perform and agrees to be bound by all obligations and covenants of the Obligated Parties described in Section 3.24 hereof (but subject to the exculpatory provisions described in Section 3.24 of the Supplemental Mortgage).

CONTINENTAL TOWERS ASSOCIATES-I,  
an Illinois limited partnership  
By: CASATI-HEISE PARTNERSHIP

By: *[Signature]*

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STATE OF 18-

COUNTY OF

SS

I, KIMBERLY S. GRANA, a Notary Public in and for the County and State aforesaid, do hereby certify that John R. Meler, P.T.A. Vice President of FIRST BANK N.A. ("Bank"), a Assistant Secretary of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument and such Vice President and Assistant Secretary, respectively, appeared before me in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that he, as custodian for the corporate seal of said Bank, did affix the said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of August, 1995.

Kimberly S. Grana  
Notary Public

My Commission Expires:

"OFFICIAL SEAL"  
Kimberly S. Grana  
Notary Public, State of Illinois  
My Commission Expires 02/06/99

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STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

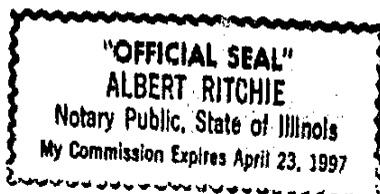
I, Albert Ritchie, a Notary Public in and for the County and State aforesaid, do hereby certify that Roland E. Casati, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument on behalf of Continental Towers Associates-I as its free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 8th day of August, 1995.

Albert Ritchie  
Notary Public

My Commission Expires:

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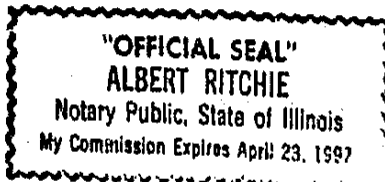
STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK       )

I, Albert Ritchie, a Notary Public in and for the County and State aforesaid, do hereby certify that **Richard A. Heise**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument on behalf of **Continental Towers Associates-I** as its free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 8th day of August, 1995.

*Albert Ritchie*  
Notary Public

My Commission Expires:



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