

CONSOLIDATED AND RESTATED MORTGAGE

94031276. THIS CONSOLIDATED AND RESTATED MORTGAGE, made this 13th day of April, 1994, between Northwestern National Life Insurance Company, a Minnesota corporation, whose address is c/o Washington Square Capital, 100 Washington Square, Suite 800, P.O. Box 9402, Minneapolis, Minnesota 55440 ("Mortgagee"), and Lake County Trust Company, an Indiana corporation, whose address is 2200 North Main Street, Crown Point, Indiana 46307 ("LCTC"), not personally but solely as Trustee under Trust Agreements dated May 12, 1984 and known as Trust Nos. 3408, 3409, 3410, 3411, 3412 and 3413 and LCTC, not personally but solely as Trustee under Trust Agreement dated March 24, 1987 and known as Trust 3711, (collectively, "Mortgagor").

Chicago Title Insurance Company

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Mortgagee, as lender, and Mortgagor, as borrower, are parties to (i) a Mortgage dated February 1, 1987, recorded February 26, 1987, as Document No. 903820, as modified by Loan Modification Agreement recorded July 11, 1988, as Document No. 986371 and re-recorded July 12, 1988, as Document No. 986549 (as modified, the "1987 Mortgage"), mortgaging the real estate in Lake County, Indiana, described on Exhibit A hereto (the "Exhibit A Parcel"), as security for a \$3,300,000 Promissory Note dated February 1, 1987 (the "1987 Note") and (ii) a Mortgage dated June 1, 1988, recorded July 11, 1988, as Document No. 986368 and re-recorded July 12, 1988, as Document No. 986547 (the "1988 Mortgage"), mortgaging the real estate in Lake County, Indiana described on Exhibit B hereto (the "Exhibit B Parcel"), as security for a \$1,700,000 Promissory Note dated June 1, 1988 (the "1988 Note").

Concurrently herewith Mortgagee and Mortgagor are entering into a Consolidated and Restated Note (the "Consolidated and Restated Note") whereby the parties are consolidating and restating in their entirety the 1987 Note and the 1988 Note.

By this Consolidated and Restated Mortgage, the parties desire to consolidate and restate the 1987 Mortgage and the 1988 Mortgage as security for the Consolidated and Restated Note.

NOW, THEREFORE, the parties hereto agree as follows:

1. The 1987 Mortgage and the 1988 Mortgage are hereby consolidated and restated in their entirety as follows:

12/1/94
[Signature]

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94031277

For ~~info~~ see doc. #

MORTGAGE
(Indiana Form)

THIS MORTGAGE made this 13th day of April, 1994, by Lake County Trust Company, not personally but solely as Trustee under Trust Agreement dated March 24, 1987 and known as Trust No. 3711, and Lake County Trust Company, not personally but solely as Trustee under Trust Agreements dated May 12, 1984 and known as Trust Nos. 3408, 3409, 3410, 3411, 3412 and 3413, whose address is 2200 North Main Street, Crown Point, Indiana 46307 (collectively, "Mortgagor"), to Northwestern National Life Insurance Company (herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee"), whose address is c/o Washington Square Capital, 100 Washington Square, Suite 800, P.O. Box 9402, Minneapolis, Minnesota 55440.

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the Lake County Recorder

WHEREAS, Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's installment note (herein called the "Note"), dated the date hereof, in the principal sum of Four Million Seven Hundred Thirty One Thousand Five Hundred Fifty One and 42/100 Dollars (\$4,731,551.42), bearing interest at the rate specified therein, due in installments and in any event on April 1, 1999, payable to the order of the Mortgagee, and otherwise in the form of Note attached hereto as Exhibit C and incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, Mortgagor is the owner of the real estate described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, Mortgagor is also the owner of the real estate described in Exhibit B attached hereto and made a part hereof; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as herein or in Note provided, are herein called the "Indebtedness Hereby Secured."

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other

Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the premises and Ten Dollars (\$10) in hand paid by the Mortgagee to the Mortgagor, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby MORTGAGE and WARRANT unto the Mortgagee all and sundry rights, interests and property hereinafter described (all herein together called the "Premises"):

- (a) All of the real estate (herein called the "Real Estate") described in Exhibit A and Exhibit B attached hereto and made a part hereof;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all herein generally called the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all herein generally called "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all herein generally called "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the rents;
- (f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or

interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;

- (g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;
- (i) All right, title and interest of Mortgagor in and to all tangible personal property (herein called "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, including, but not limited to:
- (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
 - (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
 - (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
 - (iv) all window or structural cleaning rigs,

maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, refuse or garbage;

- (v) all lobby and other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes, and other furnishings;
- (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
- (vii) all lamps, chandeliers and other lighting fixtures;
- (viii) all recreational equipment and materials;
- (ix) all office furniture, equipment and supplies;
- (x) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
- (xi) all laundry equipment, including washers and dryers;
- (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate; and
- (xiii) all maintenance supplies and inventories;

provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of tenants of the Premises;

- (j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding, or purchase in lieu thereof, of the

whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards");

- (k) all right, title and interest of Mortgagor under that certain Declaration of Covenants, Conditions, Restrictions and Easements (herein called the "Common Facilities Declaration"), dated September 10, 1984, recorded in the Office of the Recorder of Deeds of Lake County, Indiana as document no. 771818 to subject the Real Estate to the provisions of said Common Facilities Declaration.

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Indiana (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness Hereby Secured;
- (c) Performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 26 hereof;
- (d) Performance by any guarantor of its obligations under any guaranty or other instrument given to further secure the payment of the Indebtedness Hereby Secured or the performance of any obligation secured hereby;

provided that the aggregate of the Indebtedness Hereby Secured shall at no time exceed \$100,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall

be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT IS FURTHER AGREED THAT:

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of and interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor will:

- (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
- (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) Make no material alterations in the Premises, except as required by law or municipal ordinance;
- (g) Suffer or permit no change in the general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;
- (h) Pay when due all operating costs of the Premises;
- (i) Initiate or acquiesce in no zoning, reclassification with respect to the Premises, without the Mortgagee's prior written consent;

- (j): Provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises of sufficient size to accommodate not less than 164 standard-size American-made automobiles, or as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;
- (k) Reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagor and tenants of the Premises and their invitees and licensees;
- (l) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee;
- (m) Cause the Premises at all times to be operated in compliance with all local and municipal laws, statutes, ordinances, rules and regulations, so that no cleanup, claim or other obligation or responsibility arises from a violation of any such laws, statutes, ordinances, rules and regulations;
- (n) From time to time, at the direction of Mortgagee, obtain and furnish to Mortgagee at Mortgagor's expense, an environmental audit or survey from an expert satisfactory to Mortgagor with respect to the Premises; and
- (o) Comply and cause the Premises to comply with all requirements set forth in any environmental audit or survey with respect to the Premises made or obtained by or at the request or direction of Mortgagee, Mortgagor or any federal state or local governmental authority or agency.

3. **Taxes.** The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby

Secured, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein 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 the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. **Insurance Coverage.** The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) Insurance against loss to the Improvements caused by fire, lightning and risks covered by the so-called "Extended Coverage" endorsement, together with "Vandalism", "malicious mischief", "sprinkler leakage" and "all perils" endorsements and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements, plus the cost of debris removal, with full replacement cost endorsement and "agreed amount" endorsement, and "contingent liability from operations of building laws" endorsement;
- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$3,000,000 single limit coverage;
- (c) Rent and rental value insurance (or, at the discretion of Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed (i) all projected annual rents derived from the Premises,

and (ii) all amounts (including, but not limited to, all taxes, assessments, utility charges, operating expenses and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises;

- (d) Broad form boiler and machinery insurance on all equipment and objects customarily covered by such insurance (if any thereof are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the type and in amounts as the Mortgagee may reasonably require, but in any event not less than that customarily carried by persons owning or operating like properties;
- (e) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in subsection (b) above, and (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements;
- (f) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;
- (g) If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so-called "dram shop" or "innkeeper's liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$3,000,000 single limit coverage;
- (h) If the Premises is in an earthquake-prone area, earthquake insurance in an amount equal to the full replacement cost of the Premises plus the cost of debris removal, with full replacement cost endorsement, "agreed amount endorsement", and "contingent liability from operations of building laws" endorsement;
- (i) Such other insurance of the types and in amounts as the Mortgagee may require, but in any event not

less than the types and coverages of insurance customarily carried by persons owning and operating like properties;

and Mortgagor shall at its own expense furnish such insurance appraisals as may be required by mortgagee from time to time (and in any event not less often than once every 5 years) to ascertain the full replacement cost of the Improvements for the purposes of Subsection (a) above.

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) Be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) Contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;
- (d) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee;
- (e) Contain no deductible amount in excess of \$5,000; and
- (f) Provide that any waiver of the insured's subrogation rights shall not void coverage;

and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

6. Deposits for Taxes and Insurance Premiums. In order to assure the payment of Taxes and insurance premiums payable with respect to the Premises as and when the same shall become due and payable:

- (a) The Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Hereby Secured, an amount equal to:

- (i) One-Twelfth (1/12) of the Taxes next to become due upon the Premises; provided that, in the case of the first such deposit, there shall be deposited in addition, an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due; plus
- (ii) One-Twelfth (1/12) of the annual premiums on each policy of insurance upon the Premises; provided that, with the first such deposit there shall be deposited in addition, an amount equal to one-twelfth (1/12) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to, and including the date of deposit;
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- provided that the amount of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable;
- (b) The aggregate of the monthly Tax and Insurance Deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in a single payment each month, to be applied to the following items in the order stated:
- (i) Taxes and insurance premiums;
 - (ii) Indebtedness Hereby Secured other than principal and interest on the Note;
 - (iii) Interest on the Note;
 - (iv) Amortization of the principal balance of the Note.
- (c) The Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the insurance premiums and Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor; provided that (1) if the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and insurance premiums when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any

amount necessary to make up the deficiency, and (ii) if the total of such Deposits exceeds the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items;

- (d) In the event of a default in any of the provisions contained in this Mortgage or in the Note, the Mortgagee may, at its option, without being required so to do, apply any Tax and Insurance Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect, and in such case the Mortgagor will replenish any Tax and Insurance Deposits so applied within 5 days after Mortgagee's demand; provided that when the Indebtedness Hereby Secured has been fully paid, then any remaining Tax and Insurance Deposits shall be paid to the Mortgagor;
- (e) All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor;
- (f) Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes and insurance premiums any amounts deposited as Tax and Insurance Deposits unless the Mortgagor, while no default exists hereunder, and within a reasonable time prior to the due date, shall have requested the Mortgagee in writing, to make application of such Deposits on hand to the payment of the particular Taxes or insurance premiums for the payment of which such Deposits were made, accompanied by the bills therefor;
- (g) All Tax and Insurance Deposits in the hands of Mortgagee shall be held without allowance of interest and need not be kept separate and apart but may be commingled with any funds of the Mortgagee until applied in accordance with the provisions hereof.

7. **Proceeds of Insurance.** The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and

adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Five Thousand Dollars (\$5,000); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, and the insurers do not deny liability to the insureds, then, if none of the Leases are subject to termination on account of such casualty and if no franchise agreements necessary to preserve the economic viability or the fair market value or the cash flow of the Premises are terminated on account of such casualty and if no Event of Default as hereinafter defined shall have occurred and be then continuing, and if there was no Event of Default, whether continuing or not, at the time of occurrence of damage or destruction which resulted in said loss, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;
- (c) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this

Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above), consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided that no premium, or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;

- (e) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee;
- (h) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the Premises damaged or destroyed through any cause.

8. Condemnation. The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises, including damages to grade, and:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking;
- (b) At any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (c) Intentionally deleted;

- (d) Mortgagee shall apply any Award upon the Indebtedness Hereby Secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (e) Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee.

9. **Disbursement of Insurance Proceeds.** In the event the Mortgagor is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements, and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work; and in each case:

- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;
- (b) Funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and
- (c) At all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the

reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. **Prepayment Privilege.** At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayment on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

12. **Effect of Extensions of Time, Amendments on Junior Liens and Others.** Mortgagor covenants and agrees that:

- Document is NOT OFFICIAL!**
This Document is the property of the Lake County Recorder.
- (a) If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release;
- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Note and the Assignment referred to, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

13. **Effect of Changes in Tax Laws.** In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor, provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured and all accrued interest to be due and payable on a date specified in such notice, not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

14. **Mortgagee's Performance of Mortgagor's Obligations.** In case of default therein, the Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

- (a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment;
- (b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes;
- (c) All monies paid for any of the purposes herein

authorized or authorized by any other instrument evidencing or securing the Indebtedness Hereby Secured, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");

(d) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;

(e) The Mortgagee, in making any payment hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof, (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or (iii) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. **Inspection of Premises.** The Mortgagee shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. **Financial Statements.** The Mortgagor will, within ninety (90) days after the end of each fiscal year of the Mortgagor and of each guarantor and each tenant specified by Mortgagee, furnish to the Mortgagee at the place where interest thereon is then payable, financial and operating statements of the Premises and of each guarantor and each such tenant for such fiscal year, all in reasonable detail

and in any event including such itemized statement of receipts and disbursements as shall enable Mortgagee to determine whether any default exists hereunder or under the Note; and in connection therewith:

- (a) Such financial and operating statements shall be prepared in accordance with generally accepted accounting principles consistently applied and certified by an authorized person, partner or officer at the expense of Mortgagor; and
- (b) If the statements furnished shall not be prepared in accordance with generally accepted accounting principles consistently applied, or if Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of the Premises and/or the Mortgagor and of each Guarantor and each such tenant, at Mortgagor's expense, and the costs of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand.

17. **Restrictions on Transfer.** Subject to the provisions of Section 18 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, excepting only sales or other dispositions of Collateral as defined in Section 19 (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;
- (b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;

- (c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage security interest or other encumbrance or alienation of any such shareholder's shares in such corporation; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section 17(c) shall be inapplicable;
- (d) If the Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; or
- (e) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection 17(d) above;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof and otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

18. Permitted Transfers; Partial Releases. The provisions of Section 17 hereof shall not apply to any of the following:

- (a) Liens securing the Indebtedness Hereby Secured;
- (b) The Lien of current real estate taxes and assessments not in default;
- (c) Transfers of the Premises, or part thereof, or interest therein or any beneficial interests, shares of stock, or partnership or joint venture interests, as the case may be, in the Mortgagor, or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.
- (d) Transfers among the limited partners in Beneficiary of limited partnership interests in the Beneficiary or transfers of such limited partnership interests to members of the immediate family of the transferring limited partners or for estate planning purposes, to a trust for the benefit of such family members, provided that in all cases Gerald W. Fogel'son shall remain a limited partner in the Beneficiary with not less than a fifty-one percent interest in the profits and losses of the Beneficiary.
- (e) Mortgagor shall have a one-time right to sell the entire Premises to a third party purchaser subject to this Mortgage and other security for the Note on the following terms:
- (1) Mortgagee shall be given sixty (60) days advance written notice of such requested sale.
 - (2) No default or Event of Default shall exist under this Mortgage.
 - (3) The buyer must be a bona fide third party purchaser unrelated to Mortgagor or its partners.
 - (4) The buyer or its principals shall be acceptable to the Mortgagee in the Mortgagee's exercise of its sole discretion (taking into account management capabilities, experience in ownership of properties of this nature, financial standing, and credit history).
 - (5) The sale may be for cash only to the balance of the Note outstanding with no secondary financing, or seller-retained financing,

unless approved by Mortgagee, which approval Mortgagee shall be under no obligation to give and may withhold in its sole discretion.

- (6) The buyer shall assume all obligations of Mortgagor under the Note, this Mortgage and all other instruments securing the Note, without reference to any limitations on recourse against Mortgagor.
 - (7) Neither the Mortgagor nor any guarantors shall be released from any liability.
 - (8) Mortgagee shall be paid an assumption fee equal to two percent (2%) of the then unpaid principal balance of the Note (before required principal payment in subparagraph 9).
 - (9) The principal amount of the Note shall be prepaid in an amount equal to twenty-five percent (25%) of the principal balance, such prepayment to be without a premium.
 - (10) The buyer must have a net worth of at least three (3) times the outstanding principal balance of the Note and liquid assets of at least the outstanding Note balance or the partners, shareholders or beneficiaries of such buyer must have such a combined net worth and execute a full, unconditional, joint and several guaranty of the Note.
 - (11) If a consent to sale is given by Mortgagee, there shall be no changes in the Note terms except those contemplated in this clause (e).
 - (12) The buyer shall not have any right to sell the Premises or any individual parcels subject to this Mortgage without Mortgagee's prior written consent which may be withheld in Mortgagee's sole discretion.
 - (13) Mortgagor shall reimburse Mortgagee for all reasonable costs and attorney's fees incurred by Mortgagee in connection with the transfer.
 - (14) Mortgagor shall satisfy such additional requirements as Mortgagee may reasonably require.
- (f) Mortgagee will release from the lien of this Mortgage individual buildings in the Premises on the following terms and conditions:

- (1) Mortgagee shall be given sixty (60) days advance written notice of such requested release.
- (2) No default or Event of Default shall exist under this Mortgage.
- (3) Mortgagor shall furnish to Mortgagee written evidence satisfactory to Mortgagee that the portion of the Premises which will remain subject to the lien of this Mortgage after the release (the "Remaining Parcel") i) conforms to all applicable platting, zoning, setback, and other land use control laws, ordinances, regulations and restrictions; ii) is served by adequate water, sewer, gas, electric and other public utilities without need for easement; iii) has adequate access to public roads; and iv) is usable for its intended purpose.
- (4) Mortgagor shall effect a tax division with respect to the released building so that the Remaining Parcel shall be a separate parcel or parcels for the purposes of real estate taxes and assessments, and the payments of all real estate taxes and assessments on all buildings released which might become a lien upon the Remaining Parcel shall be paid or their payment assured to the satisfaction of the Mortgagee.
- (5) Mortgagor shall reimburse Mortgagee for all reasonable costs and attorney's fees incurred by Mortgagee in effecting the release.
- (6) At the time of release, Mortgagor shall prepay, without premium, principal on the Note equal to the greater of (i) the sum of (a) \$952,400 per building for each released building in the Exhibit A Parcel and (b) \$1,150,000 for each released building in the Exhibit B Parcel, and (ii) the aggregate sale price in the sale in which the release is given less any sales commission paid to a bona fide third party broker unrelated to Mortgagor or its partners; provided, however, that such sales commission shall in no event exceed five percent (5%) of the amount of the prepayment. There shall be no reduction in the monthly payment on the Note by reason of the prepayment made with respect to the first building released, and, if the first release includes more than one building, and all buildings do not have the same release price,

the first building, released shall be a building with the highest release price. Using the principal of the Note following application of the release payment attributable to the first building released, Mortgagee shall determine the date on which such principal, together with interest thereon, would be fully amortized if monthly principal and interest payments of \$44,104.27 were made on the first day of the first month following the partial release and the first day of each month thereafter (the "Recalculated Amortization Date"). In connection with the release of the second and any successive building, even if occurring at the same time as the release of the first building, the Monthly Amortizing Payment, as defined in the Note, following the release, shall be reduced to the constant monthly payment which would fully amortize the principal of the Note remaining after the release in question, plus interest thereon, over a period beginning on the first day of the first month following the release and ending on the Recalculated Amortization Date. Mortgagee's calculation of any reduced Monthly Amortizing Payment arising from a release shall be conclusive. No release or any provision of this clause (f) shall extend the Maturity Date of the Note.

- (7) Any minimum parking requirements of the Premises shall continue to be met by parking within the Remaining Parcel.
- (8) Mortgagee shall be paid a release fee of one percent (1%) of the prepaid amount for each building released.
- (9) The release may only be made at the closing of a sale of the building to a bona fide third party purchaser unrelated to Mortgagor or its partners. Such sale shall be a cash only sale with no secondary financing, permitted except that Mortgagor may convey the released parcels on a Contract for Deed or other title retention or deferred payment basis so long as Mortgagee receives in cash the required prepayment.
- (10) Mortgagor shall furnish to Mortgagee an endorsement to the title policy insuring this Mortgage amending the legal description of the insured premises to describe the Remaining Parcel and such other endorsements

as Mortgagee may require.

- (11) Mortgagor shall furnish Mortgagee the written consents to the partial release of any guarantors and any other party obligated or liable for the repayment of the Note.
- (12) Mortgagor shall satisfy such additional requirements as Mortgagee may reasonably require.
- (13) Under no circumstances will Mortgagee be required to permit an assumption of the Mortgage in connection with a partial release.

19. **Uniform Commercial Code.** This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State in which the Premises is located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all herein called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof;
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises;
- (c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Real Estate but will not be affixed to any other real estate;
- (d) The only persons having any interest in the Premises are the Mortgagor, Mortgagee and persons occupying the Premises as tenants only;
- (e) No Financing Statement covering any of the

Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing, or recording such financing statements or other documents, and this instrument, in all public offices whenever filing, or recording, is deemed by the Mortgagee to be necessary or desirable;

- (f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);
- (g) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral, subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations as provided in the Code; provided that (i) the Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises, and (ii) the Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably

convenient to both parties;

- (h) The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor, determined as provided in Section 42 hereof, at least five (5) days before the time of the sale or disposition;
- (i) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects;
- (j) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition;
- (k) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness Hereby Secured remains unsatisfied;
- (l) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. Events of Default. If one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default is made in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default is made in the making

of any payment of any other monies required to be made hereunder or under the Note, and any applicable period of grace specified in the Note shall have elapsed; or

- (b) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing without notice or grace of any kind; or
- (c) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
- (d) If (and for the purpose of this Section 20(d) only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a Trustee Mortgagor and each person who, as guarantor, co-maker or otherwise shall be or become liable for or obligated upon all or any part of the indebtedness hereby secured or any of the covenants or agreements contained herein),
- (i) The Mortgagor shall file a petition in voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or federal, now or hereafter in effect, or
- (ii) The Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or
- (iii) Within sixty (60) days after the filing, against Mortgagor of any involuntary proceedings under such Bankruptcy code or similar law, such proceedings shall not have been vacated or stayed, or
- (iv) The Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the protection, reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
- (v) The 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; or

- (e) If any default shall exist under the provisions of Section 26 hereof, or under the Assignment referred to therein; or
- (f) [Intentionally Omitted]
- (g) If any representation made by or on behalf of Mortgagor or Mortgagor's beneficiary or any partner, general or limited, of Mortgagor's beneficiary or any guarantor of all or any part of the Indebtedness Hereby Secured in connection with the Indebtedness Hereby Secured shall prove untrue in any material respect; or
- (h) If default shall continue for 15 days after notice thereof by Mortgagee to Mortgagor in the due and punctual performance or observance of any other agreement or condition herein or in the Note contained; provided that if such default is not susceptible of cure within such 15-day period, such 15-day period shall be extended to the extent necessary to permit such cure if, but only if, (i) Mortgagor shall commence such cure within such 15-day period and shall thereafter prosecute such cure to completion, diligently and without delay, and (ii) no other Event of Default shall occur; or
- (i) If the Premises shall be abandoned; or
- (j) If any default or event of default shall exist under any of the Loan Documents (as defined in the Note), including without limitation, the Note, the Mortgage and the Assignment, as they may concurrently herewith or hereafter or at any time and from time to time be supplemented or amended, and any applicable grace period shall have elapsed;

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or by law or in equity conferred.

21. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and in connection therewith:

- (a) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and
- (b) All expenditures and expenses of the nature of this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.

22. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. Receiver. Mortgagor consents and agrees that:

- (a) Upon, or at anytime after,, the filing of a complaint to foreclosure this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises;
- (b) Such appointment may be made either before or after sale,, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder, or any holder of the Note may be appointed as such receiver;
- (c) Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and,, in case of a sale and a 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 the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period;
- (d) The court may,, from time to time,, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:
- (i) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax,, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or
 - (ii) The deficiency in case of a sale and deficiency.

24. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

- (a) In the case of foreclosure of this Mortgage, the

court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the purchaser at foreclosure sale may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said Purchaser; and any such foreclosure decree may further provide that in case of a redemption under said decree, as provided by statute such redemtor may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemtor; and

- (b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to 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; and without limiting the foregoing:

- (a) The Mortgagor hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor, acquiring any interest or title to the Premises or beneficial interest in Mortgagor subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of the applicable laws of the State of Indiana.

- (b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
- (c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

26. Assignment. As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment"); dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has assigned to the Mortgagee all of the rents, issues and profits, and/or any and all Leases and/or the rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length, and in connection with the foregoing:

- (a) The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment;
- (b) The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on lessor's part to be performed and observed under any and all Leases to the end that no default on the part of lessor shall exist thereunder; and
- (c) Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of lessor under any Lease; and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which the Mortgagee may or might incur under any Lease or by reason of the Assignment; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Mortgagee in the defense (including preparation for defense) of any claims or demands

therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

27. **Priorities With Respect to Leases.** If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), the Mortgage shall become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide.

28. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

29. **Business Loan.** It is understood and agreed that the loan evidenced by the Note and secured hereby is not a consumer loan within the purview of the Uniform Consumer Credit Code of the State of Indiana (or any substitute, amended, or replacement statutes) and is transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor or, if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor.

30. [Intentionally Omitted].

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

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which

might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand);
- (d) Mortgagor shall pay such Contested Lien and Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagee, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 31(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

32. Indemnification. Mortgagor does hereby covenant and agree that:

- (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;
- (b) No liability shall be asserted or enforced against

Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases any such liability;

- (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking, on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing, or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

33. **Mortgagee Not a Joint Venturer or Partner.** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness Hereby Secured, or otherwise.

34. **Subrogation.** To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagor or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured:

- (a) Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness Hereby Secured; and

(b) Notwithstanding, the release of record of Senior Liens (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendor's Liens, mechanics liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

35. **Title In Mortgagor's Successors.** In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor (a) the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor; and (b) the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 35 contained shall vary or negate the provisions of Section 17 hereof.

36. **Rights Cumulative.** Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing, may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising, otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

37. **Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and (a) wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the Note shall have and enjoy all of the

rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

38. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

39. Waiver of Defense. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

40. Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the contexts requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

41. Commitment. Mortgagor represents and agrees that the Indebtedness Hereby Secured, represented by the Note, represents the proceeds of a loan originally made by Mortgagee to Mortgagor pursuant to a Commitment dated February 17, 1988, as modified and amended by a Commitment dated February 4, 1994, (herein, as amended and together with any Application for Loan referred to therein, being called the "Commitment"); and in connection herewith:

- (a) The Commitment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length;
- (b) If the Commitment runs to any person other than Mortgagor, Mortgagor hereby adopts and ratifies the Commitment and the Application referred to therein as its own act and agreement;
- (c) Mortgagor hereby covenants and agrees to duly and punctually do and perform and observe all of the terms, provisions, covenants and agreements on its part to be done, performed or observed by the Mortgagor pursuant to the Commitment (and the Application forming a part thereof) and further represents that all of the representations and statements of or on behalf of Mortgagor in the Commitment (and the Application forming a part thereof) and in any documents and certificates

delivered pursuant thereto are true and correct except as the same may have been superceded or updated by deliveries made by Mortgagor since February 17, 1988.

42. **Addresses and Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder.

43. **Mortgagor Will Not Discriminate.** Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

44. **Interest at the Default Rate.** Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate.

45. **Time.** Time is of the essence hereof and of the Note, the Assignment and all other instruments delivered in connection with the Indebtedness Hereby Secured.

46. **Governing Law.** This Mortgage shall be construed in accordance with the laws of the State of Indiana.

47. [Intentionally Omitted].

48. **Common Facilities Declaration.** Mortgagor shall not, without the proper written consent of Mortgagee, execute any document which subjects the Real Estate to the provisions of the Common Facilities Declaration, and any such execution, without Mortgagee's consent, shall be null and void and of no force or effect.

49. [Intentionally Omitted].

Mortgage: 2. The following Section 50 is hereby added to the

50. Cash Flow Deposits. Within ten (10) days after the end of each March, June, September and December occurring during the term of the loan secured hereby and until maturity, Mortgagor shall

(a) provide to Mortgagee or its designee a statement in form approved by Mortgagee showing (i) all rents, operating cost contributions from tenants to Mortgagor, and other revenues of any kind or nature received by Mortgagor from the Premises (the "Gross Revenues") during the three month period ending on the immediately preceding March 31, June 30, September 30, or December 31, as the case may be (the "Fiscal Quarter") and (ii) all costs incurred in the operation of the Premises, including, without limitation, real estate taxes, personal property taxes, insurance premiums, brokerage fees, tenant improvement expenses, debt service on the Indebtedness Hereby Secured, management fees, operating costs, deposits pursuant to Section 6 of this Mortgage, and, if approved by Mortgagee, other costs of the Premises which are paid by Mortgagor with respect to the Premises during the immediately preceding Fiscal Quarter (collectively, the "Property Costs"), and

(b) deposit with Mortgagee or its designee an amount equal to the Gross Revenues received during the immediately preceding Fiscal Quarter less the Property Costs paid during the immediately preceding Fiscal Quarter until the amounts deposited by Mortgagor pursuant to this Section 50 (the "Cash Flow Deposits") equal \$100,000 (the "Maximum Balance").

The Cash Flow Deposits shall be held by Mortgagee or its designee without interest. Not more frequently than monthly, Mortgagor may, within five business days after requisition therefor (which requisition shall include invoices or other evidence of the amount required, and upon the request of Mortgagee, such additional specified supporting documentation to establish the type or amount of the Property Costs as Mortgagee or its designee may reasonably require), draw funds from the Cash Flow Deposits to pay for capital improvements, tenant improvements, required payments on the Note and other Property Costs to the extent that there are not funds adequate to pay them from Gross

Revenues as they are received; provided, however, Mortgagee shall not be required to disburse any funds to Mortgagor from the Cash Flow Deposits if (a) at the time there is an uncured Event of Default as defined in this Mortgage or (b) the total amount of Cash Flow Deposits held by Mortgagee is less than \$10,000 (the "Minimum Balance"). If there is an uncured Event of Default as defined in this Mortgage, Mortgagee may apply all or any of the Cash Flow Deposits to amounts payable under the Note and to other Property Costs, as determined by Mortgagee. If at any time the total amount of the Cash Flow Deposits held by Mortgagee is less than the Minimum Balance, Mortgagor shall make Cash Flow Deposits as provided herein until the total amount of the Cash Flow Deposits is once again equal to the Maximum Balance.

Upon payment in full by Mortgagor of the Note and all other amounts secured by this Mortgage, Mortgagee shall distribute any remaining Cash Flow Deposits to Mortgagor.

Mortgage: 3. The following Section 51 is hereby added to the

51. Management Fees; Leasing Fees. (a) If Mortgagor, its beneficiaries or any affiliate of Mortgagor or its beneficiaries, or any party related in any way to Mortgagor or its beneficiaries, acts as property manager or leasing agent for the Premises, (i) any management fee paid to any such party shall not exceed an amount equal to four percent (4%) of all rents received by Mortgagor from the Premises for the month in question, and (ii) any leasing commissions paid to any such party for new leases or for renewals shall not exceed an amount equal to \$2.00 per square foot of the area leased.

(b) If a third party wholly unrelated to Mortgagor or its beneficiaries acts as property manager for the Premises, (i) any management fee paid to such third party shall not exceed an amount equal to five percent (5%) of all rents received by Mortgagor from the Premises for the month in question and (ii) any leasing commissions paid to such third party shall not exceed market rates at the time in question.

4. All references in this Mortgage to the Note shall be to the Consolidated and Restated Note of even date herewith and as it may from time to time be amended or extended. All references in this Mortgage to the Assignment shall be to the Consolidated and Restated Assignment of even date herewith and as it may subsequently be amended or extended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be made as of the day and year first above stated.

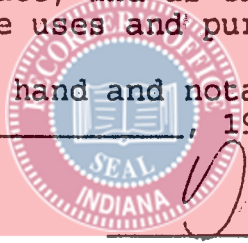
NORTHWESTERN NATIONAL LIFE ^{yes}
INSURANCE COMPANY

By [Signature]
Its [Signature] Authorized Representative

State of Minnesota)
County of Hennepin) SS.:

I, Tracy Trapp, a Notary Public in and for said County in the State aforesaid, do hereby certify that Jack Santolucito the Authorized Representative of Northwestern National Life Insurance Company, a Minnesota corporation, personally known to be to be the same person whose name is subscribed to the foregoing instrument as such Authorized Representative, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as a free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Authorized Representative did also then and there acknowledge that s/he, as custodian for the corporate seal of said corporation, did affix the said instrument as a free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18th day of April, 1994.



[Signature]
Notary Public

My Commission Expires:
7/17/97



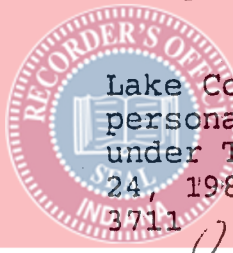
Commission Expiration Date:

[AFFIX NOTARIAL SEAL]

FOR TRUSTEE MORTGAGOR

This Mortgage is executed by Lake County Trust Company, 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 herein contained shall be constituted as creating any liability on said Lake County Trust Company as Trustee as aforesaid, or on said Lake County Trust Company, personally, to pay 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, and that so far as Lake County Trust Company as Trustee as aforesaid, and its successors, and Lake County Trust Company, personally, are concerned, the Mortgagee and the holder or holders of the Note and the owner or owners of the indebtedness accruing hereunder shall look solely to any one or more of (a) the Premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided, or (b) action to enforce the personal liability of any obligor, guarantor or co-maker or (c) enforcement of any other security or collateral securing the Indebtedness Hereby Secured. **SEE BELOW FOR ENVIRONMENTAL EXCULPATORY LANGUAGE*

IN WITNESS WHEREOF, Lake County Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its ~~Vice Presidents or Assistant Vice Presidents~~ Trust Officer ~~and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, all as of the day, month and year first above written.~~



Lake County Trust Company, not personally but solely as Trustee under Trust Agreement dated March 24, 1987 and known as Trust No. 3711

ATTEST:

By:

Elaine M. Worstell

Name: Elaine M. Worstell

~~Vice President~~ Trust Officer

Sandra L. Stiglitz

Name: Sandra L. Stiglitz

Assistant Secretary

Nothing contained herein shall be construed as creating any liability on LAKE COUNTY TRUST COMPANY, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. LAKE COUNTY TRUST COMPANY, personally, is not a "Transferor" under the Act and makes no representation concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

Lake County Trust Company not personally but solely as Trustee under Trust Agreements dated May 12, 1984 and known as Trust Nos. 3408, 3409, 3410, 3411, 3412 and 3413

ATTEST:

By: Elaine M. Worstell
Name: Elaine M. Worstell
~~Vice President~~ Trust Officer

Sandra L. Stiglitz
Name: Sandra L. Stiglitz
Assistant Secretary



**JOINDER
(INDIANA FORM)**

The undersigned, being the owner in the aggregate of One Hundred Per Cent (100%) of the beneficial interest in, and being the sole beneficiary of the Trusts which are the Mortgagor under the foregoing Consolidated and Restated Mortgage, hereby consents to and joins in the foregoing Consolidated and Restated Mortgage, intending hereby to bind any interest it and its respective administrators, successors or assigns may have in the Premises described in the foregoing Consolidated and Restated Mortgage, or any other agreements relating thereto, as fully and with the same effect as if the undersigned were named as the Mortgagor in said Consolidated and Restated Mortgage. Nothing herein contained shall be deemed to render the undersigned liable upon any obligation for payments provided in the foregoing Consolidated and Restated Mortgage.

Dated: April 13th 1994

Park Center Partnership, L.P., an Illinois limited partnership

By: Park Center, Inc., an Illinois corporation, sole general partner

ATTEST: [Signature]
Secretary

By: [Signature]
Name: GERALD W FOGELSON
Title: PRESIDENT



STATE OF Illinois)
COUNTY OF Cook) SS

I, Constance M. Green, a Notary Public in and for the said County in the State aforesaid, do hereby certify that Gerald W. Taylor, President of PARK CENTER, INC., an Illinois Corporation (the "Corporation"), and B.J. Spadix, Secretary of said Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Corporation, as the general partner in Park Center Partnership, L.P., an Illinois limited partnership (the "Partnership"), for the uses and purposes therein set forth; and the said Secretary did also then and there acknowledge that s/he, as custodian for the corporate seal of said Corporation, did affix the said instrument as a free and voluntary act, and as the free and voluntary act of said Corporation, as the general partner in the Partnership, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of April, 1994.

Constance M. Green
Notary Public

My Commission Expires:

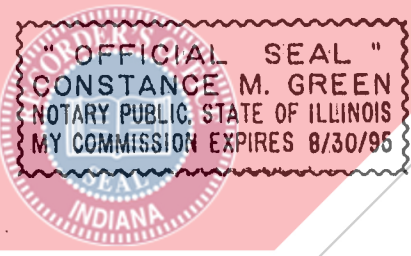


EXHIBIT A

Parcel 1: Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southeast corner of said Unit 1; thence North along the East line of said Unit 1, 221.91 feet to the point of beginning; thence West, 138.78 feet; thence North, 195 feet; thence North 78 degrees, 35 minutes, 52 seconds East, 91.43 feet; thence South 76 degrees, 25 minutes, 48 seconds East, 89.27 feet to said East line; thence South along said East line, 195.80 feet to the point of beginning.

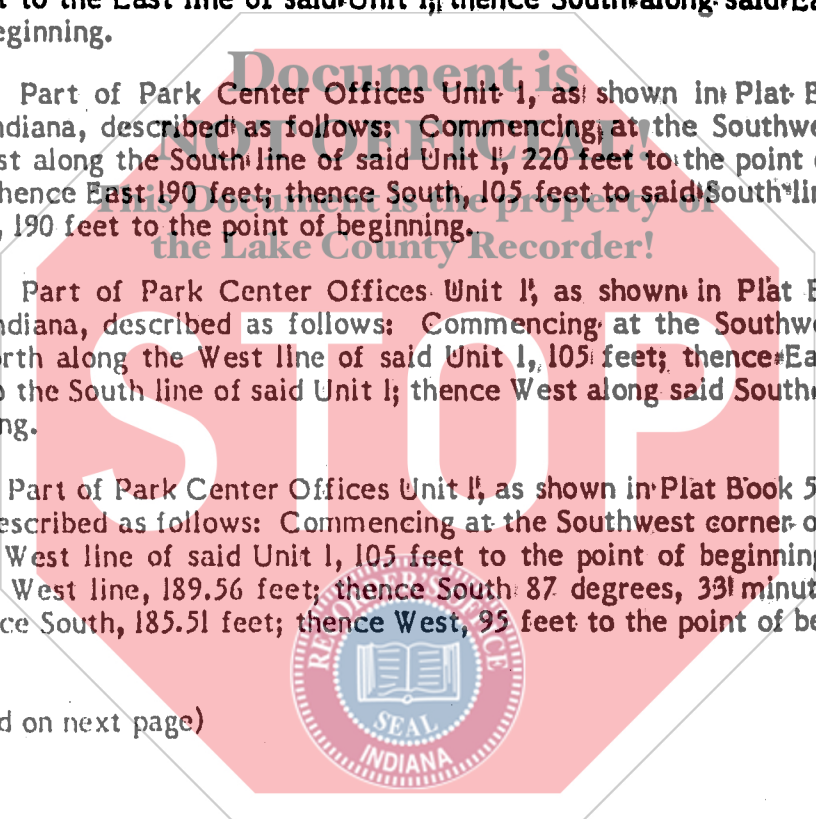
Parcel 2: Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southeast corner of said Unit 1; thence West along the South line of said Unit 1, 110 feet; thence North, 220 feet; thence East, 138.78 feet to the East line of said Unit 1; thence South along said East line, 221.91 feet to the point of beginning.

Parcel 3: Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southwest corner of said Unit 1; thence East along the South line of said Unit 1, 220 feet to the point of beginning; thence North 105 feet; thence East 190 feet; thence South, 105 feet to said South line; thence West along said South line, 190 feet to the point of beginning.

Parcel 4: Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southwest corner of said Unit 1; thence North along the West line of said Unit 1, 105 feet; thence East, 220 feet; thence South 105 feet to the South line of said Unit 1; thence West along said South line, 220 feet to the point of beginning.

Parcel 5: Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southwest corner of said Unit 1; thence North along the West line of said Unit 1, 105 feet to the point of beginning; thence continuing North along said West line, 189.56 feet; thence South 87 degrees, 33 minutes, 38 seconds East, 95.09 feet; thence South, 185.51 feet; thence West, 95 feet to the point of beginning.

(Continued on next page)



Parcel 6: Part of Park Center Offices Unit I, as shown in Plat Book 57, page 40; in Lake County Indiana, described as follows: Commencing at the Northwest corner of said Unit I; thence Easterly and Northeasterly along the Northwesternly line of said Unit I, 559.92 feet; thence Southeasterly along the Northeasterly line of said Unit I, 200.61 feet to the East line of said Unit I; thence South along said East line, 30 feet; thence North 76 degrees 25 minutes 48 seconds West, 89.27 feet; thence South 78 degrees 35 minutes, 52 seconds West, 91.43 feet thence South, 310 feet; thence West, 315 feet; thence North, 185.51 feet; thence North 87 degrees, 33 minutes, 38 seconds West, 95.09 feet to the West line of said Unit I; thence North along said West line, 20.01 feet to the point of beginning.

Parcel 7: Part of the Northeast Quarter of Section 24, Township 35 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana, described as beginning at the Northwest corner of Park Center Offices Unit #1, as shown in Plat Book 57, page 40, in Lake County, Indiana; thence Easterly and Northeasterly along the Northwesternly line of said Unit #1, 559.92 feet; thence Southeasterly along the Northeasterly line of said Unit #1, 200.61 feet to the East line of said Unit I and the Westerly line of Pine Island Drive; thence North 13 degrees 34 minutes 12 seconds East along said Pine Island Drive 12.0 feet; thence North 76 degrees 25 minutes 48 seconds West 89.02 feet; thence Northwesternly along a curve to the right with a radius of 95.6 feet for a distance of 68.05 feet; thence North 35 degrees 38 minutes 48 seconds West 47.0 feet; thence South 54 degrees 21 minutes 12 seconds West 54.04 feet; thence Southwesterly along a curve to the left with a radius of 130.52 feet for a distance of 112.71 feet; thence South 04 degrees 52 minutes 45 seconds West 31.36 feet; thence Southwesterly along a curve to the right with a radius of 82.35 feet for a distance of 125.85 feet; thence North 87 degrees 33 minutes 38 seconds West 239.99 feet; thence South 02 degrees 26 minutes 22 seconds West 12.0 feet to the point of beginning.



EXHIBIT B

PARCEL 1:

Lot 1, Park Center Offices Unit 2, as shown in Plat Book 62, page 49, in Lake County, Indiana.

PARCEL 2: ACCESS EASEMENT (for Parcel 1)

Perpetual, Non-exclusive access easement, appurtenant to Parcel 1, granted to the public for the purpose of ingress and egress upon and along the parcels of land designated and marked as access easements on the plat of Park Center Offices Unit 1 as shown in Plat Book 57, page 40, in Lake County, Indiana, including, without limitation, an access easement 20 feet and 30 feet wide along the southern border of Parcel 1, the center line of which is designated on said plat as "C/L Fountain Drive" and "C/L Commerce Drive".

PARCEL 3: UTILITY EASEMENT (for Phase II)

Perpetual, non-exclusive utility easement, appurtenant to Parcel 1, granted pursuant to Grant of Utility Easement recorded as Document No. 986365, in Lake County, Indiana, with respect to the property known as Park Center Offices Unit 1, a planned unit development of the Town of Schererville shown on the plat recorded in Plat Book 57, page 40, as Document No. 76312.

PARCEL 4: TWELVE-FOOT EASEMENT

Perpetual, Non-exclusive access and utility easement, appurtenant to Parcel 1 and to Parcel 5, Parcel 6, Parcel 7, Parcel 8, Parcel 9 and Parcel 10, granted pursuant to Document recorded as No. 986366, in Lake County, Indiana, for ingress and egress over, under and across, and for a utility easement across, the following described property:

Part of the Northeast Quarter of Section 24, Township 35 North, Range 9 West of the Second Principal Meridian, Lake County, Indiana, described as beginning at the Northwest corner of Park Center Offices Unit No. 1, as shown in Plat Book 57, page 40, in Lake County, Indiana; thence Easterly and Northeasterly along the Northwesternly line of said Unit No. 1, 559.92 feet; thence Southeasterly along the Northeasterly line of said Unit No. 1, 200.61 feet to the East line of said Unit 1 and the Westerly line of Pine Island Drive; thence North 13 degrees 34 minutes 12 seconds East along said Pine Island Drive 12.0 feet; thence North 76 degrees 25 minutes 48 seconds West 89.02 feet; thence Northwesternly along a curve to the right with a radius of 95.6 feet for a distance of 68.05 feet; thence North 35 degrees 38 minutes 48 seconds West 47.0 feet; thence South 54 degrees 21 minutes 12 seconds West 54.04 feet; thence Southwesterly along a curve to the left with a radius of 130.52 feet for a distance of 112.71 feet; thence South 04 degrees 52 minutes 45 seconds West 31.36 feet; thence Southwesterly along a curve to the right with a radius of 82.35 feet for a distance of 125.85 feet; thence North 87 degrees 33 minutes 38 seconds West 239.99 feet; thence South 02 degrees 26 minutes 22 seconds West 12.0 feet to the point of beginning.

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PARCEL 5:

Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southeast corner of said Unit 1; thence North along the East line of said Unit 1, 221.91 feet to the point of beginning; thence West, 138.78 feet; thence North 195 feet; thence North 78 degrees 35 minutes 52 seconds East, 91.43 feet; thence South 76 degrees 25 minutes 48 seconds East, 89.27 feet to said East line; thence South along said East line, 195.80 feet to the point of beginning.

PARCEL 6:

Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southeast corner of said Unit 1; thence West along the South line of said Unit 1, 110 feet; thence North, 220 feet; thence East, 138.78 feet to the East line of said Unit 1; thence South along said East line, 221.91 feet to the point of beginning.

PARCEL 7:

Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southwest corner of said Unit 1, thence East along the South line of said Unit 1, 220 feet to the point of beginning; thence North 105 feet; thence East 190 feet; thence South 105 feet to said South line; thence West along said South line, 190 feet to the point of beginning.

PARCEL 8:

Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southwest corner of said Unit 1; thence North along the West line of said Unit 1, 105 feet; thence East 220 feet; thence South 105 feet to the South line of said Unit 1; thence West along said South line, 220 feet to the point of beginning.

PARCEL 9:

Part of Park Center Offices Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Southwest corner of said Unit 1; thence North along the West line of said Unit 1, 105 feet to the point of beginning; thence continuing North along said West line, 189.56 feet; thence South 87 degrees 33 minutes 38 seconds East, 95.09 feet; thence South 185.51 feet; thence West 95 feet to the point of beginning.

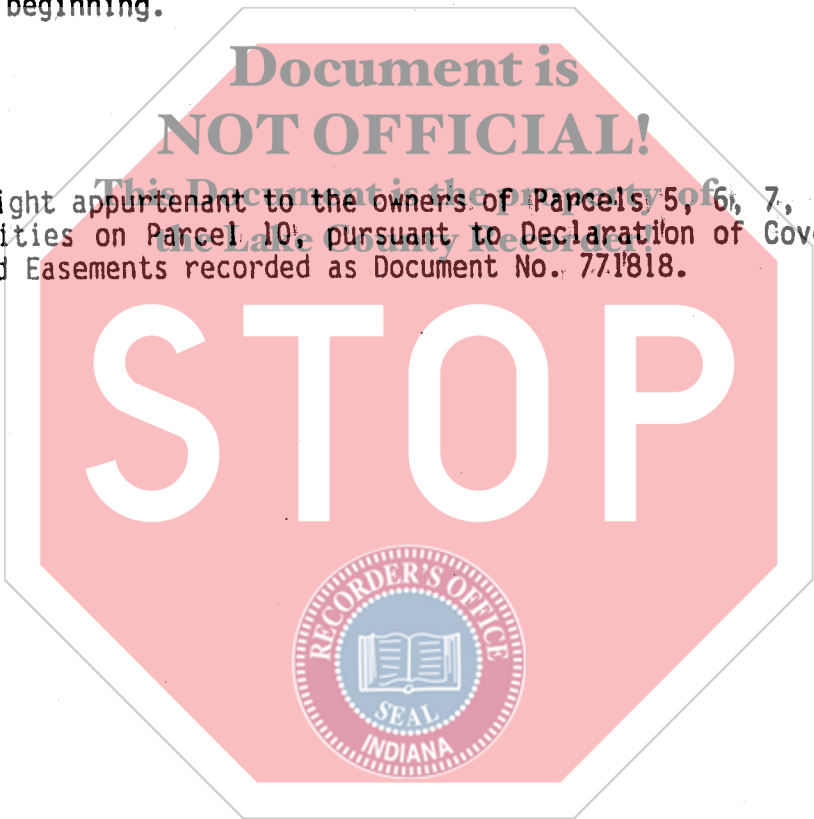
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PARCEL 10:

Part of Park Center Offices, Unit 1, as shown in Plat Book 57, page 40, in Lake County, Indiana, described as follows: Commencing at the Northwest corner of said Unit 1; thence Easterly and Northeasterly along the Northwesterly line of said Unit 1, 559.92 feet; thence Southeasterly along the Northeasterly line of said Unit 1, 200.61 feet to the East line of said Unit 1; thence South along said East line, 30 feet; thence North 76 degrees 25 minutes 48 seconds West, 89.27 feet; thence South 78 degrees 35 minutes 52 seconds West, 91.43 feet thence South, 310 feet; thence West, 315 feet; thence North, 185.51 feet; thence North 87 degrees 33 minutes 38 seconds West, 95.09 feet to the West line of said Unit 1; thence North along said West line, 20.01 feet to the point of beginning.

PARCEL 11:

Non-exclusive right appurtenant to the owners of Parcels 5, 6, 7, 8 and 9 to the use of Common Facilities on Parcel 10 pursuant to Declaration of Covenants, Conditions, Restrictions and Easements recorded as Document No. 771818.



4/11/94

EXHIBIT C

CONSOLIDATED AND RESTATED NOTE
(Northwestern National Life Insurance Company)

THIS CONSOLIDATED AND RESTATED NOTE (this "Note") is made this _____ day of April, 1994 by and among Lake County Trust Company, an Indiana corporation ("LCTC"), as trustee under Trust Agreements dated May 12, 1984 and known as Trust Nos. 3408, 3409, 3410, 3411, 3412 and 3413, and LCTC as trustee under Trust Agreement dated March 24, 1987 and known as Trust 3711 (collectively, "Borrower"), and Northwestern National Life Insurance Company, a Minnesota corporation ("Holder").

RECITALS

Borrower, as maker, previously executed and delivered to Holder, as payee, a \$3,300,000 Promissory Note (the "1987 Note") dated February 1, 1987 and a \$1,700,000 Promissory Note (the "1988 Note") dated June 1, 1988 (collectively, the "Original Notes").

Subject to the terms and provisions hereof, Borrower and Holder have agreed, among other things, to consolidate the Original Notes into one restated note, to extend the maturity date to April 1, 1999, to change the interest rate and to change the amortization and monthly payment amount.

NOW, THEREFORE, in consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Holder hereby agree as follows:

1. The Original Notes are hereby consolidated and restated in their entirety as follows:

\$4,731,551.42

Date: April __, 1994

1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

(a) "Borrower" shall mean Lake County Trust Company, an Indiana corporation, not personally but solely as Trustee under Trust Agreement dated May 12, 1984 and known as Trust Nos. 3408, 3409, 3410, 3411, 3412 and 3413 and not personally but solely as Trustee under Trust Agreement dated March 24, 1987 and known as Trust No. 3711 and shall include its successors and assigns.

(b) "Holder" shall mean Northwestern National Life Company, a Minnesota corporation, and each successive owner and holder of this Note.

(c) "Amortization Commencement Date" shall mean April 1, 1994.

(d) "Loan Amount" shall mean \$4,731,551.42.

(e) "Regular Rate" shall mean an annual rate of interest of 9.5%.

(f) "Default Rate" shall mean an annual interest rate equal to the Regular Rate plus 4%.

(g) "Premises" shall mean certain real property and improvements thereon located in and more fully described in the Mortgage hereinafter referred to.

(h) "Maturity Date" shall mean April 1, 1999.

(i) "Governing State" shall mean Indiana.

(j) "Monthly Amortizing Payment" shall mean \$44,104.27.

(k) "Loan Year" shall mean a period of twelve consecutive months commencing on March 1, 1994 or an anniversary thereof.

and other terms herein defined shall have the meanings as so defined.

2. **Agreement to Pay.** FOR VALUE RECEIVED, Borrower hereby promises to pay to the order of Holder, in the manner provided for herein and in the Mortgage hereinafter referred to, a principal sum equal to the Loan Amount, together with interest upon the balance of principal remaining, from time to time unpaid at the rates provided for in Sections 3 and 5 hereof.

3. **Interest Rate Prior to Default.** Outstanding principal balances hereof prior to default or maturity shall bear interest at the Regular Rate, in each case calculated daily on the basis of a 360-day year for each day, all or any part of the principal balance hereof shall remain outstanding.

4. **Late Charge.** Without limiting the provisions of Section 5 hereof, in the event any installment of interest and/or principal and interest is not paid on the due date thereof, the Borrower promises to pay a late charge of Four PERCENT (4%) of the amount due, to defray the expenses incident to handling any such delayed payment or payments.

5. **Default Rate.** In the event that there shall occur any default specified in Sections 10(a) and/or 10(b) hereof, then and in any such event the entire principal balance hereof and all indebtedness secured by the Mortgage shall thereafter bear interest at the Default Rate; and interest at the Default Rate as provided for in this Section shall be immediately due and payable to Holder and shall constitute additional indebtedness evidenced by this Note and secured by the Loan Documents.

6. **Monthly Payments.** Principal and interest on this Note shall be paid in installments (herein generally called "Monthly Payments") as follows:

(a) On the Amortization Commencement Date, and on the first day of each and every month thereafter to and including the first day of the month preceding the Maturity Date there shall be paid on account of principal and interest hereon at the Regular Rate the Monthly Amortizing Payment;

(b) In all events, the entire principal balance hereof, together with all accrued and unpaid interest thereon, shall be due and payable on the Maturity Date.

THIS IS A BALLOON NOTE and on the Maturity Date a substantial portion of the principal amount of this Note will remain unpaid by the Monthly Payments above required.

7. **Application of Payments.** All payments on account of the indebtedness evidenced hereby shall be applied as follows:

(a) First, to amounts payable to the Holder pursuant to or secured by the Mortgage or other Loan Documents, other than principal and interest upon this Note;

(b) Second, to Late Charges payable pursuant to Section 4 hereof;

(c) Third, to interest on the unpaid principal balance hereof at the applicable rate specified in Sections 3 and 5 hereof; and

(d) The remainder shall be applied to principal;

provided that from and after the occurrence of a default as specified in Sections 10(a) and/or 10(b) hereof, the Holder shall have the right, and shall be authorized, to apply payments made hereunder against any or all amounts payable hereunder or under the Mortgage or any of the Loan Documents, in such order or manner as the Holder may in its sole discretion elect.

8. **Method and Place of Payment.** Payments upon this Note shall be made:

(a) In lawful money of the United States of America which shall be legal tender for public and private debts at the time of payment; and

(b) At such place as the Holder may from time to time in writing appoint, provided that in the absence of such appointment, all payments hereon shall be made at the offices of Mid-North Financial Services, Inc., Suite 202, 205 West Wacker Drive, Chicago, Illinois 60606.

9. **Security.** This Note is the Note referred to in and secured by:

(a) A Consolidated and Restated Mortgage (herein called the "Mortgage") from Borrower, as mortgagor, to the Holder, as mortgagee, bearing even date herewith, encumbering the Premises; and

(b) A Consolidated and Restated Assignment of Rents and Leases (herein called the "Assignment") bearing even date herewith, made by Borrower, as assignor, to Holder, as assignee, assigning to the Holder all of the rents, issues and profits of and from the Premises and the leases thereof;

(this Note, the Mortgage, the Assignment and any commitment, letter of credit agreements, escrow agreement and other agreements in effect with respect to the indebtedness evidenced hereby and other instruments governing, securing or guaranteeing the indebtedness evidenced hereby or at any time delivered to the Holder in connection therewith, being herein generally called the "Loan Documents"); and reference is hereby made to the Loan Documents, which are hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length, for a description of the Premises, a statement of the covenants and agreements of the Borrower, as mortgagor and assignor, a statement of the rights, remedies and security afforded thereby, and all other matters therein contained.

10. **Default and Acceleration.** At the election of the Holder and without notice, the outstanding principal balance hereof, together with accrued interest thereon, shall be and become at once due and payable at the place herein provided for payment:

(a) In the case default shall occur in the payment of principal or interest when due in accordance with the terms and provisions hereof; or

(b) Upon the occurrence of any Event of Default (as such term is defined in the Mortgage) under the Mortgage or the occurrence of any event of default under the other Loan Documents;

whereupon, the Holder may proceed to foreclose the Mortgage, to exercise any other rights and remedies available to the Holder under any of the Loan Documents and to exercise any other rights and remedies against Borrower or the premises or with respect to this note or the other Loan Documents which the Holder may have at law, in equity or otherwise.

11. Prepayment Privilege. Prepayment of the indebtedness evidenced hereby, other than Monthly Payments allocable to principal, may be made only in accordance with the provisions and conditions of this Section 11 and not otherwise:

(a) Prepayment of the outstanding principal balance hereof may be made at any time in whole (but not in part except as otherwise specifically provided herein or in any other Loan Document), provided that any such prepayment shall be subject to and accompanied by a yield maintenance premium (the "Prepayment Premium") equal to (i) the present value on the date of prepayment of all future principal and interest payments including any balloon payments assuming payment in accordance with the repayment terms of the Note, (ii) less the current outstanding principal of the Loan. The interest rate used in calculating the present value shall be the "Treasury Rate" divided by twelve. "Treasury Rate" shall be the yield of actively traded U.S. Government Treasury Securities having a maturity date which is the same as the Maturity Date published as "Treasury Constant Maturities" in Federal Reserve Statistical Release Document H.15 (519) Selected Interest Rates. Yields in Percent Per Annum for the week preceding the date of prepayment (the "Index"). If for any reason such Index is not published, the "Treasury Rate" shall be based on the yields reported in another publication of comparable reliability and institutional acceptance as selected by the Lender in its sole discretion which most closely approximates yields in percent per annum of selected U.S. Treasury securities of varying maturities. If no Treasury Constant Maturities are published for the specific length of time to the Maturity Date, the Index to be utilized shall be the weighted average of the Treasury Constant Maturities published for the two periods most nearly corresponding to the Maturity Date.

(b) During the last 90 days of the last Loan Year, prepayment of the outstanding principal balance hereof made in whole (but not in part) without premium.

(c) Prepayments made out of proceeds of condemnation awards or insurance proceeds may be made at any time without premium.

(d) All prepayments made hereon [except as provided for in Subsection (c) above] may be made only (i) after 60 days prior written notice of Borrower's intention to make the same, such notice to be directed to the Holder hereof at the place where payments hereon are then payable, and (ii) on a regular Monthly Payment date; and all accrued interest hereon and prepayment premiums required hereby shall be paid on the date specified for prepayment.

(e) No partial prepayment hereon made as provided for in Subsection (c) hereof or otherwise provided herein or in the Mortgage or as otherwise accepted by the Holder as a matter of grace [it being agreed that the Holder shall have no obligation to accept any partial prepayment hereof except as set forth in Subsection (c) above and except as specifically set forth in the Mortgage] shall operate to defer or reduce scheduled Monthly Payments provided for in Section 6 hereof, and each and every scheduled Monthly Payment shall be calculated as if no partial prepayment had been made hereon and shall be paid in full when due until this Note shall have been paid in full, provided that such prepayments shall in all events be applied prior to default in accordance with the provisions of Section 7 hereof.

(f) Any default hereunder or under any other Loan Document or any other event causing an acceleration of the Loan shall be considered a voluntary prepayment by the Borrower and the Holder may include the Prepayment Premium in any amount declared due on acceleration of the Note.

12. **Induced Default.** If upon the occurrence of any default specified in Sections 10(a) and/or 10(b) hereof, and following the acceleration of the maturity hereof as herein provided, a tender of payment of the amount necessary to satisfy the indebtedness evidenced hereby is made by Borrower, its successors or assigns, or by anyone on its or their behalf, such tender shall constitute an evasion of the prepayment terms hereof and shall be deemed to be a voluntary prepayment hereunder, and any such prepayment, to the extent permitted by law, will therefore be subject to and include the Prepayment Premium specified in Section 11 hereof, if prepayment is then permitted pursuant to Section 11 hereof, and such Prepayment Premium shall constitute liquidated damages payable to the Holder on account of the Borrower's breach of its agreements hereunder and Borrower's evasion of the prepayment provisions hereof and Holder's loss of bargain.

13. **Business Loan.** Borrower represents that the indebtedness evidenced hereby is not a consumer loan within the purview and intent of the Uniform Consumer Commercial Code of the Governing State.

14. **Costs of Enforcement.** In the event that (i) this Note is placed in the hands of an attorney-at-law for collection after maturity or upon default or to enforce any of the rights, requirements or remedies contained herein or in the other Loan Documents, or (ii) proceedings at law, in equity, or bankruptcy, receivership or other legal proceedings are instituted or threatened in connection herewith or in connection with the Premises or any of the Holder's rights or interests, or (iii) the Holder is made or is threatened with being made a party to any such proceeding, then and in any such event the Borrower hereby agrees to pay within five (5) days after demand all costs of collecting or attempting to collect this Note, or protecting or enforcing such rights, or evaluating, prosecuting or defending any such proceedings, including, without limitation, reasonable attorney's fees (whether or not suit is brought), in addition to all principal, interest and other amounts payable hereunder, all of which shall be secured by the Loan Documents.

15. **Notices.** All notices required or permitted to be given hereunder to Borrower shall be given in the manner and to the place provided in the Mortgage for notices to Mortgagor.

16. **Time.** Time is of the essence of this Note and each of the provisions hereof and of the Mortgage, Assignment and other Loan Documents.

17. **No Usury.** It is the intent of Borrower and Holder to comply with the laws of the Governing State with regard to the rate of interest charged hereunder, and accordingly, notwithstanding any provision to the contrary in this Note, the Mortgage, or any of the Loan Documents, no such provision in any such instrument, including, without limitation any provision of this Note providing for the payment of interest or other charges and any provision of the Loan Documents providing for the payment of interest, fees, costs or other charges, shall require the payment or permit the collection of any amount (herein called "Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use, detention, or forbearance in the collection, of all or any portion of the indebtedness evidenced by this Note; provided that if any Excess Interest is provided for, or is adjudicated as being provided for, in this Note, the Mortgage or any of the Loan Documents, then in such event:

(a) The provisions of this Section shall govern and control;

(b) Borrower shall not be obligated to pay any Excess Interest;

(c) Any Excess Interest that holder may have received hereunder shall, at the option of holder be (i) applied as a credit against the then outstanding principal balance due under this Note, or 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 applicable interest rate or rates shall be automatically subject to the maximum lawful rate allowed to be contracted for in writing under the applicable usury laws of the Governing State as at the date of disbursement of the indebtedness evidenced hereby; and this Note and all other Loan Documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in such interest rate or rates; and

(e) Neither Borrower nor any other person shall have any action or remedy against Holder for any damages whatsoever or any defense to enforcement of any of the Loan Documents arising out of the payment or collection of any Excess Interest.

18. Disbursement. Funds representing the proceeds hereof, which are disbursed by any Holder by mail, wire transfer or other delivery to the Borrower or to escrows or otherwise for the benefit of the Borrower, shall for all purposes be deemed outstanding hereunder and to have been received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such wire transfer, mailing or delivery and until repaid, notwithstanding the fact that such funds may not at any time have been received by the Borrower or applied for its benefit. Funds paid hereunder shall be deemed received on the next business day if not received by 2:00 p.m. local time at the location where payments hereunder are to be made.

19. Waivers. Borrower, each endorser, surety, or guarantor hereof, and any and all others who are now or may become liable for all or part of the obligations of Borrower under this Note or any of the Loan Documents (all of the foregoing being herein collectively called "Obligors") agree to be jointly and severally bound hereby and jointly and severally, and to the fullest extent permitted by law:

(a) Waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness

evidenced by this note or by any extension or renewal hereof;

(b) Waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of the payment hereof or hereunder;

(c) Waive any and all demand, presentment for payment, notice of non-payment, protest and notice of protest, notice of dishonor and all lack of diligence and delays in the enforcement of the payment hereof;

(d) Agree that the liability of each or any Obligor shall be unconditional and without regard to the inability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by Holder to any of them with respect hereto;

(e) Consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by Holder with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and

(f) Consent to the addition of any and all other makers, endorsers, guarantors and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such obligors or security shall not affect the liability of any of the Obligors for the payment hereof.

20. **Holder's Actions.** The remedies of the Holder as provided herein or in any of the Loan Documents shall be cumulative and concurrent, and may be pursued singularly, successively, or together, at the sole discretion of the Holder, and may be exercised as often as occasion therefore shall arise, and in connection therewith:

(a) Failure of the Holder for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date if this Note shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent default;

(b) No act of omission or commission of the Holder, including, specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same and any such waiver or

release may be effected only through a written document executed by the Holder and then only to the extent specifically recited therein;

(c) A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event, similar or dissimilar, or as a bar to any subsequent exercise of the Holder's rights or remedies hereunder; and

(d) Except as otherwise specifically required herein, no notice to Borrower or any other person of the exercise of any right or remedy granted to the Holder by this Note shall be required.

21. **Severability.** The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions hereof unenforceable or invalid.

22. **Captions.** The captions to the Sections of this note are for convenience only and shall not be deemed part of the text of the respective Sections and shall not vary, by implication or otherwise, any of the provisions of this Note.

23. **Governing Law.** This Note shall be governed by the laws of the Governing State.

24. **Exculpation—Land Trust.** This Note is executed by Borrower, as Trustee as aforesaid, and is payable only out of the property specifically described in the Mortgage by the enforcement of the provisions contained in the Loan Documents and out of any other property, securities or guaranties given for the indebtedness evidenced hereby; and accordingly:

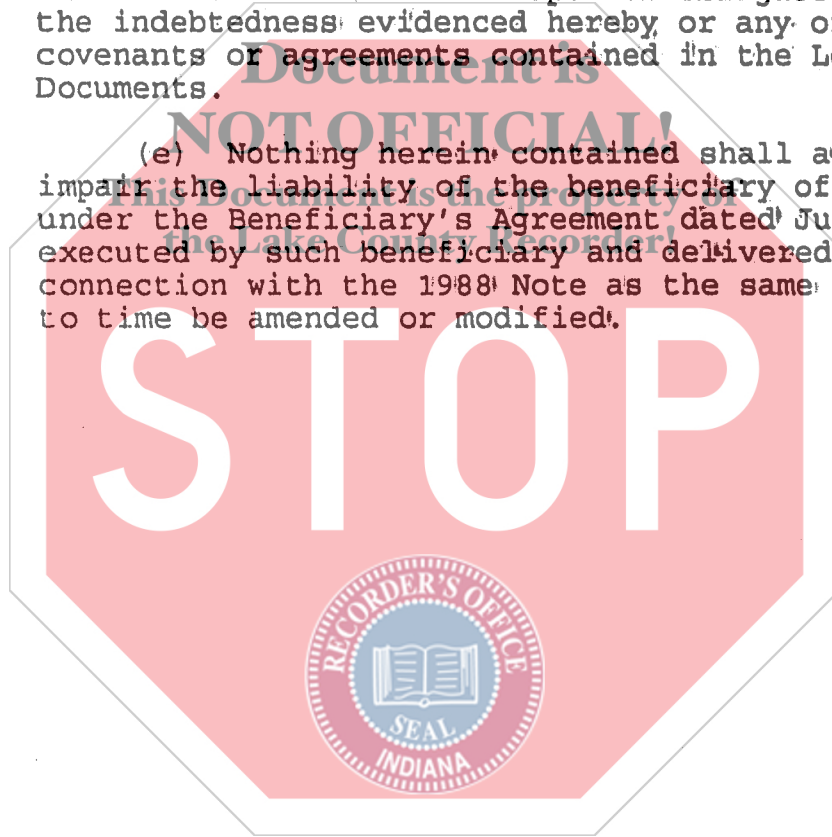
(a) No personal liability shall be asserted or be enforceable against borrower personally or against its successors or assigns because of or in respect of this Note, or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and Holder;

(b) In case of default in the payment of this Note, or any installment thereof, the sole remedies of the Holder shall be (i) foreclosure of the Mortgage in accordance with the terms and provisions in the Mortgage set forth, (ii) enforcement of the Assignment and other Loan Documents, (iii) enforcement of or realization upon any other property and security given for such indebtedness, and/or (iv) enforcement of any obligation or liabilities of the beneficiary or beneficiaries of Borrower under any separate agreement.

(c) Nothing herein contained shall be deemed a waiver by any Holder of any right which such Holder may have pursuant to Sections 506(a), 506(b) 1111 (b) or any other provision of the Bankruptcy Code of the United States to file a claim for the full amount of the indebtedness evidenced hereby or to require that all collateral or security for the indebtedness evidenced hereby shall continue to secure the entire amount of the indebtedness evidenced hereby in accordance with the Loan Documents;

(d) Nothing herein contained shall affect or impair the liability or obligation of any guarantor, co-maker or other person who by separate instrument shall be or become liable upon or obligated for any of the indebtedness evidenced hereby or any of the covenants or agreements contained in the Loan Documents.

(e) Nothing herein contained shall affect or impair the liability of the beneficiary of Borrower under the Beneficiary's Agreement dated June 1, 1988 executed by such beneficiary and delivered to Lender in connection with the 1988 Note as the same may from time to time be amended or modified.



2. The Original Notes are hereby consolidated and restated in their entirety by this Consolidated and Restated Note and as it may from time to time be further amended, modified or extended. All references in this Note to the "Mortgage" shall mean the Consolidated and Restated Mortgage of even date herewith by and between Borrower, as Mortgagor, and Holder, as mortgagee and as it may from time to time be further amended, modified or extended. All references in this Note to the "Assignment" shall mean the Consolidated and Restated Assignment of even date herewith by and between Borrower, as assignor, and Holder, as assignee, and as it may from time to time be further amended, modified or extended. All references in this Note to "Loan Documents" shall mean the Loan Documents as they may from time to time be amended, modified or extended.

3. Borrower acknowledges that, as of the date of this Note, there are no defenses or offsets to this Note, the Mortgage, the Assignment or any other Loan Documents.

IN WITNESS WHEREOF, the undersigned have caused this Note to be duly executed and attested by their corporate officers thereunto duly authorized, all on and as of the day, month and year first above written.



Lake County Trust Company, not personally but as Trustee as aforesaid under Trust Agreement dated May 12, 1984 and known as Trust Nos. 3408, 3409, 3410, 3411, 3412, 3413

By: _____
Name: _____
Title: Vice President

ATTEST:

Name: _____
Title: Assistant Secretary

Lake County Trust Company, not personally but as Trustee as aforesaid under Trust Agreement dated March 24, 1987 and known as Trust No. 3711

By: _____
Name: _____
Title: Vice President

ATTEST:

Name: _____
Title: Assistant Secretary



TRUSTEE SIGNATURE PAGE

State of Indiana)
)
County of Lake) ss.:

I, _____, a Notary Public in
and for said County in the State aforesaid, do hereby certify
that _____ Vice President of _____

_____, and _____ an _____

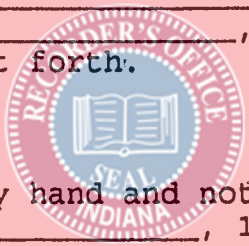
Secretary, of said _____, Assistant
personally known to be to be the same persons whose names are
subscribed to the foregoing instrument as such _____

_____, and Assistant
Secretary, respectively, appeared before me this day in person
and acknowledged that they signed and delivered the said
instrument as their own free and voluntary acts, and as the free
and voluntary act of said _____

_____, as Trustee, for the uses and purposes therein set forth;
and the said Assistant Secretary did also then and there
acknowledge that s/he, as custodian for the corporate seal of
said _____, did affix the said
instrument as a free and voluntary act, and as the free and
voluntary act of said _____

_____, as Trustee, for the uses
and purposes therein set forth.

Given under my hand and notarial seal this _____
day of _____, 19____.



Notary Public

My Commission Expires:

Resident: Lake County, Indiana

NORTHWESTERN NATIONAL LIFE
INSURANCE COMPANY

By _____
Its _____

State of _____)
County of _____)

ss.:

I, _____, a Notary Public in
and for said County in the State aforesaid, do hereby certify
that _____, the
of Northwestern National Life Insurance Company, a Minnesota
corporation, personally known to be to be the same person whose
name is subscribed to the foregoing instrument as such
_____ appeared before me this day in
person and acknowledged that s/he signed and delivered the said
instrument as a free and voluntary act, and as the free and
voluntary act of said corporation, for the uses and purposes
therein set forth; and the said _____ did
also then and there acknowledge that s/he, as custodian for the
corporate seal of said corporation, did affix the said instrument
as a free and voluntary act, and as the free and voluntary act of
said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____
day of _____, 19__.



Notary Public

My Commission Expires:

MRR096A3.WPS