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WHEN RECORDED RETURN TO:

Baker & Daniels
205 West Jefferson Boulevard
Suite 250
South Bend, Indiana 46601
ATTN: Peter G. Trybula

DEPT-01 RECORDING \$113.00
T40012 TRAN 8960 01/31/96 13:14:00
43152 CG *-96-081943
COOK COUNTY RECORDER

**MORTGAGE, SECURITY AGREEMENT, FINANCING
STATEMENT AND FIXTURE FILING WITH
ABSOLUTE ASSIGNMENT OF RENTS AND LEASES**

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THIS DOCUMENT ALSO CONTAINS A FINANCING STATEMENT FILED AS A FIXTURE FILING IN ACCORDANCE WITH SECTION 5/9-402 OF THE ILLINOIS UNIFORM COMMERCIAL CODE AND IS TO BE RECORDED IN THE OFFICE WHERE A MORTGAGE ON THE REAL ESTATE ENCUMBERED HEREBY WOULD BE RECORDED.

THIS MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING WITH ABSOLUTE ASSIGNMENT OF RENTS AND LEASES ("Mortgage"), is made this 26th day of January, 1996, by and between Remington Schaumburg, L.L.C., an Illinois limited liability company, ("Mortgagor"), whose mailing address is 155 Pfingsten Road, Deerfield, Illinois 60015, and FARM BUREAU LIFE INSURANCE COMPANY, an Iowa corporation ("Mortgagee"), whose mailing address is 5400 University Avenue, West Des Moines, Iowa 50266, Attn: Real Estate and Commercial Mortgage Manager.

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ARTICLE I

1 DEFINITIONS

In addition to any other terms defined herein, within this Mortgage, unless otherwise required by the context, the following terms shall have the meanings indicated:

1.1 **Building** means one (1) of the four (4) existing buildings that comprise a portion of the Improvements.

1.2 **Collateral** means, as the context requires, all or any of the Personalty, the Fixtures, the Leases and the Rents.

1.3 **Fixtures** means all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements on the Property, including, but not limited to, any and all partitions; window screens and shades; drapes, carpeting and other floor coverings; awnings; pumps; motors; valves; elevators, escalators; engines; wire and wiring; boilers; furnaces; pipes; plumbing; sprinkler systems; irrigation systems; fire extinguishing apparatus

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and equipment; communication equipment; computers and computerized equipment; security systems and devices; water tanks; heating, ventilating, incinerating, air conditioning and air cooling equipment and systems; gas and electric machinery; disposals, dishwashers, refrigerators, ranges and other appliances; and equipment and facilities of all kinds which constitute fixtures under Section 5/9-313 of the UCC as the same may be amended or any successor statute and all replacements and substitutions therefor.

1.4 **Governmental Authority** means any and all courts, boards, bureaus, agencies, commissions, departments, offices or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

1.5 **Hazardous Materials** has the meaning ascribed thereto in Section 3.17 of this Mortgage below.

1.6 **Impositions** means all real estate and personal property taxes, assessments, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed against, or otherwise related to the Property, the use, occupancy, operation or enjoyment thereof and/or the lien of this Mortgage on the Property or the debt secured hereby.

1.7 **Improvements** means any and all buildings, sheds, storage areas, warehousing areas, open or covered parking areas, parking garages or structures, other structures, fences, curbs, walls, sidewalks, walkways, paved parking areas, pavement, recreational facilities, landscaping and all other real property improvements and any and all additions, alterations, replacements or appurtenances thereto, now or at any time hereafter situated, placed, constructed upon or for the benefit of the Property or any part thereof, and shall include, unless the context otherwise requires, all Fixtures.

1.8 **Indebtedness Secured Hereby** means: (a) payment of that certain Secured Installment Note (the "Note") of even date herewith, executed by Mortgagor, as Borrower, to the order of Mortgagee, as Holder, in the original principal amount of One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000.00), with stated maturity on February 1, 2003, with interest thereon and all other sums payable thereunder according to the terms and conditions thereof, together with any replacements, substitutions, modifications, amendments, extensions or renewals thereof (the "Indebtedness"); and (b) payment to Mortgagee, its successors and assigns, at the times demanded and with interest at the Default Rate (as defined in the Note), to accrue from the date of advance, of all sums advanced, if any, in protecting the interests of Mortgagee under this Mortgage and any and all other Loan Documents and payment of insurance premiums covering Improvements, and payment of principal and interest on prior liens, and payment of expenses and attorneys' fees and professionals' fees herein provided for and payment of any fees herein provided for, and any and all sums advanced under this Mortgage from time to time; and (c) performance and payment in full when due of all of the Obligations.

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1.9 **Leases** means any and all leases, subleases, licenses, concessions, occupancy, rental and use agreements, or other agreements (written or oral), now or hereafter in effect which grant a possessory interest in and to, or the right to use, occupy or generate income from, in or around the Property and/or the Improvements, or any portion thereof, if any, and all guarantees of, and security for the performance of any of the obligations and payments thereunder.

1.10 **Legal Requirements** means: (a) all judicial decisions, ordinances, orders, decrees, rules, regulations, permits, statutes or requirements of any court or Governmental Authority, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, zoning stipulations, subdivision plats or other instruments or documents affecting all or any portion of the Property and/or the construction, development or use of the Mortgaged Property, including, but not limited to, any of those relating to fire, safety, environmental protection, conservation, parking and building and sign codes; and (b) Mortgagor's or any Guarantors' presently or subsequently existing articles or certificate of incorporation, bylaws, partnership agreements, limited partnership certificates, joint venture agreements, limited liability company articles of organization and/or operating agreements, trust agreements or other form of business organization or entity documents.

1.11 **Loan Documents** means this Mortgage, financing statements, the Note and any and all other documents and guarantees now or hereafter executed by Mortgagor, or any other Person to evidence, secure or guaranty the payment of the Indebtedness Secured Hereby (or any part thereof) or the performance and discharge of the Obligations (or any portion thereof).

1.12 **Mortgaged Property** means, as required by the context, all or any of the Improvements, Fixtures, Personalty, Property, Leases or Rents.

1.13 **Mortgagor** means the person named as the "Mortgagor" in the second paragraph of this Mortgage ("Original Mortgagor"), until a successor or assign shall have become such pursuant to the applicable provisions of this Mortgage, and thereafter Mortgagor shall mean each such successor or assign and the Original Mortgagor, jointly and severally unless the Original Mortgagor or any such successor or assign is released from liability hereunder in writing by the Holder.

1.14 **Mortgagor's Business** means the ownership, management, leasing, maintenance, repair, replacement and operation of the Mortgaged Property as office buildings.

1.15 **Obligations** means any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other Person to Mortgagee as set forth in the Loan Documents.

1.16 **Person** means any individual, corporation, trust, partnership, joint venture, limited liability company or any other entity, business entity or form of organization.

1.17 **Personalty** means all of the right, title and interest of Mortgagor now or hereafter existing in and to the following now or hereafter located in, upon, within or about or used in connection with the construction, use, operation or occupancy of the Property

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and/or the improvements and any business or activity conducted thereon or therein, together with all accessories, additions, accessions, renewals, replacements and substitutions thereto or therefor and the proceeds and products thereof: (a) all materials, supplies, furniture, furnishings, appliances, office supplies, equipment, construction materials, vehicles, machinery, computer hardware and software, maintenance equipment, window washing, equipment, repair equipment and other equipment, tools, telephone and other communications equipment, food service preparation equipment and utensils, chinaware, glassware, silverware and hollowware, food and beverage service equipment, food items and food stuffs; (b) all books, ledgers, records, accounting records, files, tax records and returns, policy manuals, papers, correspondence and electronically recorded data; (c) all general intangibles, instruments, money, accounts, accounts receivable, notes, certificates of deposit, chattel paper, letters of credit, choses in action, good will, rights to payment of money, rents, rental fees, equipment fees and other amounts payable by Persons who utilize the Property or any of the Improvements or paid by persons in order to obtain the right to use the Property and any of the Improvements, whether or not so used; trademarks, service marks, trade dress, tradenames, licenses, sales contracts, deposits, plans and specifications, drawings, working drawings, studies, maps, surveys; soils, environmental, engineering or other reports, architectural and engineering contracts, construction contracts, construction management contracts, surety bonds, feasibility and market studies, management and operating agreements, service agreements and contracts, landscape maintenance agreements, security service and other services agreements and vendors agreements; (d) all compensation, awards and other payments or relief (and claims therefor) made for a taking by eminent domain, or by any event in lieu thereof (including, without limitation, property and rights and interests in property received in lieu of any such taking), of all or any part of the Property (including without limitation, awards for severance damages), together with interest thereon, and any and all proceeds (or claims for proceeds) of casualty, liability or other insurance pertaining to the Property, together with interest thereon; (e) any and all claims or demands against any person with respect to damage or diminution in value to the Property or damage or diminution in value to any business or other activity conducted on the Property; (f) any and all security deposits, deposits of security or advance payments made to others with respect to: (i) insurance policies relating to the Property; (ii) taxes or assessments of any kind or nature affecting the Property; (iii) utility services for the Property and/or the Improvements; (iv) maintenance, repair or similar services for the Property or any other services or goods to be used in any business or other activity conducted on the Property; (g) any and all authorizations, consents, licenses, permits and approvals of and from all Persons required from time to time in connection with the construction, use, occupancy or operation of the Property, the Improvements, or any business or activity conducted thereon or therein or in connection with the operation, occupancy or use thereof and any certificate evidencing same; (h) all warranties, guaranties, utility or street improvement bonds, utility contracts, telephone exchange numbers, yellow page or other directory advertising and the like; (i) all goods, contract rights, and inventory; (j) all leases and use agreements of machinery, equipment and other personal property; (k) all insurance policies covering all or any portion of the Property; (l) all Reserves (as defined herein) and funds held in escrow by Mortgagee or other Person for Mortgagee's benefit; (m) all names by which the Property is now or hereafter known; (n) all interests in the security deposits of tenants; (o) all management agreements, blueprints, plans, maps, documents, books and records relating to the Property; (p) the proceeds from sale, assignment, conveyance or transfer of all or, any portion of the Property or any interest therein, or from the sale of any goods, inventory or services from, upon or within the Property and/or the Improvements (but nothing contained herein shall be deemed a consent by

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Mortgagee to such sale, assignment, conveyance or transfer except as expressly provided in this Mortgage); (q) any property listed under the definition of "Fixtures" which are not fixtures under Illinois law; (r) all other property (other than Fixtures) of any kind or character as defined in or subject to the provisions of the Uniform Commercial Code, Secured Transactions, as amended; and (s) all proceeds of the conversions, voluntarily or involuntarily, of any of the foregoing into cash or liquidated claims.

1.18 **Property** means the real estate located in Cook County, State of Illinois, described on Exhibit "A" attached hereto and incorporated herein by reference, together with all appurtenances and all estate and rights of Mortgagor thereto; all right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, all easements, rights of way and other appurtenances, public or private, now or hereafter used in connection therewith (including but not limited to rights to storm and sanitary sewer water, gas, electric, telephone and other utilities and for parking or ingress and egress by pedestrians or vehicles) to the extent the same constitutes any interest in real property; all mineral, oil and gas rights pertaining thereto; all present and future rights under or with respect to: (a) any declarations or restrictions governing or imposing rights or responsibilities on or with respect to any subdivisions, horizontal property regimes, condominiums, planned area developments, planned unit developments or master plans which are partially or wholly located on or affect the real property described in Exhibit "A" attached hereto; (b) any design review or architectural review committee and any property owners' or similar association described in or created by the documents referred to in the foregoing clause (a), together with any voting rights therein; and (c) any and all other documents and instruments and any amendments relating to the operation, organization, control or development of the Property;

1.19 **Rents** except to the extent that the same constitute personal property under Illinois law, means all of the rents, royalties, revenues, income, avails, proceeds, profits, fees, charges and other benefits paid or payable by parties to the Leases other than Mortgagor or otherwise paid by a person for using, leasing, licensing, possessing, operating from, residing in, or otherwise enjoying or generating income from the Mortgaged Property or any portion thereof, including but not limited to, liquidated or other damages following a default under any Lease, all proceeds payable under any policy of insurance covering loss of rents and all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy, including rights of recovery for use and occupancy and damage claims arising out of lease defaults, and including those arising from lease rejections under any bankruptcy or debtor relief laws.

1.20 **UCC** means Article 9 of the Illinois Uniform Commercial Code.

Mortgagor acknowledges that certain of the descriptions of items comprising the Mortgaged Property in the preceding paragraphs may be duplicative or overlapping, and that it is the express intent and agreement of Mortgagor that all of such descriptions (including without limitation any descriptions within a single section or subsection) shall be construed as being cumulative and not limiting. The terms "goods", "equipment", "inventory", "accounts", "instruments", "chattel paper", "general intangibles", "proceeds" and "products" shall (unless the context clearly indicates otherwise) also have the meanings provided for those terms in the definitions contained in the Uniform Commercial Code as enacted from time to time in the State in which the Property is located (the "UCC").

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Mortgagor further specifically understands and agrees that all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by or released to Mortgagor, or constructed, assembled or placed by Mortgagor on the Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction assembly, placement or conversion, as the case may be, and in each such case, without any further grant, encumbrance, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely and with the same effect as though now owned by Mortgagor and specifically described herein, but at any and all times Mortgagor will execute and deliver to Mortgagee, upon request, any and all such further assurances, deeds, conveyances, or assignments thereof or security interests therein as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

ARTICLE II

2 GRANT

NOW THEREFORE, for and in consideration of the Mortgagee making the loan represented by the Indebtedness to or for the benefit of the Mortgagor, and for the purpose of securing the Indebtedness Secured Hereby and the performance by the Mortgagor of the Obligations hereunder, and in consideration of the various agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Mortgagor,

THE MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, TRANSFERS, GRANTS AND ASSIGNS TO THE MORTGAGEE, AND GRANTS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Property and Improvements unto the Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the state or other jurisdiction in which the Property and Improvements are located providing for the exemption of homesteads from sale or execution or otherwise.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof, it is well seized of the Property and all Improvements, and of a good, indefeasible estate therein, in fee simple; that the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than (i) liens for current taxes not delinquent or taxes being contested in good faith and by appropriate proceedings, (ii) recorded easements and similar recorded encumbrances which do not adversely affect the operation of the properties subject thereto, and (iii) rights of tenants under existing leases (such liens and encumbrances as defined under, (i), (ii) and (iii) being herein called the "Permitted Exemptions"); that it has good and lawful right to sell, encumber and convey the Collateral; that it has good and lawful right to grant a security interest hereunder; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever.

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ARTICLE III

3 COVENANTS

Mortgagor warrants, represents, covenants and agrees with Mortgagee as follows:

3.1 Title and Property.

(a) Mortgagor warrants that it has title to an indefeasible fee simple estate in and to the Mortgaged Property, subject to no liens or encumbrances, except only the lien of ad valorem taxes which may be due but not yet payable and those matters set forth on Exhibit "B" attached hereto and incorporated herein by reference. Mortgagor further warrants that it has good right and lawful authority to grant, bargain, sell and convey the Mortgaged Property in the manner and form herein provided; that Mortgagor has full power and authority to convey the Mortgaged Property in the manner and form herein provided or intended hereafter to be done; that Mortgagor fully and absolutely waives and releases all rights and claims it may have in or to said lands, tenements and property as a homestead declaration or exemption, or other exemption, under and by virtue of any act of the State Legislature of the State of Illinois now existing or which may hereafter be passed in relation thereto; that this Mortgage is and shall remain a valid and enforceable first lien on the Mortgaged Property; that Mortgagor and its successors and assigns shall warrant and defend the same and the priority of the lien of this Mortgage forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

(b) Except as otherwise expressly provided herein, Mortgagor has and shall maintain title to the Collateral including any additions or replacements thereto free of all security interests, liens and encumbrances, other than the security interest granted hereunder and other than as disclosed to and accepted by Mortgagee in writing, and has good right to subject the Collateral to the security interest granted hereunder.

(c) Mortgagor shall, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, assignments, UCC financing statements, notices of assignments, transfers, other documents or instruments and assurances as Mortgagee shall from time to time require, for the better assuring, conveying, assigning, creating, perfecting, renewing, transferring and confirming unto Mortgagee the Mortgaged Property and rights hereby conveyed or assigned or intended now or hereafter to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention of facilitating the performance of the terms of this Mortgage and, on demand, shall execute and deliver one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

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(d) Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, shall cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Collateral and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law or order to publish notice of and fully to protect the lien hereof upon the interest of Mortgagee in the Mortgaged Property.

(e) Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property including the Collateral and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, including the Collateral or any instrument of further assurance.

(f) Mortgagor shall do all things necessary to preserve and keep in full force and effect its entity existence, franchises, rights and privileges under the laws of the state of its formation and under the laws of the state in which the Mortgaged Property is located (in whole or in part) and shall comply with all applicable environmental laws (as defined below) and Legal Requirements applicable to Mortgagor or to the Mortgaged Property or any part thereof.

(g) Mortgagor shall not, without Mortgagee's prior written consent, change Mortgagor's name, identity or structure or cause or permit to occur any other event that would require Mortgagee to file a new financing statement under UCC Section 5/9-402 or any other provisions of the UCC. If Mortgagor does, causes or permits any of the foregoing to occur, it shall constitute an Event of Default hereunder.

(h) Mortgagor warrants that the Property is assessed for tax purposes as a separate tax parcel that does not include any other property.

(i) Each Building contains approximately 20,500 net rentable square feet. There are four (4) Buildings on the Property.

(j) All utility services necessary for occupancy and operation of the Improvements for their intended purposes (including, without limitation, water, storm and sanitary sewer, electric and telephone facilities) are available to the Improvements. All consents, permits, variances or grants of any kind with respect to such utility services have been obtained.

3.2 Regarding Mortgagor.

(a) Mortgagor is an Illinois limited liability company. Mortgagor is qualified to do business and is duly authorized and empowered to do business

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in the State of Illinois Mortgagor has the requisite power and authority to: (i) incur the Indebtedness Secured Hereby and the Obligations and to execute and deliver the Note, this Mortgage and the other Loan Documents; and (ii) bind the Mortgagor by entering into the Note, Mortgage and other Loan Documents. The execution and delivery of the Note, this Mortgage and the other Loan Documents has been duly authorized by all requisite action of Mortgagor and each is the valid and legally enforceable obligation of Mortgagor, enforceable according to their respective terms except as may be limited by bankruptcy, insolvency, arrangement, moratorium and other similar laws applicable to creditors generally or by general principles of equity.

(b) Mortgagor is not in default under any agreement to which it is a party, the effect of which will materially or adversely affect performance by Mortgagor of its obligations pursuant to and as contemplated by the terms and provisions of the Note, this Mortgage and the other Loan Documents. Neither the execution and delivery of this Mortgage nor compliance with and performance of the terms and provisions hereof, will: (i) violate any presently existing Legal Requirement applicable to Mortgagor, or any existing applicable order, writ, injunction or decree of any Governmental Authority, (ii) conflict or be inconsistent with or result in any breach of any of the terms, covenants, conditions or provisions of or constitute a default under any indenture, mortgage, deed of trust, instrument, document, agreement, lease, promissory note, or contract of any kind which creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the assets of Mortgagor or to which Mortgagor is a party or by which Mortgagor or any of its assets may be bound, or in the event of any such violation, conflict, inconsistency, breach or default, the required consent or waiver of the other party or parties thereto has been validly granted, is in full force and effect and is valid and sufficient therefor.

(c) There are no actions, suits, investigations, or proceedings of any kind (including, without limitation, any condemnation or similar action) pending or, to the knowledge of Mortgagor, threatened against or affecting Mortgagor or the Mortgaged Property before any Governmental Authority.

(d) Mortgagor shall promptly notify Mortgagee of each and any action, suit or proceeding commenced as a result of injury, damage or liability occurring in, on or about the Property, and Mortgagor shall, upon Mortgagee's request, at Mortgagor's expense, either resist and defend any action, suit or proceeding based thereon, or cause the same to be resisted and defended by counsel designated by Mortgagor and approved in writing by Mortgagee. Mortgagor will not settle or admit liability for any such action, suit or proceeding without Mortgagee's written approval.

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(e) Mortgagor shall promptly notify Mortgagee if Mortgagor learns of the existence of a state of facts which constitute an Event of Default hereunder.

(f) Mortgagor shall promptly give written notice to Mortgagee of:

(i) all litigation affecting Mortgagor where the amount in controversy is \$25,000 or more; and

(ii) any dispute which may exist between Mortgagor and any Governmental Authority which would have a material and adverse effect on Mortgagor or the Mortgaged Property; and

(iii) any other matter which has resulted or might result in a material and adverse change in Mortgagor's financial condition or operations or that will have a material and adverse impact on the Mortgaged Property or any portion thereof or interest therein.

(g) Mortgagor shall obtain, preserve and keep in full force and effect all licenses, permits, approvals, certificates, Leases and agreements required by any Governmental Authority or otherwise required in order for Mortgagor to operate Mortgagor's Business on the Mortgaged Property required to enable Mortgagor to keep the Mortgaged Property operating in a first class condition. Except as specifically provided for in this Mortgage, Mortgagor shall not assign, transfer or in any manner change such certificates, licenses or permits without first receiving the written consent of Mortgagee.

3.3 Note and Reserves.

(a) Mortgagor shall promptly and punctually pay all principal and interest and all other sums to become due in respect of the Note, according to the terms thereof. Mortgagor shall also pay to Mortgagee on the date set forth therein for the making of monthly payments of principal and interest under the Note until the Indebtedness Secured Hereby has been fully paid and all Obligations have been fully paid and performed, a sum, as estimated by Mortgagee, equal to one-twelfth (1/12) of the annual taxes and assessments on the Mortgaged Property, plus the premiums that will next become due and payable on insurance policies as may be required hereunder, Mortgagor agreeing to deliver promptly to Mortgagee all bills and notices thereof. The foregoing payments are hereinafter referred to as "Reserves" and are to be held without any allowance of interest or dividend to Mortgagor and need not be kept separate and apart from other funds of Mortgagee. In lieu of monthly payment of Reserves hereunder, Mortgagee in its sole discretion may require Mortgagor to deliver to Mortgagee copies of paid insurance premium receipts not later than twenty-one (21) days prior to premium due dates and copies of

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paid tax and assessment receipts not later than ten (10) days prior to applicable delinquency dates. Mortgagee from time to time thereafter may require payment of Reserves upon ten (10) days' prior written notice to Mortgagor.

(b) In addition to any other payments required under this Mortgage, Mortgagor shall pay to Mortgagee on the date hereof, the sum of One Hundred Thousand Dollars (\$100,000) from the Loan proceeds disbursed by Mortgagee, to be held by Mortgagee in an interest-bearing account (the "Roof Reserve") which will be invested at the sole discretion of the Mortgagee. All interest earned thereof, if any, shall accrue to the benefit of the Mortgagor. The Roof Reserve shall be used to fund replacement of the roofs on two (2) Buildings. Upon the completion of all work to Mortgagee's satisfaction and delivery to Mortgagee of such evidence of Mortgagor's full payment to all contractors, materialmen and all other persons of all amounts due in connection with replacement of the roof of the first Building (including lien waivers) Mortgagee will disburse Fifty Thousand Dollars (\$50,000) from the Roof Reserve to Mortgagor. Mortgagor will disburse the remainder of the Roof Reserve upon completion of all work to Mortgagee's satisfaction and delivery of such evidence of full payment including lien waivers for replacement of the roof of the Second Building.

(c) The Reserves and the Roof Reserve are solely for the added protection of Mortgagee and entail no responsibility on Mortgagee's part beyond the allowing of due credit, without interest, (except as set forth in Section 3.3(b) above) for the sums actually received by it. Upon assignment of this Mortgage by Mortgagee, any Reserves and the Roof Reserve on hand shall be turned over to the assignee and any responsibility of the assignor with respect thereto shall terminate. When the Indebtedness Secured Hereby has been fully paid and all of the Obligations fully paid and performed, any remaining Reserves and, if not previously disbursed pursuant to Section 3.3(b) above, the Roof Reserve shall be paid to Mortgagor or to the then owner or owners of the Property as the case may be. The Reserves and the Roof Reserve are hereby pledged as additional security for the payment of the Indebtedness Secured Hereby and the payment and performance of the Obligations and Mortgagor hereby grants to Mortgagee a security interest in the Reserves and the Roof Reserve and agrees that the security interest granted to Mortgagee in this Mortgage covers the Reserves and the Roof Reserve are hereby made subject to the lien and terms of the security interest and security agreement. No portion of the Reserves and the Roof Reserve shall be subject to the direction or control of Mortgagor and Mortgagee shall not be liable for any failure to apply the Reserves to the payment of taxes and assessments and insurance premiums unless Mortgagor (provided that no default or Event of Default then exists thereunder) shall have requested Mortgagee in writing to make application of such funds to the payment of the particular charge for payment of such charge.

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(d) If the total of the Reserves shall exceed the amount of payments actually applied by Mortgagee, such excess shall be credited by Mortgagee on subsequent payments to be made by Mortgagor. If, however, the Reserves shall not be sufficient to pay the sums required when the same shall become due and payable, Mortgagor shall, within five (5) days after Mortgagee's request, deposit with Mortgagee the full amount of any such deficiency. If there shall be a default under any of the provisions of this Mortgage, Mortgagee may apply, at any time, the balance of the Reserves and the Roof Reserve against such sums due and payable under the Note, or in connection with the Obligations, whether or not then due, in such order and in such manner as Mortgagee may determine.

(e) Mortgagee, in making any payment hereby authorized: (i) relating to taxes and assessments, may do so according to any bill, statement or estimate prepared from the appropriate public office or Governmental Authority without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessments, sale, forfeiture, tax lien or title or claim thereof, or (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so upon any reasonable inquiry as to the validity or amount of any claim for lien which may be asserted.

3.4 Maintenance and Repair. Mortgagor shall keep the Mortgaged Property in first-class operating order, repair and condition and shall not commit or permit any waste thereof or any destruction or disrepair to occur thereto. Mortgagor shall make all repairs, replacements, renewals, additions and improvements and complete and restore promptly and in good workmanlike manner any Improvements which may be constructed, placed, damaged, or destroyed thereon, and pay when due all costs incurred therefor. Mortgagor shall not remove any Improvements or, except as otherwise expressly provided in this Mortgage, the Collateral from the Property or demolish any of the Improvements, nor materially alter any of the Mortgaged Property without prior written consent of Mortgagee. Mortgagor shall permit Mortgagee, its agents and authorized representatives the opportunity to inspect the Mortgaged Property, including the interior of any Improvements, at any reasonable times subject to the rights of lessees thereof.

3.5 Compliance With Laws/Maintenance of Permits. Mortgagor shall comply with all Legal Requirements affecting the Mortgaged Property and except as expressly permitted under Section 3.9, shall pay all fees or charges of any kind in connection therewith. Mortgagor shall not by act or omission, permit any property or Person which is not subject to this Mortgage to rely on the Mortgaged Property or any part thereof or any interest therein to fulfill any governmental requirement for the existence or use of such property or Person; and the Mortgaged Property shall not rely on any property or Person which is not subject to this Mortgage to fulfill any governmental requirement for the existence or use of the Property. Mortgagor shall not by act or omission impair the integrity of the Property as a single separate zoning parcel separate and apart from all other parcels.

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3.6 Insurance.

(a) Mortgagor shall keep all improvements now or hereafter existing insured against loss or damage by fire (with so-called extended coverage, vandalism and malicious mischief coverage), and other hazards as may reasonably be required by Mortgagee, including, without limitation (i) rent loss or business interruption insurance; and (ii) flood and earthquake insurance. Mortgagor shall also provide liability insurance with such limits for personal injury and death and property damage as Mortgagee may require.

(b) Mortgagor shall initially maintain, until Mortgagee shall otherwise indicate in writing, fire and extended coverage insurance in an amount of not less than the full insurable and replacement value of the Improvements now or hereafter located on the Property with "all risk" coverage, ninety percent (90%) co-insurance, and "agreed amount", "inflation guard", "replacement cost", "vandalism", "malicious mischief" and "waivers of subrogation" endorsements and with a deductible of not more than FIVE THOUSAND DOLLARS (\$5,000.00), which policy shall be written by a company or companies having a Best's rating of at least A:VIII or such other rating as may be agreed to in writing and in advance by Mortgagee; comprehensive general liability and property damage insurance (with a broad form comprehensive general liability endorsement) in the amount of at least FIVE MILLION DOLLARS (\$5,000,000.00) combined single limit for personal injury and property damage which shall have deleted therefrom any exclusion or restriction on coverage for contractual obligations; and rental or business interruption insurance in an amount sufficient to cover any loss of rents or income from the Mortgaged Property (including expenses payable by tenants) suffered by Mortgagor for a period of at least twelve (12) months. Additionally: (i) during any period that alcoholic beverages are or may be served on the Property (provided that the foregoing shall not be deemed to be Mortgagee's consent to serving any alcoholic beverages thereon), Mortgagor shall procure and maintain in effect dram shop insurance in an amount that is or not less than \$5,000,000.00; and (ii) during any period that any construction, remodeling or renovation activities are being conducted on any portion of the Property or the Improvements (to the extent such activities are permitted under this Mortgage), builder's risk (course of construction) insurance with extended coverage and such other hazard insurance as Mortgagee may require. Such insurance shall be in an amount that is not less than the maximum insurable value of the work to be performed, as determined by a recognized appraiser or insurer approved by Mortgagee. Such coverage shall be kept in full force and effect at all times until the completion of any such construction, remodeling or renovation activities.

(c) All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with standard mortgagee clauses or Mortgagee's Loss Payable Clause attached to all policies

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in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without at least thirty (30) days' prior written notice to Mortgagee. Mortgagor shall make all policies, including additional and renewal policies, available to Mortgagee, but Mortgagee may accept signed certificates of insurance evidencing the coverage in lieu of the original policies. In the case of insurance about to expire, Mortgagor shall deliver renewal policies or certificates of insurance not less than fifteen (15) days prior to their respective dates of expiration.

(d) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause or Mortgagee's loss payable clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance. In the event of a foreclosure or other transfer of title to the Property in lieu of foreclosure, or by purchase at a foreclosure sale, all interest in any insurance policies in force shall pass to Mortgagee, transferee or purchaser as the case may be.

3.7 Casualty.

(a) Mortgagor shall promptly notify Mortgagee of any loss to the Mortgaged Property or any portion thereof whether covered by insurance or not. In case of loss or damage by fire or other casualty, Mortgagee, or after foreclosure, the holder of the certificate or certificates of purchase, is authorized (i) to settle and adjust any claim exceeding Fifty Thousand Dollars (\$50,000) under insurance policies which insure against such risks, or (ii) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance money. Mortgagor and Mortgagee each will provide the other with information as to the status of any claims they are authorized under this Section 3.7(a) to adjust and allow a representative of the other to attend any meetings with the insurer.

(b) Within Sixty (60) days after its receipt of any insurance proceeds, Mortgagee shall release to Mortgagor any insurance proceeds received by Mortgagee as a result of any loss to the Property as restoration progresses solely in payment of restoration costs, but in the event of such a release, the release of funds shall be subject to the following conditions: (i) there shall be no outstanding default or Event of Default hereunder, under the Note or under any other Loan Documents and no event shall have occurred and be continuing which, but for the giving of notice and passage of time, or both, would constitute such a default or an Event of Default; (ii) Mortgagee shall approve

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the plans and specifications for any such restoration in advance of commencement thereof; (iii) there shall be sufficient funds upon deposit at all times with Mortgagee to complete the restoration, as certified by an architect approved by Mortgagee; (iv) the insurer shall not have asserted any defense against Mortgagor or any tenant pursuant to the insurance policy covering the Improvements; (v) the restoration is commenced within 120 days after the date of the loss and is capable of being completed at least twelve (12) months prior to the Maturity Date (as defined in the Note); (vi) Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor has the financial ability to continue to pay the Indebtedness Secured Hereby during restoration; (vii) the loss affects less than forty percent (40%) of the value of the Improvements; and (viii) Mortgagor shall comply with such other conditions as would customarily be required by a prudent local construction lender, or are otherwise reasonable.

(c) Mortgagee may apply any insurance proceeds remaining after completion of restoration to the Indebtedness Secured Hereby whether due or not (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not), or if the conditions set forth in subsection (b) of this Section 3.07 are not met, Mortgagee may in its sole and absolute discretion apply all insurance proceeds to the Indebtedness Secured Hereby, whether due or not, (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not) in such order and in such manner as Mortgagee may determine.

(d) Mortgagee will notify Mortgagor of its determination to apply any insurance proceeds or to make such proceeds available to restore the Property. If Mortgagee makes proceeds available, then Mortgagee will upon Mortgagor's request, deposit any insurance proceeds with a title company acceptable to Mortgagee to hold (subject to Mortgagee's right upon an Event of Default under the Mortgage to apply such deposited insurance proceeds against the Indebtedness Secured Hereby and any other remaining obligations), for disbursement by the title company as restoration progresses solely in payment of restoration costs, pursuant to such conditions as Mortgagee may require. Mortgagee may apply any insurance proceeds remaining after completion of restoration to the Indebtedness Secured Hereby whether due or not (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not).

(e) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as described in Section 3.7(b) (in Mortgagee's sole and absolute discretion) in rebuilding or restoring the Improvements, shall be used to pay the amount due Mortgagee and the balance, if any, shall be paid to the owner of the equity of redemption if he shall then be entitled to the same. In case of a judicial foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree

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

3.8 Condemnation. Mortgagor, immediately upon obtaining knowledge of the commencement of any proceeding for the condemnation of the Property and/or Improvements or any portion thereof or interest therein, shall notify Mortgagee of the pendency thereof. Mortgagor hereby assigns, transfers and sets over unto Mortgagee all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Property or Improvements taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. Mortgagee may, at its option, commence, appear in and prosecute, in its own name or in the name of Mortgagor, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof. After deducting therefrom all of its expenses, including reasonable attorneys' and other professionals' fees, Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Secured Hereby, whether due or not (or if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations whether due or not), or make those proceeds available for restoration or rebuilding of the Property. In the event that Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of the rebuilding or restoration of the Property or the Improvements, such proceeds shall be made available in the manner and under the same conditions that Mortgagee may require in the manner provided under Section 3.7 above. If the proceeds are made available by Mortgagee to reimburse Mortgagor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Mortgagee be applied on account of the Indebtedness Secured Hereby, whether due or not, or, if the Indebtedness Secured Hereby has been paid in full, then to any remaining outstanding Obligations, whether due or not, or be paid to Mortgagor in each case without penalty or premium. Mortgagor agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Mortgagee may require from time to time.

3.9 Liens and Encumbrances. Except as expressly provided in this Mortgage, Mortgagor shall not, without Mortgagee's express prior written consent, which consent may be given or withheld in Mortgagee's sole and absolute discretion, permit the creation of any liens or encumbrances on the Mortgaged Property other than the lien of this Mortgage and any lien for real property taxes so long as they are not yet delinquent, and shall pay when due

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all Impositions, obligations, lawful claims or demands of any person which, if unpaid, might result in, or permit the creation of, a lien or encumbrance on the Property or on the Rents, issues, income and profits arising therefrom, whether such lien would be senior or subordinate hereto, including, but without limiting the generality of the foregoing, all claims of mechanics, professionals, materialmen, laborers, and others for work, services or labor performed, or materials or supplies furnished in connection with any work of demolition, alteration, improvement of or construction upon the Property, and Mortgagor will do or cause to be done everything necessary so that the priority of the lien of this Mortgage shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee provided, that Mortgagor may contest in good faith by appropriate proceedings, so long as adequate cash reserves are maintained with respect thereto with a third party escrow agent acceptable to Mortgagee (which notwithstanding any other provisions in the Loan Documents shall be subject to Mortgagee's liens and applied to repayment of the obligations and the Indebtedness Secured Hereby) real property taxes and mechanics lien claims upon notice to Mortgagee of the amount claimed and the basis for Mortgagor's contest. Mortgagor will keep Mortgagee informed in writing of the status of any such contest. Any lien or encumbrance on the Mortgaged Property created hereafter shall contain, or shall by virtue hereof be deemed to contain, a provision subordinating such lien or encumbrance to all leases then or in the future affecting the Mortgaged Property but nothing in this sentence shall be deemed to be a consent by Mortgagee to any lien or encumbrance.

3.10 **Impositions.** Mortgagor shall pay in full when due, and in any event before any penalty or interest attaches, all Impositions (except those that may be paid by Mortgagee, in its sole discretion, from Reserves) and shall furnish to Mortgagee official receipts evidencing the payment thereof (including those required under Section 3.3 above); provided that if such Impositions may be paid in installments, then Mortgagor may (so long as no Event of Default has occurred and continues) pay such Imposition in installments and will pay all such installments when due and provide Mortgagee within a copy of paid receipt therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any Imposition, tax or assessment which Mortgagor may desire to contest.

3.11 **Indemnification: Attorneys' Fees.** Mortgagor shall appear in and defend any suit, hearing action or proceeding that might in any way and in the sole judgment of Mortgagee affect the value of the Mortgaged Property, the priority of this Mortgage or the rights and powers of Mortgagee under this Mortgage. Mortgagor shall, at all times, indemnify, defend, hold harmless and on demand, reimburse Mortgagee for any and all loss, damage, liability, expense or cost, including cost of evidence of title and reasonable attorneys' fees, arising out of or incurred in connection with any such suit, hearing, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest at the rate or rates provided in the Note and shall be due and payable on demand. Mortgagor shall pay the cost of suit, cost of evidence of title and reasonable attorneys' and other professionals' fees in any proceeding, suit, and foreclosure proceedings through the court brought by the Mortgagee to foreclose this Mortgage.

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3.12 Transfer of Title or Further Encumbrances.

(a) In order to induce Mortgagee to make the loan evidenced by the Note, Mortgagor agrees that subject to Sections 3.12(b) and 3.12(c) below, if title to the Property or the Improvements or any part thereof or interest therein is sold or if the Property or the Improvements or any portion thereof are leased except for a lease of portions of the Property or the Improvements in the ordinary course of operating Mortgagor's Business, or if the Property or the Improvements or any portion thereof is assigned, transferred, conveyed, further mortgaged, encumbered, or otherwise changed (including any such changes as security for additional financing), whether voluntarily or involuntarily or by operation of law, in either or any case without the prior written consent of Mortgagee, which consent may be given or withheld in Mortgagee's sole and absolute discretion, Mortgagee, at its option, may declare the Indebtedness Secured Hereby and all Obligations hereunder to be forthwith due, payable and performable. Without in any way limiting Mortgagee's rights of approval set forth above, Mortgagee may condition its consent, among other things, upon any one or more of: (i) approval of the financial condition and credit worthiness of the proposed transferee; (ii) making such modifications to the Note, this Mortgage and other Loan Documents as Mortgagee may deem appropriate; (iii) payment of a transfer fee not to exceed one percent (1%) of the then outstanding principal balance of the Note (or such lower fee as may be then required by law, if applicable); and (iv) an increase in the interest rate under the Note, (but not in excess of the maximum rate increase then permitted by law, if applicable). If the interest rate is increased, any monthly installment payment under the Note shall be increased accordingly, and either Mortgagor or the new owner shall pay all fees and expenses incurred thereby, including any costs of amending the Note, this Mortgage any of the other Loan Documents, and of obtaining appropriate title insurance insuring and assuring the continued priority of the lien of this Mortgage. In addition, Mortgagee may charge an administrative fee for processing any application seeking the consent of Mortgagee.

(b) Mortgagee will upon written request of Mortgagor and a review period of not more than sixty (60) days, permit Mortgagor to place a second mortgage on the Property (the "Junior Mortgage") in favor of an "Approved Financing Source" (as defined below) to secure indebtedness of Mortgagor of up to Four Hundred Thousand Dollars (\$400,000); provided, that (i) the aggregate of the Indebtedness Secured Hereby and the indebtedness secured by the Permitted Junior Mortgage (the "Total Mortgage Indebtedness") does not at any time exceed seventy-five percent (75%) of the value of the Property and the Improvements as determined by Mortgagee in its sole discretion based on current financial statements for the operation of the Property and an appraisal by Mortgagee's personnel and (ii) the net operating income of the Property for each of the four calendar quarters immediately preceding the date of Mortgagor's request (and if an additional calendar quarter is completed prior

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to the closing of the second mortgage, also that additional calendar quarter) is not less than one hundred twenty percent (120%) of the Total Mortgage Indebtedness paid in that calendar quarter and (iii) the terms of the financing are approved by Mortgagee based on reasonable business tests. Mortgagor will provide Mortgagee all information relating to the Property and, the Approved Financing Source and the proposed Junior Mortgage financing which Mortgagee may request. An "Approved Financing Source" means a lender (including but not limited to the Mortgagor in the event of a transfer of the Property to a transferee) approved by Mortgagee which Mortgagee has approved in advance and in writing based on such reasonable business tests as Mortgagee deems necessary, including but not limited to financial condition.

(c) Any admission of new Members to Mortgagor or transfer of the Member's limited liability company interests in Mortgagor shall be deemed a transfer of title to the Property subject to this Section 3.12 provided, however that with respect to those admissions and transfers as Mortgagee consents to pursuant to this Section 3.12(c), subject to the last sentence of this paragraph, Mortgagee will not require payment of any transfer fee or any increase in the interest rate under the Note or require any liability of transferee not required of transferor. Mortgagee will permit a transfer of ownership of the Property or Member interests in Mortgagor, upon not less than thirty (30) days prior written request describing in detail all circumstances related to the transfer, to (i) one more current Members of Mortgagor, and (ii) one or more trusts for the benefit of direct lineal descendants of Michael M. Janko, Gary R. Janko or Richard F. Janko, subject in each case to the final sentence of this paragraph. Mortgagee will also consent to a transfer of Member interests of Mortgagor to the estate of any Member upon his death or a personal representative upon his legal incompetency, in each case subject to the final sentence of this paragraph. Mortgagee will also consent to admission of new Members of Mortgagor upon at least thirty (30) days written request containing such information as Mortgagee may request concerning the proposed new Member. Mortgagee's consent to any transfer described in this paragraph shall be conditioned upon (i) its receipt of such instruments and agreements of the transferee as it may request and (ii) Michael M. Janko, Gary R. Janko and Richard F. Janko, or any one of them, shall at all times continue to maintain voting control of Mortgagor and to hold a majority of the economic interest in Mortgagor.

(d) Any change in the legal or equitable title of the Property or the Improvements or in the beneficial ownership of the Property or the Improvements not expressly permitted herein, whether or not of record and whether or not for consideration or any change of any ownership interests (whether legal or equitable) in Mortgagor shall be deemed a transfer of title to the Property or the Improvements. Mortgagor shall give prior written notice to Mortgagee of all proposed transfers of title to the Property or the Improvements or any portion thereof.

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(e) Except as otherwise expressly permitted herein, in the event ownership of the Property or the Improvements, or any part thereof, becomes vested in any person or entity other than Mortgagor, without the prior written approval of Mortgagee, Mortgagee may, without notice to Mortgagor, waive such default and deal with such successor or successors in interest with reference to this Mortgage, the Note and the other Loan Documents in the same manner as with Mortgagor, without prior approval or consent of Mortgagor and without in any way releasing, discharging or otherwise affecting the liability of Mortgagor hereunder, or for the Indebtedness Secured Hereby or payment or performance of any of the Obligations. No sale, transfer or conveyance of the Property or the Improvements, no forbearance on the part of Mortgagee, no extension of the time for the payment of the Indebtedness Secured Hereby or the performance or payment of the Obligations or any change in the terms thereof consented to by Mortgagee shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Mortgagor herein, either in whole or in part, nor shall the full force and effect of this lien be altered thereby. Any deed conveying the Property, or the Improvements or any part thereof, shall provide that the grantee thereunder assumes all of the grantor's obligations under this Mortgage, the Note and the other Loan Documents but nothing herein shall be deemed to be a consent to any transfer. In the event such deed shall not contain such assumption, the grantee under such deed shall nevertheless be deemed to have assumed such obligations by acquiring the Property, the Improvements or such portion thereof subject to this Mortgage.

(f) Mortgagor shall not voluntarily, involuntarily or by operation of law, sell, assign, transfer or otherwise dispose of the Collateral or any interest therein and shall not encumber or otherwise do or permit anything to be done or occur that may impair the Collateral as security hereunder except so long as no default or Event of Default has occurred and is continuing hereunder or under the Note or under any other Loan Document: Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when absolutely worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property or in the conduct of the Mortgagor's Business upon the Mortgaged Property replacing the same or substituting for the same other collateral at least equal in value, utility and quality to the initial value, utility and quality of that disposed of and in such a manner so that such replacement property shall be subject to the security interest created hereby and so that the security interest of Mortgagee hereunder shall be the first priority security interest therein. In the event the Collateral is sold in connection with the sale of the Property, Mortgagor shall require, as a condition of the sale, that the buyer specifically agree to assume Mortgagor's obligations as to the security interest herein granted and to execute whatever agreements and filings deemed necessary by Mortgagee to maintain its perfected security interest in the Collateral but nothing herein shall be deemed to be a consent to any sale or transfer.

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to, and continues to diligently pursue the cure of the default, for more than sixty (60) days; and provided, however, the foregoing shall not be construed to permit or to be Mortgagee's consent to any other liens or encumbrances against the Mortgaged Property, except as specifically permitted in this Mortgage.

3.21 Alteration, Removal and Change in Use of Property Prohibited. Mortgagor agrees not to permit or suffer any of the following without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld:

(a) Any structural alteration of, or addition to, the Property or the Improvements as now or hereafter situated upon the Property or the addition of any new Improvements thereto, except for the erection of non load-bearing interior walls; or

(b) The use of any of the Mortgaged Property other than for the operation of Mortgagor's Business; or

(c) Any change in the present zoning classification of the Property.

3.22 Conveyance of Mineral Rights Prohibited. Mortgagor agrees that the making of any oil, gas or mineral lease or the sale or conveyance of any oil, gas or mineral lease or the sale or conveyance of any mineral interest or right to explore for minerals under, through or upon the Property would impair the value of the Property; and that Mortgagor shall have no right, power or authority to lease the Property, or any part thereof, for oil, gas or other mineral purposes, or to grant, assign or convey any mineral interest of any nature, or the right to explore for oil, gas and other minerals, without first obtaining from Mortgagee express written permission therefor (which permission may be given or withheld in Mortgagee's sole and absolute discretion), which permission shall not be valid until recorded among the real property records of the County in which the Property is situated. Mortgagor further agrees that if Mortgagor shall make, execute, or enter into any such lease or attempt to grant any such mineral rights without the prior written consent of Mortgagee, then Mortgagee shall have the option, without notice, to declare the same to be a default hereunder and to declare the Indebtedness Secured Hereby and all Obligations immediately due and payable. Whether Mortgagee shall consent to such lease or grant of mineral rights, Mortgagee shall receive the entire consideration to be paid for such lease or grant of mineral rights, with the same to be applied to the Indebtedness Secured Hereby, the Obligations or either of them, in such manner as Mortgagee may designate, notwithstanding the fact that the amount owing thereon may not then be due and payable or the said amounts are otherwise adequately secured; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Mortgage on the Mortgaged Property.

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ARTICLE IV

4 SECURITY AGREEMENT AND FINANCING STATEMENT UNDER UNIFORM COMMERCIAL CODE

4.1 Security Agreement and Financing Statement. To the extent any Collateral covered by this Mortgage consists of rights in action or personal property covered by the UCC this Mortgage constitutes a security agreement and financing statement as defined thereunder and Mortgagor hereby grants to Mortgagee a security interest in all and any Collateral.

THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING A PART OF THE COLLATERAL WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PROPERTY. FOR PURPOSES OF THE UCC THE FOLLOWING INFORMATION IS FURNISHED:

(a) The name and address of the record fee owner of the real estate described in this instrument is the Mortgagor, whose full name and address are set forth in the second full paragraph on page one of this Mortgage and are incorporated herein by this reference;

(b) The name and address of the Debtor is the Mortgagor, whose full name and address are set forth in the second full paragraph on page one of this Mortgage and are incorporated herein by this reference;

(c) The name and address of the Secured Party is the Mortgagee, whose full name and address are set forth in the second full paragraph on page one of this Mortgage and are incorporated herein by this reference.

(d) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above; and

(e) This document also covers goods which are or are to become Fixtures.

This Mortgage shall be self-operative with respect to any Collateral covered by this Mortgage which consists of rights in action or personal property covered by the UCC, but Mortgagor agrees to execute and deliver on demand such security agreements, financing statements or other instruments as Mortgagee may request to impose the lien hereof more specifically upon any of such property and to pay the recording and/or filing fees associated therewith.

4.2 Purchase Money Security Interests, Leases. If the lien of this Mortgage on any such property is now, or shall hereafter be, subject to a prior security interest covering such property, by reason of a purchase money security interest or otherwise, then in the

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event of any default hereunder, all the right, title and interest of Mortgagor in and to any and all deposits thereon is hereby assigned to Mortgagee, together with the benefit of any payments now or hereafter made thereon but nothing herein shall be deemed to be a consent to any prior security interest.

In the event Mortgagor owns or acquires only a lessee's interest in any Personalty or Fixtures, then, in addition to the foregoing requirements, before any of such property is placed in, on or about the Property:

(a) The written approval of Mortgagee to the leasing agreements under which Mortgagor owns or acquires such lessee's interest shall first be obtained, and

(b) All consents of the lessor under any such leasing agreements to such security interest of Mortgagee, and all agreements of such lessor in favor of Mortgagee deemed necessary by Mortgagee, shall first be obtained to the satisfaction of Mortgagee.

It is understood and agreed that, in order to protect Mortgagee from the effect of UCC Section 5/9-313, as amended from time to time, in the event that Mortgagor intends to purchase any goods which may become Fixtures attached to the Property or the Improvements, or any part thereof, and such goods will be subject to a purchase money security interest held by a seller or any other Person:

(c) Mortgagor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Mortgagee, and all requests for such written approval shall be in writing and contain the following information:

(i) a description of the property to be replaced, added to, installed or substituted; and

(ii) the name and address of the proposed holder and proposed amount of the security interest.

(d) Mortgagor's execution of any such security agreement or other document evidencing such security interest without Mortgagee's prior written approval shall constitute an Event of Default hereunder and a default or Event of Default under the Note and other Loan Documents. No consent by Mortgagee pursuant to this subsection shall be deemed to constitute an agreement to subordinate any right of Mortgagee in Fixtures or other property covered by this Mortgage.

(e) If at any time Mortgagor fails to make any payment on an obligation secured by a purchase money security interest in any Personalty or

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any Fixtures, Mortgagee, at its option, may at any time pay the amount secured by such security interest. Any money paid by Mortgagee under this subsection, including any expenses, costs, charges and attorneys' fees incurred by Mortgagee shall be reimbursed to Mortgagee upon demand, shall be secured by this Mortgage and shall bear interest at the Default Rate (as defined under the Note) from the date advanced until paid. Mortgagee shall be subrogated to the rights of the holder of any such purchase money security interest in such Personalty or Fixtures.

(f) Mortgagee shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Mortgagor's indebtedness for such Personalty or Fixtures, and, upon acquiring such interest as assignee thereof, to enforce same in accordance with the terms and provisions of the UCC and in accordance with any other provisions of law.

(g) Whether or not Mortgagee has paid the Indebtedness Secured Hereby, or taken an assignment of, such security interest, Mortgagor covenants to pay all sums and perform all obligations secured thereby, and if Mortgagor at any time shall be in default under such security agreement, it shall constitute an Event of Default under this Mortgage.

(h) the provisions of sub-subsections (i), (ii), (iii), and (iv) above shall not apply if the goods which may become Fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Mortgagee, to the lien and security interest of this Mortgage in a manner satisfactory to Mortgagee.

4.3 **General.** Mortgagor agrees that all property of every nature and description, whether real or personal, covered by this Mortgage, together with all personal property in which Mortgagee has a security interest by reason of a separate agreement or instrument, are encumbered as one unit, and that, upon the occurrence of any default or Event of Default under this Mortgage, Mortgagee may, at Mortgagee's option, pursuant to UCC Section 5/9-501 foreclose and sell all such property in the same proceeding, and all such property may, at Mortgagee's option, be sold as such in one unit as a going business, subject to the provisions of UCC Section 5/9-504. The filing or recording of any financing statement relating to the Fixtures, the Personalty or any other rights or interests generally or specifically described herein shall not be construed to diminish or alter any of Mortgagee's rights or priorities hereunder.

Mortgagor and Mortgagee agree that nothing herein contained shall be construed as in anywise derogating from or impairing the hereby stated intention of the parties that to the maximum extent permitted by law, everything used in connection with the production of income from the Mortgaged Property and/or adapted for the use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all

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proceedings, both legal or equitable, shall be regarded as part of the real estate irrespective of whether (a) any such item is physically attached to the Improvements, (b) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained therein or in any list filed with the Mortgagee, or (c) any such item is referred to or reflected in any financing statement filed at any time. Similarly, the mention in any financing statement of (i) the rights in or the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for a taking or for loss of value, or (iii) the Mortgagor's interest as lessor in any present or future Lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to a Lease or otherwise shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in said financing statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (a), (b) and (c) above that notice of Mortgagee's priority of interest to be effective against a particular class of person, including, but not limited to, the Federal Government, must be filed in the UCC Records. For purposes of treating this Mortgage as a security agreement and financing statement, Mortgagee shall be deemed to be the Secured Party and Mortgagor shall be deemed to be the Debtor.

ARTICLE V

5 LEASES AND RENTS

5.1 Mortgagor to Comply with Leases Mortgagor will, at its own cost and expense:

- (a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement imposed on Landlord under any Leases;
- (b) Enforce or secure the performance of each and every obligation, covenant, condition and agreement of each Lease by the tenants thereunder to be performed;
- (c) Not borrow against, pledge or further assign (except to a transferee consented to by the Mortgagee under Section 3.12 of this Mortgage) any Rents due under any Leases;
- (d) Not permit the prepayment of any Rents due under any Lease for more than thirty (30) days in advance nor anticipate, discount, compromise, forgive or waive any such Rents;
- (e) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases except in good faith and

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consistent with reasonable commercial practices with respect to any Lease covering less than 4,000 rentable square feet; and

(f) Not materially modify, alter or waive any Lease or any part or provision thereof, or to terminate or cancel any Lease, or any part or provision thereof, except as approved in advance and in writing from time to time by Mortgagee and except in good faith and consistent with reasonable commercial practices with respect to any Lease covering less than 4,000 rentable square feet;

(g) Promptly provide to Mortgagee executed copies of any Leases, and amendments, renewals or modifications to Leases entered into by Mortgagor from and after the date of this Mortgage; and

(h) Submit to Mortgagee for Mortgagee's prior written approval any standard lease forms that Mortgagor uses or intends to use in connection with the Property.

5.2 **Mortgagee's Right to Perform under Leases.** Should Mortgagor fail to perform, comply with or discharge any obligations of Mortgagor under any Lease or should Mortgagee become aware of or be notified by any tenant under any Lease of a failure on the part of Mortgagor to so perform, comply with or discharge its obligations under said Lease, Mortgagee may, but shall not be obligated to, and without further demand upon Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and Mortgagor agrees to repay upon demand all sums incurred by Mortgagee in remedying any such failure together with interest at the Default Rate (as defined under the Note). All such sums, together with interest as aforesaid shall become additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

5.3 **Absolute Assignment of Rents.** Mortgagor does hereby absolutely and unconditionally assign and transfer unto Mortgagee all of its right, title and interest in and to all existing and future Leases and all of the Rents now due and which may hereafter become due, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such right, title and interest under the Leases and all of the Rents unto the Mortgagee. The foregoing assignment shall extend to and cover any and all extensions and renewals of existing and future Leases and to any and all present and future rights against any guarantors of any such obligations. Notwithstanding the foregoing assignment, Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of the foregoing assignment, and Mortgagor shall and does hereby agree to indemnify, defend and to hold Mortgagee harmless for, from and against any liability, loss or damage which it might incur under any Lease or under or by reason of the foregoing assignment and from any claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained in the Leases; provided, however, that Mortgagor shall not be obligated to indemnify and hold harmless Mortgagee

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from any demands or claims caused solely by the gross negligence or willful misconduct of Mortgagee. In pursuance of the foregoing assignment, and not in lieu thereof, Mortgagor shall, on demand, give Mortgagee separate specific assignments of Rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. Mortgagor does hereby irrevocably appoint Mortgagee its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all Rents; provided, Mortgagee grants Mortgagor the license and privilege to collect the Rents unless and until a default or an Event of Default under this Mortgage occurs or exists at which time such license shall be deemed terminated and revoked without further action by or notice from Mortgagee. During any period that Mortgagor's license to collect the Rents is in effect, Mortgagor shall hold all Rents collected by it in trust for the benefit of Mortgagee and shall use them in the following order of priority:

- (a) To pay any real or personal property taxes on the Mortgaged Property that are not paid from Reserves;
- (b) To pay the premiums for insurance required to be maintained by Mortgagor pursuant to the provisions of this Mortgage to the extent not paid from Reserves;
- (c) To pay the costs of maintaining the Mortgaged Property in the condition required under Section 3.4 of this Mortgage;
- (d) To pay the principal of (prepayment premiums and late charges, if any) and interest on the Indebtedness Secured Hereby and any other sums then due and owing under the Note, this Mortgage or any of the other Loan Documents; and
- (e) To pay the costs of performing or discharging any of Mortgagor's other obligations under this Mortgage.

Provided that no default or Event of Default then exists under this Mortgage (and no event has occurred that, with the giving of notice or the passage of time would constitute such a default or Event of Default) after application of the Rents as provided in (a) - (e) above, Mortgagor may retain any remaining Rents for its account. Upon a default or an Event of Default under this Mortgage and whether before or after the institution of proceedings to sell the Mortgaged Property or foreclose this Mortgage or during any period of redemption or reinstatement and without regard to waste, adequacy of the security or solvency of the Mortgagor, Mortgagee may revoke the revocable license and privilege granted Mortgagor hereunder to collect the Rents, and may, at its option, without notice in person or by agent, with or without taking possession of or entering the Property, with or without bringing any action or proceeding or by a receiver duly appointed, give, or require Mortgagor to give, notice to any or all tenants under any Lease authorizing and directing the tenant to pay such Rents to Mortgagee, such agent, or receiver as the case may be; collect all of the Rents; enforce the payment thereof and exercise all of the rights of the landlord under any Lease and all of the rights of Mortgagee hereunder; enter upon, take possession of, manage and operate the

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Mortgaged Property, or any part thereof; cancel, enforce or modify any Leases, and fix or modify Rents, do any acts which the Mortgagee deems proper to protect the security hereof. Mortgagor hereby expressly consents in advance to the appointment of a receiver applied for and selected by or for Mortgagee at any time during the continuance of a default or Event of Default under this Mortgage, whether or not foreclosure proceedings have been commenced or concluded and whether or not a foreclosure sale has occurred. Any Rents collected shall be applied to the costs and expenses of operation, management and collection, including reasonable attorneys' fees, to the payment of the fees and expenses of any agent or receiver so acting, to the costs incurred by the Mortgagee, including reasonable attorneys' fees, to the payment of taxes, assessments, insurance premiums and expenditures for the management, repair and upkeep of the Mortgaged Property, to the performance of landlord's obligations under any Leases and to the Indebtedness Secured Hereby and the Obligations all in such order, amounts and manner as the Mortgagee may require. The entering upon and taking possession of the Mortgaged Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any default or Event of Default under this Mortgage or affect any notice of default or invalidate any act done pursuant to such notice nor in any way operate to prevent Mortgagee from pursuing any other remedy which it may now or hereafter have under the terms of this Mortgage or any other security given for the Indebtedness Secured Hereby nor shall it in any way be deemed to constitute Mortgagee to be a "mortgagee-in-possession". Each Lease shall at Mortgagee's option be filed for record in the local recording office of the county where the Property is located. Also, to the extent required by the Mortgagee, each tenant (other than tenants under Leases in effect on the date of this Mortgage where the terms of the Lease does not require the tenant to deliver such certificates) shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its Lease, all satisfactory in form and content to the Mortgagee.

ARTICLE VI

6 EVENTS OF DEFAULT AND REMEDIES

6.1 **Events of Default.** Each of the following shall be deemed to be an Event of Default hereunder ("Event of Default"):

(a) Failure to pay the Indebtedness Secured Hereby or to make any payment of money or to pay, perform or discharge any monetary or financial obligation or any other Obligation on the date when the same is due in accordance with the terms of the Note, this Mortgage or any other Loan Documents.

(b) Failure to deliver to Mortgagee any financial statements or reports as required hereunder or under the Note or any other Loan Documents where such failure is not remedied within five (5) days.

(c) Failure to perform any of the terms, covenants and conditions of the Note or the Obligations (except as provided in subsections (a) and (b) of

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this section), this Mortgage or any of the other Loan Documents, provided that such default shall have continued for a period of 20 days after written notice of such default from Mortgagee, or, to the extent such performance cannot reasonably be completed within 20 days, for a period reasonably necessary to complete such performance not exceeding a total of 60 days.

(d) The occurrence and continuance of a default or an Event of Default under any other document or instrument that now or hereafter evidences or secures payment of the Note.

(e) Transfer of title to the Property or Improvements or encumbrance without the prior written consent of Mortgagee, as governed by the provisions of Section 3.12.

(f) Breach, incorrectness or untruth of any warranties or representations contained herein, in the Note or any of the other Loan Documents where either: (i) such breach, incorrectness or untruth is intentional or fraudulent; or (ii) whether or not such breach, incorrectness or untruth is intentional or fraudulent, where such breach, incorrectness or untruth of such representation or warranty would have a material adverse impact on Mortgagor, Mortgagor's Business, the Mortgaged Property, the ability of Mortgagor to pay or perform the Indebtedness Secured hereby or to pay or perform the Obligations, the ability of Mortgagor to perform under the Loan Documents, or any rights, benefits, powers or privileges of Mortgagee under this Mortgage, the Note or any of the other Loan Documents.

(g) A default or event of default under any permitted Junior Mortgage which continues for thirty (30) days or such longer period of up to sixty (60) days as is reasonably necessary to cure the permitted default under the Permitted Junior Mortgage which the Junior Mortgagee permits, where Mortgagor has during such thirty (30) days period begun to cure and thereafter diligently uses its best efforts to cure the default (but nothing herein shall be deemed to consent to or approve of any Permitted Junior Mortgage except as set forth in Section 3.12 of this Mortgage).

(h) or institution of foreclosure or other proceedings to enforce, any Permitted Junior Mortgage or junior security interest, lien or encumbrance of any kind upon the Property or any portion thereof but nothing herein shall be deemed to consent to or approve of any Permitted Junior Mortgage, junior security interest, lien or encumbrance except as set forth in Section 3.12 of this Mortgage).

(i) Should Mortgagor, any other Person who is or may become liable for all or any part of the Indebtedness Secured Hereby, or any of their successors and assigns, including, without limitation, the then current owners of any interest in the Property:

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- (i) File a petition under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing (hereafter referred to as a "Bankruptcy Proceeding"); or
- (ii) File or issue any answer or document admitting insolvency or inability to pay its debts; or
- (iii) Fail to obtain a vacation or stay of any involuntary Bankruptcy Proceeding within 60 days after the date filed, as hereinafter provided; or
- (iv) Be the subject of an order for relief against it in any Bankruptcy Proceeding; or
- (v) Have a custodian or trustee or receiver appointed for or have any court take jurisdiction of its property, or the major part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation if such trustee or receiver shall not be discharged or if such jurisdiction shall not be relinquished, vacated or stayed on appeal or otherwise within 60 days; or
- (vi) Make an assignment for the benefit of its creditors; or
- (vii) Admit its inability to pay its debts generally as they become due; or
- (viii) Consent to an appointment of a custodian, receiver or trustee of all of its property, or the major part thereof, or
- (j) Should Mortgagor or any obligated Person take action to authorize any actions set forth in (i) above.
- (k) Any written representation or disclosure (excluding any financial projections) made to Mortgagee by Mortgagor or any Guarantor in connection with or as an inducement to the making of the loan evidenced by the Note shall prove to be false or misleading in any material respect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Mortgage; or
- (l) The abandonment of the Property by Mortgagor; or
- (m) The occurrence of any breach or event which is specified in any provision of this Mortgage as constituting an Event of Default; or

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(n) Any other event not described above shall occur which, under this Mortgage, or under the Note, or any other Loan Documents constitutes a default by Mortgagor hereunder or thereunder or gives Mortgagee the right to declare the Indebtedness Secured Hereby or the payment or performance of any of the Obligations, or any part thereof, to be immediately due and payable.

The definition of "Event of Default" as set forth above is solely for purposes of determining when Mortgagee may pursue the remedies described in Section 6.02 below.

Accordingly, if an Event of Default under this Mortgage has occurred and continues, then Mortgagee shall immediately have the right to exercise or pursue any other right or remedy available to Mortgagee under this Mortgage or at law or in equity without notice to, or demand upon Mortgagor (unless otherwise expressly provided herein) all of which rights and remedies shall be non-exclusive and cumulative and the pursuit of any such other remedies by Mortgagee shall not thereafter preclude Mortgagee from pursuing any of the remedies set forth in Section 6.02 below at such times as any Event of Default has occurred.

6.2 **Remedies.** Upon or following the occurrence of any Event of Default Mortgagee shall have, at a minimum, the following rights and remedies:

(a) **Acceleration.** At the Mortgagee's option, the entire Indebtedness Secured Hereby (if not then due and payable), and the Obligations shall become due and payable immediately, without demand or notice to Mortgagor or any other person and notwithstanding the stated maturity in the Note, or any of the Loan Documents, the Indebtedness Secured Hereby and the Obligations, together with interest thereon at the rate specified on the note after maturity.

(b) **Entry.** Without regard to the value of the security, Mortgagee in person or by agent or by court-appointed receiver may enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof and do all things necessary or appropriate in Mortgagee's sole, absolute, and uncontrolled discretion in connection therewith, including without limitation making and enforcing, and if the same are subject to modification or cancellation, modifying or canceling Leases upon such terms or conditions as Mortgagee deems proper, obtaining and evicting tenants, and fixing or modifying Rents, contracting for and making repairs and alterations, and doing any and all other acts which Mortgagee deems proper to protect the security hereof; and either with or without so taking possession, in its own name or in the name of Mortgagor, suing for or otherwise collecting and receiving the Rents, including those past due and unpaid, and applying the balance after paying costs and expenses of operation and collection, including reasonable attorneys' fees, upon any Indebtedness Secured Hereby or the Obligations, and in such order as Mortgagee may determine. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the site of the Property any of the Mortgaged Property which has been removed therefrom.

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The entering upon and taking possession of the Property, or any part thereof, the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice of default hereunder or invalidate any act done pursuant to any such Event of Default or notice and, notwithstanding continuance in possession of the Property or any part thereof by Mortgagee, Mortgagor or a receiver, and the collection, receipt and application of the Rents, Mortgagee shall be entitled to exercise every right provided for in this Mortgage and/or the other Loan Documents or by law or in equity. Subject to any notice provisions and other provisions affording Mortgagor an opportunity to cure defaults hereunder, any and all such actions may be taken by Mortgagee irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the Indebtedness Secured Hereby. The exercise by Mortgagee of any of the remedies provided herein shall be deemed an acceleration pursuant to subsection (a) of this Section 6.02.

(c) **Judicial Action.** Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage as a realty mortgage or to enforce any of the covenants and agreements hereof which are specifically enforceable, and seek damages for the breach of other covenants and agreements.

(d) **Foreclosure.** Upon the occurrence of any Event of Default, the Mortgagee shall also have the right immediately to foreclose this Mortgage by filing a complaint for that purpose. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Property and Improvements, or any interest therein, as the Mortgagee may elect, until all of the Property and Improvements and interests therein have been foreclosed against and sold. Following judgment, the Sheriff of the County in which the complaint is filed shall proceed according to law to sell the mortgaged Property and Improvements or so much thereof as may be necessary to satisfy the judgment, interest and costs. In case of any foreclosure of this Mortgage by any other lawful manner, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographer's fees, costs of advertising and costs of title insurance and any other documentary evidence of title, shall be paid the Mortgagor.

(i) Mortgagee may proceed as if all of the Mortgaged Property were real property, in accordance with sub-subsection (iii) below, or Mortgagee may elect to dispose of the Personalty in accordance with sub-subsection (ii) below, separate and apart from the sale of the remainder of the Mortgaged Property.

(ii) Mortgagee may dispose of any of the Personalty in any manner now or hereafter permitted by the UCC or in

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accordance with any other remedy provided by law. Both Mortgagor and Mortgagee shall be eligible to purchase any part or all of such Personalty at any such disposition. Any such disposition may be either public or private, as Mortgagee may so elect, subject to the provisions of the UCC, Mortgagee shall give Mortgagor at least ten days prior written notice of the time and place of any public sale or other disposition of the Personalty or of the time at or after which any private sale or any other intended disposition is to be made, and such notice shall constitute commercially reasonable notice to Mortgagor.

(iii) Mortgagee may elect to sell the Property, Fixtures, Improvements, Rents and Leases and any Personalty Mortgagee has elected to treat as real property pursuant to UCC Section 5/5-501 or any part thereof under the power of sale herein granted in any manner permitted by applicable law. Upon such election, Mortgagee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Mortgagor Mortgagee, at the time and place specified in the notice of sale, shall sell such property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may, and upon request of Mortgagee shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots, parcels or items of property, Mortgagee may designate the order in which such lots, parcels or items shall be offered for sale or sold. Any person, including Mortgagor and Mortgagee, may purchase at any public sale hereunder, and Mortgagee shall have the right to purchase at any public sale hereunder by crediting upon the bid price the amount of all or any part of the Indebtedness Secured Hereby and any other amounts permitted by law. Should Mortgagee desire that more than one sale or other disposition of the Mortgaged Property be conducted, Mortgagee may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Mortgage on any part of the Mortgaged Property not sold until all Indebtedness Secured Hereby has been fully paid. Upon any sale hereunder, Mortgagee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon

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such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts, and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

(e) **Receiver.** Upon the occurrence of any Default, in any action to foreclose the Mortgage or upon the actual or threatened waste to any of the Premises, or any portions thereof, and without notice to the Mortgagor, or to any party claiming under the Mortgagor, and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises, or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, the Mortgagee shall be entitled to have a receiver appointed for the benefit of the Mortgagee, with such powers as the court making the appointment may confer, including, but not limited to, power to take possession, charge, and control of the Premises, to lease the same, to keep the improvements insured and in good repair, and to collect all Rents prior to the filing of a foreclosure suit, and, in case of foreclosure sale, and a deficiency, during any period of redemption and the Mortgagor hereby irrevocably consents to such appointment. The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities, including, without limitation, the following, in such order of application as the Mortgagee may elect: (i) amounts due upon the Note and upon any and all other unpaid notes or obligations included among the Liabilities, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all monies advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor in the performance of any obligation or condition contained in this Mortgage or otherwise, to protect the security hereof or provided herein, with interest at the rate specified in the Note after default. The overplus of the proceeds of sale, if any, shall then be paid to the Mortgagor, or the court, upon reasonable request.

(f) **Remedies for Leases and Rents.** If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee

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shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto (except medical records); (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, to the extent permitted by law, hold, operate, manage, and control the Premises, the Rents, the Leases and other Collateral relating thereto, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof (unless Mortgagee shall have entered into a nondisturbance and attornment agreement with the tenant); (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of the Indebtedness or the Liabilities as described herein.

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6.3 **Proceeds of Sale.** Unless otherwise required by applicable law (Mortgagor hereby waives to the fullest extent permitted by law, any such contrary provisions), the proceeds of any sale made under or by virtue of Section 6.02, together with all other sums which then may be held by Mortgagee under this Mortgage whether under the provisions of this Article VI or otherwise, shall be applied as follows:

FIRST: To the payment of the costs and expenses of any such sale, including the payment of the Mortgagee's and reasonable attorney's fees, actually incurred; to the payment of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest on all advances made by Mortgagee at the Default Rate (as defined under the Note).

SECOND: To the payment of any and all sums expended by Mortgagee under the terms of the Loan Documents, not then repaid, and all other sums (except advances of principal and interest thereon) required to be paid by Mortgagor pursuant to any provisions of this Mortgage, the Note or any of the other Loan Documents, together with interest thereon at the Default Rate (as defined under the Note).

THIRD: To the payment of the entire Indebtedness Secured Hereby and the amount of the Obligations with interest thereon at the Default Rate (as defined under the Note) until the same is paid in full.

FOURTH: The remainder, if any, to the person or persons legally entitled thereto.

6.4 **Waiver of Marshaling.** Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights (except as may be granted by the statutes of the State of Illinois and that cannot be waived by Mortgagor) to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the Indebtedness Secured Hereby or the Obligations marshalled upon any foreclosure of this Mortgage or sale of the Mortgaged Property, or of any other security for any of said indebtedness.

6.5 **Remedies Cumulative.** No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any default or Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by or Mortgagee. If there exists additional security for the payment of the Indebtedness Secured Hereby or the payment or performance of the Obligations, Mortgagee at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and

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remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Mortgagee at any time as additional security hereunder, to any of the Indebtedness Secured Hereby or any of the Obligations shall not extend or postpone the due dates of any payments due from Mortgagor to Mortgagee hereunder or under the Note or any of the other Loan Documents, or change the amounts of any such payments or otherwise be construed to cure or waive any default or Event of Default or notice of default hereunder or invalidate any act done pursuant to any such Event of Default or notice.

6.6 Waiver by Mortgagor. Except as otherwise expressly set forth herein, Mortgagor and all Persons who are or may be or become liable to pay all or any part of the Indebtedness Secured Hereby waive any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor and all other formalities. Mortgagor and all Persons who are or may become liable to pay all or any part of the Indebtedness Secured Hereby waive all rights and/or privileges it or they might otherwise have to require Mortgagee to proceed against or exhaust the assets encumbered hereby or by any other Loan Document or instrument securing the Note or the Obligations or to proceed against any Person who is or may become liable to pay all or any part of the Indebtedness Secured Hereby, or to pursue any other remedy available to Mortgagee in any particular manner or order under the legal or equitable doctrine or principle of marshalling and/or suretyship, and further agree that Mortgagee may proceed against any or all of the assets encumbered hereby or by any other Loan Document, in such order and manner as Mortgagee in its sole discretion may determine.

6.7 Additional Rights and Remedies. In the event Mortgagor fails or refuses to surrender possession of the Mortgaged Property after foreclosure, Mortgagor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided that this remedy is not exclusive or in derogation of any other right or remedy available to Mortgagee.

ARTICLE VII

7 MISCELLANEOUS

7.1 Taxation of Note and Mortgage. If at any time before the Indebtedness Secured Hereby is fully paid and the Obligations fully paid and performed, any law be enacted, deducting from the value of real estate, for the purposes of taxation, any lien thereon, or revising or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or bonds, or the debts secured hereby, for state or local purposes, or the manner of collection of such taxes, so as to affect adversely this Mortgage or the Indebtedness Secured Hereby, or the owner and holder thereof in respect thereto, then this Mortgage and the Indebtedness Secured Hereby and the Obligations shall at the option of Mortgagee without notice to any party, become immediately due and payable. If any such law should be enacted and to the extent permitted by such law, Mortgagor shall have the opportunity of paying to Mortgagee the amount of any additional cost or taxes to Mortgagee from such law, Mortgagor, upon demand by the Mortgagee, shall pay such taxes or

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assessments, or reimburse Mortgagee therefor, in which case Mortgagee shall not have the right to declare the Indebtedness Secured Hereby and the Obligations to be immediately due and payable; provided, however, that Mortgagor shall not have the right to pay to or reimburse Mortgagee for such taxes or assessments if in the opinion of counsel for Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law. In such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Indebtedness Secured Hereby and the Obligations to be and become due and payable sixty (60) days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor shall not be obligated to pay any portion of Mortgagee's state and/or federal income tax.

7.2 Non-Waiver.

(a) By accepting payment of any sum secured hereby after its due date or altered performance of the Indebtedness Secured Hereby or any of the Obligations, Mortgagee shall not waive its right against any person obligated directly or indirectly hereunder or with respect to any Indebtedness Secured Hereby or any Obligations, either to require prompt payment when due of all other sums so secured or to take remedy for failure to make such prompt payment or full or unaltered performance. No exercise of any right or remedy by Mortgagor or Mortgagee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law.

(b) No delay or omission of Mortgagor or Mortgagee in the exercise or any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

(c) Receipt of Rents, awards, and any other monies or evidences thereof, pursuant to the provisions of this Mortgage and any disposition of the same by Mortgagee shall not constitute a waiver of the right of foreclosure by Mortgagee upon the occurrence of an Event of Default or failure of performance by Mortgagor of any covenant or agreement contained herein or in any note secured hereby.

7.3 Protection of Security. Should Mortgagor fail to make any payment or to perform any covenant as herein provided, Mortgagee (but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereon) may: (a) make or do the same in the manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Mortgaged Property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the reasonable judgment of Mortgagee is prior or superior hereto and, in exercising any such power, incur any liability and expend whatever amounts in its reasonable discretion

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may deem necessary therefor, including cost of evidence of title and reasonable counsel fees. Any expenditures in connection herewith shall constitute an advance hereunder and shall be immediately due and payable upon demand and shall bear interest from the date made until paid at the Default Rate (as defined under the Note).

7.4 **Rule of Construction.** When the identity of the parties hereto or other circumstances make it appropriate, the masculine gender shall include the feminine and/or neuter, and the singular number shall include the plural. The headings of each article, section or subsection herein are for information and convenience only and do not limit or construe the contents of any provision hereof. The language in all parts of this Mortgage shall be in all cases construed simply, according to its fair meaning and not for or against Mortgagor or Mortgagee, regardless of which party drafted the particular language which is being construed, both parties having been represented by adequate counsel.

7.5 **Severability.** If any term of this Mortgage or the application thereof to any person or circumstances, shall to any extent, be invalid or unenforceable, the remainder of this Mortgage or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

7.6 **Successors In Interest.** This Mortgage applies to, inures to the benefit of, and is binding not only on the parties hereto, but also on their heirs, executors, administrators, successors and assigns (but nothing herein shall be construed as or deemed to constitute Mortgagee's consent to any sale, transfer or conveyance of the Mortgaged Property or any interest in Mortgagor). All obligations of Mortgagor hereunder and any Persons who are or may become liable to pay the Indebtedness Secured Hereby or any portion thereof are joint and several.

7.7 **Notices.** All notices to be given by Mortgagee to Mortgagor or by Mortgagor to Mortgagee pursuant to this Mortgage shall be sufficient if mailed either (a) by postage prepaid, U.S. certified or registered mail, return receipt requested, or (b) by delivery to a nationally recognized overnight delivery service, to the following described addresses of the parties hereto, or to such other address as a party may request in writing: (1) if to Mortgagor, then at its address first set forth above in this Mortgage and (2) if to Mortgagee, then to 5400 University Avenue, West Des Moines, Iowa 50265, ATTN: Real Estate and Commercial Mortgage Manager; with a copy to Morain, Burlingame, Pugh & Koop, 5400 University Avenue, West Des Moines, Iowa 50266. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail or upon the date delivered to said overnight delivery service, as the case may be.

7.8 **Modifications.** This Mortgage may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

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7.9 **Governing Law.** This Mortgage shall be construed according to and governed by the laws of the State of Illinois (excluding the choice of law provisions thereof).

7.10 **Waiver of Jury Trial.** After consultation with counsel, Mortgagor and any Person who is or may become liable to pay or perform the Indebtedness Secured Hereby or any of the Obligations (or portions thereof) hereby knowingly, voluntarily, and intentionally waive any right Mortgagor or any Person who is or may become liable to pay or perform the Indebtedness Secured Hereby or any of the Obligations (or portions thereof) may have to a trial by jury with respect to any litigation based upon this Mortgage, or arising out of, under or in connection with the Note, any other Loan Documents, or any other instrument relating to the subject matter hereof or any course of conduct, course of dealing, statements (whether verbal or written) or action of Mortgagor, any Person who is or may become liable to pay or perform the Indebtedness Secured Hereby or any one or more of the Obligations or Mortgagee and acknowledges that this provision is a material inducement for the Mortgagee making the loan evidenced by the Note.

7.11 **Captions.** The captions set forth at the beginning of the various sections of this Mortgage are for convenience only and shall not be used to interpret or construe the provisions of this Mortgage.

7.12 **Mortgagor Not Released.** Extension of the time for payment or modification of the terms of payment of any sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor. Without affecting the liability of any person, including Mortgagor, for the payment of any Indebtedness Secured Hereby, or the lien of this Mortgage on the remainder of the Mortgaged Property for the full amount of any such indebtedness unpaid, Mortgagee is empowered as follows: Mortgagee may from time to time and without notice: (a) release any person liable for the payment of any of the Indebtedness Secured Hereby or the Obligations, (b) extend the time or, with the consent of Mortgagor, otherwise alter the terms of payment of any of the Indebtedness Secured Hereby or the Obligations, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security, or (d) alter, substitute or release any property securing the Indebtedness Secured Hereby or the Obligations. Mortgagee may, at any time, and from time to time, (i) consent to the making of any map or plat of the Property or any part thereof, (ii) join in granting any easement or creating any restriction thereon, (iii) join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof, or (iv) reconvey, without any warranty, all or any part of the Mortgaged Property.

7.13 **Statute of Limitations.** The pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage is hereby waived to the fullest extent permitted by law by Mortgagor.

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7.14 **Consent.** Whenever any consent or approval of Mortgagee is required hereunder, then, unless otherwise specifically provided herein, such consent or approval may be given or withheld in Mortgagee's sole and absolute discretion. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

7.15 **Concerning Information Supplied, Representations and Warranties.** Mortgagor warrants that all documents and all information supplied or hereafter supplied to Mortgagee concerning Mortgagor or the Mortgaged Property are and will continue to be true, correct, complete and without material adverse change until the Indebtedness Secured Hereby and all Obligations have been paid and performed in full. Mortgagor agrees to promptly notify Mortgagee in writing of any material adverse changes in any of the foregoing. All representations, warranties, covenants and agreements of Mortgagor made herein or in any certificate or other documents delivered to Mortgagee by or on behalf of Mortgagor or any Guarantor shall be deemed to have been relied upon by Mortgagee notwithstanding any investigation heretofore or hereafter made by Mortgagee or on its behalf, and shall continue in full force and effect as long as any of the Indebtedness Secured Hereby remains unpaid or any of the Obligations remain unpaid or unperformed.

7.16 **Further Assurances.** Mortgagor will, upon request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Mortgagee to carry out more effectively the purposes of this Mortgage, to subject to the lien and security interest hereby created any of Mortgagor's properties, rights or interests covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

7.17 **Attorneys' Fees.** In the event that it becomes necessary for Mortgagee to employ legal counsel or to take legal action to collect the Indebtedness Secured Hereby or the Obligations or otherwise to enforce any provision hereof, or to protect any of Mortgagee's rights hereunder, Mortgagor and all Persons who are or may become liable to pay or perform all or part of the Indebtedness Secured Hereby and/or any one or more of the Obligations agree to pay to Mortgagee, in addition to taxable costs of any legal proceeding or action, reasonable attorneys' fees actually incurred by Mortgagee, and all costs of preparation and conduct of such proceedings, including costs of title searches and title policy commitments, all of which shall be a lien upon the Mortgaged Property, secured by this Mortgage and shall bear interest from the date of expenditure by Mortgagee until paid at the Default Rate (as defined under the Note).

7.18 **Subrogation.** Mortgagee shall be subrogated to the lien notwithstanding its release of record, of any prior mortgage or other lien or encumbrance paid or discharged from the proceeds of the Note or from any other advance made by Mortgagee.

7.19 **No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it

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is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

7.20 **Mortgagee Not a Joint Venturer or Partner.** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer or member of a joint enterprise with Mortgagor. Without limitation of the foregoing, Mortgagee shall not be deemed to be such partner or joint venturer on account of its becoming a mortgage-in-possession or exercising any rights pursuant to this Mortgage, the Note or any of the other Loan Documents.

7.21 **No Third Party Benefits.** This Mortgage, the Note and the other Loan Documents are made for the sole benefit of Mortgagor and Mortgagee, and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not Mortgagee elects to employ any or all of the rights, powers or remedies available to it under any of the foregoing, Mortgagee shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Mortgagee's actions or omissions pursuant thereto or otherwise in connection with this Mortgage.

7.22 **No Offset.** All sums comprising the Indebtedness Secured Hereby or the Obligations payable by Mortgagor shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Mortgagor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Mortgaged Property or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Mortgaged Property or any portion thereof by the holder of superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Mortgagor or Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagor or Mortgagee, or by any court, in any such proceeding; (e) any claim that Mortgagor may now or in the future have against Mortgagee; (f) any default or failure on the part of Mortgagee to perform or comply with any of the terms of this Mortgage or any other agreement with Mortgagor; or (g) any other similar or dissimilar occurrence.

7.23 **Maximum Interest Payable.**

(a) Regardless of any provision contained in this Mortgage, the Note or in any other Loan Document, Mortgagee shall never be entitled to receive, collect or apply as interest on the Note or on any other sums secured hereby, any amount in excess of the Highest Lawful Rate (hereinafter defined) and, in the event Mortgagee ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be deemed a

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partial prepayment of principal under the Note or, at Mortgagee's sole option, as a payment of any other sums or Obligations owed or owing under this Mortgage or any other Loan Documents, and shall be treated as such; and, if the principal of the Note and any other sums or Obligation owed or owing under this Mortgage, the Note or other Loan Documents shall have been paid in full, any remaining excess shall forthwith be paid to Mortgagor. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the Highest Lawful Rate, Mortgagor and Mortgagee shall, to the maximum extent permitted under applicable law, (i) characterize any nonprincipal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire contemplated term of the Note so that the interest rate is uniform throughout the entire term thereof; provided that if the Note and all other sums or Obligations hereunder or under the Note and other Loan Documents are paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Highest Lawful Rate, Mortgagee shall refund to Mortgagor the amount of such excess or credit the amount of such excess against the principal of the Note or any sums or Obligations yet to be paid hereunder or under the Note or other Loan Documents, and, in such event, Mortgagee shall not be subject to any penalties provided by any laws for contracting for, charging or receiving in excess of the Highest Lawful Rate. "Highest Lawful Rate" shall mean the maximum rate of interest which Mortgagee is allowed to contract for, charge, take, reserve or receive under applicable law after taking into account, to the extent required by applicable law, any and all relevant payments or charges under the Note; provided, however, that if, after the date hereof, the Highest Lawful Rate is decreased from that existing on the date hereof, such decrease shall not be applicable hereto or to the Note or the other Loan Documents unless such decrease is by law made retroactively applicable hereto, or to the Note, the Obligations and the other Loan Documents.

(b) All fees, charges or other sums (collectively "Additional Sums") paid or to be paid by Mortgagor to Mortgagee or the holder of the Note, whether pursuant to the Note, this Mortgage or the other Loan Documents or otherwise which, under applicable law, may be deemed to be in the nature of interest with respect to such indebtedness, shall, for the purpose of any applicable law which may limit the maximum rate or interest that may be charged with respect to such indebtedness, be payable by Mortgagor as, and shall be deemed to be, additional interest which additional interest Mortgagor covenants and agrees to pay. For such purposes only, the agreed upon and contracted rates of interest above shall be deemed to be increased to reflect the Additional Sums as interest, which rate(s) of interest Mortgagor hereby covenants and agrees to pay.

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7.24 **Participation.** Mortgagor acknowledges that Mortgagee, at its sole cost and expense may wish, and shall have the right, to have one or more participants (and to sell participation interests) in the rights of Mortgagee under the Note, this Mortgage and the other Loan Documents or any one or more of them. Mortgagor agrees, that, if so requested by Mortgagee, it will cause all insurance policies, bonds, binders and commitments (including, without limitation, casualty insurance and title insurance) required by this Mortgage to be delivered to Mortgagee to name as additional insureds or obligees such participants as Mortgagee may request. Unless Mortgagor consents in writing to the contrary, despite any participation in the Notes, this Mortgage or the other Loan Documents, or any one or more of them, Mortgagor shall be entitled to deal directly with the Mortgagee and need not deal directly with any participant of Mortgagee in all matters relating to the foregoing.

7.25 **Accounts.** To the extent that the UCC does not apply to the Reserves or the proceeds thereof, Mortgagor hereby pledges and assigns to Mortgagee all of its right, title and interest in and to the Reserves and the proceeds thereof as additional security for the payment of the Indebtedness Secured Hereby and the payment and performance of the Obligations.

7.26 **Integration.** This Mortgage (and, to the extent referred to herein, the Note and the other Loan Documents) constitutes the full and complete integrated agreement with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements, including, but not limited to, that certain commitment letter dated September 28, 1995 from Holder to Borrower as modified and supplemented by those two certain letters dated October 30, 1995 and November 6, 1995 from Holder to Borrower (collectively, the "Commitment Letter"). Mortgagor acknowledges that the Commitment Letter may contain terms and provisions different than or in addition to those set forth in this Mortgage, the Note or the other Loan Documents or that this Mortgage, the Note or the other Loan Documents may contain provisions not set forth in the Commitment Letter. By signing this Mortgage, Mortgagor agrees that any such different or additional terms or provisions are superseded by the provisions of this Mortgage, the Note and the other Loan Documents (except that nothing in the foregoing shall supersede any provisions of the Commitment Letter obligating Mortgagor to pay or reimburse to Mortgagee any fees, deposits, costs or expenses in connection with the loan made by Mortgagee to Mortgagor that is evidenced by the Note and such provisions shall remain binding on Mortgagor).

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EXHIBIT "A"

Legal Description

PART OF OUT-LOT "F" IN "SCHAUMBURG INDUSTRIAL PARK" BEING A SUBDIVISION OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 11, PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 11, PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 12, PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 13, AND PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 14, ALL IN TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF REMINGTON ROAD WITH THE WEST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 12, SAID POINT OF INTERSECTION BEING 989.16 FEET NORTHERLY OF THE SOUTHWEST CORNER OF SAID SOUTHWEST $\frac{1}{4}$ SECTION; THENCE NORTH 87 DEGREES 16 MINUTES 56 SECONDS EAST, ALONG THE SAID SOUTHERLY LINE OF REMINGTON ROAD, A DISTANCE OF 292.58 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 87 DEGREES 16 MINUTES 56 SECONDS EAST, AND ALONG THE SAID SOUTHERLY LINE OF REMINGTON ROAD, A DISTANCE OF 600.62 FEET, TO A POINT IN THE WESTERLY LINE OF "SCHAUMBURG INDUSTRIAL PARK UNIT, NO. 1", AS RECORDED OCTOBER 2, 1964 AS DOCUMENT 19263036; THENCE SOUTH 00 DEGREES 06 MINUTES 50 SECONDS EAST, ALONG SAID WESTERLY LINE, A DISTANCE OF 435.00 FEET; THENCE SOUTH 87 DEGREES 16 MINUTES 56 SECONDS WEST, A DISTANCE OF 600.62 FEET; THENCE NORTH 00 DEGREES 06 MINUTES 50 SECONDS WEST, A DISTANCE OF 435.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

1305, 1325, 1355, 1375 REMINGTON, SCHAUMBURG

07-12-300-018

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EXHIBIT "B"

Permitted Title Exceptions

- 1 COVENANTS AND RESTRICTIONS CONTAINED IN THE DECLARATION MADE BY CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 18, 1963 AND KNOWN AS TRUST NO. 45511, DATED OCTOBER 15, 1963 AND RECORDED OCTOBER 18, 1963 AS DOCUMENT 18945804, RELATING TO USE OF ALL OF THE LAND, TO THE USE, HEIGHT, AND LOCATION OF BUILDING IMPROVEMENTS TO BE ERECTED ON SAID LAND; TO THE APPROVAL OF BUILDING PLANS, TO LANDSCAPING ON THE SAID LAND AND MAINTENANCE OF PARKING AREAS, AND PROVIDING THAT OFF STREET PARKING BE PROVIDED AS IN DECLARATION PROVIDED.
- 2 EASEMENT OVER THE SOUTH 10 FEET OF THE LAND FOR THE PURPOSE OF INSTALLING AND MAINTAINING ALL EQUIPMENT NECESSARY TO SERVE THE SUBDIVISION AND OTHER LAND WITH TELEPHONE AND ELECTRICAL SERVICE, TOGETHER WITH RIGHT TO OVERHANG AERIAL SERVICE WIRES AND THE RIGHT OF ACCESS TO SUCH WIRES, AS CREATED BY GRANT TO THE ILLINOIS BELL TELEPHONE COMPANY AND THE COMMONWEALTH EDISON COMPANY, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND AS SHOWN ON THE PLAT OF SUBDIVISION RECORDED JULY 14, 1969 AS DOCUMENT 20899166.
- 3 A 50 FOOT BUILDING LINE AS SHOWN ON THE PLAT OF SURVEY ATTACHED TO GRANT RECORDED JULY 14, 1969 AS DOCUMENT 20899166 AND AS CREATED BY DEED RECORDED JULY 14, 1969 AS DOCUMENT 20899167, OVER THE NORTH LINE OF THE LAND.
- 4 EASEMENT IN, UPON, UNDER, OVER AND ALONG THE LAND AS SHOWN IN EXHIBIT "A" HEREIN MENTIONED, TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE, TOGETHER WITH RIGHT OF ACCESS TO SAID EQUIPMENT AS CREATED BY GRANT TO COMMONWEALTH EDISON COMPANY AND ILLINOIS BELL TELEPHONE COMPANY, RECORDED FEBRUARY 28, 1978 AS DOCUMENT 24344679.

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