P003409/AGT144
3/29/88

3698232

Return to:

This instrument was prepared by Alan Papernick, Esquire, Papernick & Gefsky, 34th Floor, One Oxford Centre, Pittsburgh, Pennsylvania 15219.

715717 8 D3 Pg 3

## MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE MADE THIS 28 day of March, 1988, between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter called the "Mortgagor"), a national banking association, having an address of 33 North LaSalle Street, Chicago, Illinois, not personally but solely as Trustee for Dayton Ventures, an Illinois General Partnership, pursuant to a certain Trust Agreement dated December 3, 1986, and known as Trust No. 100720-08,

3698232

A
N
D

DOLLAR BANK, FEDERAL SAVINGS BANK, having its office at Three Gateway Center, Pittsburgh, Pennsylvania 15222 (hereinafter called "Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor has executed and delivered to Mortgagee its Note (the "Note"), bearing even date herewith, wherein Mortgagor promises to pay to Mortgagee the principal sum of Four Million One Hundred Thousand Dollars ($4,100,000.00) (the "Loan") in lawful money of the United States of America, advanced or to be advanced by Mortgagee to Mortgagor in accordance with the terms of a certain Loan Agreement of even date herewith (the "Loan Agreement"), with interest thereon at a rate of one and three-quarter percent (1.75%) above the Prime Rate (as therein defined) at the times, in the manner and according to the terms and conditions specified in the Note, all of which are incorporated herein by reference, which amounts, if not sooner

Legal description affects property on Certificate
Ill 168771 and other property





0 3 6 9 8 2 3 2

This instrument was prepared by Alan Rabinowitz, Esquire, Rabinowitz & Geb[illegible] floor, One Oxford Centre, Pittsburgh, Pennsylvania.

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE MADE THIS ___ day of _____, 1988, between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter called the "Mortgagor"), a national banking association, having an address of 33 North LaSalle Street, Chicago, Illinois, not personally but solely as Trustee for Bank Resources, an Illinois General Partnership, pursuant to a certain Trust Agreement dated December 3, 1986, and known as Trust No. 100224-00,

A

N

D

DOLLAR BANK, FEDERAL SAVINGS BANK, having its office at Three Gateway Center, Pittsburgh, Pennsylvania 15222 (hereinafter called "Mortgagee");

WITNESSETH:

WHEREAS, Mortgagor has executed and delivered to Mortgagee its Note (the "Note"), bearing even date herewith, wherein Mortgagor promises to pay to Mortgagee the principal sum of [illegible] Dollars ([illegible]) (the "Loan"), in lawful, [illegible] money of the United States of America, advanced or to be advanced by Mortgagee to Mortgagor in accordance with the terms of a certain Loan Agreement of even date herewith (the "Loan Agreement"), with interest thereon at a rate of one and three-quarter percent (1.75%) above the Prime Rate (as therein defined) of the Lender, in the manner and according to the terms and conditions specified in the Note, all of which are incorporated herein by reference, which amounts, if not sooner

paid, shall become due and payable on October 1, 1989, unless said date is extended to April 1, 1990, in accordance with the terms of the Note which is attached hereto as Exhibit "B" and made a part hereof. Notwithstanding the foregoing provision, at such time as six (6) sales agreements in form and content satisfactory to Mortgagee with a ten percent (10.0%) nonrefundable deposit for each contract, are secured by Mortgagor and assigned to the Mortgagee, the interest rate shall be reduced to equal one and one-half percent (1.5%) above the Prime Rate.

NOW, THEREFORE, in consideration of the indebtedness evidenced by the Note, and to secure the payment to Mortgagee of the principal and interest, and all other sums provided for in the Note and in this Mortgage and Security Agreement ("Mortgage"), according to their respective terms and conditions, and to secure the performance and observance by Mortgagor of all covenants and conditions contained in the Note, and in any renewal, extension or modification thereof, and in this Mortgage and in all other Loan Security Documents, but in no event to exceed the sum of Ten Million Dollars ($10,000,000.00), Mortgagor has granted, conveyed, sold, aliened, enfeoffed, released, confirmed and mortgaged, and by these presents does hereby grant, convey, sell, alien, enfeoff, release, confirm and mortgage unto Mortgagee, its successors and assigns, free of any right or equity of redemption, which are hereby waived by Mortgagor, all that certain real estate described in Exhibit "A" attached hereto and made a part hereof.

TOGETHER WITH all of Mortgagor's right, title and interest now owned or hereafter acquired in:

(i) Any and all buildings, streets, alleys, passages, ways, waters, watercourses, rights, liberties, privileges, improvements, hereditaments and appurtenances thereto or in any way appertaining thereto, and all easements, rights-of-way,

paid, shall become [illegible] on October 1, 1990, unless said date [illegible] April 1, 1990, in accordance with the terms [illegible] which is attached hereto as Exhibit "B" and made [illegible] hereof. Notwithstanding the foregoing provision, at [illegible] time as six (6) prior occurrences in term and current installments on Mortgage with a [illegible] (10.00) [illegible] amortization deposits for each contract, are accepted by Mortgagor and delivered to the Mortgagee, the interest rate shall be reduced to equal the 2nd one-half percent (1.5%) above the Prime Rate.

NOW, THEREFORE, in consideration of the indebtedness evidenced by the Note, and to secure the payment to Mortgagee of the principal and interest, and all other sums provided for in the Note and in this Mortgage and Security Agreement (hereinafter), according to their respective terms and conditions, and to secure the performance and observance by Mortgagor of all covenants and conditions contained in the Note, and in any renewal, extension or modification thereof, and in this Mortgage and in all other Loan Security Documents, but in no event to exceed the sum of Six Million Dollars ($10,000,000.00), Mortgagor has granted, conveyed, [illegible], aligned, enfeoffed, released, [illegible] and mortgaged, and by these presents does hereby grant, convey, [illegible], alien, enfeoff, release, confirm and mortgage unto Mortgagee, its successors and assigns, free of any right of equity or redemption, which are hereby waived by Mortgagor, all that certain real estate described in Exhibit "A" attached hereto and made a part hereof.

TOGETHER with all of Mortgagor's right, title and interest now owned or hereafter acquired in:

(a) any and all buildings, streets, alleys, passages, ways, waters, watercourses, rights, liberties, privileges, improvements, hereditaments and appurtenances thereto or in any way appertaining thereto, and all easements, rights-of-way,

licenses and covenants now existing or hereafter created for the benefit of Mortgagor or any subsequent owner or tenant of the Mortgaged Premises over ground adjoining the Mortgaged Premises and all rights to enforce the maintenance thereof, and all other rights, liberties, and privileges of whatsoever kind or character, and the reversions and remainders, income, rents, issues and profits arising therefrom, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Mortgagor in and to the Mortgaged Premises or any part thereof.

(ii) All furniture, furnishings, floor coverings, household appliances, office equipment and articles of interior decoration; all screens, awnings, venetian blinds, shutters, shades, storm windows and storm doors; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all cleaning, ventilating, refrigerating, vending, incinerating, waste disposal, alarm, fire prevention and fire extinguishing systems, apparatus and equipment; all television, telephone, radio and other musical equipment; all passenger and freight elevators, escalators and machinery and equipment pertaining thereto; all pipes, conduits, pumps, boilers, tanks, motors, engines and furnaces; and all heating, lighting, plumbing, gas-burning, oil-burning, air-conditioning and electrical fixtures, machinery and equipment of whatsoever kind and nature and all other personal property owned by the Mortgagor now or at any time hereafter in or on the Mortgaged Premises and in the building erected thereon used or useful in the operation of the Mortgaged Premises, whether or not attached to the real estate, and all additions to and substitutions and replacements of any of the above-described types and items of property, and any proceeds of any thereof, and with respect to the Mortgaged Premises, all leases and contracts already in existence and those to be created in the future, together with all rents and amounts to become due under existing or future leases, contract rights and accounts receivable; it being mutually agreed that all the

licenses and cover[illegible] or necessary created for the benefit of [illegible] any subsequent owner or tenant of the Mo[illegible] and all other rights to enforce the maintenance thereof, and all other rights, liberties, and privileges of whatsoever kind or character, and the reversions and remainders, tenses, rents, issues and profits arising therefrom, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Mortgagor in and to the Mortgaged Premises or any part thereof.

(ii) All furniture, furnishings, floor coverings, [illegible] appliances, office equipment and articles of interior [illegible] all screens, awnings, venetian blinds, shutters, [illegible] window and storm doors, air cooling, heating and [illegible] and sanitary fixtures, vacuums, appliances and equipment, all cleaning, maintenance, refrigerating, heating, ventilating, [illegible] fire prevention and fire extinguishing systems, [illegible] equipment, all television, telephone, radio and other electrical equipment, all passenger and freight elevators, escalators and machinery and equipment [illegible] pertaining thereto, [illegible], [illegible], pipes, boilers, tanks, [illegible], engines and [illegible] and all heating, lighting, plumbing, refrigerating, air-conditioning and [illegible] fixtures, machinery and equipment of whatsoever kind and nature, [illegible] all other personal property owned by the Mortgagor now or at any time hereafter in or on the Mortgaged Premises and [illegible] or useful in the operation [illegible] Mortgagor [illegible], whether or not attached to the real [illegible], and all additions to and substitutions and replacements of any of the above-described type and items of property, and any proceeds of any thereof, and with respect to the Mortgaged Premises, all leases and contracts already in existence and those to be created in the future, together with all rents and amounts to become due under existing or future leases, contract rights and accounts receivable; it being mutually agreed that all the

aforesaid property owned by the Mortgagor and placed by it on the Mortgaged Premises shall, so far as permitted by law, be deemed to be fixtures and a part of the realty and security for the said indebtedness and covered by this Mortgage, and as to the balance of the property aforesaid and all fixtures, this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest in said property, securing indebtedness for the benefit of Mortgagee, and excluding from such Security Agreement all improvements, buildings, materials, movable fixtures and personal property affixed to or within the Mortgaged Premises which are owned by the tenants of space under occupancy leases, and their respective assignees and/or sublessees, unless such improvements, buildings and materials become Mortgagor's property as a result of a termination of such occupancy lease, in which event the aforesaid shall be subject to the lien hereof.

(iii) All awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking by eminent domain, either permanent or temporary, of all or any part of the said Mortgaged Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, said awards and compensation which are hereby assigned to Mortgagee, and upon default hereunder, Mortgagor does hereby authorize Mortgagee as its attorney-in-fact coupled with an interest and authorizes, directs and empowers such attorney, at the option of the attorney, on behalf of the Mortgagor, its successors and assigns, to adjust or compromise the claim for any such award and to collect and receive the proceeds thereof.

All of the above-mentioned real estate, buildings, improvements, fixtures, machinery, equipment, tenements, hereditaments and appurtenances, and other property interests are collectively referred to herein as the "Mortgaged Premises."

aforesaid proper[illegible] by the Mortgagor and placed by it on the Mortgaged [illegible] insofar as far as permitted by law, be deemed to [illegible] a part of the realty and security for the said [illegible] and covered by this Mortgage, and as to the balance of the property aforesaid and all fixtures, this Mortgage is hereby deemed to be as well a security agreement for the purpose of creating hereby a security interest in said property, securing indebtedness for the benefit of Mortgagee, and excluding from such security agreement all improvements, buildings, materials, movable fixtures and personal property failing to or within the Mortgaged Premises which are owned by the tenants occupying under occupancy leases, and their respective assignees and/or successors, unless such improvements, buildings and materials become Mortgagor's property as a result of termination of such occupancy leases, in which event the aforesaid shall be subject to the lien hereof.

(iii) All awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking by eminent domain, either permanent or temporary, of all or any part of the said Mortgaged Premises, or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, said awards and compensation which are hereby assigned to Mortgagee, and upon request hereunder, Mortgagor does hereby authorize Mortgagee as the attorney-in-fact coupled with an interest and authorizes, directs and empowers such attorney, at the option of the attorney, on behalf of the Mortgagor, its [illegible] or the realty, to adjust or compromise the claim for any such award and to collect and receive the proceeds thereof.

All of the aforementioned real estate, buildings, improvements, fixtures, machinery, equipment, tenements, hereditaments and appurtenances, and other property interests are collectively referred to herein as the "Mortgaged Premises."

TO HAVE AND TO HOLD the Mortgaged Premises hereby granted or mentioned or intended so to be, unto Mortgagee, its successors and assigns, to its or their own use forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived).

PROVIDED ALWAYS, that if Mortgagor shall promptly pay all sums becoming due under the Note and this Mortgage and shall perform all the other provisions contained herein and in the Note, then the estate hereby granted shall cease, terminate and become void, but otherwise shall remain in full force and effect.

DEFINITIONS:

Agreements of Guaranty and Suretyship - The Guaranty and Suretyship Agreements executed by the Guarantors.

Assignment of Agreements of Sale and Contract Deposits- The Assignment of even date herewith by which the Mortgagor and Dayton Ventures assign to the Mortgagee the agreements of sale between the Mortgagor and/or Dayton Ventures and the individual purchasers of Units comprising the Mortgaged Premises, together with the contract deposits paid thereunder.

Assignment of Construction Contract - The Assignment by Dayton Ventures in favor of Mortgagee of the Construction Contract for the Project, and agreements, licenses and permits relating to the Mortgaged Premises and the construction, use and operation of the Improvements.

Assignment of Leases and Rents - The assignment of even date herewith by which Mortgagor and Dayton Ventures assign to Mortgagee all of the Leases to the Mortgaged Premises and the rents payable thereunder.

TO HAVE [illegible] the Mortgaged Premises hereby granted [illegible] intended so to be, unto Mortgagee, its [illegible] successors, to its or their own use forever, free [illegible] rights and benefits under and by virtue of the Homestead Exemption laws of the State of Illinois (which rights and benefits are hereby expressly released and waived).

PROVIDED ALWAYS, that if Mortgagor shall promptly pay all sums secured by the under the Note and this Mortgage and shall perform all the other provisions contained herein and in the Note, then the estate hereby granted shall cease, terminate and become void, but otherwise shall remain in full force and effect.

DEFINITIONS

Assignment of Guaranty and Suretyship - The Guaranty and Suretyship Agreements executed by the Guarantors.

Assignment of Purchase of Sale and Contract Receivable - An Assignment of even date herewith by which the Mortgagor and Dayton Ventures assign to the Mortgagee the agreements of sale between the Mortgagor and Dayton Ventures and the individual purchasers of the Mortgaged Premises, including the right to receive payments and thereunder.

Assignment of Construction Contract - The Assignment by Dayton Ventures in favor of Mortgagee of the Construction Contract [illegible] and [illegible], licenses and permits relating to the Mortgaged Premises and the construction, use and operation of the Improvements.

Assignment of Leases and Rents - The assignment of even date herewith by which Mortgagor and Dayton Ventures assign to Mortgagee all of the leases to the Mortgaged Premises and the rents payable thereunder.

Commitment - The letter of commitment to make the Loan from Mortgagee to Dayton Ventures dated March 31, 1988, as accepted by letter from Dayton Ventures to Mortgagee dated _____.

Escrow Agreement for Letter of Credit - The Escrow Agreement for Letter of Credit executed by Dayton Ventures and Mortgagee of even date herewith.

Guaranties of Completion and Payment of the Costs of the Project - The Guaranties of Completion and Payment of the Costs of the Project executed by the Guarantors as identified therein of even date herewith.

Guarantors - as defined in the Note.

Improvements - As defined in the Loan Agreement.

Leases - Any and all written leases, subleases, licenses, concessions, or grants of other possessory interests in any part of the Mortgaged Premises, now or hereafter in force, and the rents and profits therefrom.

Letter of Credit - The Letter of Credit provided by Dayton Ventures in favor of the Mortgagee in accordance with the terms of the Commitment.

Loan - As defined in the Note.

Loan Security Documents - All documents and items reasonably considered by Mortgagee to be related to the Loan, in form and substance satisfactory to Mortgagee, including but not limited to (a) the Note; (b) this Mortgage and Security Agreement; (c) the Loan Agreement; (d) the Assignment of Leases and Rents; (e) the Financing Statements; (f) the Agreements of

Commitment - [illegible] commitment to make the loan from Mortgagee [illegible] expires later June 30, 1990, as accept[illegible] [illegible] amendatory endorsements to Mortgages dated _____.

Escrow Agreement for Letter of Credit - The Escrow Agreement for Letter of Credit executed by Payees Vendors and Mortgagee of even date herewith.

Guarantor of Completion and Payment of the Costs of the Project - The Guarantors of Completion and Payment of the Costs of the Project executed by the Guarantors of identified therein of even date herewith.

Guarantors - as defined in the Note.

Improvements - As defined in the Loan Agreement.

Leases - Any and all written leases, subleases, licenses, concessions, or grants of other possessory interests in [illegible] of the Mortgaged Premises, now or hereafter in force, [illegible] and product royalties.

Letter of Credit - The letter of credit provided by Payees Vendors in favor of the Mortgagee in accordance with the terms of the Commitment.

Loan - As defined in the Note.

Loan Security Documents - All documents and items [illegible] executed by Mortgagor to be related to the Loan, in form and substance satisfactory to Mortgagee, including but not limited to (a) the Note; (b) this Mortgage and Security Agreement; (c) the Loan Agreement; (d) the Assignment of Leases and Rents; (e) the Guaranty Agreement; (f) the Agreements of

Guaranty and Suretyship; (g) the Guaranties of Completion and the Payment of the Costs of the Project; (h) the Commitment; (i) the Assignment of Agreements of Sale and Contract Deposits; (j) the Escrow Agreement for Letter of Credit; (k) the Assignment of Construction Contract; (l) the Assignment of Architect Agreement and Plans and Specifications; and (m) all other miscellaneous agreements and certifications called for in the Commitment.

AND MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Warranty of Title. Mortgagor represents that it presently possesses an unencumbered fee simple title to the Mortgaged Premises, except for those title objections not removed from the Loan Title Insurance Policy issued by Chicago Title Insurance Company to Mortgagee insuring the lien of this Mortgage, and that this Mortgage is a valid and enforceable first lien on the Mortgaged Premises. Mortgagor shall preserve such title and the validity and priority of the lien hereof and shall forever defend the same to Mortgagee, its successors and assigns, against the claims of any persons and parties whomsoever.

2. Payment of Note. Mortgagor shall pay to Mortgagee or any subsequent holder of the Note the principal and interest accrued on the entire outstanding principal indebtedness due under the Note, including all sums now or hereafter due Mortgagee under the terms hereof and of the Note, together with all interest thereon and all other sums owing under the Note, punctually as and when the same shall become due by the terms thereof and hereof. Mortgagor will observe and perform all of the terms, provisions, conditions, covenants and agreements on the part of Mortgagor to be observed and performed under the Note and this Mortgage.

3. Payment of Taxes and Other Charges. Mortgagor shall, prior to the date on which any interest or penalties shall

Guaranty and Surety [illegible] the Guaranties of Completion and the Payment of [illegible] Guarantor (h) the Commitment; (i) the Assignment [illegible] of Sale and Contract Deposits; (j) the [illegible] for letter of credit; (k) the Assignment of [illegible] Contract; (l) the Assignment of Architect Agreement [illegible] and Specifications; and (m) all other miscellaneous [illegible] and certifications called for in the Commitment.

AND MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Warranty of Title. Mortgagor represents that it [illegible] possessor of indefeasible fee simple title to the [illegible] Premises, except for those title exceptions not removed from the Owner Title Insurance Policy issued by Chicago Title [illegible] Company [illegible] Mortgagee insuring the lien of this Mortgage, and that this Mortgage is a valid and enforceable first lien on the Mortgaged Premises. Mortgagor shall preserve such title and the validity and priority of the lien hereof and shall [illegible] defend the same to Mortgagee, its successors and assigns, against the claims of all persons and parties whomsoever.

2. Payment of Note. Mortgagor shall pay to Mortgagee [illegible] the principal and interest [illegible] and all other subsequently principal indebtedness due under the Note, including all sums now or hereafter due Mortgagee under the terms hereof and of the Note, together with all [illegible] thereon, and all other sums owing under the Note, [illegible] the same shall become due by the terms thereof and hereof. Mortgagor will observe and perform all of the terms, provisions, conditions, covenants and agreements on the part of Mortgagor to be observed and performed under the Note and this Mortgage.

3. Payment of Taxes and Other Charges. Mortgagor shall, prior to the date on which any interest or penalties shall

commence to accrue thereon, cause to be paid and discharged, and shall furnish to Mortgagee proper receipts for all taxes, assessments, water and sewer rents and charges, and all other license or permit fees, levies, and governmental charges, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever, which are or may have been, or may hereafter be, charged, assessed, levied, confirmed or imposed upon or against the Mortgaged Premises, or any part thereof, by any lawful authority, or which may become a lien thereon, unless the same shall have been fully paid to Mortgagee as provided in Section 7 herein. Mortgagor shall not suffer, and shall promptly cause to be paid and discharged, any lien or charge whatsoever which by any present or future law may be or become superior to, or on a parity with, this Mortgage either in lien or in distribution out of the proceeds of any judicial sale of the Mortgaged Premises, or any part thereof, including reasonable attorney's fees for collection hereinafter provided for. Mortgagor will cause to be paid, when due, all charges for utilities on the Mortgaged Premises, whether public or private, and all rents and ground rents, if any, with respect to the Mortgaged Premises.

Notwithstanding the foregoing, Mortgagor may in good faith contest, by proper legal proceedings, the validity or amount of any such tax or charge, provided a default, as defined in Section 20 hereof, has not occurred, and Mortgagor either (i) pays the taxes in full under protest, or (ii) Mortgagor provides Mortgagee security satisfactory to Mortgagee assuring the payment of such contested tax or charge and any additional charge, penalty or expense which may arise from or be incurred as a result of such contest. The option of the Mortgagor under (ii) hereof shall only be available in the event such contest operates to suspend collection and is maintained and prosecuted with diligence, and Mortgagor shall pay such contested tax or charge and all costs and penalties, if any, and shall deliver to Mortgagee evidence acceptable to Mortgagee of such payment

[illegible] to adjust [illegible] to be paid and discharged, and shall furnish [illegible] proper receipts for all taxes, [illegible] water and sewer rents and charges, and all other [illegible] fees, levies, and governmental charges, general [illegible], ordinary or extraordinary, foreseen or unforeseen, of [illegible] and nature whatsoever, which are or may have been, or may hereafter be, imposed, assessed, levied, confirmed or imposed upon or against the mortgaged premises, or any part thereof, by any lawful authority, or which may become a lien thereon, unless the same shall have been fully paid to Mortgagee as provided in Section 7 herein. Mortgagor shall not suffer, and shall promptly cause to be paid and discharged, any lien or charge whatsoever which may be created or found by law to be superior to, or on a parity with, this Mortgage either in lien or in application out of the proceeds of any judicial sale of the mortgaged premises, or any part thereof, including reasonable attorney's fees for collection hereunder provided for. Mortgagor will cause to be paid when due, all charges for utilities on the Mortgaged Premises, whether public or private, and all rents and ground rents, if any, with respect to the Mortgaged Premises.

Upon paying the foregoing, Mortgagor may in good faith contest by proper legal proceedings, the validity or amount of any such tax or charge, provided a default, as defined in section 10 hereof, has not occurred, and Mortgagor either (i) pays the taxes in full under protest, or (ii) Mortgagor provides [illegible] Mortgagee the payment of such contested tax or charge and any additional charge, penalty or expense which may arise from or be incurred as a result of such contest. The option of the Mortgagor under (ii) hereof shall only be available in the event such contest operates to suspend collection and is prosecuted with diligence, and Mortgagor shall pay such contested tax or charge and all costs and penalties, if any, and shall deliver to Mortgagee evidence acceptable to Mortgagee of such payment

promptly, if such contest is terminated or discontinued adversely to Mortgagor, and in any event at least thirty days before the date any of the Mortgaged Premises may be sold or otherwise transferred because of non-payment of tax or charge.

Subject to said right of Mortgagor to contest such tax or charge and the expiration of any notice and grace period as provided in Section 20 without a cure, nothing herein shall affect any right or remedy of Mortgagee under this Mortgage or otherwise to pay any tax or charge if not paid by the Mortgagor on or before the due date and to add the amount so paid to the outstanding principal balance of the Note.

4. Insurance. Mortgagor agrees to keep any buildings, structures, improvements and fixtures insured at all times throughout the term of this Mortgage (including any period or periods of time during which any buildings, structures and improvements are in the course of remodeling or construction) and to furnish the following to Mortgagee:

(a) Policies of insurance against loss or damage by fire, lightning, windstorm, hail, explosion, vandalism, malicious mischief and damage from aircraft and vehicles, and smoke damage from such other hazards as are presently included in standard "Extended Coverage" endorsements in Chicago, Illinois. The amount of such insurance shall be equal to the greater of 100% of the full replacement cost of the buildings, structures, improvements and fixtures without deduction for depreciation, or Three Million Nine Hundred Thousand Dollars ($3,900,000.00). Such policies shall contain a replacement value endorsement, and shall provide for co-insurance only as Mortgagee may approve. During the course of any construction of the Improvements, builder's completed value risk insurance against "all risks of physical loss", in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished with respect to the Improvements.

[illegible] exemplary, if such con[illegible] or discontinued adversely to Mortgagor, [illegible] at least twenty days before the date [illegible] Premises may be sold or otherwise [illegible] of non-payment of tax or charge.

Subject to said right of Mortgagor to contest such tax or charge and the expiration of any notice and grace period as provided in Section 1b without a cure, nothing herein shall [illegible] any right or remedy of Mortgagee under this Mortgage or otherwise to pay any tax or charge if not paid by the Mortgagor on or before the tax date date and to add the amount so paid to the outstanding principal balance of the Note.

4. Insurance. Mortgagor agrees as long as any buildings, structures, improvements and fixtures remain at all times throughout the term of this Mortgage (including any period of redemption or time during which any buildings, structures and improvements are in the course of remodeling or construction) and to contain the following in descriptions:

(a) Policies of insurance against loss or damage by fire, lightning, windstorm, hail, explosion, vandalism, malicious mischief and vandalism, riots, civil commotion, and smoke damage [illegible] are generally included in standard "extended coverage" endorsements in Chicago, Illinois. The amount of such insurance shall be equal to the greater of 100% of the full replacement cost of the buildings, structures, improvements and fixtures without deduction for depreciation, or [illegible] Dollars ($[illegible]). [illegible] shall contain a replacement value endorsement, and [illegible] insurance only as Mortgagee may approve. [illegible] any construction of the improvements, [illegible] insurance against "all risks of physical loss", in non-reporting form, covering the total value [illegible] equipment, supplies and materials furnished [illegible] on the improvements.

(b) Flood hazard insurance as required by law or evidence that the Mortgaged Premises are not located in a flood hazard area.

(c) Comprehensive public liability insurance against claims for bodily injury or death and property damage occurring upon, in or about the Mortgaged Premises to afford protection to the limit of not less than One Million Dollars ($1,000,000.00).

(d) Workmen's compensation insurance for all contractors or employees employed on or with respect to any of the Mortgaged Premises in an amount and coverages as required by law.

(e) Such other insurance on the Mortgaged Premises, or any replacements or substitutions therefor, or additions thereto, and in such amounts as may from time to time be reasonably required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated.

All insurance shall be subject to the reasonable approval of Mortgagee as to insurance companies, amounts, contents and form of policies and expiration dates, shall be placed with companies having a Best's Financial Rating of "A" or better and a size class rating of VII (7) or larger and shall include a New York Standard or other standard mortgagee clause in favor of and satisfactory to Mortgagee. Such policies shall not be cancelled or otherwise terminated without at least twenty (20) days' prior written notice to Mortgagee, except if such cancellation is due to nonpayment of premium in which event the Mortgagee shall receive at least ten (10) days prior written notice. The Mortgagor shall further cause to be provided to Mortgagee a thirty (30) day written notice of the expiration date of any insurance policy.

(b) Flood hazard insurance as required by law or evidence that the mortgaged premises are not located in a flood hazard.

(c) Comprehensive public liability insurance against claims for bodily injury or death and property damage occurring upon, in or about the mortgaged premises to afford protection to the limit of not less than One Million Dollars ($1,000,000.00).

(d) Workmen's compensation insurance for all contractors or employees employed on or with respect to any of the mortgaged premises in an amount and coverages as required by law.

(e) Blow out insurance on the mortgaged premises, or any replacements or substitutions therefor, or additions thereto, and in such amounts as may from time to time be reasonably required by Mortgagee against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated.

All insurance shall be subject to the reasonable approval of Mortgagee as to insurance companies, amounts, contents and form of policies and expiration dates, shall be placed with companies having a Best's Financial Rating of "A" or better and a size class rating of VII (7) or larger and shall include a New York Standard or other standard mortgagee clause in favor of Mortgagee in form acceptable to Mortgagee. Such policies shall not be cancelled or materially changed without at least twenty (20) days prior written notice to Mortgagee, except if such cancellation is due to nonpayment of premiums in which event the Mortgagee shall receive at least ten (10) days prior written notice. The Mortgagor shall further cause to be provided to Mortgagee a thirty (30) day written notice of the expiration date of any insurance policy.

Mortgagor will deliver the originals of all such policies (or certificates evidencing insurance if the policies are master policies) to Mortgagee, and, not less than twenty (20) days prior to the expiration date of each such policy, will deliver to Mortgagee a renewal policy or policies (or certificates evidencing insurance if the policies are master policies) marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. Mortgagor will not permit any condition to exist on the Mortgaged Premises which would wholly or partially invalidate the insurance thereon.

In the event of the occurrence of any loss or damage to the Mortgaged Premises, Mortgagor will give immediate written notice thereof to Mortgagee, and Mortgagee may make proof of loss thereof if not made promptly by Mortgagor. In the event Mortgagor does not proceed diligently to adjust and compromise any claims under such insurance, Mortgagee may adjust and compromise such claims and collect and receive the proceeds thereof and endorse drafts and Mortgagee is hereby irrevocably appointed attorney-in-fact of Mortgagor for such purposes. In such instance, each insurance company concerned is hereby authorized and directed to make payment under such policies, including return of unearned premiums, directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact to endorse any draft therefor.

Except for any casualty loss less than Twenty-Five Thousand Dollars ($25,000.00) which shall be used to restore or repair the property, Mortgagee shall have the right, at its election to retain and apply the proceeds of any casualty insurance to reduction of the indebtedness secured hereby, and/or to retain and apply the proceeds of any insurance on account of the payment of the regular monthly installments of interest as they fall due, month by month, or to restoration or repair of the property damaged. If Mortgagee receives proceeds of rent

Mortgagor [illegible] over the originals of all such policies (or [illegible] evidencing insurance if the policies are [illegible] hereunder, and not less than twenty (20) [illegible] the expiration date of each such policy, will [illegible] to Mortgagee a renewal policy or policies or certificates evidencing insurance if the policies are master policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. Mortgagor will not permit any condition to arise on the Mortgaged Premises which would cheat or partially invalidate the insurance thereon.

In the event of the occurrence of any loss or damage to the Mortgaged Premises, Mortgagor will give immediate written notice thereof to Mortgagee, and Mortgagee may make proof of loss thereof if not duly made promptly by Mortgagor. In the event [illegible] does not [illegible] diligently adjust and compromise any claim under such insurance, Mortgagee may adjust and compromise such claims and collect and receive the proceeds thereof and endorse Mortgagor's and Mortgagee's names thereon, and Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact for such purposes. In [illegible], each insurance company concerned is hereby authorized and directed to make payment under such policies, [illegible] directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact to endorse and negotiate therefor.

[illegible] Mortgagor loss less than Twenty-Five Thousand Dollars ($25,000.00) which shall be used to restore or repair the property, Mortgagee shall have the right, at its election to receive and apply the proceeds of any casualty insurance in reduction of the indebtedness secured hereby, and/or to retain and apply the proceeds of any insurance on account of the payment of the regular monthly installments of interest as they fall due, month by month, or to restoration or repair of the property damaged. If Mortgagee receives proceeds of such

insurance and/or business interruption insurance beyond those required to be applied for the current month, Mortgagee may retain such additional proceeds in an interest bearing escrow account for the account of Mortgagor, and so apply such proceeds on a monthly basis; provided that such proceeds not needed to be applied to keep Mortgagor current and not in default during the reasonably estimated period of time when the rent from the Mortgaged Premises will be inadequate to provide Mortgagor with sufficient funds with which to pay Mortgage the amounts falling due each month shall be paid over to Mortgagor to meet the other expenses of the Mortgaged Premises.

Mortgagor shall promptly comply with and conform to (a) all provisions of each insurance policy and (b) all requirements of the insurers thereunder, applicable to Mortgagor or any of the Mortgaged Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the Mortgaged Premises, even if such compliance necessitates structural changes or improvements or results in interference with the use or enjoyment of any of the Mortgaged Premises. Mortgagor shall not change the present use of any of the Mortgaged Premises in any manner which would permit the insurer to cancel or increase the premium for any insurance policy.

If Mortgagee shall acquire title to the Mortgaged Premises either by virtue of a deed in lieu of foreclosure, or a judicial sale thereof pursuant to proceedings under the Note or this Mortgage, then all of Mortgagor's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in Mortgagee.

If Mortgagor shall fail to procure, pay for and deliver to Mortgagee any policy or policies of insurance and/or renewals thereof as in this Section 4 required, Mortgagee, at its option, but without obligation to do so, may procure such insurance and pay the premiums therefor, and Mortgagor will repay to Mortgagee

insurance and/or bui[illegible] insurance beyond those required to[illegible] the [illegible] sources, Mortgagee may retain [illegible] proceeds as an interest bearing escrow [illegible] account of Mortgagor, and to apply such proceeds [illegible] strictly basis; provided that such proceeds not needed to be applied to keep Mortgagor current and not in default during the reasonably estimated period of time when the lack from the insured premises will be inadequate to provide Mortgagor with sufficient funds also which to pay Mortgage the amounts falling due each month shall be paid over to Mortgagor to meet the other expenses of the mortgaged premises.

Mortgagor shall promptly comply with and conform to (a) all provisions of such insurance policy and (b) all requirements of the insurance underwriter, applicable to Mortgagor or any of the mortgaged premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of any of the improvements thereon, even if such compliance necessitates structural change, or interference or results in interference with the use or enjoyment of any of the Mortgaged Premises. Mortgagor shall not commit or permit use of any of the mortgaged premises in a manner which would permit the insurer to void or diminish the premium for any insurance policy.

If Mortgagee shall acquire title to the Mortgaged Premises since by virtue of a deed in lieu of foreclosure, or a judicial sale thereof pursuant to proceedings under the Note or this Mortgage, then all of Mortgagor's estate, right, title and interest in and to such policies, including unearned premiums thereon and the proceeds thereof, shall vest in Mortgagee.

If Mortgagor shall fail to procure, pay for and deliver to Mortgagee any policy or policies of insurance and/or renewals thereof as in this Section 4 required, Mortgagee, at its option, but without obligation so to do, may procure such insurance and pay the premiums therefor, and Mortgagor will repay to Mortgagee

on demand any premiums so paid, with interest, and the same shall be secured by this Mortgage.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 4, unless Mortgagee is included thereon as a named insured with losses payable to Mortgagee under a standard mortgagee endorsement. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out, specifying the insurer and full particulars as to the policies evidencing the same.

5. Condemnation. In the event of any condemnation or taking of any part of the Mortgaged Premises by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Mortgaged Premises by any public or quasi-public authority or corporation or by settlement with any body having the power of eminent domain, all proceeds (that is, the award or agreed compensation for the damages sustained) shall be applied first to payment of the indebtedness secured hereby, if Mortgagee so elects. No settlement for the damages sustained shall be made by Mortgagor without Mortgagee's prior written approval which shall not be unreasonably withheld. Receipt by Mortgagee of any proceeds less than the full amount of the then outstanding debt shall not alter or modify Mortgagor's obligation to continue to pay the installments of principal, interest and other charges specified in the Note and herein. All the proceeds shall be applied in the order and in the amounts that Mortgagee, in Mortgagee's sole discretion, may elect, to the payment of principal (whether or not then due and payable), interest or any sums secured by this Mortgage, or toward payment to Mortgagor, on such reasonable terms as Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Mortgaged Premises.

[illegible] demand any premi[illegible] with interest, and the same shall be secured [illegible] mortgage.

Mortgagor shall not take out separate insurance [illegible] in form or contribution in the event of loss with that required to be maintained under this Section 4, unless Mortgagee is included thereon as a named insured with losses payable to Mortgagee under a standard mortgage endorsement. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out, specifying the insurer and full particulars as to the policies evidencing the same.

5. Condemnation. In the event of any condemnation or taking of any part of the Mortgaged Premises by eminent domain, or conveyance in lieu of any of the foregoing, or other injury to or diminution in the value of the Mortgaged Premises by any public or quasi-public authority or corporation or by settlement with any party having the power of eminent domain, all proceeds (that is, the award or agreed compensation for the damages sustained) shall be applied first to payment of the indebtedness secured hereby. [illegible] Mortgagee on account. No settlement for the damages sustained shall be made by Mortgagor without Mortgagee's prior written [illegible] or unreasonably withheld. Receipt by [illegible] of any amounts less than the full amount of the then [illegible] shall not alter or modify Mortgagor's obligation to continue to pay the installments of principal, interest and other charges specified in the Note and herein. All the proceeds [illegible] in the mortgaged [illegible] Mortgagee's [illegible] in mortgagee's sole discretion, may elect, to the payment of [illegible] then due and payable), interest or any [illegible] by this mortgage, or toward payment to Mortgagor, on such reasonable terms as Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the mortgaged Premises which may have been altered, damaged or destroyed as a result of the taking, alteration or grade or other injury to the Mortgaged Premises.

If the amount of the initial award of damages for the condemnation is insufficient to pay in full the indebtedness secured hereby with interest and other appropriate charges, Mortgagee shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceedings in the name of Mortgagee or Mortgagor, for which Mortgagee is hereby authorized as attorney-in-fact for Mortgagor, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including reasonable counsel fees, shall be paid first out of the proceeds, and only the excess, if any, paid to Mortgagee shall be credited against the amounts due under this Mortgage.

Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party in any condemnation proceeding.

No application of condemnation proceeds to the payment of the obligation secured by the Note and Mortgage shall postpone any of the current installments of principal or interest becoming due under such Note until the principal and all interest due thereunder is paid in full, but each such application shall be a prepayment without premium.

6. <u>Additions, Alterations, Removals and Repairs</u>. Mortgagor shall not make additions and alterations to the Mortgaged Premises except as provided and contemplated by the Loan Agreement and the Plans and Specifications without prior written consent of Mortgagee. Any additions or alterations shall be subject to the lien of this Mortgage.

Mortgagor shall not cause or permit any building, structure or improvement or other property now or hereafter covered by the lien of this Mortgage and comprising part of the Mortgaged Premises to be removed or demolished in whole or in part, or any fixture comprising part of the Mortgaged Premises to

If the [illegible] initial award of damages for the condemnation [illegible] fail to pay in full the indebtedness [illegible] interest and other appropriate charges, [illegible] shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceeding in the name of Mortgagee or Mortgagor, for which purpose as bona, mortgaged as attorney-in-fact for Mortgagor, with [illegible] power, being for security, is irrevocable. In that event, the expenses of the proceedings, including reasonable counsel fees, shall be paid first out of the proceeds, and only the excess, if any, paid to Mortgagor shall be credited against the amounts due under this Mortgage.

Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party in any condemnation proceeding.

No application of condemnation proceeds to the payment of the obligation secured by the Note and Mortgage shall postpone any of the current installments of principal or interest becoming due under such Note or the principal and all interest due thereunder is paid in full, but each such application shall be a correction without penalty.

Additions, Alterations, Removals and Repairs.

Mortgagor shall not make additions and alterations to the Mortgaged Premises except as provided and contemplated by the [illegible] in the [illegible] or alterations affecting prior written consent of Mortgagee. Any additions or alterations shall be subject to the lien of this Mortgage.

Mortgagor shall not cause or permit any building, structure or improvement on other property now or hereafter owned by the lien of this Mortgage and comprising part of the Mortgaged Premises to be removed or demolished in whole or in part, or any fixture constituting part of the Mortgaged Premises to

be removed, severed or destroyed, without the prior written consent of Mortgagee. Notwithstanding the foregoing, Mortgagor may remove any fixture, and it shall thereafter be free of any security interest or lien created hereby, on condition that simultaneously with, or prior to such removal, such fixture shall be replaced with other property to perform the function of the property removed and of a value at least equal to that of the replaced property and free from any title retention or security agreement or other encumbrance. By such removal and replacement, Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage. Mortgagor will not abandon or cause or permit any waste to the Mortgaged Premises.

Throughout the term of this Mortgage, Mortgagor, at its sole cost and expense, will take good care of the Mortgaged Premises and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen. All repairs and construction work on the Mortgaged Premises made by Mortgagor shall be done in a good workmanlike manner using materials of first rate quality and class. The necessity for and adequacy of repairs to the buildings and improvements pursuant to this Section 6 hereof shall be measured by the standard which is appropriate for structures of similar construction and class, provided that Mortgagor shall in any event make all repairs necessary to avoid any structural damage or injury to the buildings and improvements and to keep the buildings and improvements in a proper condition for their intended uses.

Mortgagor will permit the Mortgagee and Mortgagee's representatives to enter the Mortgaged Premises at reasonable times to inspect the same. In case of any default under this Section 6, Mortgagee may at its option enter the Mortgaged Premises to protect, restore or repair any part thereof, but Mortgagee shall be under no obligation to do so. Mortgagor will

be removed, severed [illegible] without the prior written consent of [illegible] notwithstanding the foregoing, Mortgagor [illegible] and it shall thereafter be free of any [illegible] or lien created hereby, on condition that [illegible] replacement with, or prior to such removal, such fixture shall be replaced with other property to perform the function of the property removed and of a value at least equal to that of the replaced property and free from any title retention or security [illegible] or other encumbrance. By such removal and replacement, Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage. Mortgagor will not abandon or cause or permit any waste to the Mortgaged Premises.

Throughout the term of this Mortgage, Mortgagor, at its own and expense, will take good care of the Mortgaged [illegible] and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and [illegible] and replacements. All repairs and reconstruction work on the Mortgaged Premises made by Mortgagor shall be done in a good workmanlike manner and shall consist of first rate quality and [illegible]. The adequacy of and adequacy of repairs to the [illegible] and Mortgagor's pursuant to this section 6 hereof shall be conclusive [illegible] the reasonable which is appropriate for [illegible] of similar construction and plan, provided that Mortgagor shall in any event make all repairs necessary to avoid any structural damage or injury to the buildings and improvements [illegible] in a proper condition for their intended use.

Mortgagor will permit the Mortgagee and Mortgagee's [illegible] agents to enter the Mortgaged Premises at reasonable times to inspect the same. In case of any default under this section 6, Mortgagee may at its option enter the Mortgaged Premises to provide [illegible] or repair any part thereof, but Mortgagee shall be under no obligation to do so. Mortgagor will

repay to Mortgagee on demand any sums paid by Mortgagee to protect, restore or repair any part of the Mortgaged Premises, with interest thereon, and, until repaid, such sums and interest shall be added to the principal sum secured by this Mortgage.

Throughout the term of this Mortgage, Mortgagor, at its sole cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, and national or local Boards of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Mortgaged Premises, the maintenance and use thereof, whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over property contiguous or adjacent thereto. Mortgagor will comply with all orders and notices of violation thereof issued by any governmental authority. Mortgagor will pay all license fees and similar municipal charges for the use of the Mortgaged Premises and the other areas now or hereafter comprising part thereof or used in connection therewith and will not, unless so required by any governmental agency having jurisdiction, discontinue use of the Mortgaged Premises without prior written consent of Mortgagee.

7. <u>Right to Remedy Defaults</u>. In the event of Mortgagor's failure to pay the taxes, water and sewer rents, charges, claims, assessments, liens or encumbrances described in Section 3 hereof, or to furnish and pay for the insurance required in Section 4 hereof, or to keep the Mortgaged Premises in good condition and repair as provided in Section 6 hereof, Mortgagee may, at its option, subject to Mortgagor's rights as set forth in Sections 3, 4 and 6 hereof, pay any or all such

copy to Mortgagee on demand any sums paid by Mortgagee to protect, restore [illegible] part of the Mortgaged Premises, with interest thereon, and, until repaid, such sums and interest [illegible] to the principal sum secured by this Mortgage.

Throughout the term of this Mortgage, Mortgagor, at its own cost and expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, and bylaws or local boards of fire underwriters, or any other body exercising functions similar to those of any of the foregoing, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Mortgaged Premises, the maintenance and use thereof, whether or not such law, ordinance, order, rule, regulation or requirement shall necessitate structural changes or improvements, or the removal of any encroachments or projections, or shall interrupt or abrogate, once or over property adjacent or adjacent thereto. Mortgagor will comply with all orders and notices of violation thereof issued by any governmental authority. Mortgagor will pay all license fees and other municipal charges for the use of the Mortgaged Premises [illegible] or hereafter comprising part thereof or used in connection therewith and will not, unless so required by any governmental agency having jurisdiction, discontinue use of the Mortgaged Premises without prior written consent of Mortgagee.

7. Right to Remedy Default. In the event of Mortgagor's failure to pay the taxes, water and sewer rents, charges, claims, assessments, liens or encumbrances described in Section 3 hereof, or to insure and pay for the insurance required in Section 4 hereof, or to keep the Mortgaged Premises in good condition and repair as provided in Section 6 hereof, Mortgagee may, at its option, subject to Mortgagor's rights as set forth in Sections 3, 4 and 6 hereof, pay any or all such

items, together with penalties and interest thereon and procure and pay for such insurance and repairs, and Mortgagee may at any time and from time to time advance such additional sum or sums as Mortgagee in its sole discretion may deem necessary to protect the security of this Mortgage. All such sums to be paid or advanced by Mortgagee shall immediately and without demand be repaid by Mortgagor, together with interest thereon at a rate which shall be three percent (3.0%) higher than the then effective rate provided in the Note and shall be added to the principal indebtedness secured by this Mortgage.

In the event of default hereunder, at Mortgagee's option, Mortgagor shall establish an escrow reserve with Mortgagee for the payment of hazard insurance premiums, real estate taxes, water rents, sewer rents and/or other municipal assessments and a replacement reserve, if applicable. Thereafter, Mortgagor will pay to Mortgagee contemporaneously with each monthly payment of interest, principal or principal and interest, a sum equal to one-twelfth (1/12th) of the hazard insurance premiums, real estate taxes, water rents, sewer rents, payments in lieu thereof, special assessments, if any, and any other tax assessment, lien, claim or encumbrance which may at any time be or become a lien on the Mortgaged Premises prior to, or on a parity with, the lien of this Mortgage so as to enable Mortgagee to pay the same at least thirty (30) days before they become due. If special assessments against the Mortgaged Premises may be paid in installments and Mortgagor elects to do so, the monthly payments to Mortgagee for such special assessments shall be one-twelfth (1/12th) of the current annual installments.

No amounts so paid shall be deemed to be trust funds but may be commingled with general funds of Mortgagee, and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage, the whole amount of said principal debt remaining or any installment of interest, principal or principal

these, together with [illegible] interest thereon and premiums and pay [illegible] regards, and Mortgagee may at any time and [illegible] advance such additional sums or sums as Mortgagee's sole discretion may deem necessary to protect [illegible] of this Mortgage. All such sums to be paid or advanced by Mortgagee shall immediately and without demand be repaid by Mortgagor, together with interest thereon at a rate which shall be three percent (3.0%) higher than the then effective rate provided to the Note and shall be added to the principal indebtedness secured by this Mortgage.

In the event of default hereunder, at Mortgagee's option, Mortgagor shall establish an escrow reserve with Mortgagee for the payment of hazard insurance premiums, real estate taxes, water rents, sewer rents and other municipal assessments and a replacement reserve, if applicable. Thereafter, Mortgagor will pay to Mortgagee contemporaneously with each monthly payment of interest, principal or principal and interest, an amount equal to one-twelfth (1/12th) of the hazard insurance premiums, real estate taxes, water rents, sewer rents, replacement and other municipal assessments, if any, and any other [illegible], lien, claim or encumbrance which may at any time be or become a lien on the Mortgaged Premises prior to, or on a parity with, the lien of this Mortgage so as to enable Mortgagee to pay the same at least thirty (30) days before they become due. If special assessments against the Mortgaged Premises may be paid in installments and Mortgagor elects to do so, the monthly payments to Mortgagee for such special assessments shall be one-twelfth (1/12th) of the current annual installments.

No amounts so paid shall be deemed to be trust funds but may be commingled with general funds of Mortgagee, and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage, the whole amount of said principal debt remaining or any installment of interest, principal or principal

and interest becomes due and payable, Mortgagee shall have the right, at its election, to apply any amounts so held against all or any part of the indebtedness secured hereby and interest thereon or in payment of the premiums or payments for which the amounts were deposited. If the taxes, assessments, levies, charges or fees required to be paid pursuant to Section 3 hereof shall exceed the estimate therefor, Mortgagor shall upon demand forthwith make good the deficiency. Mortgagor will furnish to Mortgagee tax bills in sufficient time to enable Mortgagee to pay such taxes, assessments, levies, charges and fees before interest and penalties accrue thereon.

8. Leases; Management.

(a) Mortgagor hereby represents that there are no leases or subleases or agreements to lease or sublease all or any part of the Mortgaged Premises (the "Leases") now in effect, except those certain leases assigned by Mortgagor to Mortgagee pursuant to an Assignment of Leases of even date herewith. Mortgagor covenants and agrees that all future Leases affecting the Mortgaged Premises shall be subject to review and approval by Mortgagee and will be subordinate to the lien of this Mortgage. Notwithstanding anything to the contrary herein contained, in the event Mortgagee approves of any lease upon the request of Mortgagor, Mortgagee will execute a Non-disturbance and Attornment Agreement in form and content reasonably acceptable to Mortgagee.

Mortgagor shall promptly (i) perform all of the provisions of the Leases on the part of the landlord thereunder to be performed; (ii) enforce all of the material provisions of the Leases on the part of the tenants thereunder to be performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations of Mortgagor as landlord or of the tenants thereunder; and (iv) deliver to Mortgagee, within ten (10) days

and interest become due [illegible], Mortgagee shall have the right, at its [illegible] any amounts so paid against all or any [illegible] indebtedness secured hereby and interest thereon of the premiums or payments for which the [illegible] are deposited. If the taxes, assessments, levies, charges or fees required to be paid pursuant to Section 3 hereof shall exceed the actual taxes, Mortgagor shall upon demand furnish sufficient funds to Mortgagee. Mortgagee will furnish to Mortgagor the bills in sufficient time to enable Mortgagor to pay such taxes, assessments, levies, charges and fees before interest and penalties accrue thereon.

8. Leases; Assignment.

(a) Mortgagor hereby represents that there are no leases or subleases or agreements to lease or sublease all or any part of the Mortgaged Premises ("Leases"), now in effect, except those certain Leases assigned by Mortgagor to Mortgagee [illegible] to an Exhibit of the date of even date herewith. Mortgagor covenants and agrees that all future Leases affecting the Mortgaged Premises shall be subject to review and approval by Mortgagee and will be subordinate to the lien of this Mortgage. [illegible] to the contrary herein contained, in the event Mortgagee exercises of any lease upon the request of Mortgagor, Mortgagor will procure a non-disturbance and attornment agreement in form and content reasonably acceptable to Mortgagee.

Mortgagor shall promptly (i) perform all of the material of the Lessor on the part or the landlord thereunder to be performed; (ii) enforce all of the material provisions of the Leases on the part of the lessee thereunder to be performed; (iii) appear in and defend any action or proceeding relating thereto, affecting the or in any manner connected with the Leases or the obligations of Mortgagor as landlord or of the tenants thereunder and (iv) deliver to Mortgagee, within ten (10) days

after a request by Mortgagee, but not more frequently than once in each year unless Mortgagor is in default hereunder, a written statement containing the names of all tenants, the terms of all Leases and the spaces occupied and rentals payable thereunder, and a statement of all Leases which are then in default, including the nature and magnitude of the default.

In the event of default by Mortgagor and the enforcement by Mortgagee of any remedy under this Mortgage, the tenant under each Lease which is subordinate to this Mortgage shall at Mortgagee's request attorn to Mortgagee or any other person succeeding to the interest of Mortgagee as a result of such enforcement and shall recognize Mortgagee or such successor in interest as landlord under the Lease without change in the provisions thereof; provided, however, that Mortgagee or such successor in interest shall not be bound by (i) any payment of an installment of rent or additional rent which may have been made more than thirty (30) days before the due date of such installment or sixty (60) days before the end of the period covered by such installment, or (ii) any amendment or modification to the Lease made without the written consent of Mortgagee or such successor in interest. The failure to make any such tenants parties defendant to any foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby and by the Note or to collect any deficiency remaining unpaid after a foreclosure sale of the Mortgaged Premises.

No existing or future Lease for any portion of the Mortgaged Premises shall be entered into, cancelled or surrendered, assigned or modified without Mortgagee's prior written consent. Further, Mortgagor shall not permit or suffer an assignment or sublease of any Lease without Mortgagee's prior written consent. Mortgagor shall not accept payment of rent more than one (1) month in advance without Mortgagee's prior written

[illegible] request by Mortgagee [illegible] not more frequently than once in each year only [illegible] in a manner hereunder, a written statement [illegible] the terms of all tenants, the terms of all [illegible] rentals and rentals payable thereunder, [illegible] amount of all leases which are then in default, [illegible] the nature and magnitude of the default.

In the event of default by Mortgagor and the acceleration by Mortgagee of any remedy under this Mortgage, the rents under such leases which is subordinate to this Mortgage shall at Mortgagee's request accrue to Mortgagee or any other person [illegible] to the interest of Mortgagee as a result of such enforcement and shall recognize Mortgagee or such successor [illegible] as landlord under the lease without change in the [illegible] thereunder provided. However, the Mortgagee or such successor in interest shall not be bound by (i) any payment of an installment of rent or additional rent which may have been made more than thirty (30) days prior to due date of such installment or eleven (11) days before the end of the period [illegible] by such installment, or (ii) any amendment or modification to the leases made without the written consent of Mortgagee or such successor in interest. The failure to make any [illegible] shall not be a defense in any foreclosure proceedings and [illegible] will not be, nor be asserted by Mortgagor to be a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby and by the Note or to collect any deficiency remaining unpaid after a foreclosure sale of the Mortgaged Premises.

No existing or future leases for any portion of the Mortgaged Premises shall be extended, renewed, cancelled or surrendered, assigned or modified without Mortgagee's prior written consent. Further, Mortgagor shall not permit or suffer an assignment or subleasing of any lease without Mortgagee's prior written consent. Mortgagor shall not accept payment of rent more than one (1) month in advance without Mortgagee's prior written

consent. Mortgagor shall notify the Mortgagee immediately of any default asserted by any tenant. If Mortgagor fails to cure such default on its part, as landlord in any of the Leases, then Mortgagor expressly authorizes Mortgagee, at its option, to cure such default in order to prevent termination of any Lease by any tenant. As used herein, "default" is a default by Mortgagor or Dayton Ventures under a Lease which default affords a tenant the right to cancel such Lease or to claim any diminution of or offset against future rents under a Lease.

(b) Mortgagor and/or Dayton Ventures shall not enter into any agreement for the management, operation, sale or marketing of all or part of the Mortgaged Premises, or modify any existing agreement, without (i) furnishing to Mortgagee a copy of the management agreement together with such information with respect to the managing party as Mortgagee may reasonably request, (ii) receiving Mortgagee's prior written consent thereto, such consent not to be unreasonably withheld, (iii) assigning to Mortgagee all interest and rights of Mortgagor and/or Dayton Ventures under the management agreement, and (iv) causing the management agent to execute a subordination and attornment agreement in favor of Mortgagee, and in form and content satisfactory to Mortgagee.

9. Financial Reports; Required Notices.

During the term of the Loan, and at such intervals as Mortgagee may reasonably prescribe, (but not more frequently than annually), Mortgagor, Dayton Ventures and the Guarantors shall furnish or cause to be furnished to Mortgagee the following documents and data certified to be true and correct by Mortgagor, Dayton Ventures and the Guarantors:

(a) Balance sheets and profit and loss statements within ninety (90) days following the close of each fiscal year of Dayton Ventures and such additional information as Mortgagee

consent. Mortgagor shall notify the Mortgagee immediately of any default asserted [illegible] notice. If Mortgagor fails to cure such default [illegible] within any of the periods, then Mortgagee irrevocably authorizes Mortgagee, at its option, to cure [illegible] in order to prevent termination of any lease by any tenant. As used herein, "default" is a default by Mortgagor or Dayton Ventures under a lease which entitles a tenant the right to terminate such lease or to claim any diminution of or offset against lease rents under a lease.

(h) Mortgagor and/or Dayton Ventures shall not enter into any agreement for the management, operation, sale or refinancing of all or part of the Mortgaged Premises, or modify any existing agreement without (i) furnishing to Mortgagee a copy of the management agreement together with such information with respect to the managing entity as Mortgagee may reasonably request, (ii) receiving Mortgagee's prior written consent thereto, such consent not to be unreasonably withheld, (iii) assigning to Mortgagee all interest and rights of Mortgagor and/or Dayton Ventures under the management agreement, and (iv) causing the management entity to execute a subordination and attornment agreement in favor of Mortgagee, and in form and content satisfactory to Mortgagee.

9. Financial Reports Required Monthly.

During the term of the loan, and at such intervals as Mortgagee may reasonably require, but not more frequently than monthly, Mortgagor, Dayton Ventures and the Guarantors shall furnish or cause to be furnished to Mortgagee the following items and data certified to be true and correct by Mortgagor, Dayton Ventures and the Guarantors:

(a) Balance sheets and profit and loss statements within ninety (90) days following the close of each fiscal year of Dayton Ventures and such additional information as Mortgagee

may reasonably request, all data being prepared according to generally accepted accounting principles consistently applied.

(b) A statement of net worth and income tax returns for each of the Guarantors, and such additional information as Mortgagee shall reasonably request, in such form and content as may be reasonably required by Mortgagee, which shall be certified as true and correct by the Guarantors, within ninety (90) days of the end of each calendar year.

(c) If applicable, a statement of gross income and expenses for the preceding fiscal year relating to the operation of the Mortgaged Premises by Mortgagor and/or Dayton Ventures and a balance sheet as of the end of such fiscal year, within ninety (90) days following the close of such fiscal year, in reasonable detail prepared in accordance with generally accepted accounting principals consistently applied.

Mortgagor agrees to make the books and accounts relating to the Mortgaged Premises available for inspection by Mortgagee, or its representatives, upon request at any reasonable time. Mortgagor hereby confirms that its fiscal year is the calendar year.

(d) Mortgagor and/or Dayton Ventures shall notify Mortgagee promptly of the occurrence of any of the following:

(i) a fire or other casualty causing damage to the Mortgaged Premises;

(ii) receipt of notice of eminent domain proceedings or condemnation of all or any part of the Mortgaged Premises;

(iii) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Premises;

(c) reasonably requested all other being prepared according to generally accepted [illegible] principles consistently applied.

(d) A statement of net worth and income tax returns [illegible] the documents, are such additional information as [illegible] shall reasonably request, in such form and content as may be reasonably required by Mortgagee, which shall be certified as true and correct by the documents, within ninety (90) days of the end of each calendar year.

(e) If applicable, a statement of gross income and expenses for the preceding fiscal year relating to the operation of the Mortgaged Premises by Mortgagor and/or Hyvon Ventures and a balance sheet as of the end of such fiscal year, within ninety (90) days following the close of such fiscal year, in reasonable detail prepared in accordance with generally accepted accounting principles consistently applied.

Mortgagor agrees to make the books and accounts relating to the Mortgaged Premises available for inspection by Mortgagee, or its representatives, upon request at any reasonable time. Mortgagor hereby confirms that its fiscal year is the calendar year.

(f) Mortgagor and/or Hyvon Ventures shall notify Mortgagee promptly of the occurrence of any of the following:

(i) a fire or other casualty causing damage to the Mortgaged Premises;

(ii) receipt of notice of eminent domain proceedings or condemnation of all or any part of the Mortgaged Premises;

(iii) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Premises;

(iv) receipt of any default or termination notice from any tenant of all or any portion of the Mortgaged Premises, excluding the normal expiration of any Leases;

(v) receipt of any default or acceleration notice from the holder of any lien or security interest in the Mortgaged Premises or any portion thereof; or

(vi) commencement of any material litigation affecting the Mortgaged Premises.

10. Additional Loans. The security of this Mortgage shall extend to and cover any additional loans or advances made by Mortgagee to Mortgagor at any time or times hereafter.

11. No Additional or Secondary Financing. Without the prior written consent of Mortgagee, Mortgagor shall not create or cause or permit to exist any lien on, or security interest in the Mortgaged Premises, including any furniture, fixtures, appliances, equipment, or other items of personal property owned by Mortgagor which are intended to be or become part of the Mortgaged Premises, and shall not incur any secured indebtedness which is secured by the Mortgaged Premises for money borrowed to purchase the Mortgaged Premises or any part thereof, other than the indebtedness secured hereby, without prior written consent of the Mortgagee.

Mortgagor shall promptly discharge, at Mortgagor's cost and expense, all monetary liens, encumbrances and charges upon the Mortgaged Premises, or any part thereof or interest therein; provided, however, that Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge if Mortgagor shall obtain a bond or other security satisfactory to Mortgagee in such amount as Mortgagee shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that

(iv) receipt of any default or termination notice from any tenant in all or any portion of the Mortgaged Premises, excluding normal expiration of any leases;

(v) receipt of any default or acceleration notice from the holder of any lien or security interest in the Mortgaged Premises or any portion thereof; or

(vi) commencement of any material litigation affecting the Mortgaged Premises.

10. Additional Loans. The security of this Mortgage shall extend to and cover any additional loans or advances made by Lender to Mortgagor at any time or times hereafter.

11. No Additional or Secondary Financing. Without the prior written consent of Mortgagee, Mortgagor shall not create or cause or permit to exist any lien on, or security interest in the Mortgaged Premises, including any furniture, fixtures, appliances, equipment, or other items of personal property owned by Mortgagor which are intended to be or become part of the Mortgaged Premises, and shall not incur any secured indebtedness with respect to the Mortgaged Premises for money borrowed to finance the Mortgage Premises or any part thereof, other than the indebtedness secured hereby, without prior written consent of the Mortgagee.

Mortgagor shall promptly discharge at Mortgagor's cost and expense, all mechanic's liens, encumbrances and charges upon the Mortgaged Premises, or any part thereof or interest therein; provided, however, that Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge. Mortgagor shall obtain a bond or other security satisfactory to Mortgagee in such amount as Mortgagee shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that

Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, or alternatively, cause a title insurance company acceptable to Mortgagee to issue title insurance to Mortgagee without exception for such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by Mortgagee, to terminate any Lease of all or a portion of the Mortgaged Premises whether or not such Lease is subordinate (whether by law or the terms of such lease or a separate agreement) to the lien of this Mortgage without first obtaining the prior written consent of Mortgagee. The holder of any subordinate mortgage or other subordinate lien shall have no such right, whether by foreclosure of its mortgage or lien or otherwise, to terminate any such Lease, whether or not permitted to do so by Mortgagor or as a matter of law, and any such attempt to terminate any such Lease shall be ineffective and void.

12. <u>Transfer of Title</u>. Any sale, change, transfer, liquidation, assignment or diminishment of the ownership of Mortgagor and/or Dayton Ventures in the Mortgaged Premises or any part thereof, or any interest or title therein, legal or equitable, or any change in the general partners of Dayton Ventures or the sale or assignment of all or substantially all of the assets of the general partners of Dayton Ventures, or the sale, assignment or transfer of any interest in Dayton Ventures by the general partners of Dayton Ventures, or any transfer of the benefits of the Loan, direct or indirect, or any attempted

Mortgagor shall thereafter [illegible] promptly proceed to cause such lien, encumbrance or [illegible] to be [illegible] removed and discharged. If Mortgagor shall fail [illegible] such lien, encumbrance or charge, or [illegible] cause a title insurance company acceptable to [illegible] to issue title insurance to Mortgagee without exception for such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by Mortgagee, to terminate any lease of all or a portion of the Mortgaged Premises whether or not such lease is subordinate whether by its or its terms or such lease or a separate agreement, or the lien of this Mortgage without first obtaining the prior written consent of Mortgagee. The holder of any subordinate mortgage or other subordinate lien shall have no such right, whether by foreclosure of its mortgage or lien or otherwise. It terminate any such lease, whether or not permitted as aforesaid by Mortgagee or as a matter of law, and any such attempt to terminate any such lease shall be ineffective and void.

14. Transfer of Title. Any sale, change, transfer, liquidation, assignment or diminishment of the ownership of [illegible] or any other interest in the Mortgaged Premises or any part thereof, or any interest or title therein, legal or equitable, or any change in the general partners of Dayton [illegible] or the sale or assignment of all or substantially all of the assets of the general partners of Dayton Ventures, or the sale, assignment or transfer of any interest in Dayton Ventures by the general partners of Dayton Ventures, or any transfer of [illegible] of [illegible], direct or indirect, or any attempted

change, transfer, liquidation or diminishment of ownership or attempted transfer of the benefits of the Loan, or attempted change of the general partners of Dayton Ventures, or the attempted sale, transfer or assignment of all or substantially all of the assets of the general partners of Dayton Ventures, or the attempted sale, transfer or assignment of any interest in Dayton Ventures by the general partners of Dayton Ventures, without Mortgagee's prior written approval, including such conditions as Mortgagee may impose shall be an event of default hereunder and the Loan, at Mortgagee's option, shall be deemed to have matured in accordance with its terms, and the entire outstanding balance of the Loan shall be immediately due and payable without further notice.

Notwithstanding the foregoing, the sale or transfer of legal or equitable title to individual townhome residences ("Units") to be constructed upon the Mortgaged Premises in accordance with the Loan Agreement shall be excluded from the aforesaid prohibition against transfer of title to the Mortgaged Premises provided that a Release Fee in accordance with the provisions of Paragraph 37 of this Mortgage is paid to Mortgagee.

It is expressly understood and agreed that Mortgagee may condition any required consent to a transfer of the benefits of the loan evidenced by the Note and secured by this Mortgage upon the fulfillment of certain requirements including, but not limited to, the following:

(i) that the proposed purchaser meet Mortgagee's then-existing credit and other standards with respect to similar loans,

(ii) that the purchaser specifically assume the obligations to be performed under the Note and this Mortgage,

[illegible] transfer, liquidation or dissolution of ownership or attempted transfer [illegible] the proceeds of the loan, or attempted change of [illegible] partners or Joint Venturers, or the [illegible] or assignment of all or substantially [illegible] of the general partners of Joint Venture, or [illegible] sale, transfer or assignment of any interest in Joint Venture by the general partners of Joint Venture, without Mortgagee's prior written approval, including such conditions as Mortgagee may impose shall be an event of default hereunder and the loan, at Mortgagee's option, shall be deemed to have matured in accordance with its terms, and the entire outstanding balance of the loan shall be immediately due and payable without further notice.

Notwithstanding the foregoing, the sale or transfer of legal or equitable title to individual townhome residences ("Units") to be constructed upon the Mortgaged Premises in accordance with the loan documents shall be excluded from the aforesaid prohibition against transfer of title to the Mortgaged Premises provided that a Release Fee in accordance with the provisions of Paragraph [illegible] of this Mortgage is paid to Mortgagee.

It is expressly understood and agreed that Mortgagee may condition its required consent to a transfer of the benefits of the loan evidenced by the Note and secured by this Mortgage upon the fulfillment of certain requirements including, but not limited to, the following:

(i) that the proposed purchaser meet Mortgagee's then-existing credit and other standards with respect to similar loans,

(ii) that the purchaser specifically assume the obligations to be performed under the Note and this Mortgage,

(iii) that reasonable fees be paid to Mortgagee at the time of transfer,

(iv) that the interest rate payable under the Note be increased,

(v) that a new policy of mortgagee's title insurance be obtained,

(vi) that new financing statements be filed,

(vii) that the proposed purchaser agree to restrictions on further transfers, and

(viii) that endorsements to existing policies or new hazard and other insurance policies be obtained.

It is further understood and agreed that Mortgagee shall not consent to (i) any transfer of less than the entire Mortgaged Premises, except a transfer of an individual Unit for which a release fee has been paid as aforesaid, or (ii) any transfer in any form, including but not limited to a sale and leaseback, which has the effect of creating additional expense to or charges against the Mortgaged Premises. No encumbrance, subordinate mortgage or junior lien may be created without the express written consent of Mortgagee.

13. Security Agreement. This Mortgage constitutes a security agreement under the Uniform Commercial Code of the State of Illinois and creates a security interest in all that property (and the proceeds thereof) included in the Mortgaged Premises which constitutes "personal property". Mortgagor shall execute, deliver, file and refile any financing statements, continuation statements, or other security agreements Mortgagee may require from time to time to confirm the lien of this Mortgage with respect to such property. Without limiting the foregoing,

(iii) that reasonable fees be paid to Mortgagee at the time of [illegible];

(iv) that the interest rate payable under the [illegible] be increased,

(v) that a new policy of mortgagee's title insurance be obtained,

(vi) that new financing statements be filed,

(vii) that the proposed purchaser agree to restrictions on further transfers, and

(viii) that endorsements to existing policies or new bonded and other insurance policies be obtained.

It is further understood and agreed that Mortgagee shall not consent to (i) any transfer of less than the entire mortgaged premises, except transfer of an individual unit for which a release is to be [illegible] as aforesaid, or (ii) any transfer in any form, including but not limited to a sale and [illegible] which would cause or creating additional expense to [illegible] Mortgagee's business. No encumbrance, [illegible] pledge or junior lien may be created without the express written consent of Mortgagee.

12. Security Agreement. This Mortgage constitutes a [illegible] under the Uniform Commercial Code of the State of Illinois and grants a security interest in all that property (the "Fixtures") included in the Mortgaged Premises which constitutes "personal property". Mortgagor shall execute, [illegible], file and refile any financing statements, continuation statements, or other security agreements Mortgagee may require [illegible] to perfect or continue the lien of this Mortgage with respect to such property. Without limiting the foregoing,

Mortgagor hereby irrevocably appoints Mortgagee Attorney-in-Fact for Mortgagor to execute, deliver and file such instruments for and on behalf of Mortgagor. Notwithstanding any release of any or all of that property included in the Mortgaged Premises which constitutes "real property", any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the obligations of Mortgagor as are now or hereafter evidenced by the Note. Mortgagee may exercise any and all remedies of a secured party available to it under the Uniform Commercial Code of Illinois with respect to such property, and it is expressly agreed in accordance with the provisions of the Uniform Commercial Code of Illinois that ten (10) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under the provisions of the Uniform Commercial Code of Illinois requiring such notice; provided, however, that Mortgagee may, at its option, dispose of the collateral in accordance with Mortgagee's rights and remedies with respect to real property pursuant to the provisions of this Mortgage and Security Agreement in lieu of proceeding under the Uniform Commercial Code of Illinois.

14. Corporate Existence and Taxes. If Mortgagor or Dayton Ventures or any successor or grantee of Mortgagor or Dayton Ventures is a coproration it shall keep in effect its existence and rights as a corporation under the laws of its state of incorporation and comply with all statutory requirements as necessary to keep in effect its right to own, lease, mortgage and encumber the Mortgaged Premises. For all periods during which title to the Mortgaged Premises or any part thereof shall be held by a corporation or association subject to corporate taxes or taxes similar to corporate taxes, such entities shall file returns for such taxes with the proper authorities, bureaus or departments and it shall pay, when due and payable and before interest or penalties are due thereon, all taxes owing by it to

3698232

Mortgagor hereby irrevocably appoints Mortgagee Attorney-in-Fact for Mortgagor to [illegible] deliver and file such instruments for and on [illegible] notwithstanding any release of any [illegible] property included in the Mortgaged Premises which [illegible] "Real Property", any proceeding to foreclose this [illegible] or the satisfaction of record, the terms hereof shall [illegible] as a security agreement with respect to the security interest created hereby are released to above until the repayment or satisfaction in full of the obligations of Mortgagor as the now or hereafter evidenced by the Note. Mortgagee may exercise any and all remedies of a secured party available to it under the Illinois Commercial Code of Illinois with respect to such [illegible], and it is expressly agreed in accordance with the provisions of the Illinois Commercial Code of Illinois that ten (10) days notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under the provisions of the Uniform Commercial Code of Illinois requiring such notice provided, however, that Mortgagee may, at its option, dispose of the collateral in accordance with Mortgagee's rights and remedies with respect to real property pursuant to the provisions of this Mortgage and security agreement in lieu of proceeding under the Uniform Commercial Code of Illinois.

14. Corporate Existence and Taxes. If Mortgagor or Mortgagor's successor or any successor or grantee of Mortgagor or Mortgagor's successor is a corporation it shall keep in effect its existence and rights as a corporation under the laws of its state of incorporation and comply with all statutory requirements as necessary to have sufficient rights to own, lease, mortgage and encumber the Mortgaged Premises. For all periods during which title to the Mortgaged Premises or any part thereof shall be held by a corporation or association subject to corporate taxes or such similar to corporate taxes, such entities shall file returns and such forms with the proper authorities, pursuant to statutes and it shall pay, when due and payable and before interest or penalties are due thereon, all taxes owing by it to

the United States, to such state of incorporation and to the in which the Mortgaged Premises is situated and any political subdivision thereof, and shall produce for Mortgagee receipts showing payment of any and all such taxes, charges or assessments prior to the last dates upon which such taxes, charges or assessments are payable without interest or penalty charges, and within ten (10) days of receipt thereof or within the applicable time deadline, whichever time period is longer, all settlements, notices of deficiency or overassessment and any other notices pertaining to the its tax liability, which may be issued by the United States, such state of incorporation, the state in which the Mortgaged Premises are situated and any political subdivision thereof.

15. Taxes. In the event of the passage after the date of this Mortgage of any law of the State of Illinois, the Commonwealth of Pennsylvania or any other governmental entity, changing in any way the laws now in force for the taxation of mortgages, or debts secured thereby, for federal, state or local purposes (except federal or state income taxes or bank shares tax), or the manner of the operation of any such taxes, so as to affect the interest of Mortgagee, then and in such event, Mortgagor shall bear and pay the full amount of such taxes.

16. Zoning and Environmental Laws. Mortgagor covenants and represents that all applicable zoning laws, ordinances and regulations affecting the Mortgaged Premises permit the construction, use and occupancy of the Improvements as contemplated by the Loan Security Documents and Mortgagor further covenants and represents to comply with all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Premises.

17. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right at any time, upon reasonable notice to Mortgagor, to enter the Mortgaged Premises at a

the United States, to such state of incorporation and to the in which the Mort[illegible] assessed and any political [illegible] and shall produce for Mortgagee receipts [illegible] and all such taxes, charges or assessments [illegible] the last date upon which such taxes, charges or assessments are payable without interest or penalty charges, and within ten (10) days of receipt thereof or within the applicable tax deadline, whichever time period is longer, all settlements, notices of deficiency or overassessment and any other notices pertaining to the tax liability, which may be issued by the United States, such state or incorporation, the state in which the Mortgaged Premises are situated and any political subdivision thereof.

[illegible]. In the event of the passage after the date of this Mortgage of any law of the State of Illinois, the Commonwealth of Pennsylvania or any other governmental entity, imposing in any way the lien secured hereby, for the taxation of mortgages, or debts secured thereby, for federal, state or local purposes (except income or excess income taxes or bank shares tax), or the manner of the operation of any such taxes, so as to affect the interest of Mortgagee, then and in such event, Mortgagor shall forthwith pay the full amount of such taxes.

[illegible]. Zoning and Environmental Laws. Mortgagor covenants and represents that all applicable zoning laws, ordinances and regulations affecting the Mortgaged Premises [illegible] and occupancy of the Improvements as [illegible] by the land security documents and Mortgagor further covenants and represents to comply with all environmental and zoning laws, ordinances and regulations affecting the Mortgaged Premises.

[illegible]. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right at any time, upon reasonable notice to Mortgagor, to enter the Mortgaged Premises at a

reasonable hour to inspect and photograph its condition and state of repair.

18. Advance by Mortgagee. Upon the occurrence of an event of default (or, in the case of an emergency materially threatening the Mortgaged Premises or Mortgagee's rights therein, the occurrence of an event which if uncured will constitute an event of default with the passage of time), Mortgagee may (but is not obligated to) pay any sum or perform any other obligation for the account of Mortgagor which Mortgagor has failed to pay or perform, and sums so spent by Mortgagee shall be added to the principal sum secured by this Mortgage and be repayable by Mortgagor on demand, and shall bear interest at the Default Rate as specified in the Note.

19. Extension; Release of Security. The granting of an extension or extensions of time by Mortgagee with respect to the performance of any obligation of the Mortgagor under this Mortgage or the Note, or the taking of any additional security, or the waiver by Mortgagee or failure by Mortgagee to enforce any provision of this Mortgage or the Note or to declare a default with respect thereto, shall not operate as a waiver of any subsequent default or defaults or affect the right of Mortgagee to exercise all rights or remedies stipulated herein and therein.

Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release any part of the security described herein or any person liable for any indebtedness secured hereby without affecting the priority of the lien of this Mortgage to the full extent of the indebtedness remaining unpaid hereunder. Mortgagee may agree with any party obligated on said indebtedness or having any interest in the security described herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien

reasonable hour to inspect and photograph its condition and state of repair.

16. Notice by Mortgagee. Upon the occurrence of an default (or, in the case of an emergency materially affecting the Mortgaged Premises or Mortgagee's rights therein, the occurrence of an event which it caused will constitute an event of default with the passage of time), Mortgagee may (but is not obligated to) pay any sum or perform any other obligation for the account of Mortgagor which Mortgagor has failed to pay or perform, and sums so spent by Mortgagee shall be added to the principal sum secured by this Mortgage and be repayable by Mortgagor on demand, and shall bear interest at the default rate as specified in the Note.

17. Extensions; Release of Security. The granting of an extension or extensions of time by Mortgagee with respect to the performance or any obligation of the Mortgagor under this Mortgage or the Note, or the taking of any additional security, or the waiver by Mortgagee of failure by Mortgagee to enforce any provision of this Mortgage or the Note or to declare a default with respect thereto, shall not operate as a waiver of any subsequent default or obligation or affect the right of Mortgagee to exercise all rights or remedies stipulated herein and therein.

Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any interior liens thereon, may release any part of the mortgaged premises or any person liable for the indebtedness secured hereby without affecting the priority of the lien of this Mortgage to the full extent of the indebtedness remaining unpaid hereunder. Mortgagee may agree with any party obligated on said indebtedness or having any interest in the security described herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien

hereof, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to said lien.

In the event Mortgagee (a) releases, as aforesaid, any part of the security described herein or any person liable for any indebtedness secured hereby, or (b) grants an extension of time on any payments of the indebtedness secured hereby, or (c) takes other or additional security for the payment thereof, or (d) waives or fails to exercise any right granted herein or in the Note, said act or omission shall not release Mortgagor, Dayton Ventures, subsequent purchasers of the Mortgaged Premises or any part thereof, or the makers or the Guarantors of this Mortgage or of the Note, from any covenant of this Mortgage or of the Note, nor preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default.

20. Events of Default. The following shall constitute events of default hereunder:

(a) if default shall be made in the payment of any sum required to be paid under the terms of this Mortgage, the Note or any of the other Loan Security Documents when and as the same shall become due and payable and such default shall have continued for a period of five (5) days after the day on which written notice of same is given by Mortgagee to Mortgagor; or

(b) if default shall be made in the due observance or performance of or compliance with any of the other provisions, warranties, covenants, agreements, terms or conditions of this Mortgage, the Note or any of the other Loan Security Documents, and such default shall have continued for a period of thirty (30) days after notice specifying such default and demanding that the same be cured shall have been given to Mortgagor, or if the default cannot reasonably be remedied within such period, if

Hereof, but shall extend the lien hereof as against the title of all persons having [illegible] interest in said security which inherent is subject [illegible].

In the event Mortgagee is released, or considered, any [illegible] the security described herein or any person liable for any indebtedness secured hereby, or (b) grants an extension of time on any payments of the indebtedness secured hereby, or (c) takes other or additional security for the payment thereof, or (d) waives or fails to exercise any right granted herein or in the Note; and no or omission shall not release Mortgagor, Borrower, surety, subsequent purchasers of the Mortgaged Premises or any part thereof, or the heirs or the successors of this Mortgage or of the Note, free from any covenant of this Mortgage or of the Note, are prevented therefrom from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default.

20. Events of Default. The following shall constitute events of default hereunder:

(a) If default shall be made in the payment of any sum [illegible] to be paid under the terms of this Mortgage, the Note or any of the other loan security documents when and as the same shall become due and payable and such default shall have continued for a period of five (5) days after the day on which written notice of same is given by Mortgagee to Mortgagor; or

(b) If default shall be made in the due observance or performance of or compliance with any of the other provisions, agreements, covenants, arrangements, terms or conditions of this Mortgage, the Note or any of the other Loan Security Documents, and such default shall have continued for a period of thirty (30) days after notice specifying such default and demanding that the same be cured shall have been given to Mortgagor, or if the default cannot reasonably be remedied within such period, if

Mortgagor fails to commence to remedy the same within thirty (30) days and vigorously thereafter to carry the same to completion; provided, however, that if the default is such that a delay in the exercise of a remedy would in Mortgagee's reasonable judgment cause material harm to Mortgagee or the Mortgaged Premises, Mortgagor shall not be entitled to such period of grace; or

(c) if any proceding under the Bankruptcy Code or any law of the United States or any State relating to insolvency, receivership or debt adjustment is instituted by Mortgagor, Dayton Ventures, or any legal or beneficial owner of Mortgagor, or any Guarantor, or if any such proceeding is instituted against Mortgagor, Dayton Ventures or any legal or beneficial owner of Mortgagor, Dayton Ventures or any Guarantor and is consented to by the respondent or remains undismissed for sixty (60) days, or if relief in bankruptcy is granted to Mortgagor, any legal or beneficial owner of Mortgagor, or Dayton Ventures or any Guarantor, or if a trustee or receiver is appointed for any substantial part of the property of any thereof and such appointment shall not have been vacated within sixty (60) days thereafter, or if Mortgagor or any legal or beneficial owner of Mortgagor, or Dayton Ventures or any Guarantor make an assignment for the benefit of creditors, admit in writing an inability to pay debts generally as they become due or become insolvent; or

(d) if any representation or warranty made by Mortgagor, Dayton Ventures or any Guarantor in any of the Loan Security Documents or in any other instrument which pertains to this Mortgage proves to be materially incorrect, now or hereafter; or

(e) if any improvement essential to the continued operation of the Mortgaged Premises is substantially damaged or destroyed by an uninsured casualty; or

(f) a material default under any Lease; or

Mortgagor fails to commence to remedy the same within thirty (30) days and whom [illegible] to carry the same to completion; [illegible] the default is such that a delay in [illegible] would in Mortgagee's reasonable judgment [illegible] material harm to Mortgagee or the Mortgaged Premises, Mortgagor shall not be entitled to such period of grace; or

(c) if any proceeding under the Bankruptcy Code or any law of the United States or any State relating to insolvency, receivership or such adjustment is instituted by Mortgagor, Dayton Ventures, or any legal or beneficial owner of Mortgagor, or any Guarantor, or if any such proceeding is instituted against Mortgagor, Dayton Ventures, or any legal or beneficial owner of Mortgagor, Dayton Ventures or any Guarantor and is consented to [illegible] the respondent or remains unvacated for sixty (60) days, or [illegible] in contemplation to proceed to Mortgagor, any legal or beneficial owner of Mortgagor, or Dayton Ventures or any [illegible] or if a trustee or receiver is appointed for any substantial part of the property of any thereof and such proceedings shall not have been vacated within sixty (60) days [illegible], or if Mortgagor or any legal or beneficial owner of Mortgagor or Dayton Ventures or any Guarantor make an assignment for the benefit of creditors, admit in writing an inability to pay debts generally as they become due or become insolvent; or

(d) if any representation or warranty made by Mortgagor, Dayton Ventures or any Guarantor in any of the loan Security Documents or in any other instrument which pertains to this Mortgage proves to be materially incorrect, now or hereafter; or

(e) if any improvement essential to the continued operation of the Mortgaged Premises is substantially damaged or destroyed by an uninsured casualty; or

(f) a material default under any lease; or

(g) If any Event of Default occurs under the Loan Agreement executed of even date herewith by and between Mortgagee, as lender, and Dayton Ventures.

21. Remedies. In the event of default, and after applicable cure periods, if any, Mortgagee may, at its option and notwithstanding any contrary provisions in the Note, without further demand, notice or delay, do any or all of the following:

(a) Mortgagee may declare the entire unpaid principal balance of the Note to be due and payable immediately. Thereupon, said principal and all accrued interest, and all other sums due hereunder and thereunder shall become immediately due and payable. Thereafter, the default may be cured only by the payment of the entire principal balance and all other sums due and payable thereunder and hereunder. Upon default, interest shall continue to accrue at a rate equal to three percent (3.0%) per annum in excess of the then effective interest rate being charged on the principal balance of the Loan (the "Default Rate") at such time, but not to exceed the highest rate permitted by law, until the Loan is paid in full.

(b) Mortgagee may (i) institute and maintain an action of mortgage foreclosure against any of the Mortgaged Premises, (ii) bid for and purchase the Mortgaged Premises upon any such foreclosure sale, and upon compliance with the terms of the sale, hold, retain and possess and dispose of the Mortgaged Premises in its own absolute right without further accountability, (iii) institute and maintain an action on the Note against Mortgagor or on any guaranty agreement executed by any guarantor, (iv) have judgment entered by confession pursuant to any power to confess judgment contained in any Loan Security Document, (v) take such other action at law or in equity for the enforcement of any Loan Security Document against Mortgagor, Dayton Ventures and/or any Guarantor. Mortgagee may proceed in any such action to final judgment and execution thereon for all sums due under paragraph

(g) If any Event of Default occurs under the Loan Agreement executed [illegible] Borrower by and between Mortgagee [illegible] Vendusee.

1. Remedies. In the event of default, and after [illegible] cure periods, if any, Mortgagee may, at its option and [illegible] according any monetary provisions in the Note, without further demand, notice or delay, do any or all of the following:

(a) Mortgagee may declare the entire unpaid principal balance of the Note to be due and payable immediately. Thereupon, such principal and all accrued interest, and all other sums due hereunder, shall become immediately due and payable. Thereafter, the default may be cured only by the payment of the entire principal balance and all other sums due and by all Mortgagee and Mortgagor. Upon default, interest shall continue to accrue at a rate equal to three percent (3.0%) per annum in excess of the then effective interest rate being charged on the principal balance of the Loan (the "Default Rate") in such case, but not in excess of the highest rate permitted by law, until the Loan is paid in full.

(b) Mortgagee may (i) institute and maintain an action [illegible] against any of the Mortgaged Premises, [illegible] for [illegible] the Mortgaged Premises upon any such [illegible] and upon compliance with the terms of the sale, hold, retain and possess and dispose of the Mortgaged Premises in its own absolute right without further accountability, (ii) [illegible] (iv) have [illegible] by any guarantor, (v) have [illegible] pursuant to any power to confess judgment contained in any Loan Security Document, (vi) take such other action at law or in equity for the enforcement of any Loan Security Document against Mortgagor, Guarantor Vendusee and/or any [illegible]. Mortgagee may proceed in any such action to final judgment and execution thereon for all sums due under paragraph

(a) of this Section 21, together with interest on such sums as provided in the Note, all costs of suit and a reasonable attorney's commission. Interest at a rate equal to three percent (3.0%) per annum in excess of the rate provided in the Note, but not greater than permitted by law, shall be due on any judgment obtained by Mortgagee until actual payment is made of the full amount of the judgment by the Sheriff or otherwise.

(c) Mortgagee may, without releasing Mortgagor, Dayton Venture or any Guarantor from any obligation under any Loan Security Document or under any lease or waiving any default: (i) collect any or all of the rents, including any rents past due and unpaid, (ii) perform any obligation or exercise any right or remedy of Mortgagor under any lease, or (iii) enforce any obligation of any tenant of any of the Mortgaged Premises. Mortgagee shall not be obligated to do any of the foregoing, even if Mortgagee have performed any obligation or exercised any remedy of landlord or enforced any obligation of a tenant. Mortgagee may exercise any right under this paragraph (c) whether or not Mortgagee shall have entered into possession of any of the Mortgaged Premises; and nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession" unless Mortgagee shall have entered into and shall remain in actual possession of the Mortgaged Premises. Mortgagor hereby authorizes and instructs each and every present and future tenant of any of the Mortgaged Premises to pay all rents directly to Mortgagee and to perform all other obligations of that tenant for the direct benefit of Mortgagee, as if Mortgagee were the landlord under the Lease with that tenant, immediately upon receipt of a demand by Mortgagee to make such payment or perform such obligations. No tenant shall have any responsibility to ascertain whether such demand is permitted hereunder or whether a default shall have occurred. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of rents or performance of obligations to Mortgagee; and any such payment or performance to

(a) of this Section 21, together with interest on such sums as provided in the Note [illegible] rate of suit and a reasonable attorney's fee [illegible] at a rate equal to three percent [illegible] rate provided in the Note, but [illegible] shall be use or any judgment [illegible] by Mortgagee shall present in lieu of the full amount of the judgment by the Statute or otherwise.

(b) Mortgagee may, without releasing Mortgagor, Bryton Ventures or any Guarantor from any obligation under any Loan Security Documents or under any lease or waiving any default: (i) [illegible] any or all of the rents, including any rents past due and unpaid, (ii) pursue any obligation or exercise any right or remedy of Mortgagee under any lease, or (iii) enforce any obligation of any tenant or any of the Mortgaged Premises.

Mortgagee shall not be obligated to do any of the foregoing, even if Mortgagee has produced any application or exercised any remedy or instituted or prosecuted an application of a tenant.

Mortgagee may exercise any right under this paragraph (c) whether or not Mortgagee shall have entered into possession of any of the Mortgaged Premises or the rents thereof contained shall be construed as constituting Mortgagee a "mortgagee in possession" [illegible] Mortgagee has entered into and shall remain in [illegible] possession of the Mortgaged Premises. Mortgagor hereby authorizes and instructs each and every present and future tenant of any of the Mortgaged Premises to pay all rents directly to Mortgagee and to perform all other obligations of that tenant for the direct benefit of Mortgagee, as if Mortgagee were the [illegible] immediately upon [illegible] by Mortgagee to make such payment or perform such obligations. No tenant shall have any responsibility to ascertain whether such demand is permitted hereunder or whether a default shall have occurred. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of rents or performance of obligations to Mortgagee and any such payment or performance to

Mortgagee shall discharge the obligations of the tenant to make such payment or performance to Mortgagor. Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from any and all liability under any lease and from any and all claims and demands which may be asserted against Mortgagee by reason of any alleged obligations to perform any provision of any lease, except as to Mortgagee's own negligence or willful misconduct.

(d) Mortgagee may, without releasing Mortgagor, Dayton Ventures or any Guarantor from any obligation under any Loan Security Document or under any Lease or waiving any default, enter upon and take possession of any of the Mortgaged Premises, with or without legal action and by force if necessary, or have a receiver appointed without proof of depreciation or inadequacy of the value of the Mortgaged Premises or other security or proof of the insolvency of Mortgagor. Mortgagee or said receiver may manage and operate any of the Mortgaged Premises; make, cancel, enforce or modify Leases; obtain and evict tenants; establish or change the amount of any rents; and perform any acts which Mortgagee deems proper to protect the security of this Mortgage. After deduction of all costs and expenses of operation and management of the Mortgaged Premises and of collection of the rents (including attorneys' fees, administration expenses, management fees and brokers' commissions), Mortgagee may apply the rents received by Mortgagee to the payment of any or all of the following, in such order and amounts as Mortgagee, in its sole discretion, may elect: liens on any of the Mortgaged Premises, taxes, claims, insurance premiums, other carrying charges, invoices of persons who have supplied goods or services to or for the benefit of any of the Mortgaged Premises, costs and expenses of maintenance, repair, restoration, alteration or improvement of any of the Mortgaged Premises, the outstanding principal balance of the Loan, or accrued interest. Mortgagee may, in its sole discretion, determine the method by which, and extent to which, the rents will be collected and obligations of tenants enforced. Mortgagee may waive or fail to enforce any

Mortgagee shall discharge the obligations of the tenant to make such payment or [illegible] in Mortgagor. Mortgagor shall indemnify [illegible] and hold Mortgagee harmless from any and all [illegible] in law and from any and all claims and demands [illegible] be asserted against Mortgagee by reason of any alleged [illegible] to perform any provision of any lease, except as to Mortgagee's own negligence or willful misconduct.

(d) Mortgagee may, without releasing Mortgagor, by written [illegible] ventures or any guarantee from any obligation under any lease, [illegible] security hereunder or under any lease or waiving any default, enter upon and take possession of any of the Mortgaged Premises, [illegible] within legal utility and by force if necessary, or have a receiver appointed at the proof of deficiency or inadequacy of the value of the Mortgaged Premises or other security or proof of the insolvency of Mortgagor. Mortgagee or said receiver may [illegible] any of the Mortgaged Premises make, cancel, change or modify leases, obtain and evict tenants, establish or change the amount of any rental and perform any acts which Mortgagee deems proper to protect the security of this Mortgage, [illegible] selection of all agents and employees of operation and management of the Mortgaged Premises and of collection of the rents, including attorneys' fees, administration expenses, [illegible] commissions, [illegible] compensation, Mortgagee may apply the rents received by Mortgagee to the payment of any or all of the items, in such order and amounts as Mortgagee, in its sole discretion, may elect: liens on any of the Mortgaged Premises, taxes, claims, insurance premiums, other carrying [illegible] of [illegible] or have supplied goods or services to or for the benefit of any of the Mortgaged Premises, costs and expenses of maintenance, repair, restoration, alteration or improvement on any of the Mortgaged Premises, the outstanding principal balance of the Loan, or accrued interest. Mortgagee may, in its sole discretion, determine the method by which, and order in which, the rents will be collected and obligations of tenants satisfied. Mortgagee may waive or fail to enforce any

right or remedy of the landlord under a lease. Mortgagee shall not be accountable for any rents or other sums it does not actually receive. Upon and after default, Mortgagor hereby appoints Mortgagee as its attorney-in-fact to perform all acts which Mortgagor is required or permitted to perform under any and all leases.

(e) Mortgagee may disaffirm and cancel any Lease which is subordinate to this Mortgage at any time before the expiration of sixty (60) days after Mortgagee acquires the legal title to the Mortgaged Premises by any transfer pursuant to the exercise of a remedy hereunder or otherwise, even though Mortgagee shall have enforced such Lease, collected rents thereunder or taken any action that might be deemed by law to constitute an affirmance of the Lease. Such disaffirmance shall be made by notice addressed to the tenant at the Mortgaged Premises or, at Mortgagee's option, such other address of the tenant as may be provided in that tenant's Lease.

(f) Mortgagee may take possession of any of the Mortgaged Premises and may sell such property pursuant to the provisions of the Uniform Commercial Code of the State of Illinois and exercise such other rights and remedies with respect to such property as may be provided by said Code. Mortgagee may apply the proceeds of such sale received by Mortgagee to the payment of any or all of the following, in such order and amounts as Mortgagee, in its sole discretion, may elect: Liens on any of the Mortgaged Premises, taxes, claims, insurance premiums, other carrying charges, invoices of persons who have supplied goods or services to or for the benefit of any of the Mortgaged Premises, costs and expenses of maintenance, repair, restoration, renovation, alteration or improvement of any of the Mortgaged Premises, the outstanding principal balance of the Loan, or accrued interest thereon.

right or remedy of the landlord under a lease. Mortgagee shall not be accountable for any rents or other sums it does not actually [illegible] upon and after default, Mortgagor hereby [illegible] Mortgagee as its attorney-in-fact to perform all acts [illegible] required or permitted to perform under any and all leases.

(e) Mortgagee may disaffirm and cancel any lease which is subordinate to this mortgage at any time before the expiration of sixty (60) days after Mortgagee acquires the legal title to the Mortgaged Premises by any transfer pursuant to the exercise of a remedy hereunder or otherwise, even though Mortgagee shall have received such lease, collected rents thereunder or taken any action that might be deemed by law to constitute an affirmance of the lease. Such disaffirmance shall be made by notice addressed to the tenant at the Mortgaged Premises or, at Mortgagee's option, such other address of the tenant as may be provided in that tenant's lease.

(f) Mortgagee may take possession of any of the Mortgaged Premises and sell such property pursuant to the provisions of the Uniform Commercial Code of the State of Illinois and exercise such other rights and remedies with respect to the property as may be provided by said Code. Mortgagee may apply the proceeds of such sale received by Mortgagee to the payment of any or all of the following, in such order and amounts as Mortgagee, in its sole discretion, may elect: liens on any of the Mortgaged Premises, taxes, claims, insurance premiums, other [illegible] [illegible] to or for the benefit of any of the Mortgaged Premises, [illegible] or maintenance, repair, restoration, [illegible], alteration or improvement of any of the Mortgaged Premises, the outstanding principal balance of the loan, or accrued interest thereon.

(g) Mortgagee may apply on account of the indebtedness hereby secured the balance of the accumulated installment payments made by Mortgagor for taxes, water and sewer rents and insurance premiums under Section 7 above.

(h) Marshalling of assets principles shall not govern any foreclosure sale and the fee simple title, unencumbered by any leasehold, is to be the asset sold at said foreclosure sale.

22. Remedies Cumulative. Mortgagee may exercise all of the rights and remedies provided in this Mortgage or the Note, or in any other Loan Security Document, or which may be available to Mortgagee by law, and all such rights and remedies shall be cumulative and concurrent and may be pursued singularly, successively or together, at Mortgagee's sole discretion, and may be exercised as often as occasion therefor shall occur. Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note or this Mortgage or to any judicial proceedings under the Mortgage, may be sold in one parcel, in its entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

23. Waivers by Mortgagor. Mortgagor, Dayton Ventures and all Guarantors hereby waive and release (a) all technical errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage, (b) all benefits that might accrue to Mortgagor by virtue of any present or future laws exempting the Mortgaged Premises or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, or providing any stay of execution, exemption from civil process, extension of time for payment, or rights of redemption, (c) all notices not herein elsewhere specifically required of Mortgagor's default or of Mortgagee's exercise of, or election to exercise, any option under this Mortgage, (d) any present or future statute of limitation or moratorium law or any other present or future law, regulation or judicial decision

(d) Mortgagee may apply on account of the indebtedness hereby secured the [illegible] or the accumulated instalment payments made [illegible] under section 7 above.

(e) Marshalling of assets principles shall not govern any foreclosure sale and the fee simple title, unencumbered by any lien[illegible], is to be the asset sold at said foreclosure sale.

12. Remedies Cumulative. Mortgagee may exercise all of the rights and remedies provided in this Mortgage or the Note, or in any other Loan Security Document, or which may be available to Mortgagee by law, and all such rights and remedies shall be cumulative and concurrent and may be pursued singularly, successively or together, at Mortgagee's sole discretion, and may be accelerated or after an acceleration thereof shall occur. Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note or this Mortgage or to any judicial proceeding under the Mortgage, may be sold in one parcel, in its entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

13. Waivers by Mortgagor. Mortgagor, Dayton Ventures [illegible] all guaranty, surety waive and release (a) all technical errors, defects and imperfections in any proceedings instituted by Mortgagee under this Mortgage, (b) all benefits that might accrue to Mortgagor by virtue of any present or future laws exempting the Mortgaged Premises or any part of the proceeds arising from any [illegible] or attachment, levy or sale under execution, or providing any stay of execution, exemption from civil process, extension of time for payment, or rights of redemption, (c) all notices not herein elsewhere specifically required of Mortgagor's default or of Mortgagee's exercise of, or election to exercise, any option under this Mortgage, (d) any present or future statute of limitation or moratorium law or any other present or future law, regulation or judicial decision

which provides for any stay of execution, marshalling of assets, exemption from civil process, redemption, extension of time for payment or valuation of appraisement of any of the Mortgaged Premises, (e) any right pursuant to any law now existing or hereafter enacted to cure any default following acceleration by payment of less than the entire outstanding principal balance outstanding, together with accrued interest thereon and all other sums due pursuant to the terms of the Note, this Mortgage and any other Loan Security Documents, (f) any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting any decree or judgment creditors of Mortgagor acquiring any interest or title to the Mortgaged Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the fullest extent permitted by the provisions of Illinois law.

24. No Waiver Implied. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms, covenants, agreements, conditions and provisions hereof shall not be deemed to be a waiver of any of the terms, covenants, agreements, conditions and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms, covenants, agreements, conditions and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the consent of the Mortgagee to the filing of any map, plat or replat of the Mortgaged Premises, or

which provides for any stay or exemption, marshalling of assets, exemption from civil [illegible], redemption, extension of time for payment or [illegible] [illegible] of any of the Mortgaged Premises [illegible] pursuant to any law now existing or [illegible] [illegible] any decree of foreclosure or [illegible] by [illegible] then the entire unpaid principal balance [illegible], together with accrued interest thereon and all other sums due pursuant to the terms of the Note, this Mortgage and any other Loan Security Documents, (f) any and all rights or redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any lien or judgment creditors of Mortgagor [illegible] any interest in title to the Mortgaged Premises [illegible] to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the fullest extent permitted by the provisions of Illinois law.

3a. In event [illegible] any failure by Mortgagor to insure upon the strict performance by Mortgagor of any of the terms, covenants, agreements, conditions and provisions hereof [illegible] shall not be deemed to be a waiver of any of the terms, [illegible] covenants, agreements, conditions and provisions hereof, and [illegible] notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms, covenants, agreements, conditions and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment [illegible] or any part of the sums now or [illegible] secured by this Mortgage, shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the consent of the Mortgagee to the sale of any such part or right of the Mortgaged Premises, or

by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and Mortgagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for the indebtedness and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage, or both, without, as to the security of the remainder thereof, impairing or affecting the lien of this Mortgage or the priority of such lien as security for the payment of the indebtedness as it may be so extended or modified over any subordinate lien. For the payment of the indebtedness secured hereby Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

25. <u>Counsel Fees</u>. If Mortgagee retains the services of counsel in order to cure any default under this Mortgage or the Note, reasonable attorney's fees shall be payable by Mortgagor to Mortgagee and shall be secured hereby. Mortgagor shall pay the cost of any required title search and all other costs incurred by Mortgagee in connection with proceedings to recover any sums secured hereby. Mortgagor shall also pay any reasonable charge incurred by Mortgagee in connection with the satisfaction of this Mortgage of record.

by reason of the release, reduction or consideration, of the whole or any part of the security held for the indebtedness secured by [illegible] or by reason of any impairment or [illegible] [illegible] owner of assets of the [illegible] and Mortgagee extends the time of payment or [illegible] the terms of the Note or Mortgage without first having [illegible] the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification, notwithstanding [illegible] and without the necessity for any release of any [illegible] or any [illegible] or any [illegible] or

If Mortgagee becomes a party to any suit or proceeding affecting the Mortgaged Premises or title thereto, the lien created by this Mortgage or Mortgagee's interest therein, or following an event or events of default hereunder if Mortgagee engages counsel to collect any of the indebtedness or to enforce performance of the agreements, conditions, covenants, provisions or stipulations of this Mortgage or the Note, Mortgagee's advanced costs, expenses and reasonable counsel fees, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at three percent (3%) above the effective rate set forth in the Note, but not greater than permitted by law, and until paid such costs, expenses and fees shall be deemed to be part of the indebtedness evidenced by the Note and secured by this Mortgage.

26. Declaration of No Set-Off. Mortgagor represents to Mortgagee that it has no knowledge of any offsets, counterclaims or defenses to the principal indebtedness secured hereby, or to any part thereof, or the interest thereon, either at law or in equity. Mortgagor, within three (3) days upon request in person or within ten (10) days upon request by mail, will furnish a duly acknowledged written statement in form satisfactory to Mortgagee stating either that Mortgagor knows of no offsets or defenses existing against the indebtedness evidenced by the Note and secured by this Mortgage, or if such offsets or defenses are alleged to exist, the nature and extent thereof. Mortgagee agrees to provide to Mortgagor a written statement within ten (10) days upon request by mail that, if applicable, Mortgagor is not in default under the terms of this Mortgage.

27. Representations and Warranties. Mortgagor and Dayton Ventures represent that: (a) Mortgagor is a national banking association duly organized under the laws of the United States of America, and has the authority to conduct business in the State of Illinois; (b) Mortgagor has been duly and validly

If Mortgagee becomes a party to any suit or proceeding affecting the Mortgagor's [illegible] or title thereto, the lien created by [illegible] or [illegible]'s interest therein, or [illegible] to assist in defending Mortgagee [illegible] to collect any or the indebtedness or to enforce [illegible] of the agreements, conditions, covenants, provisions [illegible] validity of this instrument or the Note, Mortgagee's [illegible] costs, including an reasonable counsel fees, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at three percent (3%) above the effective rate set forth in the Note, but not greater than permitted by law, and until paid such costs, expenses and fees shall be deemed to be part of the indebtedness evidenced by the Note and secured by this Mortgage.

26. Mortgagor Is Not Bankrupt. Mortgagor represents to Mortgagee that it has no knowledge of any claims, counterclaims or defenses to the principal indebtedness secured hereby, or to any part thereof, or the interest thereon, either [illegible] in equity. Mortgagor, within three (3) days upon [illegible] in person or [illegible] (10) days upon request by mail, will furnish a duly acknowledged written statement in form [illegible] to Mortgagee stating either that Mortgagor knows of no claims or defenses affecting against the indebtedness [illegible] and assumed by this Mortgage, or if such claims or defenses are alleged to exist, the nature and extent thereof. Mortgagor agrees to provide to Mortgagee a written [illegible] within ten (10) days upon request by mail that, if [illegible], Mortgagor is not in default under the terms of this Mortgage.

27. Representations and Warranties. Mortgagor and Guarantor warrant represent that: (a) Mortgagor is a national banking association duly organized under the laws of the United States of America, and has the authority to conduct business in the State of Illinois; (b) Mortgagor has been duly and validly

appointed Trustee for Dayton Ventures, pursuant to the terms of a Trust Agreement dated December 3, 1986, and known as Trust No. 100729-08; (c) Dayton Ventures is a general partnership existing under the laws of the State of Illinois and has the authority to conduct business in the State of Illinois; (d) Mortgagor and Dayton Ventures have the requisite power and authority to execute the Loan Security Documents and perform the obligations hereunder and thereunder; (d) the transactions contemplated in the Loan Security Documents are and will be in all respects binding obligations of the respective parties thereto in accordance with their respective provisions; (e) all information, reports, papers and data given to Mortgagee with respect to any of the Mortgaged Premises, the Mortgagor, Dayton Ventures and the Guarantors is accurate in all material respects necessary to make the information therein not misleading and complete insofar as completeness may be necessary to give Mortgagee accurate knowledge of the subject matter, and there has been no material adverse change in any condition or fact stated therein; (f) no portion of the Mortgaged Premises has been damaged by fire or other casualty which is not now fully restored; (g) no notice of taking by eminent domain or condemnation of any of the Mortgaged Premises has been received by Mortgagor, and Mortgagor has no knowledge that any of such is contemplated; (h) the proceeds of the Loan evidenced by the Note have been or will be paid as directed by Mortgagor and will be used solely for its proper purposes; and (i) the Mortgagor and Dayton Ventures have complied with all the provisions of the Commitment.

28. <u>Invalid Provisions Disregarded</u>. If any term or provision of this Mortgage or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or the provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this

[illegible] Trustee for Dayton Ventures, pursuant to the terms of a Trust Agreement dated [illegible] 1, 1986, and known as Trust No. 3007129-08[illegible] (the "Trust") [illegible] to a general partnership existing under [illegible] the laws of Illinois and has the authority to [illegible] business in the State of Illinois (y) Mortgagor and [illegible] Trustee have the requisite power and authority to execute [illegible] Loan Security Documents and perform the obligations hereunder and thereunder; (z) the transactions contemplated in the Loan Security Documents are and will be in all respects binding obligations of the respective parties thereto in accordance with their respective terms; (aa) all information, reports, papers and data given to Mortgagee with respect to any of the Mortgaged Premises, the Mortgagor, Dayton Ventures and the guarantors is [illegible]. In all material respects necessary or more the information therein not misleading and complete insofar as [illegible] may be necessary to give Mortgagee accurate knowledge of the subject matter, and there has been no material adverse change in any condition or fact stated therein; (ff) no portion of the Mortgaged Premises has been damaged by fire or other casualty which is not now fully restored; (gg) no notice of [illegible] by [illegible] has been received; (hh) no condemnation of any of the Mortgaged Premises has been commenced by Mortgagor, and Mortgagor has no [illegible] that any [illegible] is contemplated; (ii) the proceeds of the Loan [illegible] by the Note have been or will be paid as [illegible] by Mortgagor and will be used solely for the proper purposes; and (jj) the Mortgagor and Dayton Ventures have complied with all the provisions of the Commitment.

[illegible] Invalidity of Provisions. If any term or [illegible] of this Mortgage or the application thereof to any [illegible] or circumstances shall, in any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or the provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this

Mortgage shall be valid and be enforced to the fullest extent permitted by law.

29. Applicable Law. This Mortgage is given as security for real estate situate in the State of Illinois, but the Loan secured hereby shall be deemed made under and governed by the laws of the Commonwealth of Pennsylvania in all respects, including matters of construction, performance and enforcement, but excluding however, principles of conflicts of law, and except to the extent that the procedural laws of the State of Illinois shall apply to any action commenced by Mortgagee in pursuit of a remedy under this Mortgage.

30. Notices. All Notices shall be given to Mortgagor at:

American National Bank and Trust Company of Chicago,
as Trustee under Trust No. 100729-08
33 North LaSalle Street
Chicago, IL 60602

And

Dayton Ventures,
an Illinois General Partnership
c/o Dayton Resources, Ltd.
1959 North Halsted Street
Chicago, IL 60614
Attn: Stephen Ballis, President

and Mortgagee at:

Dollar Bank
Tenth Floor
Three Gateway Center
Pittsburgh, PA 15222
Attention: Vice President, Real Estate Lending

Except as otherwise provided in this Mortgage, all notices hereunder shall be in writing and shall be deemed to have been duly given for all purposes when delivered in person or three (3) days after being deposited in the United States mail, by registered or certified mail, return receipt requested,

Mortgage shall be valid and be enforced to the fullest extent permitted by law.

[illegible] Notices. This Mortgage is given as real estate within the state of Illinois, but if a material breach shall be caused under and governed by the laws of the Commonwealth of Pennsylvania in all respects, including matters of construction, performance and enforcement, and mandatory however, principles of conflicts of law, and except to the extent that the procedural laws of the State of Illinois shall apply to any action commenced by Mortgagee in pursuit of a remedy under this Mortgage.

30. Notices. All Notices shall be given to Mortgagor at:

American National Bank and Trust Company of Chicago,
as Trustee under Trust No. 100729-08
30 North LaSalle Street
Chicago, IL 60602

and

Bryden Associates
an Illinois General Partnership
c/o Lyle [illegible] Associates, Ltd.
[illegible] Hartland Street
Chicago, IL 60613
Attn: Stephen Dillis, President

and Mortgagee at:

Dollis Bank
Fourth Floor
[illegible]
[illegible]
Attention: Vice President, Real Estate Lending

Except as otherwise provided in this Mortgage, all notice hereunder shall be in writing and shall be deemed to have been duly given for all purposes when delivered in person or three (3) days after being deposited in the United States mail, by registered or certified mail, return receipt requested.

postage prepaid, directed to the party to receive the same at its address stated above or at such other address as may be substituted by notice given as herein provided.

31. Captions. The captions appearing in this Mortgage are inserted solely for convenience of reference and shall not constitute a part of this Mortgage, not shall they in any way affect its meaning, construction or effect.

32. Construction. The word "Mortgagor" whenever used herein is intended to and shall be construed to mean American National Bank and Trust Company of Chicago, its successors and assigns. All covenants, promises, agreements, authorizations, waivers, releases, options, undertakings, rights and benefits made or given herein by Mortgagor shall bind Mortgagor as fully as though such entity was specifically named herein whenever the term "Mortgagor" is used. The obligation of each and every party hereto, and also the authority and powers conferred herein, shall inure to the benefit of and bind each and every party hereto its respective successors and assigns.

33. Usury. Nothing herein contained or any transaction related hereto shall be construed or shall so operate either presently or prospectively to require Mortgagor (a) to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to make any payment or do any act contrary to law, but if any clause or provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect. Any interest paid in excess of the lawful rate shall be refunded to Mortgagor. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding under the Note and shall be applied in such

postage prepaid, directed to the party to receive the same at its address stated above or at such other address as may be substituted by [illegible] as herein provided.

[illegible]. Captions. The captions appearing in this Mortgage [illegible] and solely for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

[illegible]. Construction. The word "Mortgagor" whenever used herein is intended to and shall be construed to mean American National Bank and Trust Company of Chicago, its successors and assigns [illegible] all covenants, warranties, agreements, authorizations, authority, rights, powers, waivers, rights and benefits made or given herein by Mortgagor shall bind Mortgagor as fully as though such entity was specifically named herein whenever the word "Mortgagor" is used. The obligation of each and every party hereto, and also the authority and powers conferred herein, shall inure to the benefit of and bind each and every party hereto its successors and assigns.

[illegible]. Usury. Nothing herein contained or any instrument related hereto shall be construed or shall operate either [illegible] to require Mortgagor (a) to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to make any payment or do any act contrary to law, but if any clause or provision herein contained shall [illegible] to operate to invalidate this Mortgage in whole or in part, then such clause and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect. Any interest paid in excess of the lawful rate shall be refunded to Mortgagor. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding under the Note and shall be applied in such

order as Mortgagee may determine. If the excessive amount of interest paid exceeds the sums outstanding under the Note, the portion exceeding the said sums outstanding under the Note shall be refunded in cash by Mortgagee. Any such crediting or refund shall not cure or waive any default by Mortgagor hereunder or under the Note. Mortgagor agrees, however, that in determining whether or not any interest payable under the Note or this Mortgage exceeds the highest rate permitted by law, any non-principal payment (except payments specifically stated in the Note to be "interest"), including without limitation prepayment premiums and late charges, shall be deemed, to the extent permitted by law, to be an expense, fee, premium or penalty rather than interest.

34. Subsidence and Physical Damage to Mortgaged Premises. In case of any subsidence or the threat of such subsidence on the surface or of any physical damage to the Mortgaged Premises, the Mortgagee shall have the right to expend such sums to as in its judgment may be necessary or desirable to protect the Mortgaged Premises from damage by reason thereof and to add the cost and expenses thereof to the unpaid balance of the Loan, and all sums so expended shall bear interest at the interest rate set forth in the Note and shall be secured hereby or, in the alternative, Mortgagee may, in its discretion, declare the indebtedness to be due and payable upon notice to Mortgagor.

35. Further Assurances. At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or refiled, at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, enlarge in accordance with the

[illegible] under as Mortgagee may determine. If the excessive amount of interest paid exceeds the [illegible] outstanding under the Note, the portion exceeding [illegible] outstanding under the Note shall be treated [illegible] by Mortgagee. Any such crediting or refund [illegible] any defaults by Mortgagor hereunder or [illegible] Mortgagor agrees, however, that in determining [illegible] or not any interest payable under the Note or this Mortgage exceeds the highest rate permitted by law, any non-principal payment (except payments specifically stated in the Note to be "interest"), including without limitation prepayment premiums and late charges, shall be deemed, to the extent permitted by law, to be an expense, fee, premium or penalty rather than interest.

14. Subleases and Physical Damage to Mortgaged Property. In event of any abandonment or the threat of such abandonment on the premises or of any physical damage to the Mortgaged Premises, the Mortgagee shall have the right to expend such funds as in its judgment may be necessary or desirable to protect the Mortgaged Premises from damage by reason thereof and to add the cost and expense thereof to the unpaid balance of the Note, and all sums so expended shall bear interest at the [illegible] rate set forth in the Note and shall be secured hereby. [illegible] Mortgagee may, in its discretion, declare the indebtedness to be due and payable upon notice to Mortgagor.

15. Further Assurances. At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and [illegible] be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and re-file or re-record from time to time thereafter to be recorded or filed at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, enlarge or accomplish the

Loan Security Documents or perfect, continue and preserve the obligations of Mortgagor under the Note and this Mortgage or any other Loan Security Document, and the lien of this Mortgage as the first and prior lien upon all of the Mortgaged Premises, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and Attorney-in-Fact of Mortgagor to do so.

36. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intending to be used solely in connection with or with the operation of the Mortgaged Premises or any part thereof.

37. Release of Individual Units: Mortgagee shall release individual townhome units ("Units") comprising the Mortgaged Premises from the lien of this Mortgage, provided that the Mortgagor fully complies with the following provisions:

(a) The Mortgagor, Dayton Ventures or any Guarantors shall not be in default in the performance of the terms, conditions and requirements of the Note, this Mortgage, or any of the other Loan Security Documents.

(b) Mortgagor shall have paid to Mortgagee a release fee (the "Release Fee") for the Unit to be released equal to the net proceeds from the sale. "Net proceeds" shall be defined as the gross sales price of a Unit less reasonable attorney's fees, escrow fees and prorations (including any real estate tax prorations which may be held in escrow by Dayton Ventures), settlement fees, recording fees, title insurance, city, county and state tax stamps, and other reasonable closing costs and

loan Security Documents or policies, continue and preserve the obligations of Mortgagor under the Note and this Mortgage or any other loan Security Documents, and the lien of this Mortgage as a first lien [illegible] on all of the Mortgaged Premises, [illegible] owned or hereafter acquired by Mortgagor. Upon any [illegible] Mortgagor to do so, Mortgagee may pass, execute, record, file, re-record or refile any and all such mortgages, financing statements, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

[illegible]. After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used solely in connection with or with the operation of the Mortgaged Premises or any part thereof.

[illegible]. Rights of Individual Units. Mortgagee shall release individual rentable units ("Units") comprising the Mortgaged Premises from the lien of this Mortgage, provided that the Mortgagor fully complies with the following provisions:

(a) The Mortgagor, Tenant Vacancies or any Guarantors shall not be in default in the performance of the terms, conditions and requirements of the Note, this Mortgage, or any of the other loan Security Documents.

(b) Mortgagor shall have paid to Mortgagee a release [illegible] ("Release Fee") for each Unit to be released equal to the [illegible] from the sale of such Unit. "Net Proceeds" shall be defined as the gross sales price of a Unit less reasonable attorney's fees, [illegible] fees and commissions (including any real estate tax [illegible] which may be held in escrow by Dayton Ventures), [illegible] fees, recording fees, title insurance, city, county and state tax stamps, and other reasonable closing costs and

sales commissions. Upon receipt, if Mortgagor, Dayton Ventures or any Guarantor is not in default hereunder or pursuant to the Note or any other Loan Security Document, the Release Fee shall be applied to reduction of the outstanding principal balance of the Loan. Otherwise, the Release fee shall be applied to accrued interest, principal or other costs due hereunder or pursuant to the Note or any other Loan Security Document in such order as Mortgagee shall in its sole discretion determine. In no event shall the Mortgagor sell a Unit at a price lower than Three Hundred Eighty-Five Thousand Dollars ($385,000.00) without prior written approval of the Mortgagee.

(c) All releases shall be statutory in form, shall be prepared and recorded at the expense of the Mortgagor, and shall be in form and substance satisfactory to Mortgagee.

38. Loan Agreement; Obligatory Advances. The indebtedness secured hereby is to be advanced in connection with the construction of the Improvements upon the Mortgaged Premises pursuant to a Loan Agreement between Mortgagor and Mortgagee dated of even date herewith, the terms and conditions of which are incorporated herein by this reference with the same force and effect as if hereinafter more fully set forth.

It is understood and agreed that this Mortgage covers present and future advances, in the aggregate amounts secured hereby, made by the Mortgagee to or for the benefit of the Mortgagor pursuant to the Loan Agreement of even date herewith between Mortgagor and Mortgagee and that the lien of such future advances shall relate back to the date of this Mortgage.

39. Limited Liability of Mortgagor. This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing

sales commissions. Upon receipt of Mortgagor, Bryson Ventures or any Guarantor is not in default hereunder or pursuant to the Note or any other [illegible] Security Documents, the Release Fee shall be applied [illegible] of the outstanding principal balance of the [illegible]. However, the Release Fee shall be applied to accrued interest, principal or other sums due hereunder if pursuant to [illegible] or any other such Security Documents in such order as [illegible] shall in its sole discretion determine. In no event shall the Mortgagor sell a Unit at a price lower than Three Hundred Eighty-Five Thousand Dollars ($385,000.00) without prior written approval of the Mortgagee.

(c) All rentals shall be structured in form, shall be properly and recorded at the expense of the Mortgagor, and shall be in form and substance satisfactory to Mortgagee.

20. Loan Agreement Security Advances. The promissory notes secured hereby is to be advanced in connection with the construction of the Improvements upon the Mortgaged Premises pursuant to a Loan Agreement between Mortgagor and Mortgagee dated of even date herewith, the terms and conditions of which are incorporated herein by this reference with the same force and effect as if herein set forth more fully set forth.

It is understood and agreed that this Mortgage covers present and future advances, in the aggregate amounts secured hereby, made by the Mortgagee to or for the benefit of the Mortgagor pursuant to the Loan Agreement of even date herewith [illegible] and that the lien of such future advances shall [illegible] back to the date of this Mortgage.

21. Limited Liability of Mortgagor. This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing

herein contained shall be constituted as creating any liability on said American National Bank and Trust Company of Chicago as Trustee as aforesaid, or on said American National Bank and Trust Company of Chicago personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder. Each original and successive holder of this Mortgage accept the same upon the express condition that in case of default in the payment of this Mortgage, or of any installment thereof, the sole remedy against the Mortgagor shall be by foreclosure of the Mortgage given to secure the indebtedness evidenced by this Mortgage in accordance with the terms and provisions of the Mortgage, by enforcement of the Assignment of Leases and Rents with respect to the Mortgaged Premises, or by action to enforce other security given to secure payment of the Loan; provided, however, nothing herein shall limit or otherwise affect the remedies afforded the holder hereof under the terms of the Guaranties of Completion and Payment of the Costs of the Project against the Guarantors or any of them, the Agreements of Guaranty and Suretyship against the Guarantors or any one of them, the Escrow Agreement for Letter of Credit, or any combination of said remedies.

40. <u>Hazardous Materials</u>. Mortgagor does hereby warrant and represent that to the best of its knowledge after due inquiry that there does not exist presently, and there shall not exist after the date of this Mortgage, in, on or around the Mortgaged Premises any hazardous waste, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants as those terms are used in the Resource Conservation Recovery Act, the Comprehensive and Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and the Clean Water Act or any regulations promulgated

herein contained shall be construed as creating any liability on [illegible] and Trust Company of Chicago as Trustee as aforesaid [illegible] to exist American National Bank and Trust Company of [illegible] personally to pay the said Note or any [illegible] interest thereon, or any indebtedness accruing [illegible] to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by the Mortgagee and by every person now or hereafter claiming any right or security hereunder. Each original and successive holder of this Mortgage accept the same upon the express condition that in case of default in the payment of this Note, or of any indebtedness thereof, the sole remedy against the Mortgagor shall be by foreclosure of the Mortgage given to secure the indebtedness evidenced by this Mortgage in accordance with the terms and provisions of the Mortgage, by enforcement of the assignment of leases and rents with respect to the Mortgaged premises, or by action to enforce other security given to secure payment of the loan; provided, however, nothing herein shall limit or otherwise affect the remedies afforded the holder hereof under the terms of the Guarantee of Completion and Payment of the costs of the project executed by the Guarantors or any of them, or judgments or liens and enforcement against the Guarantors or any of them of the Note, the Escrow Agreement for Letter of Credit, or any indemnities or hold harmless.

Hazardous Materials. Mortgagor does hereby warrant and represent that to the best of its knowledge after due inquiry that there does not exist presently, and there shall not at any time during the term of this Mortgage, in, on or around the premises any hazardous or toxic waste, hazardous substance, hazardous waste and, toxic substance, hazardous air pollutants or toxic pollutants as these terms are used in the Resource Conservation Recovery Act, the Comprehensive and Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Clean Air Act, and the Clean Water Act or any regulations promulgated

pursuant thereto or any other applicable federal, state or local law, regulation or ordinance; and that there has not been any seepage, spill, release or discharged of any of the foregoing on or from the Mortgaged Premises and that all representations, warranties and covenants made herein and in any other Loan Security Documents with respect to the presence of any such hazardous waste, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants substances or conditions are true and correct. Further, Mortgagor represents and warrants that there shall not hereafter occur any seepage, spill, release or discharge of any of the foregoing on or from the Mortgaged Premises which is not properly disposed of and made to comply with all applicable federal, state and local laws, regulations or ordinances.

3420231

IN WITNESS WHEREOF, Mortgagor has executed these presents the day and year first above written.

ATTEST:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
as Trustee aforesaid

By: _____

Second Vice President

Second Vice President

3698232

EXHIBIT A

THE EASTERLY 6 FEET OF LOT 71 AND ALL LOTS 72 TO 81 BOTH INCLUSIVE IN CHARLES H. HAPGOOD'S SUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 9 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOT 71

PIN(S): 14-32-400-021 through 030

022 - LOT 72

023 - LOT 73

024 - LOT 74

025 - LOT 75

026 - LOT 76

027 - LOT 77

028 LOT 78 279

029 - LOT 80

3698232

P003407/AGT144
3/29/88

EXHIBIT B

# NOTE

$4,100,000.00

Pittsburgh, Pennsylvania
Dated: March 31, 1988

FOR VALUE RECEIVED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as Trustee for Dayton Ventures, an Illinois General Partnership, pursuant to a certain Trust Agreement dated December 3, 1986, and known as Trust No. 100729-08 (the "Maker"), promises to pay to the order of DOLLAR BANK, FEDERAL SAVINGS BANK (the "Payee"), at its office at Three Gateway Center, Pittsburgh, Pennsylvania 15222, the principal sum of Four Million One Hundred Thousand Dollars ($4,100,000.00) (the "Loan"), or so much of the principal sum as shall have been advanced or re-advanced to or for the account of Maker or Dayton Ventures, under the terms of this Note and the Loan Agreement of even date herewith (the "Loan Agreement"), together with interest from the date or dates of disbursement on the outstanding balances thereof, at the rates and in the installments as hereinafter provided.

## DEFINITIONS:

Agreements of Guaranty and Suretyship - The Agreements of Guaranty and Suretyship executed by the Guarantors of even date herewith by which the Guarantors guarantee and become surety for the prompt and timely payment of certain sums due under this Note.

Assignment of Agreements of Sale and Contract Deposits- The Assignment of even date herewith by which the Maker and Dayton Ventures assign to the Payee the agreements of sale between the Maker and/or Dayton Ventures and the individual

# NOTE

$1,100,000.00 Pittsburgh, Pennsylvania
Dated: March 11, 1989

FOR VALUE RECEIVED, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but solely as Trustee for Dayton Ventures, an Illinois General Partnership, pursuant to a certain Trust Agreement dated December 3, 1984, and known as Trust No. 100729-08 (the "Maker"), promises to pay to the order of DOLLAR BANK, FEDERAL SAVINGS BANK (the "Payee"), at its office at Three Gateway Center, Pittsburgh, Pennsylvania 15222, the principal sum of Four Million One Hundred Thousand Dollars ($4,100,000.00) (the "Loan"), or so much of the principal sum as shall have been advanced or re-advanced to or for the account of Maker or Dayton Ventures, under the terms of this note and the loan agreement of even date herewith (the "Loan Agreement"), together with interest from the date or dates of disbursement on the outstanding balance thereof, at the rates and in the installments hereinafter provided.

## DEFINITIONS:

Acceleration of Guaranty and Suretyship - The Agreements of Guaranty and Suretyship executed by the Guarantors of even date herewith by which the Guarantors guarantee and become surety for the prompt and timely payment of certain sums due under this Note.

Assignment of Agreements of Sale and Contract Deposits - The Assignment of even date herewith by which the Maker and Dayton Ventures assign to the Payee the agreements of sale between the Maker and/or Dayton Ventures and the individual

purchasers of Units comprising the Premises, together with the contract deposits paid thereunder.

Assignment of Construction Contract - The Assignment by Dayton Ventures in favor of Payee of the Construction Contract and agreements, permits and licenses relating to the Premises and the construction, use and operation of the Improvements.

Assignment of Leases and Rents - The Assignment of even date herewith by which Maker and Dayton Ventures assign to Payee the Leases to the Premises and the rents payable thereunder.

Commitment - The letter of commitment to make the Loan from Payee to Dayton Ventures dated _____, as accepted by letter from Dayton Ventures to Payee dated _____.

Escrow Agreement for Letter of Credit - The Escrow Agreement for Letter of Credit executed by Dayton Ventures and Payee of even date herewith.

Guaranties of Completion and Payment of the Costs of the Project - The Guaranties of Completion and Payment of the Costs of the Project executed by the Guarantors of even date herewith.

Guarantors - Stephen Ballis and John L. Kuhn.

Improvements - Twelve (12) townhome residences ("Units") to be constructed upon the Premises in accordance with the Plans and Specifications.

Leases - Any and all written leases, subleases, licenses, concessions, or grants of other possessory interests in

[illegible] units comprising the Premises, together with the [illegible] deposits paid thereunder.

Assignment of Construction Contract - The Assignment by Dayton Ventures in favor of Bayes of the Construction Contract and agreements, permits and licenses relating to the Premises and the construction, use and operation of the Improvements.

Assignment of Leases and Rents - The Assignment of even date herewith by which Xerox and Dayton Ventures assign to Bayes the leases to the Premises and the rents payable thereunder.

Commitment - The letter of commitment to make the loan from Bayes to Dayton Ventures dated _____, as accepted by letter from Dayton Ventures to Bayes dated _____.

Escrow Agreement for Letter of Credit - The Escrow Agreement for letter of credit executed by Dayton Ventures and Bayes of even date herewith.

Guaranties of Completion and Payment of the Costs of the Project - The Guaranties of Completion and Payment of the Costs of the Project executed by the Guarantors of even date herewith.

Guarantors - Stephen Sallis and John L. Kuhn.

Improvements - Twelve (12) townhome residences ("Units") to be constructed upon the Premises in accordance with the Plans and Specifications.

Leases - Any and all written leases, subleases, licenses, concessions, or grants of other possessory interests in