

This Instrument prepared (with advice of Illinois counsel) by, and after recording return to:

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Property Address: 2727 Old Higgins and  
2425 Touhy Avenue  
Elk Grove Village, Illinois 60007

Tax Identification No.: 08-26-410-003-0000, Volume 50  
08-35-200-028-0000, Volume 50  
08-35-200-014-0000, Volume 50

**REVOLVING CREDIT MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS REVOLVING CREDIT MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") dated January 28, 1999 is executed and delivered by Mortgagor to and for the benefit of Holder, as agent for Lenders, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Mortgagor.

**Article I**

**Certain Definitions; Granting Clauses; Secured Indebtedness**

Section 1.1. **Certain Definitions and Reference Terms.** In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it.

"Act" means the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-101 et seq., as in effect from time to time, and any successor statutes.

"Credit Agreement": that certain Credit Agreement dated as of January 28, 1999, among Bank One, Texas, N.A., as Agent, American Industrial Properties REIT, as Borrower, and the Lenders named therein, as amended, restated, and supplemented.

"Holder": means Bank One, Texas, N.A., as agent for the Lenders, and the successors and assigns of such party.

"Lenders": has the meaning set forth in the Credit Agreement.

"Mortgagor": American Industrial Properties REIT, a Texas real estate investment trust.

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**"Promissory Note"**: means, collectively, those certain Revolving Credit Note or Notes as described in the Credit Agreement, bearing interest as provided in the Promissory Note, containing a provision for the payment of a reasonable additional amount as attorneys' fees, and finally maturing on January 28, 2001.

Section 1.2. **Mortgaged Property.** Mortgagor does hereby WARRANT, GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and MORTGAGE to Holder the following: (a) the real estate (herein called the "**Land**") described in *Exhibit A* which is attached hereto and incorporated herein by reference, and (i) all improvements now or hereafter situated or to be situated on the Land (herein together called the "**Improvements**"); and (ii) all right, title and interest of Mortgagor in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; and (3) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "**Premises**"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "**Accessories**," all of which are hereby declared to be permanent accessions to the Land); (c) all right, title and interest of Mortgagor in and to all (i) plans and specifications for the Improvements; (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitment for financing to pay any of the secured indebtedness, as defined below), insurance policies and other contracts and general intangibles (including but not limited to trademarks, trade names and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits or reserves hereunder or under any other Loan Document for taxes, insurance or otherwise), money, accounts, instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories (without derogation of Article 3 hereof); (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Mortgaged Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) proceeds of or arising from the properties, rights, titles and interests referred to above in this Section 1.2, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; and (ii) other interests of every kind and character which Mortgagor now has or

hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.2 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.2 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; to have and to hold the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "*Mortgaged Property*"), unto Holder and to its successors and assigns, forever.

**Section 1.3. Security Interest.** Mortgagor hereby grants to Holder (as hereinafter defined) a security interest in all of the Mortgaged Property which constitutes personal property or fixtures (herein sometimes collectively called the "*Collateral*"). In addition to its rights hereunder or otherwise, Holder shall have all of the rights of a secured party under the Uniform Commercial Code.

**Section 1.4. Note, Loan Documents, Other Obligations.** This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time, including, without limitation, any future advances or revolving credit advances: (a) the Promissory Note and all other notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such note or notes, whether one or more, as from time to time renewed, extended, supplemented, increased, or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "*Note*"); (b) all indebtedness and other obligations owed by Mortgagor to Holder now or hereafter incurred or arising pursuant to or permitted by the provisions of the Credit Agreement, the Note, this Mortgage, or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, tri-party financing agreement or other agreement between Mortgagor and Holder, or among Mortgagor, Holder and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note; and (c) the Unconditional Guaranty Agreement executed by DDR Office Flex II, LLC (such agreement, whether one or more, as from time to time renewed, extended, supplemented, increased, or modified and all other guaranties given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "*Guaranty*") (the Credit Agreement, the Note, the Guaranty, this Mortgage and such other documents, as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "*Loan Documents*." The indebtedness referred to in this Section 1.4 is hereinafter sometimes referred to as the "*secured indebtedness*" or the "*indebtedness secured hereby*."

## Article 2

### Representations, Warranties and Covenants

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) **Payment and Performance.** Mortgagor will make due and punctual payment of the secured indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants,

agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) **Title and Permitted Encumbrances.** Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and marketable title to the Mortgaged Property, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Encumbrances" in *Exhibit B* hereto, which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Mortgaged Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for ad valorem taxes and standby fees on the Mortgaged Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Lender (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the "*Permitted Encumbrances*"). Mortgagor, and Mortgagor's successors and assigns, will warrant and forever defend title to the Mortgaged Property, subject as aforesaid to Holder and its successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Holder. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Holder of any existing or future violation or other breach thereof by Mortgagor, by the Mortgaged Property or otherwise. No part of the Mortgaged Property constitutes all or any part of the homestead of Mortgagor. If any right or interest of Holder in the Mortgaged Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Trustee and Holder, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Holder, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Holder, and Holder shall be subrogated to all rights of the person receiving such payment.

(c) **Taxes and Other Impositions.** Subject to the contest rights provided in the Credit Agreement, Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Mortgaged Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all ad valorem taxes assessed against the Mortgaged Property or any part thereof, and shall deliver promptly to Holder such evidence of the payment thereof as Holder may require.

(d) **Insurance.** Grantor shall obtain and maintain at Grantor's sole expense:

(1) mortgagee title insurance issued to Holder covering the Premises as required by Holder;

(2) all-risk insurance with respect to all insurable Mortgaged Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Holder may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Holder from

becoming a coinsurer, such insurance to be in Builder's Risk (nonreporting) form during and with respect to any construction on the Premises;

(3) if and to the extent any portion of the Premises is in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the principal face amount of the Note or the maximum amount available;

(4) commercial general liability insurance, on an "occurrence" basis, for the benefit of Grantor, as named insured, and Holder, as additional insured, on a 1996 form with a minimum coverage of \$1,000,000 in the aggregate;

(5) statutory workers' compensation insurance with respect to any work on or about the Premises;

(6) excess liability insurance of at least \$5,000,000 in the aggregate;

(7) auto liability insurance, on an "occurrence" basis with a minimum coverage of \$1,000,000 in the aggregate;

(8) professional liability insurance for any architect or engineer covering the cost of correcting problems arising out of errors or omissions related to faulty design or engineering and bodily injury or property damage losses arising out of performance of any professional services, with a minimum coverage of \$5,000,000; and

(9) such other insurance on the Mortgaged Property as may from time to time be required by Holder (including but not limited to business interruption insurance, boiler and machinery insurance, earthquake insurance, and war risk insurance) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

All insurance policies shall be issued and maintained by insurers, in amounts with deductibles, and in form satisfactory to Holder, and shall require not less than thirty (30) days' prior written notice to Holder of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Mortgagor with respect to the Mortgaged Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Mortgagor or Holder and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if in Holder's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Mortgagor shall, in each instance promptly upon the request of Holder and at Mortgagor's expense, obtain and deliver to Holder a like policy (or, if and to the extent permitted by Holder, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Holder with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Mortgaged

Property shall contain a standard mortgage clause (without contribution) naming Holder as mortgagee with loss proceeds payable to Holder notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named insured; (ii) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Holder under the Loan Documents; or (iv) any change in title to or ownership of the Mortgaged Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. Agent shall be designated as "Bank One, Texas, N.A., a national banking association, as agent, as mortgagee [or loss payee] and/or its assigns" when named as mortgagee or loss payee or as an additional insured. The originals of each initial insurance policy (or to the extent permitted by Holder, a copy of the original policy and a satisfactory certificate of insurance) shall be delivered to Holder at the time of execution of this Mortgage, with premiums fully paid, and each renewal or substitute policy (or certificate) shall be delivered to Holder, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Mortgagor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Holder evidence satisfactory to Holder of the timely payment thereof. If any loss occurs at any time when Mortgagor has failed to perform Mortgagor's covenants and agreements in this paragraph, Holder shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Mortgagor, to the same extent as if it had been made payable to Holder. Upon any foreclosure hereof or transfer of title to the Mortgaged Property in extinguishment of the whole or any part of the secured indebtedness, all of Mortgagor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Holder shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Mortgaged Property, and the expenses incurred by Holder in the adjustment and collection of insurance proceeds shall be a part of the secured indebtedness and shall be due and payable to Holder on demand. Holder shall not be, under any circumstances, liable or responsible for the obtaining, maintaining or adequacy of any insurance or for failure to collect or exercise diligence in the collection of any of such proceeds or for failure to see to the proper application of any amount paid over to Mortgagor. Any such proceeds received by Holder shall, after deduction therefrom of all reasonable expenses actually incurred by Holder, including attorneys' fees, at Holder's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Holder) to repair or restoration, either partly or entirely, of the Mortgaged Property so damaged, or (3) if a Default (as defined in the Credit Agreement) has occurred and is continuing, applied to the payment of the secured indebtedness in such order and manner as Holder, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the unsecured indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Mortgagor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Mortgaged Property.

(e) **Reserve for Insurance, Taxes and Assessments.** Upon request of Holder after Default, Mortgagor will deposit or cause to be deposited with Holder a sum equal to ad valorem taxes, assessments and charges (which charges for the purpose of this paragraph shall include without limitation any recurring charge which could result in a lien against the Mortgaged Property) against the Mortgaged Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Holder and prorated to the end of the calendar month following the month during which Holder's request is made, and thereafter will deposit with Holder, on each date when an installment of principal and/or interest

is due on the Note, sufficient funds (as estimated from time to time by Holder) to permit Holder to pay at least fifteen (15) days prior to the due date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance. Holder shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Holder for future use, applied to any secured indebtedness or refunded to Mortgagor, at Holder's option, and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of Holder. All such funds so deposited shall bear no interest, may be mingled with the general funds of Holder and shall be applied by Holder toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Holder by Mortgagor (which statements shall be presented by Mortgagor to Holder a reasonable time before the applicable amount is due); provided, however, that, if a default shall have occurred hereunder, such funds may at Holder's option be applied to the payment of the secured indebtedness in the order determined by Holder in its sole discretion, and that Holder may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Mortgaged Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by Holder under this paragraph but subject to the rights of Holder hereunder.

(f) **Condemnation.** Mortgagor shall notify Holder immediately of any threatened or pending proceeding for condemnation affecting the Mortgaged Property or arising out of damage to the Mortgaged Property, and Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings. Holder shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Holder shall be entitled to receive all sums which may be awarded or become payable to Mortgagor for the condemnation of the Mortgaged Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for injury or damage to the Mortgaged Property. Mortgagor shall, promptly upon request of Holder, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Holder to collect and receipt for any such sums. All such sums are hereby assigned to Holder, and shall, after deduction therefrom of all reasonable expenses actually incurred by Holder, including attorneys' fees, at Holder's option be (1) released to Mortgagor, or (2) applied (upon compliance with such terms and conditions as may be required by Holder) to repair or restoration of the Mortgaged Property so affected, or (3) if a Default (as defined in the Credit Agreement) has occurred and is continuing, applied to the payment of the secured indebtedness in such order and manner as Holder, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the secured indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Holder shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Mortgagor. Holder is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred by Holder in connection with any condemnation shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Holder pursuant to this Mortgage.

(g) **Compliance with Legal Requirements.** The Mortgaged Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable Legal Requirements (defined below). The Mortgaged Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Mortgaged Property to fulfill any requirement of any Legal Requirement. Mortgagor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Mortgaged Property or any interest therein to fulfill any requirement of any Legal Requirement. No part of the Mortgaged Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Mortgagor has obtained or caused to be obtained and shall preserve in force all requisite zoning, utility, building, health and operating permits from the governmental authorities having jurisdiction over the Mortgaged Property. If Mortgagor receives a notice or claim from any person that the Mortgaged Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Mortgagor will promptly furnish a copy of such notice or claim to Holder. Mortgagor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "**Legal Requirement**" means any law (defined below), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "**Law**" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(h) **Maintenance, Repair and Restoration.** Mortgagor will keep the Mortgaged Property in a condition similar to its condition on the date hereof, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Mortgaged Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Mortgagor will not, without the prior written consent of Holder, (i) remove from the Mortgaged Property any fixtures or personal property covered by this Mortgage except such as is replaced by Mortgagor by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Mortgaged Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor shall give prompt notice thereof to Holder and Mortgagor shall promptly, at Mortgagor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(i) **No Other Liens.** Mortgagor will not, without the prior written consent of Holder, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Mortgaged Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Mortgaged Property without the prior written consent of Holder, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Mortgaged Property and will not acquire any fixtures, equipment or other property forming a part of the



Mortgaged Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Holder. If Holder consents to the voluntary grant by Mortgagor of any lien, security interest, or other encumbrance (hereinafter called "*Subordinate Mortgage*") covering any of the Mortgaged Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Mortgage, any such Subordinate Mortgage shall contain express covenants to the effect that: (1) the Subordinate Mortgage is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action shall be instituted to foreclose or otherwise enforce the Subordinate Mortgage, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Holder; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Mortgage, shall be applied first to the payment of the secured indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Mortgaged Property in such order as Holder may determine, prior to being applied to any indebtedness secured by the Subordinate Mortgage; (4) written notice of default under the Subordinate Mortgage and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Mortgage or to seek the appointment of a receiver for all or any part of the Mortgaged Property shall be given to Holder with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Mortgage, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Holder.

(j) **Operation of Mortgaged Property.** Mortgagor will operate the Mortgaged Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Mortgagor will keep the Mortgaged Property occupied so as not to impair the insurance carried thereon. Mortgagor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Mortgaged Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Mortgagor will not initiate or permit any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Mortgagor will not impose any easement, restrictive covenant or encumbrance upon the Mortgaged Property, execute or file any subdivision plat or condominium declaration affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality, without the prior written consent of Holder. Mortgagor will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened. Mortgagor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Mortgaged Property. Without the prior written consent of Holder, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Mortgagor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Mortgaged Property) incurred in the construction, maintenance, operation and development of the Mortgaged Property to be promptly paid.

(k) **Certain Environmental Matters.**

(i) **Definitions.** As used in this Mortgage: (1) "**Environmental Claim**" means any investigative, enforcement, cleanup, removal, containment, remedial or other governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement against Mortgagor or against or with respect to the Mortgaged Property or any use or activity on the Mortgaged Property, and any claim at any time threatened or made by any person against Mortgagor or against or with respect to the Mortgaged Property or any use or activity on the Mortgaged Property, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substance; (2) "**Environmental Requirement**" means any Legal Requirement which pertains to ground or air or water or noise pollution or contamination, underground or aboveground tanks, health or the environment, including without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Resource Conservation and Recovery Act of 1976, as amended ("**RCRA**") and (3) "**Hazardous Substance**" means any substance, whether solid, liquid or gaseous: (a) which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or (b) which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, or explosive or radioactive material; or (c) which causes or poses a threat to cause a contamination or nuisance on the Mortgaged Property or on any adjacent property or a hazard to the environment or to the health or safety of persons on the Mortgaged Property; and (d) in uses or quantities that violate any environmental requirement. As used in this paragraph (m), the word "on" when used with respect to the Mortgaged Property or adjacent property means "on, in, under, above or about".

(ii) **Representations and Warranties.** Except as disclosed in the environmental assessments delivered by Mortgagor to Holder, Mortgagor represents and warrants to Holder, without regard to whether Holder has or hereafter obtains any knowledge or report of the environmental condition of the Mortgaged Property, as follows: (1) during the period of Mortgagor's ownership of the Mortgaged Property, the Mortgaged Property has not been used for industrial or manufacturing purposes, for landfill, dumping or other waste disposal activity or operation, for generation, storage, use, sale, treatment, processing, recycling or disposal of any Hazardous Substance in violation of any Environmental Requirement, or for any other use that would give rise to the release of any Hazardous Substance on the Mortgaged Property in violation of any Environmental Requirement; (2) to the best of Mortgagor's knowledge after inquiry in accordance with good commercial or customary practices, no use of the Mortgaged Property described in clause (1) preceding occurred at any time prior to the period of Mortgagor's ownership of the Mortgaged Property nor did any such use on any adjacent property occur during or at any time prior to the period of Mortgagor's ownership of the Mortgaged Property, and there is no Hazardous Substance, storage tanks (or similar vessel), sump or well on the Mortgaged Property in violation of any Environmental Requirement; (3) Mortgagor has received no notice and has no knowledge of any Environmental Claim or any completed, pending, proposed or threatened investigation or inquiry concerning the presence or release of any Hazardous Substance on the Mortgaged Property in violation of any Environmental Requirement or on any adjacent property or concerning whether any condition, use or activity on the Mortgaged Property or on any adjacent property is in violation of any Environmental Requirement; (4) the present conditions, uses and activities on the Mortgaged Property do not violate any Environmental Requirement and the use of the Mortgaged Property which Mortgagor (and each tenant and subtenant, if any) makes and intends to make of the Mortgaged Property complies and will comply with all applicable Environmental Requirements; (5) the Mortgaged Property is not currently on, and to the best of

Mortgagor's knowledge after inquiry in accordance with good commercial or customary practices, has never been on, any federal or state "superfund" or "superlien" list; and (6) neither Mortgagor, nor to Mortgagor's knowledge any tenant or subtenant, has obtained or is required to obtain any permit or other authorization to construct, occupy, operate, use or conduct any activity on any of the Mortgaged Property by reason of any Environmental Requirement.

(iii) **Violations.** Mortgagor will not cause, commit, permit or allow to continue any violation of any Environmental Requirement by Mortgagor or by or with respect to the Mortgaged Property or any use or activity on the Mortgaged Property, or the attachment of any environmental lien to the Mortgaged Property. Mortgagor will not place, install, dispose of or release, or cause, permit or allow the placing, installation, disposal or release of, any Hazardous Substance or storage tank (or similar vessel) on the Mortgaged Property in violation of any Environmental Requirement and will keep the Mortgaged Property free of any Hazardous Substance, except as permitted by the Loan Documents.

(iv) **Notice to Holder.** Mortgagor will promptly advise Holder in writing of any Environmental Claim or of the discovery of any Hazardous Substance on the Mortgaged Property, as soon as Mortgagor first obtains knowledge thereof, including a full description of the nature and extent of the Environmental Claim and/or Hazardous Substance and all relevant circumstances.

(v) **Site Assessments and Information.** If Holder shall ever have reason to believe that any Hazardous Substance affects the Mortgaged Property, or if any Environmental Claim is made or threatened, or if a Default shall have occurred, Mortgagor will at its expense provide to Holder from time to time, in each case within 30 days of Holder's request, a report (including all drafts thereof if requested by Holder) of an environmental assessment of the Mortgaged Property made after the date of Holder's request and of such scope (including but not limited to the taking of soil borings, air and groundwater samples and other above and below ground testing) as Holder may request and by a consulting firm acceptable to Holder. Mortgagor will cooperate with each consulting firm making any such assessment and will supply to the consulting firm, from time to time and promptly on request, all information available to Mortgagor to facilitate the completion of the assessment and report.

(vi) **Remedial Actions.** Without limitation of Holder's rights to declare a Default and to exercise all remedies available by reason thereof, if any Hazardous Substance is discovered on the Mortgaged Property in violation of any Environmental Requirement at any time and regardless of the cause, Mortgagor shall: (1) promptly at Mortgagor's sole risk and expense remove, treat and dispose of the Hazardous Substance in compliance with all applicable Environmental Requirements and solely under Mortgagor's name (or if removal is prohibited by any Environmental Requirement, take whatever action is required by applicable Environmental Requirements), in addition to taking such other action as is necessary to have the full use and benefit of the Mortgaged Property as contemplated by the Loan Documents, and provide Holder with satisfactory evidence thereof; and (2) if requested by Holder, provide to Holder within 30 days of Holder's request a bond, letter of credit or other financial assurance evidencing to Holder's satisfaction that all necessary funds are readily available to pay the costs and expenses of the actions required by clause (1) preceding and to discharge any assessments or liens established against the Mortgaged Property as a result of the presence of the Hazardous Substance on the Mortgaged Property.

(l) **Further Assurances.** Mortgagor will, promptly on the reasonable request of Holder, (i) correct any defect, error or omission which may be discovered in the contents, execution or

acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property) or as deemed advisable by Holder to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Holder to enable Holder to comply with the requirements or requests of any agency having jurisdiction over Holder or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Mortgaged Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Holder pursuant to this Mortgage.

(m) **Fees and Expenses.** Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Holder on demand to the extent paid by Holder: (i) all appraisal fees, filing and recording fees, taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, escrow fees, reasonable attorneys' fees, architect fees, construction consultant fees, environmental inspection fees, survey fees, and all other out-of-pocket costs and expenses of every character incurred by Mortgagor or Holder in connection with any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Mortgagor as owner of the Mortgaged Property; and (ii) all reasonable costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(n) **Indemnification.**

(i) Mortgagor will indemnify and hold harmless Holder from and against, and reimburse Holder on demand for, any and all Indemnified Matters (defined below). For purposes of this paragraph (p), the term "Holder" shall include the directors, officers, partners, employees and agents of Holder, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Holder. **Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person.** However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the fraud, gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p) by Mortgagor to Holder shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Holder pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Holder (including without limitation any rights of contribution or indemnification) against Mortgagor or

any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "**Indemnified Matters**" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Holder at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Mortgaged Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever at any time on or before the Release Date, any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Mortgagor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) and any Environmental Matter (defined below). As used herein, the term "**Environmental Matter**" means: (a) the presence of any Hazardous Substance on, in, under, above or about the Mortgaged Property, or the migration or release or threatened migration or release of any Hazardous Substance on, to, from or through the Mortgaged Property, on or at any time before the Release Date; or (b) any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Substance which is at any time on or before the Release Date present on, in, under, above or about the Mortgaged Property; or (c) any violation on or before the Release Date, of any Environmental Requirement in effect on or before the Release Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or (d) any Environmental Claim, or the filing or imposition of any environmental lien against the Mortgaged Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (a) through (c) preceding; and regardless of whether any of the matters referred to in the foregoing clauses (a) through (d) was caused by Mortgagor or Mortgagor's tenant or any subtenant, or a prior owner of the Mortgaged Property or its tenant or any subtenant, or any third party. Without limitation of the definition of Indemnified Matters herein, Mortgagor's indemnification obligations regarding any Environmental Matter shall include injury or damage to any person, property or natural resource occurring upon or off of the Mortgaged Property (including but not limited to the cost of demolition and rebuilding of any improvements on real property), the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring or similar work required by any Environmental Requirement or necessary to have the full use and benefit of the Mortgaged Property as contemplated by the Loan Documents (including, without limitation, any of the same in connection with any foreclosure or transfer in lieu thereof), and all liability to pay or indemnify any person for costs in connection with any of the foregoing excluding those caused by the gross negligence or willful misconduct of Holder, its agents or employees. The term "**Release Date**" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a

conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Mortgaged Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the secured indebtedness, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(o) **Taxes on Note or Mortgage.** Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the secured indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Holder, the Note, the Mortgaged Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Holder the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the indebtedness secured hereby or Holder, then, and in any such event, Mortgagor, upon demand by Holder, shall pay such taxes, assessments, charges or liens, or reimburse Holder therefor; provided, however, that if in the opinion of counsel for Holder (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Holder may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

(p) **Statement Concerning Note or Mortgage.** Mortgagor shall at any time and from time to time furnish within seven (7) days of request by Holder a written statement in such form as may be required by Holder stating that (i) the Note, this Mortgage and the other Loan Documents are valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Mortgagor shall, alternatively, specify the reason therefor.

(q) **Business Loan.** The proceeds of the loan evidenced by the Note shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire loan constitutes (i) a "business loan" within the purview of 815 ILCS 205/4(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(l).

(r) **Illinois Responsible Property Transfer Act.** The Mortgaged Property does not fall within the categories of real property covered by the Illinois Responsible Property Transfer Act, 765 ILCS 90/3 et. seq., as amended.

**Section 2.2. Performance by Holder on Mortgagor's Behalf.** Mortgagor agrees that, if Mortgagor fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the secured indebtedness has been accelerated, Holder, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Holder and any money so paid by Holder shall be a demand obligation owing by Mortgagor to Holder (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Holder, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Holder and its designees shall have the right to enter upon the Mortgaged Property at any time and from time to time for any such purposes. No such payment or performance by Holder shall waive or cure any default or waive any right, remedy or recourse of Holder. Any such payment may be made by Holder in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Holder pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Holder on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Holder hereunder and the time when paid shall be fully established by the certificate of Holder or any of Holder's officers or agents.

**Section 2.3. Absence of Obligations of Holder with Respect to Mortgaged Property.** Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Mortgaged Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Mortgaged Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) Holder neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Mortgaged Property" herein, either prior to or after obtaining title to such Mortgaged Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (i) Holder may, at any time prior to or after the acquisition of title to any portion of the Mortgaged Property as above described, advise any party in writing as to the extent of Holder's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Mortgaged Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Holder shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Mortgaged Property, as lessee under any lease or purchaser or seller under any contract or option unless Holder elects otherwise by written notification.

**Article 3**  
**Assignment of Rents and Leases**

**Section 3.1. Assignment.** Mortgagor hereby assigns to Holder all Rents (hereinafter defined) and, as additional security for the indebtedness secured hereby, all of Mortgagor's rights in and under all Leases (hereinafter defined). Upon the occurrence of a Default hereunder, Holder shall have the right, power and privilege (but shall be under no duty) to demand possession of the Rents, which demand shall to the fullest extent permitted by applicable law be sufficient action by Holder to entitle Holder to immediate and direct payment of the Rents, (including delivery to Holder of Rents collected for the period in which the demand occurs and for any subsequent period), for application as provided in this Mortgage, all without the necessity of any further action by Holder, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Mortgaged Property. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Holder upon written demand by Holder, without further consent of Mortgagor, without any obligation to determine whether a default has in fact occurred and regardless of whether Holder has taken possession of any portion of the Mortgaged Property, and the tenants may rely upon any written statement delivered by Holder to the tenants. Any such payment to Holder shall constitute payment to Mortgagor under the Leases, and Mortgagor hereby appoints Holder as Mortgagor's lawful attorney-in-fact for giving, and Holder is hereby empowered to give, acquittances to any tenants for such payments to Holder after a default. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "**Lease**" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Mortgaged Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "**Rents**" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Mortgaged Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (as hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Mortgaged Property or any part thereof and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Mortgaged Property. The security pledged in this section constitutes primary collateral for the secured indebtedness on a par with all other collateral and security provided for in this Mortgage and other agreements executed in connection with this Mortgage. Without limiting any other provision of this Mortgage, or other documents regarding the exercise of remedies, Holder may exercise the rights granted to it in this section separate from or in conjunction with any other remedies provided for in this Mortgage and other documents in any order and at such time or times as Holder, in its sole and absolute discretion, may elect.

**Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents.** Mortgagor covenants, represents and warrants that: (i) Mortgagor has good title to, and is the owner of the



entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (ii) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (iii) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (iv) no Rents have been waived, released, discounted, set off or compromised; (v) except as stated in the Leases, Mortgagor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (vi) Mortgagor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (vii) except in the ordinary course of business, Mortgagor will not, without the prior written consent of Holder, enter into any Lease after the date hereof, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; (viii) Mortgagor will not, except in good faith where the tenant is in material default thereunder, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing, in Holder's judgment, at least equivalent to that of the tenant whose Lease was canceled, on substantially the same terms as the terminated or canceled Lease; (ix) Mortgagor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (x) for any tenant leasing more than fifty percent (50%) of the rentable area of the premises, Mortgagor shall give prompt notice to Holder, as soon as Mortgagor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Mortgagor shall defend, at Mortgagor's expense, any proceeding pertaining to any Lease, including, if Holder so requests, any such proceeding to which Holder is a party; (xi) promptly upon request by Holder, Mortgagor shall deliver to Holder executed originals of all Leases and copies of all records relating thereto; (xii) there shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Holder; and (xiii) Holder may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

**Section 3.3. No Liability of Holder.** Holder's acceptance of this assignment shall not be deemed to constitute Holder a "mortgagee in possession," nor obligate Holder to appear in or defend any proceeding relating to any Lease or to the Mortgaged Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Holder. Holder shall not be liable for any injury or damage to person or property in or about the Mortgaged Property (except for such injury or damages resulting from Holder's fraud, gross negligence or will misconduct), or for Holder's failure to collect or to exercise diligence in collecting Rents, but shall be

accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Holder's rights regarding Leases and Rents (including collection of Rents) nor possession of the Mortgaged Property by Holder nor Holder's consent to or approval of any Lease (nor all of the same), shall render Holder liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Holder seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Holder neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Holder under this Article 3 shall be cumulative of all other rights of Holder under the Loan Documents or otherwise.

#### Article 4 Default

Section 4.1. **Events of Default.** "Default" is defined in Section 10 of the Credit Agreement.

#### Article 5 Remedies

Section 5.1. **Certain Remedies.** If a default shall occur, Holder may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) **Acceleration.** Holder may at any time and from time to time declare any or all of the secured indebtedness immediately due and payable and such secured indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Mortgagor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (i), (iii) or (iv) of subparagraph (1) or paragraph (d) of Section 4.1, hereof, all of the secured indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Mortgagor.

(b) **Enforcement of Assignment of Rents.** Prior or subsequent to taking possession of any portion of the Mortgaged Property or taking any action with respect to such possession, Holder may: (1) collect and/or sue for the Rents in Holder's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the secured indebtedness in such manner and order as Holder may elect and/or to the operation and management of the Mortgaged Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Holder together with original counterparts of the Leases.

(c) **Foreclosure.** (i) Holder shall have the right to foreclose the lien hereof for the secured indebtedness or any part thereof and pursue all remedies afforded to a mortgagee under and pursuant to the Act. In case of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels.

It is further agreed that if a default shall occur concerning the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Holder shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure judgment is entered pursuant to a partial foreclosure proceeding because of default of a part of the secured indebtedness, such judgment and sale pursuant thereto may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such judgment or sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure judgment or sale had been entered or made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a judgment of foreclosure therein, Holder may elect at any time prior to a foreclosure sale pursuant to such judgment to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure sale for any unmatured part of the Secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(ii) In any case in which under the provisions of this Mortgage Holder has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Mortgagor shall forthwith, upon demand of Holder, surrender to Holder and Holder shall be entitled to take, and upon Holder's request to the court to be placed in actual possession of the Mortgaged Property, Holder shall be placed in possession of the Mortgaged Property or any part thereof, personally, or by its agent or attorneys as provided in Subsection (b)(2) and (c) of Section 1701 of the Act. In such event Holder in its discretion may, with or without force and with or without process of law, enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Holder and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and 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 or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereunder and

beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Mortgaged Property; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limiting the generality of the foregoing provisions of this Section, Holder shall also have all power, authority and duties as provided in Section 15-1703 of the Act.

Holder shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Holder harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 5.1(c) and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor. Should Holder incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate (as that term is defined in the Loan Agreement) shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

(iii) In any case in which under the provisions of this Mortgage, Holder has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of foreclosure proceedings or before or after judgment thereunder, and at all times until confirmation of sale, the court shall appoint a receiver of the premises whenever Holder when entitled to possession so requests either pursuant to Section 15-1702(a) of the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Mortgaged Property after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the secured indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the

protection, possession, control, management and operation of the premises during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the secured indebtedness, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Holder is authorized to make a protective advance under this Mortgage, and (b) the deficiency in case of a sale and deficiency.

(d) **Uniform Commercial Code.** Without limitation of Holder's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Holder may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Uniform Commercial Code and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Holder may enter upon Mortgagor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Holder may require Mortgagor to assemble the Collateral and make it available at a place Holder designates which is mutually convenient to allow Holder to take possession or dispose of the Collateral; (3) written notice mailed to Mortgagor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Property as provided in paragraph (c) above in this Section 5.1; (5) in the event of a foreclosure sale, the Collateral and the other Mortgaged Property may, at the option of Holder, be sold as a whole; (6) it shall not be necessary that Holder take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds of disposition of the Collateral under Section 5.3 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Holder; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any default, or as to Holder having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Holder, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Holder may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Holder, including the sending of notices and the conduct of the sale, but in the name and on behalf of Holder.

(e) **Lawsuits.** Holder may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) **Entry on Mortgaged Property.** Holder is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Mortgaged Property, or any part thereof, and to take possession of the Mortgaged Property and all books and records relating thereto, and to exercise without interference from Mortgagor any and all rights

which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property. Holder shall not be deemed to have taken possession of the Mortgaged Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Holder in managing, operating, maintaining, protecting or preserving the Mortgaged Property shall constitute a demand obligation of Mortgagor (which obligation Mortgagor hereby promises to pay) to Holder pursuant to this Mortgage. If necessary to obtain the possession provided for above, Holder may invoke any and all legal remedies to dispossess Mortgagor. In connection with any action taken by Holder pursuant to this Section, Holder shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property or any part thereof, or from any act or omission of Holder in managing the Mortgaged Property unless such loss is caused by the willful misconduct and bad faith of Holder, nor shall Holder be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any lease or other agreement relating to the Mortgaged Property or arising under any Permitted Encumbrance or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Holder with respect to the Mortgaged Property taken under this Section.

(g) **Receiver.** Holder shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Mortgaged Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Mortgaged Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Mortgagor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Holder, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Holder to application of Rents as provided in this Mortgage. Nothing herein is to be construed to deprive Holder of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Holder in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Holder pursuant to this Mortgage.

(h) **Termination of Commitment to Lend.** Holder may terminate any commitment or obligation to lend or disburse funds under any Loan Document.

(i) **Other Rights and Remedies.** Holder may exercise any and all other rights and remedies which Holder may have under the Loan Documents, or at law or in equity or otherwise.

#### Section 5.2. [Reserved]

**Section 5.3. Proceeds of Foreclosure.** The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note.

**Section 5.4. Holder as Purchaser.** Holder shall have the right to become the purchaser at any foreclosure sale and Holder shall have the right to credit upon the amount of Holder's successful bid, to the

extent necessary to satisfy such bid, all or any part of the secured indebtedness in such manner and order as Holder may elect. If Holder is the purchaser of the Mortgaged Property, or any part thereof, at any sale thereof (including any sale of the Collateral as contemplated in Subsection 5.1(d) hereof), Holder shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the assignments, liens, and security interests of these presents.

**Section 5.5. [Reserved]**

**Section 5.6. Remedies Cumulative.** All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Holder shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

**Section 5.7. Holder's Discretion as to Security.** Holder may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Holder in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

**Section 5.8. Mortgagor's Waiver of Certain Rights.** To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Holder under the terms of this Mortgage to a sale of the Mortgaged Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Holder under the terms of this Mortgage to the payment of the secured indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert pursuant to any provision of any law pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

**Section 5.9. Delivery of Possession After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's heirs, devisees, representatives, successors or assigns are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. In the event the tenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

**Section 5.10. Waiver of Rights.** To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor acknowledges that the Mortgaged Property do not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property of any nature whatsoever subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

**Section 5.11. Performance of Mortgagor's Agreements.** In case Mortgagor fails to perform any of its covenants and agreements herein or in the Note or any Loan Document, Holder may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on any prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment.

In the event Holder shall elect, pursuant to this Section 5.11, to undertake to perform Mortgagor's obligations for restoration or rebuilding as required of Mortgagor by Section 2.1 hereof, Holder shall not be required to restore or rebuild the improvements to any greater extent than will be covered by available proceeds or estimated proceeds of insurance or condemnation award. An estimate of available proceeds may be made if at such time as Holder is prepared to arrange for plans, solicit bids, let a contract, or otherwise proceed with restoration, the loss may not have been adjusted with insurers or the court may not have finally determined the amount of a condemnation award. If Holder shall have expended any amount for restoration or rebuilding in excess of the actual or estimated proceeds of insurance or condemnation award for the purpose of such repair or replacement, the amount of such excess ("Excess Restoration Cost") so expended by Holder shall constitute additional indebtedness secured hereunder and shall be secured by the lien hereof.



All advances, disbursements and expenditures (collectively, "advances") made by Holder before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate (as such term is defined in the Credit Agreement), are hereinafter referred to as "Protective Advances":

- (a) advances pursuant to this Section 3.7;
- (b) Excess Restoration Costs;
- (c) advances in accordance with the terms of this Mortgage to: (i) protect, preserve or restore the Mortgaged Property; (ii) preserve the lien of this Mortgage or the priority thereof, or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;
- (d) payments of (i) installments of principal, interest or other obligations in accordance with the terms of any prior encumbrance; (ii) installments of real estate taxes and other impositions; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section of this Mortgage and in Section 15-1505 of the Act;
- (e) attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act and in connection with any other litigation or administrative proceeding to which the Holder may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defenses of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and cost (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Holder may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Mortgaged Property;
- (f) Holder's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;
- (g) payment by Holder of impositions as required of Mortgagor by Sections 4.11 and 4.13 of the Loan Agreement;
- (h) expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Act; and
- (i) expenses incurred and expenditures made by Holder for any one or more of the following: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the owner thereof; (ii) if any of the

Mortgaged Property consists of an interest in a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums upon casualty and liability insurance made by Holder whether or not Holder or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining of insurance in effect at the time any receiver or Holder takes possession of the Mortgaged Property imposed by Subsection (c)(1) of Section 15-1704 of the Act; (iv) payments required or deemed by Holder to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (v) shared or common expense assessments payable to any association or corporation in which the owner of the premises is a member in any way affecting the Mortgaged Property; (vi) operating deficits incurred by Holder to any receiver; and (vii) if the loan secured hereby is a construction loan, costs incurred by Holder for completion of construction as may be authorized by the Credit Agreement.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded, pursuant to Subsection (b)(1) of Section 15-1302 for the Act.

The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, be included in:

- (a) determination of the amount of the secured indebtedness secured by this Mortgage at any time;
- (b) the indebtedness found due and owing to the Holder in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, the court may reserve jurisdiction for such purpose;
- (c) if right of redemption has not been validly waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act;
- (d) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;
- (e) determination of the application of income in the hands of any receiver or Holder in possession; and
- (f) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

All moneys paid for Protective Advances or any of the other purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Holder to protect the Mortgaged Property and the lien hereof, shall be so much additional

indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as such term is defined in the Credit Agreement). Inaction of Holder shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

**Section 5.12. Subrogation.** Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Holder, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any senior mortgage (as described in Subsection (a) of Section 15-1505 of the Act) or any other lien or encumbrance upon the Mortgaged Property or any part thereof on a parity with or prior or superior to the lien hereof ("Prior Encumbrance"), then as additional security hereunder, the Holder shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

**Section 5.13 Benefits of Act.** Mortgagor and Holder shall have the benefits of all of the provisions of the Act, including all amendments thereto which may become affective from time to time after the date hereof. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Holder any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Holder under the Act in the absence of said provision, Holder shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Holder to the extent reimbursable under Sections 5115-1510 and 5115-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

## Article 6 Miscellaneous

**Section 6.1. Scope of Mortgage.** This Mortgage is a mortgage of both real and personal property, a security agreement, a financing statement and a collateral assignment and also covers proceeds and fixtures.

**Section 6.2. Effective as a Financing Statement.** This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to Subsection (e) of Section 9.103 of the Uniform Commercial Code as enacted in the state where the Mortgaged Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property is situated. This Mortgage shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor is the address of Mortgagor set forth at the end of this Mortgage and the address of Holder from

which information concerning the security interests hereunder may be obtained is the address of Holder set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

**Section 6.3. Notice to Account Debtors.** In addition to the rights granted elsewhere in this Mortgage, Holder may at any time notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Holder directly.

**Section 6.4. Waiver by Holder.** Holder may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) consent to Mortgagor's doing any act which hereunder Mortgagor is prohibited from doing, or to Mortgagor's failing to do any act which hereunder Mortgagor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Mortgaged Property or any interest therein from the lien and security interest of this Mortgage; or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Holder hereunder except to the extent specifically agreed to by Holder in such writing.

**Section 6.5. No Impairment of Security.** The lien, security interest and other security rights of Holder hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Holder including, but not limited to, any renewal, extension or modification which Holder may grant with respect to any secured indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Holder may grant in respect of the Mortgaged Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Holder shall not release or impair the lien, security interest or other security rights of Holder hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Mortgaged Property (without implying hereby Holder's consent to any junior lien).

**Section 6.6. Acts Not Constituting Waiver by Holder.** Holder may waive any default without waiving any other prior or subsequent default. Holder may remedy any default without waiving the default remedied. Neither failure by Holder to exercise, nor delay by Holder in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the secured indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Holder of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Holder and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the secured indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor,

constitute payment until the required amount is actually received by Holder in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Holder of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder.

**Section 6.7. Mortgagor's Successors.** If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Mortgagor, Holder may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Mortgaged Property, no forbearance on the part of Holder, and no extension of the time for the payment of the indebtedness secured hereby given by Holder shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Holder and any subsequent owner of the Mortgaged Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Holder's consent to any transfer of the Mortgaged Property.

**Section 6.8. Place of Payment; Forum.** All secured indebtedness which may be owing hereunder at any time by Mortgagor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Holder indicated at the end of this Mortgage). Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any Texas state court, or any United States federal court, sitting in the county in which the secured indebtedness is payable, and to the non exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Mortgaged Property is located, over any suit, action or proceeding arising out of or relating to this Mortgage or the secured indebtedness. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Texas state court, or any United States federal court, sitting in the county in which the secured indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated in this Mortgage, or at a subsequent address of Mortgagor of which Holder received actual notice from Mortgagor in accordance with this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed.

**Section 6.9. Subrogation to Existing Liens; Vendor's Lien.** To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property, such proceeds have been advanced by Holder at Mortgagor's request, and Holder shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the secured indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner

and terms of enforcement of the liens, security interests, charges and encumbrances to which Holder is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Holder, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Mortgaged Property, no vendor's lien is waived; and Holder shall have, and is hereby granted, a vendor's lien on the Mortgaged Property as cumulative additional security for the secured indebtedness. Holder may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

**Section 6.10. Application of Payments to Certain Indebtedness.** If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

**Section 6.11. Compliance with Usury Laws.** It is the intent of Mortgagor and Holder and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Holder and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "**Maximum Amount**"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Holder shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the secured indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other secured indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Holder does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Holder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Texas or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. [Reserved]

**Section 6.13. Future Advances and Revolving Credit Advances; Maximum Secured Indebtedness.** This Mortgage is given to secure a revolving credit facility and secures not only present indebtedness but also future advances and revolving credit advances, whether such advances are obligatory or to be made at the option of Holder, which are made within twenty (20) years from the date hereof, which future advances and revolving credit advances shall have the same priority as if all such future advances and revolving credit advances were made or issued on the date of execution hereof. Nothing in this Section 6.13 or in any other provision of this Mortgage shall be deemed an obligation on the part of Holder to make any future advances or revolving credit advances other than in accordance with the terms and provisions of the Credit Agreement. The amount of indebtedness secured hereby may increase or decrease from time to time, however, the principal amount of such indebtedness shall not at any time exceed the amount of \$300,000,000.00 plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Documents.

**Section 6.14. Release of Mortgage.** If all of the secured indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all obligations, if any, of Holder for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Holder in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Holder shall survive discharge of the secured indebtedness and any foreclosure, release or termination of this Mortgage. Reference is made to Section 4.6 of the Credit Agreement for additional terms and conditions regarding release.

**Section 6.15. Notices.** Notices shall be given as set forth in Section 13.3 of the Credit Agreement.

**Section 6.16. Invalidity of Certain Provisions.** A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

**Section 6.17. Gender; Titles; Construction.** Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

**Section 6.18. Reporting Compliance.** Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Holder to furnish Holder with evidence of such compliance.

**Section 6.19. Holder's Consent.** Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Holder is required or requested, (i) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Holder, and Holder shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Holder's judgment, and (ii) no approval or consent of Holder shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Holder.

**Section 6.20. Mortgagor.** Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the Mortgagors named in Section 1.1 hereof or any of them. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for it, represent and warrant to Holder that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability.

**Section 6.21. Execution; Recording.** This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Holder shall reasonably request and will pay all such recording, filing, re-recording and refile taxes, fees and other charges.

**Section 6.22. Successors and Assigns.** The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the heirs, devisees, representatives, successors and assigns of Mortgagor, and shall inure to the benefit of Holder and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Mortgagor.

**Section 6.23. Modification or Termination.** The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.



**Section 6.24. No Partnership, etc.** The relationship between Holder and Mortgagor is solely that of lender and borrower. Holder has no fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Holder or in any way make Holder a co-principal with Mortgagor with reference to the Mortgaged Property. All agreed contractual duties between or among Holder and Mortgagor are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

**Section 6.25. Applicable Law.** This Mortgage and the Loan Documents are being executed and delivered, and the payment obligation of Mortgagor under the Note is intended to be performed, in the State of Texas. The substantive laws of the State of Texas (without regard to principals of conflicts of law) shall govern the validity, construction, enforcement, and interpretation of the Note and the other Loan Documents, including without limitation, this Mortgage, except to the extent that the laws of the State of Illinois necessarily govern the creation, perfection and enforcement of the liens, interests, and rights of the parties under this Mortgage.

**Section 6.26. Entire Agreement.** The Loan Documents constitute the entire understanding and agreement between Mortgagor and Holder with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Mortgagor and Holder with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Holder to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

**The written Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.**

**There are no unwritten oral agreements between the parties.**

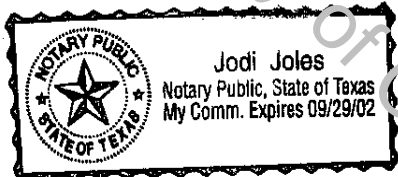


ILLINOIS  
NOTARY ACKNOWLEDGMENT

State of Texas )  
 ) SS.  
County of Dallas )

I Jodi Joles, a notary public for the State of Texas (name and official capacity of official), do hereby certify that on the 28<sup>th</sup> day of January, 1999, Marc A. Simpson (names of persons signing document), personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written. (Insert official capacity of official)



Jodi Joles  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

Property of Cook County Clerk's Office

EXHIBIT A  
TO  
REVOLVING CREDIT MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND  
FINANCING STATEMENT

LAND

Property Address: 2727 Old Higgins and  
2425 Touhy Avenue  
Elk Grove Village, Illinois 60007

Tax Identification No.: 08-26-410-003-0000, Volume 50  
08-35-200-028-0000, Volume 50  
08-35-200-014-0000, Volume 50

CONTINENTAL

Lots 32 and 33 in Centex Industrial Park Unit 6, being a subdivision in Sections 26 and 35, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

Also described by metes and bounds as follows:

Beginning at the most Northerly corner of Lot 33; Thence South 40 degrees 50 minutes 35 seconds East along the Northeasterly line thereof for a distance of 635.70 feet to a corner of said lot; Thence South 48 degrees 23 minutes 58 seconds West along a Southeasterly line of said lot for a distance of 115.97 feet to the most Northerly corner of Lot 32; Thence South 41 degrees 37 minutes 38 seconds East along a Northeasterly line of Lot 32 aforesaid for a distance of 127.01 feet to a corner of said lot; Thence South 00 degrees 10 minutes 33 seconds West along the East line of Lot 32 aforesaid for a distance of 296.06 feet to the Southeast corner thereof; Thence South 89 degrees 58 minutes 18 seconds West along the South line of Lot 32 aforesaid for a distance of 188.15 feet to the Southwest corner of Lot 32; thence Northwesterly along the Southwesterly lines of Lots 32 and 33 aforesaid being an arc of a circle convex Northeasterly and having a radius of 383.28 feet for a distance of 518.20 feet to a point of tangency (the chord of said arc having a bearing of North 51 degrees 16 minutes 05 seconds West a distance of 479.62 feet), Thence South 90 degrees 00 minutes 00 seconds West along the South line of Lot 33 aforesaid for a distance of 196.50 feet to the Southwest corner thereof; Thence North 00 degrees 09 minutes 24 seconds East along the West line of Lot 33 aforesaid for a distance of 280.00 feet to a corner of Lot 33; Thence North 43 degrees 00 minutes 54 seconds East along the Northwesterly line of Lot 33 for a distance of 505.71 feet to the point of beginning, in Cook County, Illinois.

EXHIBIT B  
TO  
REVOLVING CREDIT MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND  
FINANCING STATEMENT

PERMITTED ENCUMBRANCES

1. Taxes for the years 1998 and 1999, to the extent not yet due and payable.
2. Building lines as shown on the plat of subdivision of Centex Industrial Park Unit 6 recorded as Document Number 18350756 in the records of Cook County, Illinois, and shown on Survey prepared by Gremley & Biedermann, Inc., dated April 14, 1998, last revised January 25, 1999, Order No. 98587.
3. Easements for public utilities, sewers, water, and drainage as shown on the plat of subdivision of Centex Industrial Park Unit 6 recorded as Document Number 18350786 in the records of Cook County, Illinois and shown on Survey prepared by Gremley & Biedermann, Inc., dated April 14, 1998, last revised January 25, 1999, Order No. 98587.
4. Easement for the purpose of installing, operating and maintaining all equipment necessary for the purpose of serving the subdivision and other property with telephone and electric service and also with right of access thereto as granted to the Illinois Bell Telephone Company and the Commonwealth Edison Company and their respective successors and assigns, as shown on the plat of subdivision of Centex Industrial Park Unit 6 recorded as Document Number 18350786 in the records of Cook County, Illinois and shown on Survey prepared by Gremley & Biedermann, Inc., dated April 14, 1998, last revised January 25, 1999, Order No. 98587.
5. Declaration of Easement dated June 28, 1962 recorded July 5, 1962 as Document Number 18524141 in the records of Cook County, Illinois declaring and granting an easement in perpetuity for drainage purposes over those portions of the land described therein and an easement in perpetuity for sewer purposes over that portion of the land described therein and shown on Survey prepared by Gremley & Biedermann, Inc., dated April 14, 1998, last revised January 25, 1999, Order No. 98587.
6. Reservation of rights-of-way and easements contained in the Deed dated March 28, 1962 recorded March 30, 1962 as Document Number 18436949 in the records of Cook County, Illinois, wherein the Grantor reserves and retains such rights-of-way and easements as may be necessary or convenient for the purpose of erecting, constructing, maintaining and operating utility services over, across, under and through the land in the designated set back areas between the building lines and the property lines, including public service wires and conduits for lighting, power and telephone, gas lines, sanitary sewer, storm sewer and water, and the Grantor shall have the right to grant right-of-way easements to others to carry out these purposes.
7. Terms, provisions, covenants, conditions, options and rights contained in and granted by unrecorded Lease Agreement dated April 25, 1962 by and between Trammell Crow, lessor, and Continental Can Company, Inc., a New York corporation, lessee, and recorded Lease dated August 1, 1962 by and between LaSalle National Bank, as Trustee under Trust Agreement dated March 23, 1962 and known as

Trust No. 29274, lessor, and Continental Can Company, Inc., a New York corporation, lessee, recorded August 15, 1962 as Document Number 18563246 in the records of Cook County, Illinois and recorded Supplemental Lease dated May 1, 1963 by and between LaSalle National Bank, as Trustee under Trust Agreement dated March 23, 1962 and known as Trust No. 29274, lessor, and Continental Can Company, Inc., a New York corporation, lessee, recorded July 22, 1963 as Document Number 18859694 in the records of Cook County, Illinois, and unrecorded Letter Agreement dated October 24, 1967 between LaSalle and Continental Can and unrecorded Second Supplemental Lease dated February 1, 1969 between LaSalle and Continental Can and unrecorded Letter Agreement dated July 21, 1972 between LaSalle and Continental and unrecorded Letter Agreement dated October 27, 1976 between LaSalle and The Continental Group, Inc. (successor-in-interest to Continental Can) and unrecorded Letter Agreement dated April 17, 1981 between LaSalle and Continental and unrecorded Letter Agreement dated October 23, 1985 between LaSalle and Continental Plastic Containers, Inc. (as successor-in-interest to The Continental Group, Inc. by merger and assignment) and unrecorded Extension Agreement dated June 7, 1988 between LaSalle and Continental Plastic Containers, Inc., a Delaware corporation, and unrecorded Amendment to Lease dated March 29, 1995 between USAA Real Estate Income Investments II Limited Partnership and Continental Plastic Containers, Inc., a Delaware corporation, (and as disclosed in recorded Landlord's Consent and Subordination Agreement Document Number 97036132); demising and leasing the subject premises as described therein.