

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MARGARETTE CLEVELAND  
RECORDER

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COMMERCIAL SECOND MORTGAGE,  
SECURITY AGREEMENT  
AND  
ASSIGNMENT OF LEASES AND RENTS

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS, executed this 25th day of January, 1996 by MERCANTILE NATIONAL BANK OF INDIANA, NOT PERSONALLY BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 8, 1994 AND KNOWN AS TRUST NO. 5979 (hereinafter interchangeably referred to as "Mortgagor" or "Borrower"), to U.S. BANK, an Illinois Banking Corporation, (hereinafter interchangeably referred to as "Mortgagee," "Lender" or "Bank").

W I T N E S S E T H:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the sum of FOUR HUNDRED EIGHT THOUSAND AND NO/100 (\$408,000.00) DOLLARS in lawful money of the United States, and has agreed to pay the same, together with interest thereon, which rate of interest may vary from time to time, on or before July 25, 1996 according to the terms and provisions of a certain promissory note dated January 25, 1996 made by Mortgagor to the order of Mortgagee (hereinafter referred to as the "Note"), which Note represents a loan made by Mortgagee to Mortgagor.

TO SECURE TO MORTGAGEE a) the payment of the indebtedness evidenced by the Note, with interest thereon, together with all renewals, extensions, replacements, consolidations and modifications thereof, the terms of which are, by this reference, incorporated herein and made a part hereof; b) the payment of all other sums, with interest thereon, which may hereafter be loaned to Mortgagor, or its successors or assigns, by Mortgagee, when evidenced by a promissory note or notes reciting that it or they are secured by this Mortgage, provided such other sums shall not

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exceed the sum of \$100,000.00; c) the payment of all other sums, with interest thereon, advanced by Mortgagee in accordance herewith to protect the security of this instrument; d) the performance by Mortgagor of the covenants and agreements herein contained; e) performance of Mortgagor's obligations and agreements under any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby and any modification or amendment thereof; all of the foregoing hereinafter referred to as the "Indebtedness" or "Obligations".

MORTGAGOR, for and in consideration of the sums hereinabove set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, convey, warrant and mortgage unto Mortgagee, and its successors and assigns, all that certain tract of land of which Mortgagor is now seized and in possession situate in Lake County, Indiana, and which is more fully described in Exhibit "A" attached hereto and hereby made a part hereof; and Mortgagor hereby grants to Mortgagee, and its successors and assigns a security interest in and a first lien upon certain personal property hereinafter described.

TOGETHER with all the estate, right, title, interest, claim and demand whatsoever which Mortgagor may now have or hereafter acquire in and to the said real property, and every part and parcel thereof; and

TOGETHER with all buildings, structures and other improvements now or hereafter located on the said property or any part or parcel thereof, and all adjacent lands included in enclosures or occupied by buildings located partly on said real property or any part or parcel thereof; and

TOGETHER with all right, title and interest which Mortgagor may now have or hereafter acquire in and to the gas, oil, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on said real property or under or above the same, or any part or parcel thereof; and

TOGETHER with all and singular the tenements, hereditaments, easements and appurtenances thereunto or unto any part thereof now or hereafter belonging or in any wise appertaining, and all streets, sidewalks, alleys, passages, ways, watercourses, (whether open or proposed), and all leasehold estates, easements, rights of way and covenants now existing or hereafter created for the benefit of Mortgagor or any subsequent owner or tenant of said real property, (including all water rights and shares of stock evidencing the same), and all rights to enforce the maintenance thereof, and all other rights, privileges and liberties of whatsoever kind or character, and the reversions and remainders thereof, and all estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of

Mortgagor in and to said real property or any part thereof; and

TOGETHER all right, title and interest that Mortgagor may now have or hereafter acquire in and to all building materials, fixtures, apparatus, building machinery and building equipment located on or adjacent the said real property, (or stored elsewhere), during the course of or in connection with the construction, reconstruction, repair or remodeling of any of the aforesaid buildings, structures or other improvements, all machinery, apparatus, equipment, chattels, fittings and fixtures, whether now or hereafter actually or constructively attached to said property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter referred to collectively as the "Collateral"), now or hereafter located in, upon, on or under said property, or any part thereof, or used or usable in connection with any present or future operation of said property, including, but without limiting the generality of the foregoing, all heating, water heating, air-conditioning, freezing, lighting, incinerating and power apparatus and equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; antennas; wires; cables; transmitters; receivers; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, furnaces, oil burners or units thereof; vacuum cleaning systems; windows; wall beds; attached cabinets; partitions; ducts and compressors; and such other goods, chattels, personal property, fixtures and equipment as are usually found on property of the character hereby conveyed, together with all additions thereto, replacements thereof and substitutions therefor; all of which Collateral shall to the extent permitted by law be considered as annexed to or forming a part of said real property (collectively, the "Personal Property"); and

TOGETHER with all monies and proceeds (hereinafter referred to collectively as the "Proceeds") derived by Mortgagor from said real property, buildings, structures, improvements, Collateral, Contracts (as hereinafter defined) or Rents (as hereinafter defined), including but not limited to all rents, refunds, rebates, tenant reimbursements, condemnation awards and proceeds of the sale of, insurance on or other borrowings secured in whole or in part by any of said real property, buildings, structures, improvements, Collateral, Contracts (as hereinafter defined) or Rents (as hereinafter defined); reserving only the right to Mortgagor (except as otherwise provided herein) to collect the same so long as there is no Event of Default, as hereinafter defined, which shall have occurred and be continuing. In the event that Mortgagee comes into possession of tenant security deposits, Mortgagee agrees to hold and apply said deposits in accordance with applicable law.

TOGETHER with all goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles which Mortgagor may now have or hereafter acquire,

relating to the real property and/or the improvements thereon, and all accounts, contract rights, instruments, chattel paper, and other existing or hereafter acquired rights of Mortgagor for payment of money sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of Mortgagor related to the said real property and/or said improvements;

TOGETHER with all rights of Mortgagor to plans and specifications, designs, surveys, drawings and other matters prepared for any construction on the said real property;

TOGETHER with all rights of Mortgagor under any agreement, contract, understanding or arrangement pursuant to which Mortgagor has, with the consent of Mortgagee, obtained the agreement of any person to pay or disburse any money for Mortgagor's sale (or borrowing on the security) of any property which is mortgaged or in which Mortgagee is given a security interest or any part thereof;

TOGETHER with all other property or rights of Mortgagor of any kind or character, including any permits and governmental approvals or soil reports and environmental studies related to the said property and/or the improvements thereon and all proceeds and products of the foregoing.

Mortgagor hereby warrants and represents to Mortgagee that Mortgagor has good title to the above-described property (all of which property, both real and personal, being herein referred to collectively as the "Premises"), is lawfully seized and possessed of the Premises, and every part thereof, and has the right to grant, bargain, sell, convey, mortgage and warrant the same; and that the premises are free and clear of all liens, and encumbrances, subject only to the matters set forth in Exhibit "B" attached hereto and hereby made a part hereof.

Mortgagor hereby sells, assigns, sets over and transfers to Mortgagee all Mortgagor's interest in and to any and all leases, tenant contracts and rental agreements and other contracts, licenses and permits (all of which are sometimes hereinafter referred to as the "Contracts") now or hereafter affecting or in any manner relating to the Premises, or any part thereof, together with Mortgagor's right and power to cancel, accept the surrender of or modify any of the terms thereof without Mortgagee's prior written consent. Mortgagor agrees to execute and deliver such other instruments as Mortgagee may require evidencing the assignment of the Contracts.

Mortgagor hereby sells, assigns, sets over and transfers to Mortgagee all of the rents, tenant reimbursements, issues and profits which shall hereafter become due or be paid for the use of the Premises or any part thereof, all rents, tenant reimbursements, issues and profits arising under the Contracts or any thereof, and

all unrefunded security, pet and other deposits (hereinafter referred to as the "Deposits") paid to anyone in connection with the occupancy of the Premises or any part thereof (all of which are sometimes hereinafter referred to as the "Rents"), reserving to Mortgagor a license to collect the Rents and to hold the Deposits only so long as there is no Event of Default, as hereinafter defined, which shall have occurred and be continuing, said license to be revocable immediately upon notice to Mortgagor. Mortgagor agrees to execute and deliver such other instruments as Mortgagee may require evidencing the assignment of the Rents.

Mortgagor hereby transfers, assigns and conveys to Mortgagee, as security for the Indebtedness, any and all balances, credits, deposits, accounts, items and moneys of Mortgagor now or hereafter in the possession or control of or otherwise with Mortgagee, and Mortgagee is hereby given a lien upon, security title to, and a security interest in all property of Mortgagor of every kind and description now or hereafter in the possession or control of Mortgagee for any reason, including all dividends and distributions on or other rights in connection therewith. Upon the occurrence of an Event of Default, Mortgagee may, without notice or demand of any kind, at any time and from time to time, when any amount shall be due and payable under the Note, or this Mortgage, appropriate or apply toward the payment of such amount, and in such order of application as Mortgagee may from time to time elect, any property, balances, credits, deposits, accounts, items or moneys of Mortgagor in the possession or control of Mortgagee for any purpose.

AND MORTGAGOR FURTHER COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

#### I. COVENANTS OF MORTGAGOR

1.01 **Payment of Indebtedness.** Mortgagor shall pay to Mortgagee the Indebtedness when due. Mortgagor shall have no right of offset whatsoever with regard to any payment of the Indebtedness.

1.02 **Taxes, Liens, Charges and Expenses.** In the event the holder of a first Mortgage does not require a Tax and Insurance Escrow, Mortgagor, at the option of Mortgagee, shall pay to Mortgagee on the day monthly installments of principal or interest are payable under the Note (or on another day designated in writing by Mortgagee), until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Premises, (b) the yearly ground rents, if any, (c) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Premises as Mortgagee may require pursuant to paragraph 1.03 hereof, (d) the yearly premium installments for mortgage insurance, if any, and (e) if this Mortgage is on a leasehold, the yearly fixed rents, if any,

under the ground lease, all as reasonably estimated initially and from time to time by Mortgagee on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Mortgagee of a requirement that Mortgagor pay such Funds may be revoked by Mortgagee, in Mortgagee's sole discretion, at any time upon notice in writing to Mortgagor. Mortgagee may require Mortgagor to pay to Mortgagee, in advance, such other Funds for taxes, charges, premiums, assessments and impositions in connection with Mortgagor or the Premises which Mortgagee shall reasonably deem necessary to protect Mortgagee's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Mortgagee may require Funds for Other Impositions to be paid by Mortgagor in a lump sum or in periodic installments, at Mortgagee's option.

The Funds shall be held in an institution(s) the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Mortgagee if Mortgagee is such an institution). Mortgagee shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Mortgagor is not in breach of any covenant or agreement of Mortgagor in this Mortgage. Mortgagee shall make no charge for so holding and applying the Funds, analyzing said account or for verifying and compiling said assessments and bills, unless Mortgagee pays Mortgagor interest earnings or profits on the Funds and applicable law permits Mortgagee to make such a charge. Mortgagor and Mortgagee may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Mortgagor, and unless such agreement is made or applicable law requires interest, earnings or profits to be paid, Mortgagee shall not be required to pay Mortgagor any interest, earnings or profits on the Funds. Mortgagee shall give to Mortgagor, without charge, an annual accounting of the Funds in Mortgagee's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Mortgagee at the time of the annual accounting thereof shall exceed the amount deemed necessary by Mortgagee to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Mortgagor on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Mortgagee shall be less than the amount deemed necessary by Mortgagee to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency within thirty days after notice from Mortgagee to Mortgagor requesting payment thereof.

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, Mortgagee may apply, in any amount and

in any order as Mortgagee shall determine in Mortgagee's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Mortgage. Upon payment in full of all sums secured by this Mortgage, Mortgagee shall promptly refund to Mortgagor any Funds held by Mortgagee.

1.03 Insurance. Mortgagor shall keep the Premises and the interests and liabilities incident to the ownership, possession and operation thereof insured for the benefit of Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and against all other such risks and perils as Mortgagee may from time to time designate; provided, however, that the amount of such insurance shall not be less than an amount equal to the unpaid principal balance of the Indebtedness. All such insurance shall include (without limitation) rental insurance, business interruption insurance, worker's compensation insurance and boiler and machinery insurance, shall be in such amounts, shall be evidenced by such policies (both as to form and content), shall be governed by such terms and conditions (including without limitation provisions prohibiting the cancellation or material modification thereof without providing Mortgagee at least thirty (30) days' prior written notice), shall provide coverage for a period not less than one year, shall have such expiration dates, and shall be issued by such companies licensed to do business in the State of Illinois, all as are approved by Mortgagee. All insurance policies shall be held by and, to the extent of its interests, shall be for the benefit of and first payable in the case of loss, without contribution, to Mortgagee pursuant to a mortgagee clause satisfactory to Mortgagee. Mortgagor shall provide Mortgagee written evidence of the timely payment in advance of all premiums for such policies. Mortgagor shall deliver to Mortgagee a new policy, together with written evidence of the payment of the premium therefore, as a replacement for any expiring policy at least thirty (30) days before the date of such expiration. Mortgagor does hereby transfer and assign to Mortgagee all such insurance policies, and the proceeds thereof, and in the event of a loss, the proceeds collected may, at the option of Mortgagee, be used in any one or more of the following ways: (i) apply the same or any part thereof upon the Indebtedness, whether the Indebtedness or any part thereof be then matured or unmatured; (ii) use the same or any part thereof to fulfill any of the covenants and agreements of Mortgagor hereunder as Mortgagee may determine; (iii) pay the same or any part thereof to Mortgagor for the purpose of replacing, restoring or altering the Premises to a condition satisfactory to Mortgagee; or (iv) release the same to Mortgagor. With respect to rental insurance, the proceeds thereof received by Mortgagor shall be held and applied by Mortgagee, in Mortgagee's discretion, to obligations of Mortgagor under the Note, this Mortgage and/or any other agreement, instrument or document now or hereafter

evidencing, securing or otherwise relating to the Indebtedness, until restoration of the improvements damaged or destroyed shall have been completed satisfactorily to Mortgagee, at which time, provided that no Event of Default (or any event or condition which after notice, lapse of time or otherwise might become an Event of Default) has occurred and is continuing and there is no denial of liability to a named insured, the remaining balance of such proceeds shall be paid over to Mortgagor. Any proceeds applied to the Indebtedness shall be applied, at the option of Mortgagee, to the last installment or installments of principal coming due under the Note. Mortgagee is hereby irrevocably appointed by Mortgagor as attorney in fact of Mortgagor to assign any such policy, without accounting to Mortgagor for any unearned premium thereon, in the event of the foreclosure of this Mortgage or a conveyance in lieu of any such foreclosure.

#### 1.04 Care of Premises.

(a) Notwithstanding any other provision of this Mortgage, Mortgagor shall keep the Premises protected and in good order, repair and condition at all times, promptly replacing, repairing or restoring any part thereof which may become damaged, destroyed, lost or unsuitable for use. In the event the Premises or any part thereof is damaged or destroyed by fire or other casualty, Mortgagor shall immediately notify Mortgagee, in writing, of such damage or destruction.

(b) Mortgagor shall not remove, demolish, destroy or alter the Premises, or any portion thereof, without the prior written consent of Mortgagee.

(c) Mortgagor shall not commit or suffer any strip or waste of the Premises.

(d) Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(e) Mortgagor shall not cause or permit anything to be done which would or could increase the risk of fire or other hazard to the Premises, or any part thereof, or which would or could result in an increase in any insurance premiums payable with respect to the Premises, or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(f) Mortgagor shall timely keep and perform all agreements and covenants required to be kept and performed pursuant to any and all leases and other instruments creating Mortgagor's interest in or defining Mortgagor's rights with respect to the Premises or any part therefor.



**1.05 Performance by Mortgagee.** In the event that Mortgagor fails to observe or perform any of Mortgagor's obligations or covenants set forth in the Note, this Mortgage or in any other instrument now or hereafter evidencing, securing or otherwise relating to the Indebtedness, the Mortgagee, at its option, may endeavor to perform and observe the same, without notice to or demand upon Mortgagor and without releasing Mortgagor from any of its obligations or covenants hereunder, and all payments made and costs incurred by Mortgagee in connection therewith, including but not limited to attorney fees and expenses, shall be secured by this Mortgage and, upon demand, shall be repaid by Mortgagor to Mortgagee, with interest thereon at the post maturity rate under the Note or any rate selected by Mortgagee up to the highest rate permitted by law upon such amount, calculated from the date any such payment is made. Mortgagee shall be the sole judge of the necessity for any actions so taken by Mortgagee and the amount necessary to be paid or incurred by Mortgagee to remedy any such failure on the part of Mortgagor. Mortgagee is hereby empowered to enter upon and to authorize others to enter upon the Premises, or any part thereof, for the purpose of performing or observing any such defaulted covenant or obligation, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

**1.06 Condemnation.** Mortgagor, immediately upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any proceedings for the taking of the Premises, or any part thereof, by condemnation or eminent domain, will notify Mortgagee of the pendency of such proceedings. Mortgagee may, at its option, participate in any such proceedings, and Mortgagor shall promptly deliver to Mortgagee all instruments from time to time requested by Mortgagee to permit such participation. In any such proceedings Mortgagee may be represented by counsel selected by Mortgagee. Mortgagor hereby assigns to Mortgagee all awards hereafter made by virtue of any exercise of the right of condemnation or eminent domain by any authority, including any award for damages to or taking of title to the Premises, or any part hereof, or the possession thereof, or any right or easement affecting the Premises or appurtenant thereto (including any award for any change of grade of streets), and the proceeds of all sales in lieu of condemnation. Mortgagee, at its option, is hereby authorized to collect and receive all such awards and the proceeds of all such sales and to give proper receipts and acquittances therefor, and Mortgagee, at its election, may use such awards and proceeds in any one or more of the following ways: (i) apply the same or any part thereof upon the Indebtedness, whether the Indebtedness, or any part thereof, be then matured or unmatured, (ii) use the same or any part thereof to fulfill any of the covenants and agreements of Mortgagor hereunder as Mortgagee may determine, (iii) pay the same or any part thereof to Mortgagor for the purpose of replacing, restoring or altering the Premises to a condition satisfactory to Mortgagee, or (iv) release the same to

Mortgagor. Any proceeds applied to the Indebtedness shall be applied, at the option of Mortgagee, to the last installment or installments of principal coming due under the Note. Mortgagee shall be under no obligation to question the amount of any such award or proceeds and may accept the same in the amount in which the same shall be paid. Mortgagor agrees to execute and deliver such other instruments as Mortgagee may require evidencing the assignment of all such awards and proceeds to Mortgagee. If, prior to the receipt by Mortgagee of such award or proceeds, the Premises shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered, and of reasonable counsel fees, costs, including costs of litigation, and disbursements incurred by Mortgagee in connection with the collection of such award or proceeds.

#### 1.07 Books and Records.

(a) Mortgagor shall keep, at Mortgagor's sole cost and expense, and shall make available to Mortgagee at the Premises from time to time upon reasonable request of Mortgagee, adequate records and books of account with respect to the Premises in accordance with generally accepted accounting principles or sound cash basis accounting principles, consistently applied, and shall permit Mortgagee, by Mortgagee's agents, employees, accountants and attorneys, to visit at any time and from time to time and inspect the Premises and examine such records and books of account and to discuss the affairs, finances and accounts of Mortgagor with Mortgagor and with the officers, agents, employees and/or principals of Mortgagor, at such reasonable times as may be requested by Mortgagee.

(b) Upon the request of Mortgagee, Mortgagor shall furnish to Mortgagee Mortgagor's current financial statements.

1.08 Estoppel Certificates. Mortgagor within three (3) days upon request in person, or within five (5) days upon request by mail, shall furnish to Mortgagee a sworn certificate setting forth the amount of principal and interest due under the Note and stating whether any offsets or defenses exist against the Indebtedness.

#### 1.09 Leases, Tenant Contracts, etc.

(a) As additional collateral and further security for the Indebtedness, Mortgagor does hereby assign to Mortgagee Mortgagor's interest in any and all Contracts; and Mortgagor hereby warrants and represents that all such Contracts are in full force and effect. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance and with such warranties satisfactory to Mortgagee, as may hereafter from time to

time be requested by Mortgagee further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Mortgagee to any of the Contracts, or to impose upon Mortgagee any obligation with respect thereto. Except in the ordinary course of Mortgagor's business, without first obtaining on each occasion the written approval of Mortgagee, Mortgagor shall not cancel any of the Contracts or terminate, modify or accept a surrender thereof or reduce the payment of the rental or fees thereunder or accept, or permit to be made, any prepayment of any installment of rent or fees thereunder (except the usual prepayment of rent which results from the acceptance by a landlord on or about the first day of each month of the rent for the ensuing month). Mortgagor shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of the Contracts on the part of Mortgagor to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants and agreements by such other party to be performed thereunder. If an Event of Default, as hereinafter defined, shall occur, Mortgagor shall immediately pay over to Mortgagee an amount equal to the total of the then outstanding Deposits.

(b) Mortgagor shall not execute an assignment of the Contracts or the Rents or any part thereof, whether as security or otherwise, unless Mortgagee shall first consent to such assignment, which consent may be withheld for any reason, whether or not unreasonable or arbitrary, or for no reason, and unless such assignment shall provide that it is subordinate to the assignment contained in this Mortgage and any assignment then existing or thereafter executed pursuant hereto.

(c) Each lease, tenant contract and rental agreement pertaining to the Premises or any part thereof shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee or tenant thereunder will, upon request of Mortgagee or any other person or entity succeeding to the interest of Mortgagor as a result of such enforcement, automatically attorn to and become the lessee or tenant of said successor in interest, without change in the terms or other provisions of said lease, tenant contract or rental agreement; provided however, that said successor in interest shall not be bound by (i) any payment of rental or additional rental for more than one (1) month in advance, or (ii) any amendment or modification of said lease, tenant contract or rental agreement made without consent of Mortgagee or said successor in interest. Each lease, tenant contract and rental agreement pertaining to the Premises shall also provide that, upon request by said successor in interest, the lessee or tenant thereunder shall deliver an instrument or instruments confirming such attornment.

1.10 Legal Actions. In the event that Mortgagee is made a

party to or appears, either voluntarily or involuntarily, in any action or proceeding affecting or relating to the Premises (including without limitation, any action or proceeding brought under any Federal, state or local environmental statute), the Note, the Indebtedness, the Loan Commitment or the validity or priority of this Mortgage, then Mortgagor shall, upon demand, reimburse Mortgagee for all costs, expenses and liabilities incurred by Mortgagee by reason of any such action or proceeding, including without limitation attorney fees and costs and expenses of litigation, and the same shall be secured by this Mortgage. Mortgagor hereby agrees to indemnify, defend and hold Mortgagee harmless from and against any liability, loss, injury, claim, damage, cost or expense, including without limitation attorney fees and costs and expenses of litigation, which Mortgagee may incur, suffer or be threatened with on account of any claim for a fee, commission or similar compensation by any broker, agent or finder, whether or not meritorious, in connection with the negotiation or execution of the Loan Commitment or any of the transactions contemplated thereby.

1.11 **Use and Management of Premises.** Mortgagor shall be strictly prohibited from altering or changing, in any way whatsoever, the use, operation or management of the Premises, or from filing of record any document or communicating, in any way whatsoever, with tenants concerning conversion of the Premises to any form of condominium, cooperative or other collective or subdivided ownership, without the prior written consent of Mortgagee, which consent may be withheld for any reason, whether or not unreasonable or arbitrary, or for no reason. The identity of the managing agent of the Premises shall at all times be subject to Mortgagee's consent, which consent shall not be unreasonably withheld.

1.12 **Additional Covenants, Representations and Warranties.** Mortgagor covenants, warrants and represents that:

(a) The execution, delivery and performance of this Mortgage, the Note and all other documents executed by Mortgagor in connection with the loan represented by the Note do not contravene any legal or contractual restriction binding on or affecting Mortgagor or the Premises.

(b) This Mortgage constitutes a legal, valid and binding obligation of Mortgagor enforceable against Mortgagor in accordance with its terms.

(c) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the grant by Mortgagor of the lien and security interest granted hereby or for the execution, delivery or performance of this Mortgage by Mortgagor or (ii) for the exercise by Mortgagee of its rights and remedies

hereunder.

(d) Mortgagor intends to and shall use the proceeds of the loan represented by the Note solely for a business purpose within the purview of 815 ILCS 205/4(1)(a) and 815 ILCS 205/4(1)(c) and not for any purpose that is nor may be deemed personal.

(e) The loan evidenced by the Note is being made solely to Mortgagor, and there are no other persons or entities, whether affiliated with Mortgagor or not, for whose benefit or on whose behalf said loan is being made or will be used.

(f) If Mortgagor is a corporation or if Mortgagor is a partnership one or more of whose general partners are corporations, said corporation or corporations are duly organized, validly existing and in good standing under the laws of the state or states of their incorporation, are duly qualified, authorized and licensed therein, and are in good standing in all states where such qualification, authorization and licensing is necessary to carry on their present and proposed operations; and the execution, delivery and performance of the terms and conditions hereof and of any instrument evidencing, securing or otherwise relating to the Indebtedness are within the corporate powers of said corporation or corporations and have been duly authorized by all proper and necessary corporate action and are not in conflict with the charter and bylaws of said corporation or corporations or any indenture, contract or agreement to which said corporation or corporations are parties or by which they are bound or with any statute, rule or regulation binding upon them.

(g) There is no litigation or other proceeding pending or, to the knowledge of Mortgagor's agents, partners or officers, threatened by or before any court, public body or authority, including condemnation proceedings, which would adversely affect the Premises or Mortgagor or its financial condition or business; there exists no violation of any law, ordinance or requirement of any federal, state, municipal or other governmental agency or commission or public or quasi-public body having jurisdiction of the Premises, and the Premises comply with all restrictive covenants affecting the Premises and all building and use restrictions and zoning regulations of all governmental bodies having jurisdiction thereof.

(h) Mortgagor has not received (and has no knowledge of) any notice or request from any municipal department, insurance company or Board of Fire Underwriters (or organization exercising functions similar thereto) or mortgagee requesting the performance of any work or alterations with respect to the Premises which has not been complied with, and Mortgagor has not received (and has no knowledge of) any notice of violation of any local, state or federal environmental protection or pollution control laws with respect to the Premises.

(i) There are presently in effect all licenses, certificates of occupancy and permits as may be required for the present and proposed operation of the Premises.

(j) There are no existing prior assessments which are unpaid and Mortgagor has no knowledge of any pending or contemplated assessments against the Premises.

(k) Mortgagor shall timely keep and perform all agreements and covenants required to be kept and performed under the terms of any mortgage or trust deed prior to this Mortgage.

1.13 Hazardous Material. Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including attorney's fees and costs of litigation) and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against Mortgagor for, with respect to, or as a direct result of the presence of any hazardous, toxic or dangerous substance, waste or material defined as such under any Federal, state or local statute ("hazardous material"), which is on, under or over the Premises or any part thereof, or the occurrence of any event which would be deemed under any Federal, state or local statute as a release or disposal of a hazardous material on, under or from the Premises or any part thereof.

## II. DEFAULT AND REMEDIES

2.01 Event of Default. The occurrence of any one of the following events shall constitute an Event of Default hereunder:

(a) Mortgagor fails to pay any installment of principal or interest, or of principal and interest, or any part thereof, payable under the Note, when and as the same shall become due and payable;

(b) Mortgagor fails to pay any other sums covenanted to be paid by Mortgagor under the Note or this Mortgage, or any other portion of the Indebtedness, when and as the same shall become due and payable;

(c) Any warranty, representation or statement of Mortgagor, or which is or has been made on behalf of Mortgagor, in this Mortgage, or in any other document, affidavit, certificate or other instrument now or hereafter evidencing, securing or otherwise relating to the Indebtedness or the Premises, or any part thereof, proves untrue or misleading in any material respect;

(d) Any event occurs under any instrument, mortgage or agreement given or made by Mortgagor to or with any third party which would authorize the acceleration of an indebtedness to such third party;

(e) The Premises are subjected to actual or threatened waste, or all or any part thereof is removed, demolished or altered without the prior written consent of Mortgagee, which consent may be withheld for any reason, whether or not unreasonable or arbitrary, or for no reason;

(g) Mortgagor fails to keep, observe, perform, carry out and execute in every particular the other covenants, agreements, obligations and conditions contained in this Mortgage, the Note, the Loan Commitment or any other instrument now or hereafter evidencing, securing or otherwise relating to the Indebtedness or any part thereof or defaults on any obligation it may now or hereafter have to Mortgagee in addition to the Indebtedness; or

(h) The sale or transfer of (i) all or part of the Premises, or any interest therein, or (ii) any beneficial interest in Mortgagor if Mortgagor is a corporation, partnership, trust or other legal entity.

(i) If Mortgagor shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Mortgagor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Mortgagor, or if Mortgagor shall be adjudged a bankrupt or if a trustee or receiver shall be appointed for Mortgagor or Mortgagor's property, or if the Premises shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Mortgagor shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment executive or other judicial seizure of any portion of Mortgagor's assets and such seizure is not discharged within thirty (30) days.

(j) There shall occur any breach, default or event of default under any document or instrument evidencing or securing any other indebtedness secured by all or any part of the Premises.

(k) Mortgagor shall fail to timely keep and perform all agreements and covenants required to be kept and performed under the terms of any mortgage or trust deed prior to this Mortgage.

2.02 Rights of Mortgagee Upon Default. Upon the occurrence of an Event of Default, Mortgagee, at its option, may do any one or more of the following:

(a) Declare the Indebtedness to be immediately due and payable without notice to or demand upon Mortgagor, and may proceed

to protect and enforce all rights by any action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law;

(b) Enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor, and collect and receive the rents, incomes, issues and profits of and from the Premises, and Mortgagee is hereby constituted and appointed as the attorney in fact of Mortgagor to manage and operate the Premises and to collect all such sums. After deducting from the sums so collected all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for any of such purposes), the net amount so collected shall be applied toward the Indebtedness; provided that nothing herein contained shall be construed to obligate Mortgagee to discharge or perform the duties of a landlord to any tenant or to impose any liability upon Mortgagee as the result of any exercise by Mortgagee of its rights under this Mortgage, and Mortgagee shall be liable to account only for the rents, incomes, issues and profits actually received by Mortgagee;

(c) Apply for the appointment of a receiver of the rents, incomes, issues and profits of and from the Premises, without notice to Mortgagor. Mortgagee shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Premises as security for the Indebtedness or the solvency of Mortgagor or any person or legal entity, if any, which may be liable for the payment of all or any part of the Indebtedness.

2.03 Restoration of Parties. In the event Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage, and such proceedings are discontinued or abandoned for any reason, the Mortgagor and Mortgagee shall immediately be restored to their former positions and rights hereunder, and all rights powers and remedies of Mortgagee shall continue as if no such proceeding had taken place.

2.04 Subrogation. To the full extent of the Indebtedness, Mortgagee is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be and each of them is hereby preserved and shall pass to and be held by Mortgagee as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Mortgagee had they been duly and legally assigned, transferred, set over and delivered unto Mortgagee by assignment, notwithstanding



the fact that the same may be satisfied and cancelled of record.

2.05 Remedies Cumulative. Each of the rights of Mortgagee under this Mortgage and the Note is separate and distinct from and cumulative to all other rights herein and therein granted, and all other rights which Mortgagee may have in law or equity, and no such right shall be in exclusion of any other.

2.06 No Waiver. No modification or waiver by Mortgagee of any right or remedy under this Mortgage shall be effective unless made in writing. No delay by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof upon the occurrence of an Event of Default. No failure by Mortgagee to insist upon the strict performance by Mortgagor of each and every covenant and agreement of Mortgagor under the Note or this Mortgage shall constitute a waiver of any such covenant or agreement, and no waiver by Mortgagee of any Event of Default shall constitute a waiver of or consent to any subsequent Event of Default. No failure of Mortgagee to exercise its option to accelerate the maturity of the Indebtedness, nor any forbearance by Mortgagee before or after the exercise of such option, nor any withdrawal or abandonment by Mortgagee of any action of or sale upon foreclosure hereunder or any of its rights under such action or sale, shall be construed as a waiver of any option, power or right of Mortgagee hereunder.

### III GENERAL PROVISIONS

3.01 Mortgagor as Tenant Holding Over. So long as the Indebtedness, or any part thereof, remains unpaid, Mortgagor agrees that possession of the Premises by Mortgagor, or any person claiming under Mortgagor, shall be as tenant under Mortgagee, and, in case of a sale upon foreclosure as provided in this Mortgage, Mortgagor and any person in possession under Mortgagor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over.

3.02 Interest Not to Exceed Maximum Allowed by Law. Anything in the Note, the Loan Commitment or this Mortgage to the contrary notwithstanding, it is understood and agreed by the parties that if by reason of acceleration or otherwise, interest paid or contracted to be paid by Mortgagor on the Indebtedness or any part thereof shall exceed the maximum amount permitted by applicable law, then at the option of Mortgagee, the Indebtedness shall immediately become due and payable in full, unless such excess amount may be allocated as additional interest previously accrued or otherwise allocated or credited so as not to exceed the maximum amount permitted by law, in which event such excess shall be so allocated

or credited; provided that this sentence shall not operate if there is no applicable law limiting the amount of interest which can be paid on the Indebtedness or if no usury defense is available to Mortgagor. All interest charges provided for in this Mortgage shall be calculated on the basis of a 360 day year.

3.03 Severability. If any provision, paragraph, sentence, clause, phrase or word of this Mortgage, or the application thereof in any circumstance, is held invalid or unenforceable, the validity and enforceability of the remainder of this Mortgage, and of the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstance, shall not be affected thereby, it being intended that all rights, powers and privileges of Mortgagee hereunder shall be enforceable to the fullest extent permitted by law.

3.04 Assignment. This Mortgage and the Indebtedness are freely assignable by Mortgagee, and any such assignment by Mortgagee shall operate to vest in such assignee the lien hereof upon and to the Premises and all rights and powers herein conferred. Without limiting the generality of the foregoing, Mortgagor acknowledges that Mortgagee may, at any time and from time to time, sell this Mortgage or any interest herein, pledge or assign this Mortgage or any interest herein as security in connection with any financing arrangement or enter into any participation or similar cooperative arrangements with respect hereto.

3.05 Waiver of Homestead. Mortgagor, for himself and family, hereby waives and renounces any and all homestead and exemption rights which he or his family may have under or by virtue of the Constitution or the laws of the United States or of any state, in and to the Premises as against the collection of all amounts secured hereby or any part thereof, and does transfer, convey and assign to the holder hereof a sufficient amount of such homestead or exemption as may be allowed, including but not limited to such homestead or exemption as may be set apart in bankruptcy, up to an amount sufficient to pay the amounts secured hereby in full, with all costs of collection, and does hereby direct any trustee in bankruptcy having possession of such homestead or exemption to deliver to Mortgagee a sufficient amount of property or money set apart as exempt to be applied to the amounts secured hereby and does hereby appoint Mortgagee the attorney in fact for Mortgagor to claim any and all homestead exemptions allowed by law. Mortgagor hereby warrants that no one has any homestead rights in the Premises or any part thereof.

3.06 Waiver of Rights to Require Marshalling or Separate Sales. Mortgagor hereby waives any and all rights it may have under applicable law to require the marshalling of assets or of liens or that would require that the Premises to be sold as separate or unitary tracts, lots or units in the event Mortgagee

exercises its right to foreclose this Mortgage.

**3.07 Waiver of Right of Redemption and Similar Rights.** Mortgagor hereby waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Premises, and (ii) the extension of time for the enforcement of the collection of the Indebtedness or enforcement of this Mortgage or creating or extending a period of redemption from any sale made in collecting said Indebtedness. To the full extent, Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter enforced providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, its heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. If any such law now enforced, of which Mortgagor, its heirs, devisees, representatives, successors and assigns or any other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be enforced, such law shall not thereafter be deemed to preclude the application of this paragraph.

**3.08 Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Indebtedness. To the fullest extent permitted by law, Mortgagor waives all present and future statutes of limitation with respect to the Indebtedness or any part thereof in any action or proceeding for the purpose of enforcing this Mortgage or any rights or remedies hereunder.

**3.09 Power of Mortgagee to Reconvey or Consent.** Without affecting the liability of Mortgagor or any other person for the payment of the Indebtedness or any part thereof, including such of the Indebtedness as may be due at the time of or after any reconveyance of the Premises to Mortgagor, or the lien of this Mortgage upon any remainder of the Premises which has not been so reconveyed for the full amount of the Indebtedness than or thereafter secured hereby, or the rights and powers of Mortgagee with respect to such remainder of the Premises, Mortgagee may, at its option, do any one or more of the following: (i) release all or any part of the Indebtedness; (ii) extend the time or otherwise alter the terms of payment of all or any part of the Indebtedness; (iii) accept additional or substitute security hereunder; (iv) substitute for or release all or any part of the Premises as security hereunder; (v) reconvey to Mortgagee all or any part of

the Premises; (vi) consent to the making of any map or plat of all or any part of the Premises; (vii) join in the granting of any easement upon all or any part of the Premises; (viii) join in any extension agreement or any agreement subordinating or otherwise affecting the lien or charge hereof or the priority thereof.

3.10 Successors and Assigns. Each and every covenant, warranty and agreement of Mortgagor herein, if Mortgagor be more than one, shall be jointly and severally binding upon and enforceable against Mortgagor, and each of them. As used herein the terms "Mortgagor" and "Mortgagee" shall include the named Mortgagor and the named Mortgagee and their respective heirs, executors, administrators, legal representatives, successors, successors in title and assigns.

3.11 Mortgage Tax. In the event of the enactment after the date of this Mortgage of any law of the United States or of the state in which the Premises are located or any political subdivision thereof deducting any lien from the value of the Premises for the purpose of taxation, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor or imposing a stamp or other documentary tax on this Mortgage or the Note or the Indebtedness secured hereby or otherwise 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 manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then, and in any such event, Mortgagor upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such notice.

3.12 No Liens. Mortgagor shall pay when due all claims for labor performed and materials furnished in connection with the Premises, and shall keep the Premises free from liens of mechanics, materialmen, laborers and others, from liens under any Federal, state or local environmental statute, and from all other liens, charges, mortgages, security agreements and encumbrances other than encumbrances permitted hereunder and shall exhibit to Mortgagee upon request, satisfactory evidence of the payment and discharge of such liens, charges, and encumbrances.

3.13 No Further Encumbrances. Mortgagor shall not, without the prior written consent of Mortgagee, create, suffer or permit to be created or to exist any mortgage, deed of trust, security interest, or other encumbrance of any kind whatsoever upon all or

any part of the Premises, whether junior, secondary or subordinate or senior or prior to the lien of this Mortgage. To the extent the Mortgagee has consented or so consents to any further encumbrances, Mortgagor shall perform all of its obligations with respect to such encumbrances, including without limitation payment when due of all principal, interest and other indebtedness secured thereby, and Mortgagor shall furnish Mortgagee with copies of all checks or other payments made to the holders of such encumbrances. Mortgagor shall also furnish Mortgagee with copies of all notices received from the holders of such encumbrances, including but not limited to notices claiming the existence of a default thereunder or giving notice of a condition which with the passage of time would give rise to a default thereunder.

3.14 Uniform Commercial Code Security Agreement. This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Mortgagee a security interest in said items. Mortgagor agrees that Mortgagee may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Premises. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Mortgagor's breach of any covenant or agreement of Mortgagor contained in this Mortgage, including the covenants to pay when due all sums secured by this Mortgage, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code, and at Mortgagee's option, may also invoke the remedies provided in paragraph 2.02 of this Mortgage as to such items. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Premises separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 2.02 of this Mortgage.

**3.15 Construction Loan Provisions.** Mortgagor agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Mortgage. All advances made by Mortgagee pursuant to the Construction Loan Agreement shall be indebtedness of Mortgagor secured by this Mortgage, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Mortgagee prior to completion of the improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Mortgagor of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law and shall be payable upon notice from Mortgagee to Mortgagor requesting payment therefor.

From time to time as Mortgagee deems necessary to protect Mortgagee's interests, Mortgagor shall, upon request of Mortgagee, execute and deliver to Mortgagee, in such form as Mortgagee shall direct, assignments of any and all rights or claims which relate to the construction of the Premises and which Mortgagor may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Premises. In case of breach by Mortgagor of the covenants and conditions of the Construction Loan Agreement, Mortgagee, at Mortgagee's option, with or without entry upon the Premises, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may accelerate the sums secured by this Mortgage and invoke those remedies provided in paragraph 2.02 hereof, or (iii) may do both.

**3.16 Captions.** Titles or captions of articles and paragraphs contained in this Mortgage are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Mortgage or the intent of any provision hereof.

**3.17 Number and Gender.** Whenever required by the context, the singular number shall include the plural and the gender of any pronoun shall include the other genders.

**3.18 Reconstruction of Premises.** Anything herein contained to the contrary notwithstanding, in the event of any loss or damage to any portion of the Premises due to fire or other casualty, or in the event that the Premises, or any portion thereof, are taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation, all proceeds received in connection with any such casualty damage, eminent domain or condemnation (the "Proceeds") shall be deposited with Mortgagee and shall be used to reimburse Mortgagor for the cost of rebuilding or

restoration and operations of building and improvements on the Premises. The buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. In the event Mortgagor is entitled to reimbursement out of such proceeds, such proceeds shall be disbursed to Mortgagor through a Construction Escrow established with a Title Company acceptable to Mortgagee from time to time, upon Mortgagee and Escrowee being furnished with such building permits, architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee and Escrowee may reasonably require and approve. Mortgagee may, in its discretion, request that payments for the cost of construction be made directly to any contractor, subcontractor, material man, or to any vendor of fixtures and equipment. In the event the cost of restoration exceeds the amount of the Proceeds, Mortgagor shall be required to deposit with Mortgagee a sum of money equal to such deficiency prior to the start of restoration. In the event the Proceeds exceed the cost of restoration, such excess shall be applied as a prepayment of the Loan. Construction shall begin within three (3) months from the date the Proceeds are deposited with Mortgagee. In the event Mortgagor is in default, the Proceeds of any such insurance policy or policies shall, at Mortgagee's option, be applied to the Indebtedness secured hereby. Anything herein contained to the contrary notwithstanding, if, in the sole judgment of Mortgagee, there is reasonable doubt as to Mortgagor's ability to complete construction of the building and improvements, or if restoration is not commenced within three (3) months after any such loss, damage, fire, casualty, condemnation or eminent domain taking all Proceeds shall be applied as a prepayment of the Loan.

This Commercial Mortgage, Security Agreement and Assignment of Leases and Rents is executed by MERCANTILE NATIONAL BANK OF INDIANA, NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 8, 1994 AND KNOWN AS TRUST NO. 5979, and it is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the Trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against such Trustee on account of this instrument or





EXHIBIT "A"

Units 1-C, 1-D, 2-C, 2-D, 3-C and 3-D in 2343 99th Street; in Highland, Indiana, in Eagle Pointe Condominium, Inc., II, a Horizontal Property Regime established under a Declaration of Condominium recorded December 14, 1995 as Document No. 95076268 and re-recorded December 15, 1995 as Document No. 95076616, and as shown in Plat Book 79 page 68, in the Office of the Recorder of Lake County, Indiana.  
Together with an undivided 1/18th interest in the common elements thereto appertaining.

Key No.: 27-609-7 to 12

Common Address: 2343 99th Street  
Highland, Indiana

EXHIBIT B

1. General taxes for the for year 1995 and subsequent years.

Prepared by and Mail to:  
STEVEN J. COLOMPOS/DM  
17130 So. Torrence Avenue  
Suite 260  
Lansing, Illinois 60438

