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## WRAP-AROUND MORTGAGE

This Wrap-Around Mortgage ("Mortgage") is made as of this <sup>28<sup>th</sup></sup> day of June, 1990, by COLE TAYLOR BANK, an Illinois banking corporation, not personally, but solely as Trustee, under a Trust Agreement dated October 19, 1989, and known as Trust No. 89-4170 ("Mortgagor"), to KRUPP REALTY LIMITED PARTNERSHIP-IV, a Massachusetts limited partnership ("Mortgagee"), and pertains to the real estate described in Exhibit "A," which is attached hereto and hereby made a part hereof.

### ARTICLE I RECITAL

1.1 Recital. The Mortgagee has made a purchase money loan to the Mortgagor in the principal sum of THREE MILLION THREE HUNDRED FORTY THOUSAND DOLLARS (\$3,340,000.00) evidenced by a Wrap-Around Note ("Note") bearing even date herewith executed by Mortgagor and payable to the order of Mortgagee at its principal office aforesaid in the above stated principal amount, duly delivered to the Mortgagee and drawing interest on the unpaid balance of principal from this date until maturity at the rates set forth in the Note, the interest being payable in installments as set forth in the Note, with the principal balance, and all unpaid and accrued interest due and payable on the fifteenth (15th) day of February, 1994. The indebtedness evidenced by the Note shall be deemed the "Loan".

### ARTICLE II THE GRANT

NOW, THEREFORE, to secure the payment of the principal indebtedness under the Note and interest and premiums, if any, on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor and effect, and to secure the payment of all other sums which may be at any time due and owing or required to be paid under the Note or this Mortgage, and to secure the performance and observance of all the covenants, agreements and provisions contained in this Mortgage, the Note, or any other agreements made in connection with the Loan (collectively the "Loan Documents"), and to secure performance by the Mortgagor and any and all guarantors of the Loan (collectively, the "Borrowers"), under the Loan Documents, and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns forever, the land located in the State of Illinois and legally described in Exhibit "A" attached hereto and made a part hereof ("Premises"), and the following described property, rights and interests (which, together with the Premises, are referred to herein collectively as the "Mortgaged Property"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Premises, and not secondarily:

- (a) all buildings and other improvements of every kind and description now or hereafter situated, erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

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- (b) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks, and alleys adjoining the Premises;
- (c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties, and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise, or license and the reversions and remainders thereof;
- (d) All rents, issues, deposits, royalties, revenues, income and profits accruing and to accrue from the Premises and the avails thereof;
- (e) All fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the aforesaid improvements thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such real estate or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code (the "Code") of the state in which the Premises are located, this Mortgage shall be deemed to be, as well, a security agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as "secured party," as such term is defined in such Code;
- (f) All proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the Premises, or proceeds of any sale, option or

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contract to sell the Premises or any portion thereof; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as credit upon any portion, as selected by Mortgagee, of the Loan, notwithstanding the fact that the same may not be due and payable or that the Loan is otherwise adequately secured; and

- (g) All right, title and interest of Mortgagor in and to any leases now or hereafter on or affecting the Premises, whether oral or written, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect rentals under any lease.

To have and to hold the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

If and when the Borrowers have paid the principal amount of the Note and all interest as provided thereunder, have paid any and all other amounts required under the Loan Documents, and have performed all of the agreements contained in the Loan Documents, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

## ARTICLE III PRIOR NOTE AND PRIOR MORTGAGE

3.1 **Prior Note and Prior Mortgage.** The Mortgaged Property, and the lien of this Mortgage, is subject to that certain Mortgage ("Prior Mortgage") made by Mortgagee to Cohen Financial Corporation, a Delaware corporation ("Prior Mortgagee") dated February 24, 1987, and filed February 27, 1987, as document number LR3594619 with the Registrar of Titles of Cook County, Illinois. The Prior Mortgagee secures that certain promissory note ("Prior Note") of even date with the Prior Mortgage, made by Lender, payable to the order of Prior Mortgagee, in the original principal amount of One Million Five Hundred Thousand (\$1,500,000.00). The Prior Note, the Prior Mortgage and all other instruments or documents securing the Prior Note are sometimes collectively referred to as the "Prior Loan Documents".

3.2 **Prior Lien.** The lien of this Mortgage and the terms and provisions hereof are subject and subordinate to the lien of the Prior Mortgage.

3.3 **Compliance with Prior Loan Documents.** Mortgagor shall fully and timely perform and discharge every agreement, term, covenant, condition, and undertaking on the part of Mortgagee to be performed under the Prior Mortgage, the Prior Note and the Prior Loan Documents, and Mortgagor shall not permit a default or Default (as defined in Article V) to exist under any of the foregoing, provided, however, that Mortgagor shall

not be obligated to pay any sums due under the foregoing documents, that Lender has agreed to pay. Any default under the Prior Note, or the Prior Loan Documents, other than a default caused by Mortgagee's failure to pay the sums that Mortgagee has agreed to pay, shall be a Default under this Mortgage.

**3.4 Payments.** As long as Mortgagor pays Mortgagee when due (i) principal and interest as provided in the Note, and (ii) the insurance premiums, tax reserve and other similar payments provided for in this Mortgage, and no Default has occurred and is then continuing, Mortgagee shall, prior to the maturity of the Prior Note (whether by acceleration or otherwise), pay the sums necessary to meet (i) the regular successive monthly installments of principal and interest due under the terms of the Prior Note, and (ii) the tax reserve, insurance and other similar payments, if any, due under the terms of the Prior Mortgage. Mortgagor hereby waives any right to pay the aforesaid installments of principal and interest and tax reserve, insurance and other similar payments so long as Mortgagee is not in default with respect to the payment thereof. Mortgagee shall have no obligation to make the foregoing payments with respect to the Prior Note or the Prior Mortgage, in the event Mortgagor fails to make its payments due under the Note, Mortgage and Loan Documents.

**3.5 Prepayments.** If Mortgagor prepays all or any portion of the indebtedness evidenced by the Note in accordance with the terms hereof, Mortgagor shall be liable for the payment of any and all prepayment penalties and premiums payable hereunder and under the Prior Loan Documents. If Mortgagor prepays the entire indebtedness secured by the Note in accordance with the terms thereof, Mortgagee shall remit to Prior Mortgagee any and all sums due thereunder. Notwithstanding the foregoing, if at any time during the time hereof Mortgagor is notified that Prior Mortgagee requires a payment of the entire indebtedness secured by the Prior Mortgage due to the occurrence of certain events and caused by Mortgagor, as set forth therein, then Mortgagor shall pay to Mortgagee an amount equal to the amount required by Prior Mortgagee on the date specified by Mortgagee.

**3.6 Insurance and Condemnation.** If the unpaid principal balance of the Prior Note is reduced by the Prior Mortgagee by reason of the application of any insurance proceeds or condemnation awards thereto, Mortgagee's obligation to make payments of principal and interest due under the Prior Note shall be reduced pro tanto in the same manner and amount as the obligation to make any such payments of principal and interest is reduced by the Prior Mortgagee and Mortgagee agrees that the indebtedness secured by the Note shall likewise be reduced as of the date of such application of insurance proceeds or condemnation awards by an amount equal to the amount by which the principal indebtedness evidenced by the Prior Note is so reduced. If Mortgagee receives and retains condemnation or insurance proceeds which are not applied in reduction of the indebtedness evidenced by the Prior Note, the same shall be applied in reduction of the principal balance under the Note except to the extent the same are used to rebuild, repair or restore the Premises or any part thereof.

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**ARTICLE IV  
GENERAL AGREEMENTS**

**4.1 Principal and Interest.** Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner provided in the Note, this Mortgage, or any of the other Loan Documents.

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**4.2 Other Payments.** Mortgagor shall deposit with Mortgagee or a depository designated by Mortgagee, in addition to the monthly installments required by the Note, monthly until the principal indebtedness evidenced by the Note is paid:

- (a) A sum equal to one-twelfth of the last total of all annual taxes and assessments for the last ascertainable year (general and special) ("Taxes") on the Mortgaged Property, all as estimated by Mortgagee, divided by the whole number of months to elapse before the month prior to the date when the Taxes will become due and payable; and
- (b) A sum equal to one hundred five percent (105%) of an installment of the premium or premiums that will become due and payable to renew the insurance as required in Paragraph 4.5 hereof, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration of renewal date or dates of the policy or policies to be renewed.

All such payments described in this Paragraph 4.2 shall be held by Mortgagee or a depository designated by Mortgagee, in trust, without accruing, or without any obligation arising for the payment of, any interest thereon. If the funds so deposited at any time are insufficient to pay, when due, all taxes and premiums as aforesaid, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amount required to pay such items, the excess shall be applied on a subsequent deposit or deposits.

Neither Mortgagee nor any such depository shall be liable for any failure to make such payments of insurance premiums or taxes unless Mortgagor, while not in default hereunder, has requested Mortgagee or such depository, in writing, to make application of such deposits to the payment of particular insurance premiums or taxes, accompanied by the bills for such insurance premiums or taxes; provided, however, that Mortgagee may, at its option, make or cause such depository to make any such application of the aforesaid deposits without any direction or request to do so by Mortgagor.

Notwithstanding anything to the contrary contained herein all sums paid by Mortgagor pursuant to this Paragraph 4.2 shall, at a minimum, be equal to those similar sums required by the Prior Mortgage.

**4.3 Property Taxes.** Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and shall furnish to Mortgagee duplicate receipts therefor within thirty (30) days after payment thereof. Provided, however, that unless any waiver by Mortgagee of the monthly deposits required by Paragraph 4.2(a) and (b) hereof is then in effect, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Paragraph 4.3 or may make such payments on behalf of Mortgagor. Mortgagor may, in good faith and with

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reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

- (a) such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;
- (b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties, or costs; and
- (c) Mortgagor has deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee pursuant to Paragraph 4.2 hereof, is sufficient, in Mortgagee's judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable.

In the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the monies and liquidate any securities deposited with Mortgagee in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount satisfactory to Mortgagee. Provided that Mortgagor and the borrowers are not then in default hereunder or under the Note, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments of that part thereof then unpaid, together with all penalties and interest thereon.

Notwithstanding anything to the contrary contained herein, Mortgagor's right to contest pursuant to this Paragraph 4.3 shall be limited to those rights afforded Mortgagee under the Prior Loan Documents.

**4.4 Tax Payments by Mortgagee.** Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions, or liens that may be asserted against the Property, or any part thereof, and may do so according to any bill, statement, or estimate procured from the appropriate

public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture, or title or claim relating thereto. Mortgagee is further authorized to make or advance, in the place and stead of Mortgagor, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph 4.4, whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph 4.4 shall constitute additional indebtedness secured hereby and shall be repayable by Mortgagor upon demand with interest at the "Default Rate" (as that term is defined in the Note).

4.5 **Insurance.** Mortgagor will insure the Mortgaged Property against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require and shall at a minimum comply with the requirements in the Prior Mortgage, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

- (a) Comprehensive public liability against death, bodily injury and property damage for an amount not less than TWO MILLION DOLLARS (\$2,000,000.00) combined single limit for claims arising from any accident or occurrence in or upon the Mortgaged Property; and
- (b) All risk coverage insurance (including vandalism and malicious mischief) for an amount not less than ninety percent (90%) of the full replacement cost and excess replacement cost of the Mortgaged Property written on a replacement cost and excess replacement cost basis and with a replacement cost endorsement (without depreciation) and an agreed amount endorsement pertaining to the co-insurance clause. If at any time a dispute arises with respect to replacement cost, Mortgagor agrees to provide, at Mortgagor's expense, an insurance appraisal prepared by an insurance appraiser approved by Mortgagee, establishing the full replacement cost in a manner satisfactory to the insurance carrier.
- (c) If the Premises has been designated to be in a special flood hazard area, first and second layer flood insurance when and as available; and
- (d) Rental insurance in an amount equal to the aggregate amount of six (6) months' rental to be paid pursuant to the terms of any lease or leases covering all or part of the Mortgaged Premises; and
- (e) Sprinkler insurance, and boiler and machinery insurance, if applicable; and

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- (f) Such other insurance that may be required from time to time by the Prior Mortgagee.

In the event Mortgagor has not maintained or procured the policies of insurance required above, in addition to all other remedies of Mortgagee hereunder in the event of a Default Mortgagee may, at any time thereafter and in its sole discretion, procure and substitute for any and all of the policies of insurance required above, such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

All Insurance Policies shall be in form, companies and amounts satisfactory to Mortgagee, and the Prior Mortgagee. All Insurance Policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgagee endorsements in favor of and with loss payable to Mortgagee and the Prior Mortgagee, as well as standard waiver of subrogation endorsements, shall provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee and shall provide that no claim shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies premium prepaid to Mortgagee and, in case of Insurance Policies about to expire, Mortgagor will deliver renewal or replacement policies not less than thirty (30) days prior to the date of expiration. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. In the event of foreclosure of the Mortgage or assignment hereof by Mortgagee or transfer of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to the policies then in force shall pass to the Mortgagee, purchaser, grantee or assignee.

In case of loss or damage by fire or other casualty, subject to the rights of the Prior Mortgagee, full power is hereby conferred on Mortgagee to settle and adjust any claim under insurance policies which insure against such risks, after consultation with Mortgagor; provided, however, in the event of a loss by fire or casualty in the amount of \$50,000.00 or less, Mortgagee hereby agrees that Mortgagor shall be entitled to make or file proofs of loss or damage and to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds of any such policies. Mortgagee is authorized to collect and receipt for any such insurance money. Provided such loss or damage does not result in the termination or cancellation of any of the leases of the Mortgaged Property ("Leases"), and provided further that the insurers do not deny liability as to the insureds, and so long as this Mortgage is not in Default, such insurance proceeds after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the rebuilding or restoration of the buildings and improvements on the Mortgaged Property. In all other cases, such insurance proceeds may, at the option of the Mortgagee, be applied in the reduction of the indebtedness secured hereby, whether due or not, or be held by the Mortgagee and used to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Mortgaged Property. In any event, the buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed upon the disbursing party being furnished with satisfactory

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evidence of the estimated cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the disbursing party can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds together with undisbursed interest earned thereon remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and improvements can reasonably exceed the sum of EIGHTY FIVE THOUSAND and NO/100 DOLLARS (\$85,000.00), then the Mortgagee shall reasonably approve plans and specifications of such work before such work shall be commenced. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor for the cost of said rebuilding or restoration, any surplus of such cost of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto and under the conditions that the Mortgagee may require. Such deposits shall bear interest at the money market rate of interest being paid by American National Bank and Trust Company of Chicago changing as and when said interest rate changes during the time that such sums are on deposit with Mortgagee.

Notwithstanding anything to the contrary contained herein, in the event that the Prior Mortgagee makes any insurance proceeds or condemnation awards available to Mortgagor, then Mortgagee hereby agrees that Mortgagor shall be entitled to collect such proceeds and awards, provided that Mortgagor shall use such proceeds and awards for the repair, restoration or rebuilding of the Mortgaged Property.

**4.6 Condemnation and Eminent Domain.** Subject to the Prior Mortgage, any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Mortgaged Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, any improvement located thereon, or any easement thereon or appurtenance thereof (including any award from the United States Government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises, or any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. At Mortgagee's option, any such award may be applied to restoring the improvements, in which event the same shall be paid out in the same manner as is provided with respect to insurance proceeds in Paragraph 3.5.

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**4.7 Maintenance of Property.** Mortgagor shall promptly repair, restore, or rebuild any building or other improvement now or hereafter situated on the Premises that may become damaged or destroyed. Any such building or other improvement shall be so repaired, restored, or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Mortgaged Property or any part thereof; to keep and maintain the Mortgaged Property and every part thereof in good repair and condition; to effect such repairs as Mortgagee may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels, and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

**4.8 Compliance with Laws.** Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees, and other requirements relating to the Mortgaged Property or any part thereof by any federal, state, or local authority; and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions, nonconforming uses, environmental and pollution laws, statutes, ordinances and regulations), privileges, franchises, and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Property.

**4.9 Prohibited Transfers.** Mortgagor covenants and agrees that Mortgagee, at its option, has the unqualified right to accelerate the maturity of the indebtedness evidenced by the Note and secured thereby causing the Outstanding Principal Balance (as defined in the Note) and accrued interest under the Note to become immediately due and payable in full, in the event that any of the following occurs, each of which shall constitute a "Prohibited Transfer":

- (a) Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, or assign the legal or equitable title to all or any portion of the Mortgaged Property, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing;
- (b) The beneficiary of Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, assign or create a security interest in the beneficial interest, or any part thereof, in Mortgagor, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or
- (c) Any general partner of the beneficiary of Mortgagor or any general partner of any partnership which is a general partner of the beneficiary of Mortgagor shall, without the prior written consent of the Mortgagee, sell, transfer, convey, assign or create a security interest in the general partnership interest owned by any such general partner, or any part thereof, whether

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by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

(d) Any shareholder of any corporate general partner of the beneficiary of Mortgagor, or any shareholder of any corporate general partner of any partnership general partner of the beneficiary of the Mortgagor shall, without the prior written consent of the Mortgagee, sell, transfer, convey, assign or create a security interest in the shares owned by such shareholder, or any part thereof; whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing; or

(e) Mortgagor shall, without the prior written consent of Mortgagee, directly or indirectly, create, suffer or permit to be created or filed against the Mortgaged Property, or any portion thereof, or against the rents, issues and profits therefrom (including, without limitation, any lien arising with respect to the payment of taxes, assessments and other charges required by the Loan Documents, any mortgage lien, security interest, or other lien or encumbrance, except the lien of current general taxes duly levied and assessed but not yet due and payable and the lien of this Mortgagor.

The foregoing provisions of this Paragraph 4.9 are for the purpose of:

- (1) protecting Mortgagee's security, both of repayment of the indebtedness secured hereby and the value of the Mortgaged Property;
- (2) giving the Mortgagee the full benefit of its bargain with the beneficiaries of Mortgagor;
- (3) allowing the Mortgagee to raise the interest rate; and
- (4) keeping the Mortgaged Property and the beneficial interest in Mortgagor free of subordinate financing liens or security interests.

Notwithstanding the aforesaid, the sale or dispositions of collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property shall not be deemed a Prohibited Transfer, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by collateral of at least equal value and utility which is subject to the Mortgage with the same priority as with respect to the Obsolete Collateral.

Notwithstanding anything to the contrary contained herein, each of the following shall not be deemed to constitute a "Prohibited Transfer":

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- (a) A sale, conveyance, assignment or other transfer (whether voluntarily, involuntarily or by operation of law) of a limited partnership interest in the partnership which is the beneficiary of Mortgagor.
- (b) A sale, conveyance, assignment, or other transfer (whether voluntarily, involuntarily or by operation of law) of any general partnership interest in any partnership which is a general partner of beneficiary, of any of the shares of any corporate general partner of beneficiary or of any shares of any corporate general partner of any partnership general partner of beneficiary, provided (i) the new general partner of such partnership, general partner or trust of the beneficiary of Mortgagor, the new shareholder of any corporate general partner of the beneficiary of Mortgagor or any corporate general partner of any partnership general partner of the beneficiary of Mortgagor is controlled by Richard Kaplan or Jerome Meyer, or (ii) a general partnership interest of any partnership general partner of beneficiary of Mortgagor is transferred by reason of the bankruptcy, death, incapacity or incompetence of any general partner of the beneficiary of Mortgagor.
- (c) A further encumbrance of the Mortgaged Property or any part thereof, including, without limitation, any financing secured by a junior mortgage or security interest secured by the Mortgaged Property or by the beneficial interest of the beneficiary of Mortgagor or by any general partnership interest of the beneficiary of Mortgagor, provided that any such junior mortgage or security interest is permitted by the Prior Loan Documents.
- (d) Leases for the Mortgaged Property.

Any waiver by Mortgagee of the provisions of this Paragraph 4.9 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

**4.10 Subrogation to Prior Lienholder's Rights.** If the proceeds of the Loan secured hereby, any part thereof, or any amount paid out or advanced by Mortgagee are used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

**4.11 Mortgagee's Dealings with Transferee.** In the event of the sale or transfer, by operation of law, voluntarily, or otherwise, of all or any part of the Mortgaged Property, Mortgagee shall be authorized and empowered to deal with the

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vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its covenants hereunder, specifically including those contained in Paragraph 4.9 hereof, and without waiving Mortgagee's right of acceleration pursuant to Paragraph 4.9 hereof.

**4.12 Stamp Taxes.** If at any time the United States Government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps, levies, or any tax on this Mortgage or on the Note, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Mortgagee, thirty (30) days after the mailing by Mortgagee of notice of such election to Mortgagor, provided, however, that such election shall be unavailing, and this Mortgage and the Notes shall be and remain in effect, if Mortgagor lawfully pays for such stamps or such tax, including interest and penalties thereon, to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and any penalties thereon.

**4.13 Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges, or liens hereby required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. Provided, however, that if, in the opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment, or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, to declare all of the indebtedness secured hereby to become due and payable ninety (90) days from the giving of such notice. Provided, further, that nothing contained in this Paragraph 4.13 shall be construed as obligating Mortgagee to pay any portion of Mortgagor's federal income tax.

**4.14 Inspection of Property.** Mortgagor shall permit Mortgagee and its representatives and agents to inspect the Mortgaged Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable.

**4.15 Acknowledgment of Debt.** Mortgagor and the Borrowers shall furnish from time to time, within fifteen (15) days after Mortgagee's request, a written statement, duly acknowledged, specifying the amount due under the Note and this Mortgage.

**4.16 Other Amounts Secured.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures in addition to any loan proceeds disbursed from time to time, and in addition to any advances pursuant to Paragraphs 4.4, 4.6 and 4.9 hereof, litigation and other expenses pursuant to Paragraphs 5.4 and 5.5

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hereof, and any other amounts as provided herein, the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or paid or incurred by Mortgagee in connection with the loan commitment issued in connection with this transaction, if any, and the other Loan Documents.

**4.17 Assignments of Rents and Leases.** As additional security hereunder, Mortgagor hereby assigns to Mortgagee the rents of the Property, provided the Mortgagor, prior to Default, shall have the right to collect and retain such rents as they become due and payable.

**4.18 Security Instruments.** Mortgagor shall execute, acknowledge, and deliver to Mortgagee, within ten (10) days after request by Mortgagee, a security agreement, financing statements, and any other similar security instrument required by Mortgagee, in form and content satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor that, in the sole opinion of Mortgagee, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Premises are located. Mortgagor shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, certificate, or other document as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend such security instruments. Mortgagor further agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document.

**4.19 Releases.** 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 from the lien created hereby all or any part of the Mortgaged Property, or release from liability any person obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage, or any of the other Loan Documents, including without limitation any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby.

**4.20 Interest Laws.** It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage, or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage, or any of the other Loan Documents, then in such event (a) the provisions of this Paragraph 3.20 shall govern and control; (b) neither Mortgagor nor any of the Borrowers or any Guarantor of the Note shall be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit

against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the rate of interest under the Note shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage, and the other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in the rate of interest; and (e) neither Mortgagor nor any of the Borrowers or the Guarantors of the Note shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

## ARTICLE V DEFAULTS AND REMEDIES

5.1 Defaults. If one or more of the following events (hereinafter called "Defaults") shall occur:

- (a) If any default be made by any party in the due and punctual payment of monies required under the Note (after expiration of any applicable grace period), under this Mortgage or under the Loan Documents, as and when the same is due and payable and any applicable period of grace expressly allowed for the cure of such default in such document shall have expired;
- (b) If any default shall exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Loan hereby secured including, but not limited to, the Loan Documents, in each case after the expiration of any period of grace expressly allowed for the cure of such default in such other document or instrument;
- (c) The occurrence of a Prohibited Transfer;
- (d) If default shall continue for thirty (30) days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein contained, provided, however, that if such default is not capable of being cured within such thirty (30) day period, such period shall be extended to the extent necessary to permit such cure, but not more than sixty (60) days after the expiration of such thirty (30) day period, provided that Mortgagor shall commence such cure within such initial thirty (30) day period and shall thereafter prosecute such cure to completion, diligently and without delay;
- (e) The occurrence of a default of the Prior Mortgage caused by Mortgagee;
- (f) If (and for the purpose of this Subparagraph 5.1(e) only, the term Mortgagor shall mean and include not only Mortgagor, but also the Borrowers, any beneficiary of a trustee Mortgagor, any joint

venturer in a joint venture Mortgagor or in a joint venture which is a beneficiary of a trustee Mortgagor, any owners of stock in a corporate Mortgagor or a corporation which is a joint venturer of the beneficiary of a trustee Mortgagor and each person or entity who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Loan or any of the covenants or agreements contained herein):

- (1) Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect;
- (2) Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
- (3) Within sixty (60) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated;
- (4) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;
- (5) Mortgagor shall be adjudicated a bankrupt;
- (6) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;
- (7) Any order appointing a receiver, trustee or liquidator of Mortgagor or any or a major part of Mortgagor's property or the Premises is not vacated within sixty (60) days following the entry thereof;
- (8) Mortgagor shall die, be adjudicated an incompetent, or shall be dissolved, terminated or merged;

then Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, the Loan hereby secured to be immediately due and payable with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by law or



in equity, or by this Mortgage, the Note, or any other document or instrument regulating, evidencing, securing or guarantying any of the Loan hereby secured.

**5.2 Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Mortgagee may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

**5.3 Mortgagee's Continuing Options.** The failure of Mortgagee to exercise either or both of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Mortgagee's options hereunder nor establish, extend, or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

**5.4 Litigation Expenses.** In any proceedings to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, and the other Loan Documents, or in any other proceeding whatsoever in connection with any of the Loan Documents or any of the Mortgaged Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all reasonable expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including without limitation, attorney's fees, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Mortgaged Property as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including without limitation the fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage, or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor and the Borrowers with interest thereon at the Default Rate.

**5.5 Performance by Mortgagee.** In the event of any Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor or any of the Borrowers in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture

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affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee to protect the Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor and the Borrowers to Mortgagee without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be construed to be a waiver of any right accruing to Mortgagee by reason of any default by Mortgagor.

**5.6 Right of Possession.** In any case in which, under the provisions of this Mortgage or the other Loan Documents, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

- (a) Hold, operate, manage, and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor; and
- (b) Make all necessary or proper repairs and initiate or complete construction, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom.

**5.7 Priority of Payments.** Any rents, revenues, issues, deposits, profits, and avails of the Mortgaged Property received by Mortgagee after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or any of the other Loan Documents, shall be applied in payment of or on account of the following, in such order as Mortgagee or, in case of a receivership, as the court, may determine:

- (a) Operating expenses of the Mortgaged Property (including reasonable compensation to Mortgagee, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also

including sale commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized):

- (b) Taxes, special assessments, and water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;
- (c) Any and all repairs and the initiation or completion of construction, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including without limitation the cost, from time to time, of installing or replacing ranges, refrigerators, and other appliances and other personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Mortgagee or any receiver thereof, make it readily rentable or salable);
- (d) Any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and
- (e) Any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.8 **Receiver.** Upon the filing of any complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, revenues, issues and profits of the Mortgaged Property during the pendency of any foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, revenues, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Mortgaged Property during the whole of any such period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property in payment in whole or in part of: (a) the Loan hereby secured or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale or deficiency.

5.9 **Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

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**5.10 Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 4.4 and 4.5 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Rate; (c) all interest remaining unpaid under the Note; (d) all principal remaining unpaid under the Note; and (e) any overplus to Mortgagor, or its successors or assigns, as their interests and rights may appear.

**5.11 Application of Deposits.** In the event of any Default, Mortgagee may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's or the Borrowers' obligations under the Note, this Mortgage, or any of the other Loan Documents, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purpose for which made hereunder and shall not be subject to the direction or control of Mortgagor.

**5.12 Waiver of Right of Redemption or Other Rights.** To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead any stay, exemption or extension law or any so-called "Moratorium Laws" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property 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 full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

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## ARTICLE VI MISCELLANEOUS

6.1 **Notices.** Any notice that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address hereinbelow set forth, or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered on the date deposited in United States registered or certified mail, return receipt requested, postage prepaid addressed to a party at its address set forth below or such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith or when delivered in person.

(a) If to Mortgagee:

KRUPP REALTY COMPANY  
Harbor Plaza  
470 Atlantic Avenue  
Boston, Massachusetts 02210  
Attn: Operations, Mr. Timothy J. Dunne

with copy to:

ROBBINS, RUBINSTEIN, SALOMON & GREENBLATT, LTD.  
25 East Washington Street, Suite 1000  
Chicago, Illinois 60602  
ATTN: Edward S. Salomon, Esq.

(b) If to Mortgagor:

COLE TAYLOR BANK  
350 East Dundee Road  
Wheeling, Illinois 60090  
Attn: Land Trust Department

with copy to:

LAKEVIEW PLAZA PARTNERS LIMITED PARTNERSHIP  
740 North Rush Street, Suite 600  
Chicago, Illinois 60611  
Attn: Mr. Jerome H. Meyer or  
Mr. Richard Kaplan

with copy to:

GOLDBERG, KOHN, BELL, BLACK  
ROSENBLUM & MORITZ, LTD.  
55 East Monroe Street  
Chicago, Illinois 60606  
Attn.: Wayne S. Gilmartin, Esq.

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**6.2 Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

**6.3 Covenants Run With Land, Successor Owners.** All of the covenants of this Mortgage shall run with the land and be binding on any successor owners of the Premises. In the event that the ownership of the Premises or any portion thereof becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Loan hereby secured in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 4.9 hereof.

**6.4 Governing Law.** This Mortgage shall be governed by the laws of the State of Illinois. To the extent that this Mortgage may operate as a security agreement under the Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein.

**6.5 Rights and Remedies Cumulative.** All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

**6.6 Severability.** If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

**6.7 Non-Waiver.** Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any interested party referred to herein, to or of any breach or default by any other interested party referred to herein, in the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

**6.8 Headings.** The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

**6.9 Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

**6.10 Deed in Trust.** If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a

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similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

**6.11 Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Note or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

**6.12 Trustee's Exculpation.** This Mortgage is executed by the undersigned, 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 said Trustee hereby warrants in its individual capacity that it possesses full power and authority to execute this Mortgage), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, representation, agreement or condition, either express or implied herein contained, or with regard to any warranty contained in this Mortgage except the warranty made in this paragraph. All such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder; provided that nothing herein contained shall be construed in any way so as to limit or restrict any of the rights and remedies of lender in any such foreclosure proceedings or other enforcement of the payment of the indebtedness hereby secured out of and from the security given therefor in the manner provided herein, or construed in any way so as to limit or restrict any of the rights and remedies of Mortgagor under any other document or instrument evidencing, securing or guarantying the indebtedness hereby secured. Notwithstanding any of the foregoing, nothing contained in this paragraph shall be deemed to prejudice any of the rights of the Mortgagee hereof, against any person or entity other than the Trustee (except against the Trustee for the warranty that Trustee possesses full power and authority to execute this Mortgage) (i) for fraud or material misrepresentation in connection with the making of the loan secured by this Mortgage, or similar rights to payment; or (ii) for fraud or material misrepresentation in connection with any warranty or representation given by the Mortgagor (or the beneficiary of the Borrower ("Beneficiary")) in connection with the making of the loan secured by this Mortgage; or (iii) to recover any condemnation or insurance proceeds or other similar funds or payments attributable to the Mortgaged Property which under the terms of this Mortgage securing the Note shall have been paid to the Mortgagee; or (iv) to recover any tenant security deposits, condominium assessments, advance or prepaid rents or other similar sums paid to or held by the Mortgagor or beneficiary; or (v) to recover any gross revenues from the Mortgaged Property received after the occurrence of an event of default which have not been applied as follows: to pay any portion of the indebtedness secured by this Mortgage, to pay any operating and maintenance expenses of the Mortgaged Property, including, without limitation, real estate taxes, and assessments and insurance premiums for the Mortgaged Property or to pay deposits into a reserve for taxes, insurance replacements or other sums required by the Loan Documents.

**6.13** Krupp Realty Limited Partnership-IV agrees to perform the obligations of Mortgagee under this Mortgage and Lender under the Note pursuant to Exhibit "B" attached hereto.

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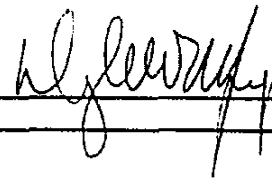
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6.14 Upon written request of Mortgagor, Mortgagee, within fifteen (15) days after its receipt of said request, shall issue an estoppel letter stating the following concerning the Loan Documents: (i) the status of payments; (ii) defaults, if any; (iii) the outstanding balance due under the Note; and (iv) whether or not the Loan Documents have been amended and are in full force and effect.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

COLE TAYLOR BANK, an Illinois banking corporation, not personally, but solely as Trustee, under a Trust Agreement dated October 19, 1989, and known as Trust No. 89-4170

By:  
Its:

  
\_\_\_\_\_  
\_\_\_\_\_  
AUP

ATTEST:

By:  
Its:

  
\_\_\_\_\_  
Trust Officer

Property of Co. County Clerk's Office

3893775



EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 3 ACRES OF THE EAST 1/2 OF THE NORTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS AND ALSO EXCEPT THE EAST 50 FEET THEREOF AND ALSO EXCEPT THAT PART THEREOF BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF THE NORTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 WITH THE EAST LINE OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 THEN RUN WEST ALONG SAID NORTH LINE 50.00 FEET; THEN RUN SOUTH ALONG A LINE 50.00 FEET WEST OF AND PARALLEL WITH SAID EAST LINE BEING THE WEST RIGHT OF WAY LINE OF NORTH ASHLAND AVENUE 33.00 FEET TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF WEST NELSON STREET BEING A LINE 33.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF THE NORTH EAST 1/4 FOR A POINT OF BEGINNING; THENCE CONTINUE SOUTH ALONG SAID WEST RIGHT OF WAY LINE 100.00 FEET; THENCE RUN WEST 100.00 FEET ALONG A LINE 133.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE OF THE SOUTH HALF OF THE SOUTH EAST 1/4 OF THE NORTH EAST 1/4 OF THE NORTH EAST 1/4; THEN RUN NORTH 100.00 FEET ALONG A LINE 150.00 FEET WEST OF AND PARALLEL WITH SAID EAST LINE OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 TO ITS INTERSECTION WITH THE SOUTH RIGHT OF WAY LINE OF WEST NELSON STREET; THEN RUN EAST 100 FEET ALONG SAID RIGHT OF WAY LINE TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Common Address of Property: 3000 North Ashland  
Chicago, Illinois

Permanent Tax Index Number(s): 14-30-216-005 and 15-30-216-006

3893776

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0 3 8 9 3 7 7 6

## EXHIBIT "B"

LAKEVIEW PLAZA PARTNERS LIMITED PARTNERSHIP  
740 North Rush Street, Suite 600  
Chicago, Illinois 60611

Gentlemen,

Reference is made to the "Loan Documents" defined in Article II of this Mortgage. This will confirm that Krupp Realty Limited Partnership-IV, a Massachusetts limited partnership, will perform all of Mortgagee's and Lender's obligations under the Loan Documents.

Very truly yours,

KRUPP REALTY LIMITED PARTNERSHIP-IV, a  
Massachusetts limited partnership

By: The Krupp Corporation, a Massachusetts  
corporation, as General Partner

By:  
Its:

Wesley Williams  
Authorized agent

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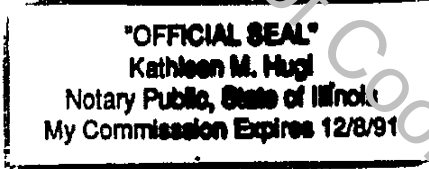
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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

I, the undersigned, a Notary Public, in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that DOUGLAS W. MYERS and DAVID M. TALBOTT, the AVP and TO of RODGE TAYLOR BANK, known to me to be the same person whose names are subscribed to the foregoing instrument as such AVP and TO, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said BANK, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 28<sup>th</sup> day of June, 1990.



Kathleen M. Hugi  
NOTARY PUBLIC

My commission expires: 12/8/91

This instrument was prepared by and after recording return to:

Edward S. Salomon, Esq.  
ROBBINS, RUBINSTEIN, SALOMON & GREENBLATT, LTD.  
25 East Washington Street  
Suite 1000  
Chicago, Illinois 60602

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8  
1453326

IN DUPLICATE

1990 JUL -2 PM 2:52

CAROL MOSELE (23-01)  
REGISTRAR OF TITLES

Submitted by \_\_\_\_\_  
 Address \_\_\_\_\_  
 Premised \_\_\_\_\_  
 Deliver certifi. to \_\_\_\_\_  
 \_\_\_\_\_  
 Address \_\_\_\_\_  
 Deliver duplicate Truc. \_\_\_\_\_  
 Dead to \_\_\_\_\_  
 Address \_\_\_\_\_  
 Notified \_\_\_\_\_  
 GURTOWSKI

COMMONWEALTH LAND TITLE INS. CO.  
 30 N. LaSalle  
 Suite 2900  
 Chicago, Illinois 60602

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Property of Cook County Clerk's Office

Commission Expires 12/31/91  
 State Public, State of Illinois  
 Kathleen M. Hudgins  
 OFFICIAL SEAL