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Chicago Title Insurance Company

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LAKE COUNTY  
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JENNER & BLOCK  
One IBM Plaza  
Chicago, IL 60611

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**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY  
AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY  
AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT ("Mortgage") is  
made as of July 31, 2000, by The WILLIAM J. MC ENERY REVOCABLE TRUST  
(herein, together with its successors and assigns referred to as the "Mortgagor")  
having its principal place of business c/o Gas City, Ltd., 160 S. LaGrange Road, Frankfort,  
Illinois 60423, in favor of LASALLE BANK NATIONAL ASSOCIATION, a national  
banking association having an office at 135 South LaSalle Street, Chicago Illinois 60603  
(herein, together with its successors and assigns referred to as the "Mortgagee").

RECITALS:

A. Loan Agreements and Loan Amounts. Mortgagor is the present owner of  
the land (the "Land") described on Exhibit A attached hereto. Mortgagee has made and/or  
may from time to time hereafter make: (i) a loan ("Loan No. 1") to Mortgagor in the  
aggregate principal amount of Thirty Five Million Dollars (\$35,000,000.00) (herein, such  
amount is called "Loan Amount No. 1"), pursuant to a Loan Agreement between  
Mortgagor and Mortgagee dated as of April 21, 1998 (herein, such Loan Agreement,  
together with any and all amendments or supplements thereto, extensions thereof and  
restatements therefor, shall be called "Loan Agreement No. 1") and (ii) loans to the  
Mortgagor ("Loan No. 2"; collectively with Loan No. 1, the "Loans") in the aggregate  
principal amount of up to Fifty-Four Million Three Hundred Fifty Thousand Dollars  
(\$54,350,000.00) (herein such amount is called "Loan Amount No. 2"; collectively with

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Loan Amount No. 1, the "**Loan Amounts**"), pursuant to a Multi-Facility Loan Agreement between Mortgagor and Mortgagee dated as of April 21, 1998 (herein such Multi-Facility Loan Agreement, together with any and all amendments or supplements thereto, extensions thereof and restatements therefor, shall be called "**Loan Agreement No. 2**"; and collectively with Loan Agreement No. 1, the "**Loan Agreements**").

B. Notes, Principal and Interest. Mortgagor has executed and delivered to the Mortgagee: (i) a promissory note dated as of April 21, 1998 in the face principal amount of Thirty Five Million Dollars (\$35,000,000.00) payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before sixty (60) months from the date of its execution, subject to acceleration as provided in such promissory note, Loan Agreement No. 1, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured thereby, shall be called the "**Gas Station Note**"); (ii) a promissory note dated as of April 21, 1998, in the face principal amount of Three Million Six Hundred Thousand Dollars (\$3,600,000.00) payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before sixty (60) months from the date of its execution, subject to acceleration as provided in such promissory note, Loan Agreement No. 2, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured thereby, shall be called the "**Green Garden Note**"); (iii) a promissory note dated as of April 21, 1998 in the face principal amount of Three Million Six Hundred Twenty Five Thousand Dollars (\$3,625,000.00) payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before thirty-six (36) months from the date of its execution, subject to acceleration as provided in such promissory note, Loan Agreement No. 2, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured thereby, shall be called the "**Second Term Loan Note**"); (iv) a revolving promissory note dated as of April 12, 2000, in the face principal amount of Thirteen Million Dollars (\$13,000,000.00) payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before March 1, 2002, subject to acceleration as provided in such promissory note, Loan Agreement No. 2, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured thereby, shall be called the "**Revolving Note**"); (v) a promissory note dated as of the date hereof, in the face principal amount of Fifteen Million Dollars (\$15,000,000.00) payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in

full, if not sooner paid on or before March 1, 2002, subject to conversion and acceleration as provided in such promissory note, Loan Agreement No. 2, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured thereby, shall be called the "Construction Note"); (vi) a promissory note dated as of the date hereof, in the face principal amount of Five Million Dollars (\$5,000,000) payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before March 1, 2002, subject to acceleration as provided in such promissory note, Loan Agreement No. 2, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitutions or extension thereof or which may evidence any of the indebtedness secured thereby, shall be called the "Vacant Land Note"); (vii) a promissory note dated as of May 21, 1999, in the face principal amount of Seven Million Seven Hundred Twenty Five Thousand Dollars (\$7,725,000), payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before June 1, 2004, subject to acceleration as provided in such promissory note, Loan Agreement No. 2, or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured thereby shall be called the "Third Term Loan Note"); and (viii) a promissory note dated as of the date hereof in the principal amount of Seven Million Eighty-Seven Thousand Five Hundred and no/100 Dollars (\$7,087,500.00) payable to the order of Mortgagee at Chicago, Illinois, and due and payable together with all accrued and unpaid interest, in full, if not sooner paid on or before May 1, 2005, subject to acceleration as provided in such promissory note, Loan Agreement No. 2, or in this mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution, or extension thereof or which may evidence any of the indebtedness secured thereby shall be called the "Fourth Term Loan Note"; collectively with the Gas Station Note, the Green Garden Note, the Second Term Loan Note, the Vacant Land Note, the Construction Note, the Revolving Note, the Third Term Loan Note the "Notes"). The Notes bear interest as provided therein and in the Loan Agreements, on the principal amount thereof from time to time outstanding; all principal of and interest on the Notes is payable in lawful money of the United States of America at the office of the Mortgagee in Chicago, Illinois, or at such place as any holder thereof may from time to time appoint in writing. The Mortgagor is or will become justly indebted to the Mortgagee in the Loan Amounts in accordance with the terms of the Notes.

#### I. GRANT

NOW THEREFORE, for and in consideration of the Mortgagee's making the Loans and any other loan, advance or other financial accommodation at any time to or for the benefit of the Mortgagor, and in consideration of the various agreements contained herein



and in the other Related Documents (hereinafter defined), and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities (hereinafter defined),

THE MORTGAGOR HEREBY MORTGAGES, CONVEYS, GRANTS, BARGAINS, SELLS, TRANSFERS, ASSIGNS AND WARRANTS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER ALL OF MORTGAGOR'S RIGHT, TITLE AND INTEREST IN, AND GRANTS TO THE MORTGAGEE A CONTINUING LIEN UPON AND SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL (HEREINAFTER DEFINED), WHETHER NOW OWNED OR HELD OR HEREAFTER ACQUIRED.

TO HAVE AND TO HOLD the Collateral unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth. All of the Collateral, whether real, personal, or mixed, whether affixed or annexed or not and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Premises (hereinafter defined) and to be appropriated to the use of the Premises, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby. As to any of the Collateral which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Premises, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code in effect in the jurisdiction in which the Premises are located (hereinafter referred to as the "UCC") for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the UCC), securing said indebtedness and obligations and Mortgagee shall have in addition to its rights and remedies hereunder all rights and remedies of a Secured Party under the UCC. As to any of the Collateral which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: (1) that at the execution and delivery hereof the Mortgagor has a good, indefeasible fee simple title to the Premises, (2) that the Collateral is free from all encumbrances whatsoever, except for the lien in favor of Mortgagee granted herein and by the Related Documents and the encumbrances, conditions and restrictions set forth in Chicago Title Insurance Company title insurance policy number 199001008 insuring the lien of this Mortgage in favor of the Mortgagee (collectively the "Permitted Exceptions"); (3) that Mortgagor has good and lawful right to sell, mortgage and convey the Collateral; (4) and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever with the exception of the Permitted Exceptions.

1. Definitions.

1.1 Related Documents. As used in this Mortgage, the term "**Related Documents**" means the Loan Agreements, the other Loan Documents (as defined in the Loan Agreements), any guaranty or indemnification agreement, the Notes, and any other documents and instruments executed and delivered by or for the benefit of the Mortgagor, whether pursuant to the terms of this Mortgage or otherwise in connection with the Loan Agreements or Notes or as security therefor, or for the purpose of supplementing or amending all or any of the foregoing, all as the same may be amended, modified or supplemented from time to time.

1.2 The Liabilities. As used in this Mortgage, the term "**Liabilities**" means and includes all of the following: (i) the principal of, interest on and any and all other amounts which may at any time be or become due or owing under the Notes; (ii) all indebtedness of any kind arising under, and all amounts (including, without limitation, future advances) of any kind which may at any time be or become due or owing to the Mortgagee under or with respect to, the Notes, the Loan Agreements, this Mortgage or any of the other Related Documents; (iii) all of the covenants, obligations and agreements (and the truth of all representations and warranties) of the Mortgagor in, under or pursuant to the Notes, the Loan Agreements, this Mortgage, and all of the other Related Documents; (iv) any and all advances, costs or expenses paid or incurred by the Mortgagee to protect any or all of the Collateral, perform any obligation of the Mortgagor hereunder or under any of the Related Documents or collect any amount owing to the Mortgagee which is secured hereby; (v) any and all other obligations of Mortgagor to the Mortgagee, in each case, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, joint or several, now or hereafter existing or due or to become due, and whether or not arising out of or in connection with the Notes, this Mortgage or any of the Related Documents; (vi) interest on all of the foregoing; and (vii) all costs of enforcement and collection of the Notes, the Loan Agreements, this Mortgage, any of the other Related Documents, and the Liabilities; provided, however, notwithstanding anything to the contrary herein, the total aggregate indebtedness and Liabilities secured by this Mortgage shall not exceed an amount equal to the Loan Amounts.

1.3. The Collateral. For purposes of this Mortgage, the term "**Collateral**" means and includes all of the following, whether now owned, or hereafter acquired by the Mortgagor:

(i) Real Estate. All of the Land, together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to

any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "**Real Estate**");

(ii) Improvements and Fixtures. All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by Mortgagor, including, but not limited to gas pumps, canopies, tanks, related fueling mechanisms and all piping and mechanical systems related thereto, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures, motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment and other articles of personal property of any kind or nature whatsoever, now or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by Mortgagor (all of the foregoing is herein referred to collectively as the "**Improvements**");

(iii) Intangibles. All goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Mortgagor relating to the Real Estate or the Improvements, and any other intangible property of Mortgagor related to the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "**Intangibles**");

(iv) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing is herein referred to collectively as the "**Rents**");

(v) Leases. All rights of Mortgagor under all leases, licenses (to the extent assignable), occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person or entity agrees to pay money to Mortgagor or any consideration for the use, possession or occupancy of, or the conducting of any business on, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "**Leases**");

(vi) Plans. All rights of Mortgagor to plans and specifications, designs, drawings and other matters prepared in connection with the Real Estate (all of the foregoing is herein called the "**Plans**");

(vii) Contracts for Construction or Services. All rights of Mortgagor, if any, under any contracts executed by it with any provider of goods or services for



or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including any architect's contract (all of the foregoing is herein referred to collectively as the "Contracts for Construction");

(viii) Contracts for Sale or Financing. All rights of Mortgagor, if any, as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement of any Person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Collateral or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale"); and

(ix) Other Property. All other property or rights of Mortgagor of any kind or character related to the Real Estate or the Improvements and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing, including all proceeds of the conversion, whether voluntary or involuntary, of any of the foregoing into cash or liquidated claims. (All of the Real Estate and the Improvements, and any other property constituting a portion of the Collateral which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".)

## II. COVENANTS AND AGREEMENTS OF MORTGAGOR

Further to secure the full, timely and proper payment and performance of the Liabilities, the Mortgagor hereby warrants to and covenants and agrees with the Mortgagee as follows:

2.1. Payment of Liabilities. The Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, the principal of and interest on the Notes, and all other Liabilities (including fees and charges).

2.2. Payment of Taxes. The Mortgagor will pay, at least ten (10) business days before delinquent, all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the other Related Documents, whether levied against the Mortgagor or the Mortgagee or otherwise, and will submit to the Mortgagee upon request, all receipts showing payment of all of such taxes, assessments and charges.

2.3. Maintenance, Repair and Restoration of Improvements; Payment of Prior Liens. Mortgagor shall (a) promptly repair, restore or rebuild the Improvements which

may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof or bonded or insured over to the satisfaction of Mortgagee; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon the Real Estate; (e) comply with all material requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (f) make no material alterations in the Premises, except for the construction of Improvements permitted by Loan Agreement No. 2; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's written consent; and (h) initiate or acquiesce in no zoning variation or reclassification, without Mortgagee's written consent.

2.4. Insurance. Mortgagor shall keep the Improvements and all other Collateral insured against loss or damage by fire and such other hazards as may be reasonably requested by Mortgagee, including, but not limited to, all-risk property insurance covering, without limitation, fire, extended coverage, vandalism and malicious mischief, in an amount that is not less than the replacement cost of the Improvements and Goods without consideration for depreciation, with an agreed upon value endorsement, insurance against business interruption and loss of rentals for such occurrences and in such amounts as the Mortgagor may require; insurance against flood if required by the Federal Disaster Protection Act of 1973, as amended, and regulations issued thereunder; comprehensive general public liability insurance, in an amount satisfactory to Mortgagee; and, during construction, builder's completed value risk insurance against "all risks of physical loss" (including collapse and transit coverage); and all other insurance commonly or, in the judgment of Mortgagee, prudently maintained by those whose business and use of real estate is similar to that of the Mortgagor. Mortgagor shall further provide Mortgagee with insurance certificates evidencing that any contractor secured by Mortgagor to perform work on the Premises has, in full force and effect, liability and worker's compensation insurance. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with standard noncontributory mortgagee loss payee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. All policies shall further name Mortgagee as an additional insured and as a lender loss payee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.



2.5. Adjustment of Losses with Insurer and Application of Proceeds of Insurance.

(a) In case of loss or damage by fire or other casualty, Mortgagee is authorized to (i) settle and adjust any claim under insurance policies which insure against such risks, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, the Mortgagee is authorized to collect and issue a receipt for any such insurance money. At the option of the Mortgagee, such insurance proceeds may be applied in the reduction of the Liabilities, whether due or not, or may be held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the Premises. In the event Mortgagee elects to apply the insurance proceeds in reduction or satisfaction of the Liabilities, such prepayment shall be without penalty or premium to Mortgagor. Irrespective of whether such insurance proceeds are used to reimburse Mortgagor for the cost of said rebuilding or restoration or not, and irrespective of whether such insurance proceeds are or are not adequate for such purpose, the Premises shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the Premises can reasonably be expected to exceed the sum of One Hundred Thousand Dollars (\$100,000.00), then the Mortgagor shall obtain Mortgagee's approval of plans and specifications for such work before such work shall be commenced. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that the Mortgagee may require and upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, the Mortgagor immediately shall, on written demand of the Mortgagee, deposit with the Mortgagee in cash the amount of such estimated excess cost. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the Liabilities or be paid to any party entitled thereto without interest.

(b) Any provision of this Section 2.5 to the contrary notwithstanding, provided that (i) the insurance carrier does not deny liability as to the insured and Mortgagor demonstrates to Mortgagee's reasonable satisfaction that Mortgagor has the financial capacity (taking into account any projected receipts from the Premises and any proceeds from applicable insurance policies) to fulfill its Liabilities and obligations under the Notes, the Loan Agreements, this Mortgage and the other Related Documents during the process of rebuilding or restoration, (ii) no Default (as hereinafter defined) exists under this Mortgage, (iii) the proceeds of such casualty insurance are used solely for rebuilding

or restoration and are sufficient to rebuild or restore the Premises as required hereunder (or Mortgagor deposits any deficiency with Mortgagee or deposits a letter of credit or other security satisfactory to Mortgagee in its absolute discretion to cover such deficiency), (iv) the funds are released under escrow or construction funding arrangements satisfactory to Mortgagee, and (v) the rebuilding or restoration can in Mortgagee's reasonable judgment be expected to be substantially completed at least six (6) months prior to the final maturity date of any of the Notes, Mortgagee agrees to make such insurance proceeds available, after deducting therefrom any expenses incurred in the collection thereof, in accordance with the other provisions of this Section 2.5 for the rebuilding or restoration of the Premises. Any excess proceeds remaining after completion of the rebuilding or restoration of the Premises may be retained by Mortgagee at its option, for application against the Liabilities as set forth above or paid to any party entitled thereto, without interest. In addition, provided that no Default exists under this Mortgage, any proceeds of rent loss or similar insurance shall be made available to Mortgagor to pay debt service on the Notes and operating expenses.

**2.6. Stamp and Other Taxes.** If the Federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Mortgagee's receipt of interest payments on the principal portion of the Liabilities), assessment or imposition upon this Mortgage, the Liabilities, the Notes or any of the other Related Documents, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to the Notes, this Mortgage, or any of the other Related Documents, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then all sums hereby secured shall become immediately due and payable at the option of the Mortgagee. Thereafter, if the Mortgagor fails to make payment of all such sums within five (5) days of the Mortgagee's demand therefor, such failure shall constitute a Default hereunder and all sums secured hereby shall become immediately due and payable.

**2.7. Effect of Extensions of Time.** If the payment of the Liabilities or any part thereof is extended or varied or if any part of any security for the payment of the Liabilities is released or additional security is taken, all persons now or at any time hereafter liable therefor, or interested in the Collateral, shall be held to assent to such extension, variation, or taking of additional security or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, taking of additional security or release.

**2.8. Recorded Instruments.** That Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instru-



ments of record affecting the Collateral, noncompliance with which would affect the security of this Mortgage or impose any duty or obligation upon Mortgagor or other occupant of the Premises, or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Premises.

2.9. Mortgagee's Performance of Defaulted Acts. In the event of the occurrence of a Default hereunder which is not cured within the time provided herein with respect to such Default, if any, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title of claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Mortgagor as lessor under any of the Leases. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any stamp tax or any Leases or to protect the Premises and the lien hereof, shall be added to the Liabilities, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as defined in the Loan Agreements). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default on the part of Mortgagor.

2.10. Mortgagee's Reliance on Tax Bills. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) 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.

2.11. Condemnation.

(a) Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation (the "**Condemnation Proceeds**"). The Mortgagee may elect to apply the Condemnation Proceeds upon or in reduction of the Liabilities, whether due or not, or make the Condemnation Proceeds available for restoration or rebuilding of the Premises. Irrespective of whether the Condemnation Proceeds are made available for restoration or rebuilding, and irrespective of whether the Condemnation Proceeds are adequate for such purpose, the Premises shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In the event the Condemnation Proceeds are made available for rebuilding or restoration, the Condemnation Proceeds shall be made available and disbursed in the manner and under the



conditions as provided in Section 2.5(b) hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. In such event, if the estimated cost to complete rebuilding or restoration exceeds the Condemnation Proceeds, Mortgagor immediately shall, on written demand of the Mortgagee, deposit with the Mortgagee in cash the amount of such excess cost. Any surplus which may remain after payment of such cost of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the Liabilities or be paid to any party entitled thereto, without interest.

2.12. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

2.13. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and file (at the Mortgagor's expense) such financing statements, obtain such acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Collateral and to provide for payment to the Mortgagee directly of all cash proceeds thereof, with the Mortgagee in possession of the Collateral to the extent it requests; maintain its executive office and principal place of business at all times at the address shown above ; keep all of its books and records relating to the Collateral on the Premises or at such address; keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing; make notations on its books and records sufficient to enable the Mortgagee, as well as third parties, to determine the interest of the Mortgagee hereunder; and not collect any Rents or the proceeds of any of the Leases or Intangibles more than thirty (30) days before the same shall be due and payable except as the Mortgagee may otherwise consent in writing.

2.14. Utilities. The Mortgagor will pay all utility charges incurred in connection with the Collateral and maintain all utility services available for use at the Premises.

2.15. Contract Maintenance; Other Agreements; Leases.

(a) The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Liabilities secured hereby, including, without limitation, the Leases, the Contracts for Sale, the Contracts for Construction and the Intangibles (collectively, the "**Third Party Agreements**"), so that there will be no default thereunder and so that the Persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such Person to avoid such performance. Without the prior written consent of the Mortgagee, the Mortgagor shall not (i) make or permit any termination or material amendment of the rights of the Mortgagor under any Third Party Agreement; (ii) collect rents or the proceeds of any Leases or

Intangibles more than thirty (30) days before the same shall be due and payable; (iii) make any material modification or amendment to any Leases, cancel or terminate the same or accept a surrender of the leased premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any material Lease, or grant any options to renew; or (v) in any other manner impair Mortgagee's rights and interest with respect to the Rents. The Mortgagor will furnish Mortgagee, within ten (10) days after a request by Mortgagee to do so, a written statement containing the names of all lessees, terms of all Leases, including the spaces occupied and the rentals payable thereunder, exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any Lease a certificate with respect to the status thereof and not permit any Lease to become subordinate to any lien on the Premises without the prior written consent of Mortgagee. Mortgagor shall include in each Lease, a provision whereby the tenant thereunder covenants that it will not subordinate its leasehold interest therein to any lien on the Premises without the prior written consent of Mortgagee and the Mortgagor shall promptly deliver to the Mortgagee copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Mortgagee the right, but not the obligation, to cure any such default. All security or other deposits, if any, received from tenants under the Leases shall, to the extent required by applicable law or the Related Documents, be segregated and maintained in an account satisfactory to the Mortgagee and in compliance with the law of the state where the Premises are located and with an institution satisfactory to the Mortgagee.

(b) Nothing in this Mortgage or in any of the other Related Documents shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as landlord under any of the Leases assigned to Mortgagee or under any Third Party Agreements, or to pay any sum of money or damages therein provided to be paid by the Mortgagor, each and all of which covenants and payments Mortgagor agrees to perform and pay. Unless waived by Mortgagee, each of the Leases shall have a subordination provision in form and substance reasonably satisfactory to Mortgagee, subordinating the interest of the tenants under the Leases to this Mortgage, and all renewals, modifications, consolidations, replacements and extensions hereof and shall have attornment and noncancellation clauses in form and substance reasonably satisfactory to Mortgagee. Until all of the Liabilities and other sums secured by this Mortgage are paid in full, Mortgagee reserves the right to require that any Lease be made either superior to or inferior to the lien of this Mortgage.

(c) In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each Lease shall attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as landlord under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance, and shall not be bound by any amendment or modification to any Lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request

by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

2.16. Notify the Mortgagee of Default. The Mortgagor shall notify the Mortgagee in writing immediately upon learning of the occurrence of any Default hereunder, which notice shall describe such Default and the steps being taken by the Mortgagor with respect thereto.

2.17. Restrictions on Transfers; Assignments; Future Leases.

(a) The Mortgagor shall not, without first obtaining the express written consent of Mortgagee create, effect or consent to or 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, whether any such conveyance, sale, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Section 2.17(a) shall not apply (A) to the lien of this Mortgage or any lien created pursuant to the other Related Documents, or (B) to the lien of current taxes and assessments not yet due and payable. The provisions of this Section 2.17(a) shall be operative with respect to, and shall be binding upon, any Person who, in accordance with the terms hereof or otherwise, shall acquire, either directly or indirectly, any part of or interest in or encumbrance upon the Premises or any interest in the Mortgagor.

(b) The Mortgagor shall not cause or permit any Rents, Leases, Contracts for Sale or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Mortgagee without first obtaining the express written consent of the Mortgagee to any such assignment or permit any such assignment to occur by operation of law.

(c) The Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly, without the prior written consent of the Mortgagee and, if granted, under Leases approved in writing by the Mortgagee.

2.18. Assignment of Leases and Rents and Collections.

(a) All of the Mortgagor's interest in and rights under the Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Collateral, are hereby absolutely, presently and unconditionally assigned and conveyed to the Mortgagee to be applied by the Mortgagee in payment of the Liabilities and all other sums payable under this Mortgage. Prior to the occurrence of any Default, the Mortgagor shall have a license to collect and receive all



Rents and other amounts, which license shall be terminated at the sole option of the Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon the Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment to the Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies under Article III hereof shall be deemed to make the Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until the Mortgagee, in person or by agent, assumes actual possession thereof, nor shall appointment of a receiver for the Collateral by any court at the request of the Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make the Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of any Default, this shall constitute a direction to and full authority to each lessee under any Leases, each guarantor of any of the Leases and any other Person obligated under any of the Collateral to pay all Rents and other amounts to the Mortgagee without proof of the Default relied upon. The Mortgagor hereby irrevocably authorizes each such Person to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any Rents and other amounts due or to become due.

(b) The Mortgagor shall apply the Rents and other amounts to the payment of all necessary and reasonable operating costs and expenses of the Collateral, debt service on the Liabilities and otherwise in compliance with the provisions of this Mortgage.

(c) The Mortgagor shall at all times fully perform the obligations of the lessor under all Leases.

(d) The Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgagee or any participating interest therein or to any Person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to the Mortgagee. Upon the occurrence of any Default, the Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. The Mortgagee shall have the authority, as the Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Mortgagor and to bind the Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.

2.19. Reserve for Taxes, Assessments and Insurance. After a Default and during its continuance, at Mortgagee's request, Mortgagor covenants and agrees to pay to the Mortgagee (or as directed by Mortgagee, to a depository institution ("**Depository**")) monthly until all of the Notes and all of the other Liabilities have been paid in full, in

addition to the monthly payments of principal and interest under the terms of the Notes and concurrently therewith, monthly, until all of the Notes are fully paid, a sum equal to taxes and assessments next due upon the Premises (all as estimated by the Mortgagee) and the premiums that will next become due and payable on policies of fire, rental value and other insurance covering the Premises required under the terms of this Mortgage, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and insurance premiums will become due and payable, such sums to be held by the Mortgagee or the Depository, if any, without interest accruing thereon, to pay each of the said items.

All payments described above in this Section 2.19 shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee or the Depository, if any, to the foregoing items in such order as the Mortgagee shall elect in its sole discretion.

The Mortgagor shall also pay to the Mortgagee, at least thirty (30) days prior to the due date of any taxes, assessments or insurance premiums levied on, against or with respect to the Premises, such additional amount as may be necessary to provide the Mortgagee or the Depository, if any, with sufficient funds to pay any such tax, assessment and insurance premiums under this Section 2.19 at least fifteen (15) days in advance of the due date thereof.

Prior to acceleration of the Liabilities, the Mortgagee or the Depository, if any, shall, within ten (10) days of receipt from the Mortgagor of a written request therefor together with such supporting documentation as the Mortgagee may reasonably require (including, without limitation, official tax bills or statements for insurance premiums), cause proper amounts to be withdrawn from the applicable depository account and paid directly to the appropriate tax collecting authority or insurer. Even though the Mortgagor may have made all appropriate payments to the Mortgagee or the Depository, if any, as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and the Mortgagee or any Depository shall have no responsibility or obligation of any kind with respect thereto except with respect to payments required to be made by the Mortgagor hereunder for which the Mortgagee or the Depository, if any, has received funds to cover such payments in full and all statements, invoices, reports or other materials necessary to make such payments, all not less than thirty (30) days prior to the deadline for any such payment. If at any time the funds so held by the Mortgagee shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by the Mortgagee) with respect to the then-current twelve-month period, the Mortgagor shall, within ten (10) days after receipt of notice thereof from the Mortgagee or the Depository, if any, deposit with the Mortgagee or the Depository, if any, such additional funds as may be necessary to remove the deficiency. Failure to do so within such 10-day period shall be a Default hereunder and all sums hereby secured shall immediately become due and payable at the option of the Mortgagee. In the event Mortgagee accelerates the Liabilities, initiates a foreclosure of the Premises or otherwise exercises its rights and remedies, accumulations under this Section 2.19 may be applied to



the Liabilities in such order of application as the Mortgagee may elect in its sole discretion. Any Depository hereunder shall not be liable for any act or omission performed in good faith or pursuant to the direction of any party hereto, but shall be liable only for its gross negligence or willful misconduct.

2.20. Governmental Requirements: Utilities. The Mortgagor will at all times fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral or the use thereof, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights and use, noise and pollution) which are applicable to the Mortgagor or have been granted for the Collateral or the use thereof.

2.21. Compliance with Agreements. Mortgagor shall not do, permit suffer or refrain from doing anything as a result of which a default by the Mortgagor would exist under the Loan Agreements.

### III. DEFAULT; REMEDIES

3.1. Defaults. Each of the following shall constitute a default ("**Default**") hereunder:

(a) Failure to pay any installment of principal or interest under the Notes when due or declared due; or

(b) Non-compliance by the Mortgagor with, or failure by the Mortgagor to pay or perform, any obligation, covenant, condition or agreement contained herein (other than any non-compliance or failure which constitutes a default under Section 3.1(a) or 3.1(c) of this Agreement) and continuance of such non-compliance or failure for ten (10) days after written notice thereof to the Mortgagor from the Mortgagee with respect to any (i) monetary default under this Mortgage, or (ii) default under Section 2.4 of this Agreement, or for fifteen (15) days after written notice thereof to the Mortgagor from the Mortgagee with respect to any non-monetary default under this Mortgage, other than under Section 2.4; or

(c) Any representation or warranty made by or on behalf of Mortgagor to Mortgagee contained herein shall prove to have been false or misleading in any material respect as of the time such representation or warranty was made and Mortgagee notifies Mortgagor thereof in writing; or



(d) The occurrence of a Default or Event of Default (as such terms are defined therein) under the terms and provisions of any of the Related Documents or any guaranty of the Liabilities; or

(e) A default by the Mortgagor occurs under the terms of any of the Leases or under any other Third Party Agreement and any such default continues for more than the applicable period of grace, if any, therein set forth; or

(f) The occurrence of any of the following: (i) the Mortgagor or any guarantor of the Liabilities shall file a petition seeking relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") or any similar law, state or Federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within sixty (60) days, as hereinafter provided; or (ii) an order for relief shall be entered in an involuntary case against the Mortgagor or any guarantor, or a trustee or a receiver shall be appointed for the Mortgagor or any guarantor of the Liabilities, or for all of the property of Mortgagor or any guarantor of the Liabilities, or the major part thereof, in any involuntary proceeding, or any court shall have taken jurisdiction of the property of the Mortgagor or any guarantor of the Liabilities, or the major part thereof, in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, or any guarantor of the Liabilities, 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 (iii) the Mortgagor or any guarantor of the Liabilities, 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 a major part of its property; or (iv) the Mortgagor or any guarantor of the Liabilities is formally charged under a Federal or state law, for which forfeiture of the Premises is a potential penalty.

3.2. Acceleration. Upon the occurrence of any Default, the entire indebtedness evidenced by the Notes, and all other Liabilities, together with interest thereon at the Default Rate (as defined in the Loan Agreements) shall, notwithstanding any provisions of the Notes or the other Related Documents, at once, at the option of the Mortgagee, become immediately due and payable without demand or notice of any kind to the Mortgagor or any other Person. Further, in the event Mortgagee shall be or become entitled to, or shall, accelerate the Liabilities, Mortgagee shall have the right, at Mortgagor's expense, to conduct an environmental audit, review and assessment of the Premises and Mortgagor hereby consents to Mortgagee and its representatives entering upon the Premises for such purpose. The scope of such environmental audit, review and assessment shall be determined by Mortgagee.

3.3. Foreclosure; Expense of Litigation. Upon the occurrence of any Default, Mortgagee shall have the right immediately to foreclose this Mortgage. In any civil action to foreclose the lien hereof, there shall be allowed and included as Liabilities in the order or judgment for sale all expenditures and expenses which may be paid or incurred by or on



behalf of Mortgagee for attorneys' fees, appraiser's 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 order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such civil actions or to evidence to bidders at any sale which may be held pursuant to such order or judgment the true condition of the title to or the value of the Collateral. All expenditures and expenses of the nature in this Section 3.3 mentioned, and such expenses and fees as may be incurred in the protection of the Collateral and maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Notes or the other Liabilities, including probate, bankruptcy and appellate proceedings, or in preparation for the commencement or defense of any pending or threatened civil actions or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

3.4. Application of 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 3.3 hereof; second, all other items which may under the terms hereof constitute Liabilities other than the Liabilities evidenced by the Notes, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Notes; and fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

3.5. Appointment of Receiver. Mortgagor agrees that upon, or at any time after the filing of a complaint to foreclose this Mortgage, upon written notice to Mortgagor, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Notes may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect 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. Mortgagor further agrees that the court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Liabilities, or any judgment or order foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.



3.6. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the Liabilities secured hereby are declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor, upon demand of Mortgagee, shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agents or attorneys. In such event Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power to: (a) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) elect to disaffirm any Lease or sublease which is then subordinate to the lien hereof; (c) extend or modify any Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of Liabilities and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from a foreclosure of this Mortgage, discharge of the Liabilities, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee may deem appropriate; (e) insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) receive all of such Rents and proceeds, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without prior notice to Mortgagor.

3.7. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers conferred herein, shall have full power to use and apply the Rents and proceeds of the Premises to the payment of or on account of the following, in such order as Mortgagee may reasonably determine:

(a) to the payment of the operating expenses of the Premises, including the cost to manage and lease the Premises (which shall include appropriate compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents),



establishing claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises;

(c) to the payment of all repairs, replacements, alterations, additions, betterments, and improvements of the Premises and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily marketable and rentable; and

(d) to the payment of any of the Liabilities or any deficiency which may result from any foreclosure sale.

3.8. Performance of Third Party Agreements. The Mortgagee may, in its sole discretion at any time after the occurrence of a Default, notify any Person obligated to the Mortgagor under or with respect to any Third Party Agreements of the existence of a Default, require that performance be made directly to the Mortgagee at the Mortgagor's expense, advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder and exercise, on behalf of the Mortgagor, any and all rights of the Mortgagor under the Third Party Agreements as the Mortgagee, in its sole discretion, deems necessary or appropriate; and the Mortgagor agrees to cooperate with the Mortgagee in all ways reasonably requested by the Mortgagee (including the giving of any notices requested by, or joining in any notices given by, the Mortgagee) to accomplish the foregoing.

3.9. Rights Cumulative. No right, power or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right, power or remedy, and 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.

#### IV. GENERAL

4.1. Release upon Payment and Discharge of Mortgagor's Liabilities. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all of the Liabilities.



4.2. Giving of Notice. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to be given if and when sent in the manner provided in the Loan Agreements.

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

4.4. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself, and all who may claim through or under it, waives any and all right to have the property and estates comprising the Collateral marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Collateral sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from any order, judgment or decree of foreclosure of this Mortgage on behalf of Mortgagor and each and every person acquiring any interest in or title to the Collateral subsequent to the date of this Mortgage. Mortgagor does hereby further expressly waive, to the extent now or hereafter permitted by law, all rights of reinstatement of this Mortgage pursuant to any provision of Indiana law regarding mortgage foreclosures.

4.5. Compliance with Indiana Mortgage Foreclosure Law. In the event that any provision of this Mortgage shall be inconsistent with any provision of Indiana law regarding mortgage foreclosure ("Foreclosure Law"), the provisions of the Foreclosure Law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Law. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon any Default by the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Foreclosure Law in the absence of said provision, Mortgagee shall be vested with the rights granted in the Foreclosure Law to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Foreclosure Law, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 4.6 of this Mortgage, shall be added to the Liabilities secured by this Mortgage or by the judgment of foreclosure.

4.6. Security Agreement; Fixture Filing. In the event of a Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real property and personal property in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the personal property Collateral securing the Liabilities separately from the real property, ten (10) days notice of the sale of the personal property Collateral shall be reasonable notice. The reasonable expenses of retaking,

holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the fixtures securing the Liabilities except that so long as no Default has occurred and is continuing, Mortgagor shall be permitted to sell or otherwise dispose of such property when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other property at least equal in value to the initial value to that disposed of and in such a manner so that said other property shall be subject to the security interest created hereby and so that the security interest of the Mortgagee shall always be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the property securing the Liabilities shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

4.7. Filing and Recording Fees. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all Federal, state, county, and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes, this Mortgage and the other Related Documents.

4.8. No Liability on Mortgagee. Notwithstanding anything contained herein, the Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from: any and all liabilities, losses or damages which the Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against the Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral, except for claims, liability, loss or damage resulting directly from Mortgagee's gross negligence or willful misconduct. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or 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 lessee, licensee, employee, stranger or other Person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.



4.9. Successors. This Mortgage, and all provisions hereof, shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the Liabilities or any part thereof, whether or not such persons shall have executed the Notes or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Notes secured hereby.

4.10. Severability. In the event one or more of the provisions contained in this Mortgage or the Notes secured hereby or any other Related Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The creation of this Mortgage, the perfection of the lien or security interest in the Premises, and the rights and remedies of the Mortgagee with respect to the Premises, as provided herein and by the laws of the state in which the Premises are located, shall be governed by and construed in accordance with the internal laws of the State of Indiana without regard to principles of conflicts of law. Otherwise, the Loan Agreements, the Notes and the other Related Documents and all other obligations of Mortgagor (including, but not limited to the liability of Mortgagor for any deficiency following a foreclosure of all or any part of the Premises) shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to principles of conflicts of laws, such State being the State where such documents were executed and delivered.

4.11. No Offset. No offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under the Notes secured hereby or from performing any other obligations contained herein or secured hereby.

4.12. No Reliance by Others on the Premises. Mortgagor shall not by act or omission permit any building or other improvement on the Premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as zoned. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section 4.12 shall be void.

4.13. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire any additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.14. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the 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 Liabilities secured hereby, or otherwise.

4.15. Mortgage and Other Related Documents; Obligatory Future Advances.

(a) The Mortgagor covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of this Mortgage, the Notes and all of the other Related Documents.

(b) This Mortgage is granted to secure future advances and loans from the Mortgagee to or for the benefit of the Mortgagor or the Premises and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage and the other Related Documents. All advances, disbursements or other payments required by the Notes, this Mortgage and the other Related Documents are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded. All future advances that may be subsequently made by Mortgagee shall be made within 20 years of the date hereof and have the same priority as advances made on the date hereof although there may be no advances made on the date hereof and although there may be no indebtedness outstanding at the time any future advance is made.

(c) All indebtedness arising or accruing under the Loan Agreements from time to time, whether or not the total amount thereof may exceed the Loan Amount or the face amount of the Notes, shall be secured hereby to the same extent as though said Loan Agreements were fully incorporated in this Mortgage.

4.16. No Property Manager's Lien. Any property management agreement for or relating to all or any part of the Premises, whether now in effect or entered into hereafter by the Mortgagor or its agents, with a property manager shall contain a "no lien" provision whereby the property manager forever and unconditionally waives and releases any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at



any time pursuant to any statute or law. Such property management agreement or a short form thereof including such waiver shall, at the Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. In addition, the Mortgagor shall cause the property manager to enter into a subordination agreement with the Mortgagee, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. The Mortgagor's failure to cause any of the foregoing to occur shall constitute a Default under this Mortgage.

4.17. Miscellaneous.

(a) Mortgagor represents that the proceeds of the Loans will not be used for the purchase of registered equity securities within the purview of any regulation issued by the Board of Governors of the Federal Reserve System.

(b) Mortgagor on written request of the Mortgagee will furnish a signed statement of the amount of the Liabilities and whether or not any Default then exists hereunder and specifying the nature of such Default or Defaults.

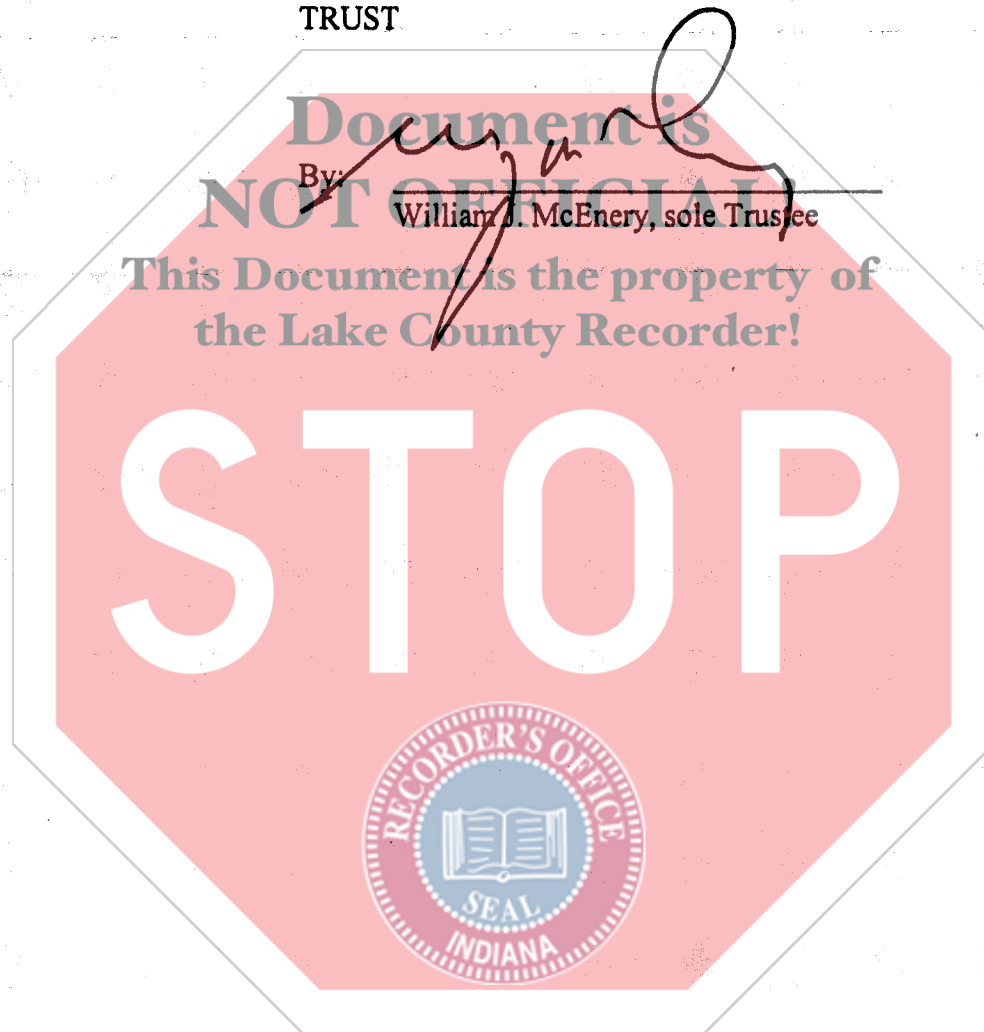
(c) Mortgagee shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants under the Leases and the failure to make any such tenant or tenants a party defendant to any such civil action or to foreclose their rights will not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Liabilities, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Collateral, any statute or rule of law at any time existing to the contrary notwithstanding.

(d) At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all of the Leases upon the execution by Mortgagee and recording or registering thereof, at any time hereafter, in the office wherein this Mortgage was recorded or registered, of a unilateral declaration to that effect.

(e) Mortgagor represents and warrants that (i) the proceeds of the Loans secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(c), and that the principal obligation secured hereby constitutes a "business loan" within the purview of said paragraph, and (ii) the Loans are loans secured by a mortgage on real estate which comes within the purview of Section 205/4(1) of said paragraph.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written, pursuant to proper authority duly granted.

THE WILLIAM J. MCENERY REVOCABLE TRUST





Mortgagor Acknowledgment

STATE OF Illinois )  
 ) SS.  
COUNTY OF Will )

I, Jennifer J. Christopher, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT William J. McEnery, personally known to me to be the sole Trustee of The William J. McEnery Revocable Trust, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Trustee, he signed and delivered the said instrument pursuant to proper authority, as the free and voluntary act and deed of the William J. McEnery Trust and the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of <sup>Aug.</sup> ~~July~~, 2000.

"OFFICIAL SEAL"  
JENNIFER J. CHRISTOPHER  
Notary Public, State of Illinois  
My Commission Expires 07/16/03  
Jennifer J. Christopher  
Notary Public



EXHIBIT A

THE LAND

THE SOUTH 290 FEET OF THE WEST 260 FEET OF THE  
SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17,  
TOWNSHIP 35 NORTH, RANGE 8 WEST OF THE 2ND PRINCIPAL MERIDIAN, IN  
LAKE COUNTY, INDIANA, EXCEPTING THEREFROM THE SOUTH 10 FEET  
THEREOF AND EXCEPTING THAT PORTION OF THE LAND DESCRIBED IN  
WARRANTY DEED RECORDED NOVEMBER 6, 1992, AS DOCUMENT NO.  
92070501, TO THE STATE OF INDIANA.

Key No. 15-116-65

Common Address: 7277 Taft Street, Merrillville, Indiana

