

This instrument prepared by  
and after recording return to:

Jack Edelbrock  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603  
312/782-0600

Inst # 1996-30970

09/19/1996-30970  
10:26 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 MCD 28.50

SECOND AMENDMENT TO FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS SECOND AMENDMENT TO FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called the "Amendment") is made as of August 13, 1996 by and between: HARBERT PROPERTIES CORPORATION, a corporation duly organized and validly existing under the laws of the State of Alabama (herein, together with its successors and assigns, the "Mortgagor"), having its office at One Riverchase Parkway South, P.O. Box 1297, Birmingham, Alabama 35244; and BANK OF AMERICA ILLINOIS (f/k/a Continental Bank N.A. ["Continental"]), having its principal office at 231 South LaSalle Street, Chicago, Illinois ("Lender") and BANK OF AMERICA ILLINOIS (f/k/a Continental Bank N.A.) as agent ("Agent") for the Lender (herein in such capacity as Agent, together with its successors and assigns in such capacity, called the "Mortgagee"), having its principal office at 231 South LaSalle Street, Chicago, Illinois 60697.

R E C I T A L S

WHEREAS, HARBERT CORPORATION, a Delaware corporation (the "Parent"), HARBERT INTERNATIONAL, INC., a Delaware corporation (the "Company"; and, together with the Parent, the "Borrowers") were party to that certain Credit Agreement dated as of March 26, 1991, as amended to date (the "Original Credit Agreement") among the Borrowers, various financial institutions as lenders (the "Original

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Facility Lenders") and Continental, as agent for the Original Facility Lenders; and

WHEREAS, the Borrowers were party to that certain New Facility Credit Agreement dated as of April 27, 1992, as amended to date (the "New Facility Agreement") among the Borrowers, the various financial institutions party thereto as Lenders and Continental as agent for such lenders; and

WHEREAS, on January 12, 1994, the Borrowers and Lender amended, restated and consolidated the Original Credit Agreement and the New Facility Agreement on the terms and conditions set forth in that certain Amended and Restated Credit Agreement, dated as of January 12, 1994 (the "First Amended Agreement"), by and among Continental, as agent and lender, and Borrowers; and

WHEREAS, simultaneously herewith the Borrowers, the Lender and the Agent are amending, restating and consolidating the First Amended Agreement on the terms and conditions set forth in that certain Second Amended and Restated Credit Agreement of even date herewith (the "Agreement"), to, among other things, set forth the terms and conditions under which Loans (as defined in the Agreement) in a maximum aggregate principal amount at any one time not to exceed \$20,000,000 will hereafter be made available to the Borrowers; it being the intention of the Borrowers, the Lender and the Agent that the Agreement and the Loan Documents executed in connection therewith not effect a novation of the obligations of the Borrowers under the Original Credit Agreement, the New Facility Agreement or the First Amended Agreement, but merely a restatement and, where applicable, an amendment of the terms governing such obligations hereafter; and

WHEREAS, Mortgagor is an indirect, wholly-owned Subsidiary of Parent; and

WHEREAS, the Loans arising under the Original Credit Agreement, the New Facility Agreement and the First Amended Agreement are secured by certain collateral, including, without limitation, that certain Future Advance Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (herein sometimes called the "Original Mortgage") made as of March 19, 1993 by Mortgagor encumbering certain real property described in Exhibit A hereto, which Original Mortgage was recorded on March 26, 1993 in the records of the Shelby County Judge of Probate as Instrument Number 1993-08142;

WHEREAS, the Original Mortgage was previously amended contemporaneously with the execution and delivery of the First Amended Agreement by that certain First Amendment to Future Advance Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement (the "First Amendment") between and among

Mortgagor and Mortgagee, which First Amendment was recorded on January 18, 1994 in the records of the Shelby County, Alabama Judge of Probate as Instrument Number 1994-01696 (the Original Mortgage, as amended by the First Amendment is herein called the "Mortgage");

WHEREAS, Mortgagee, as Agent and Lender, has required, as a condition to entering into the Agreement, that this Amendment be executed and recorded to evidence the agreement that the Mortgage will continue to secure the Loans and the other Obligations under the Agreement.

NOW THEREFORE, for and in consideration of the Lender's executing and delivering the Agreement, and for \$10.00 in hand paid by Mortgagee to the Mortgagor and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of the principal and interest payable in respect of the Notes, as hereinafter defined, and all other Liabilities, as hereinafter defined, and any extensions, renewals, modifications and refinancing of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, the Company or the Parent, and the payment of all charges incurred herein by Mortgagee on account of Mortgagor or the Parent, including, but not limited to, attorneys' fees, and the payment of any and all other Obligations, and the performance of all and singular the covenants, conditions and agreements in the Original Mortgage, in the said Notes, in the Agreement and in the other Loan Documents, the parties hereto agree as follows:

I. Each of the foregoing Recitals is true and correct.

II. All terms used in this Amendment beginning with an initial capital letter, that are not otherwise defined herein, but that are defined in the Agreement or the Mortgage, shall have the same meaning for purposes hereof as they are given in such documents.

III. The Mortgage is hereby amended as follows:

III.1. All references to the "Credit Agreement", or terms of like import shall hereafter be deemed references to the Agreement.

III.2. All references in the Mortgage to the "Mortgagee" shall mean the Mortgagee.

III.3. The term "Notes" as used in the Mortgage shall hereafter refer to the Note as defined in Section 3.2 of the Agreement.



III.4. All references to the "Liabilities" shall mean the Obligations as defined in the Agreement, provided, however, that the maximum aggregate amount included within the Liabilities on account of principal shall not exceed the sum of \$2,500,000.00.

III.5 All other terms in the Mortgage that are defined by reference to the First Amended Agreement shall instead be defined by reference to the Agreement.

IV. All references in the Mortgage to "the Mortgage" shall be deemed references to such document as amended hereby and as it may from time to time be further amended, modified, supplemented or restated.

V. The Mortgagor and the Mortgagee expressly agree that this Amendment shall not effect a novation of the Loans, the Notes or any of the Liabilities (each as defined in the Mortgage) or, the Mortgage or of any of the obligations of the Borrowers under the First Amended Agreement.

VI. The Mortgagor confirms for the benefit of the Lender and the Agent that the Mortgage as amended hereby, shall continue to secure the Liabilities as herein above defined in this Amendment.

VII. Except as herein amended, each of the parties hereto reaffirms, ratifies and confirms all of the terms, conditions, agreements, representations and provisions set forth in the Mortgage.

VIII. This Amendment shall be a contract under and governed by the internal laws of the state where the Premises are located.

IX. (a) The Mortgagor and Mortgagee intend and agree that the indebtedness secured by the Mortgage as amended hereby will periodically and from time to time increase and decrease as provided in the Agreement. The Mortgagor and the Mortgagee further expressly agree that should all monies advanced to the Mortgagor pursuant to the Agreement be totally repaid and the balance owing to the Mortgagee be reduced to zero at any time or from time to time, the Mortgage shall not become null or void by operation of law or otherwise, but shall instead, unless the Mortgage shall be subject to release by its terms, remain in full force and effect and shall retain its priority position of record until the termination of the Agreement and of all obligations of the Mortgagee to make any advances or disbursements thereunder and the full payment and satisfaction of the Liabilities.

(b) The Mortgage has been granted to secure future advances and loans from the Mortgagee to or for the benefit of the Mortgagor or its successors and assigns or the Premises (as defined

in the Original Mortgage), as provided in the Agreement regardless of whether, at the time or times of such advances, the Mortgagor is then the owner of the Collateral (as defined in the Original Mortgage) or any interest in any part thereof, and costs and expenses of enforcing the Mortgagor's obligations under the Mortgage, the Loan Documents and the Agreement. All advances, disbursements or other payments required by the Agreement 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 Amendment is recorded.

(c) BY VIRTUE OF THE AMENDMENT AND RESTATEMENT OF THE FIRST AMENDED AGREEMENT REFERENCED ABOVE, A PORTION OF THE LIABILITIES SECURED BY THE MORTGAGE (AS AMENDED HEREBY) WILL REPRESENT REVOLVING INDEBTEDNESS. THE FIRST AMOUNTS ADVANCED UNDER THE AGREEMENT AND THE NOTE SHALL BE DEEMED TO BE THE LAST AMOUNTS REPAYED UNDER THE AGREEMENT AND THE NOTES. NOTWITHSTANDING ANY AND ALL OTHER PROVISIONS OF THIS AMENDMENT OR THE MORTGAGE (AS AMENDED HEREBY) TO THE CONTRARY, THE MAXIMUM PRINCIPAL AMOUNT SECURED AND WHICH UNDER ANY CONTINGENCY MAY AT ANY TIME HEREAFTER BE SECURED BY THE MORTGAGE IS \$2,500,000 AND ALL PROVISIONS OF THE MORTGAGE (AS AMENDED HEREBY) AND THIS AMENDMENT SHALL BE READ IN A MANNER CONSISTENT WITH AND NOT IN CONFLICT WITH SUCH LIMITATION. THE AMOUNTS SECURED BY THE MORTGAGE (AS AMENDED HEREBY) SHALL BE DEEMED TO BE THE LAST AMOUNTS REPAYED UNDER THE AGREEMENT, OTHER THAN THE AMOUNTS SECURED BY THE AMENDED AND RESTATED FUTURE ADVANCE MORTGAGE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT, OF EVEN DATE WITH THE FIRST AMENDED AGREEMENT, BETWEEN HARBERT INTERNATIONAL, INC. AND THE MORTGAGEE, WHICH MORTGAGE HAS BEEN RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA AS INSTRUMENT NO. 1994-01695 (WHICH MORTGAGE IS BEING AMENDED CONTEMPORANEOUSLY HERewith BY A CERTAIN FIRST AMENDMENT TO AMENDED AND RESTATED FUTURE ADVANCE MORTGAGE AND LEASEHOLD MORTGAGE, "ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT OF EVEN DATE HERewith; AS SO AMENDED, THE "HARBERT INTERNATIONAL MORTGAGE") WHICH AMOUNTS SECURED BY THE SAID HARBERT INTERNATIONAL MORTGAGE SHALL BE DEEMED TO BE THE LAST AMOUNTS REPAYED UNDER THE AGREEMENT.

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Mortgage in Chicago, Illinois on the day and year first above written.

Witness:

HARBERT PROPERTIES CORPORATION  
an Alabama corporation

Connie L. Pike  
Name: CONNIE L. PIKE

By: David Boutwell  
Name: DAVID BOUTWELL  
Title: CONTROLLER

Address: One Riverchase Parkway South  
Birmingham, Alabama 35244  
Facsimile No.: (205) 987-5505  
Attention: Michael D. Luce

with a copy to:

Balch & Bingham  
1910 Sixth Avenue North  
Suite 2600  
Birmingham, Alabama 35203  
Facsimile No.: (205) 252-1074  
Attention: John F. Mandt, Esq.

Accepted:

BANK OF AMERICA ILLINOIS, individually  
and as Agent

By: Timothy J. Pepowski  
Title: Senior Vice President

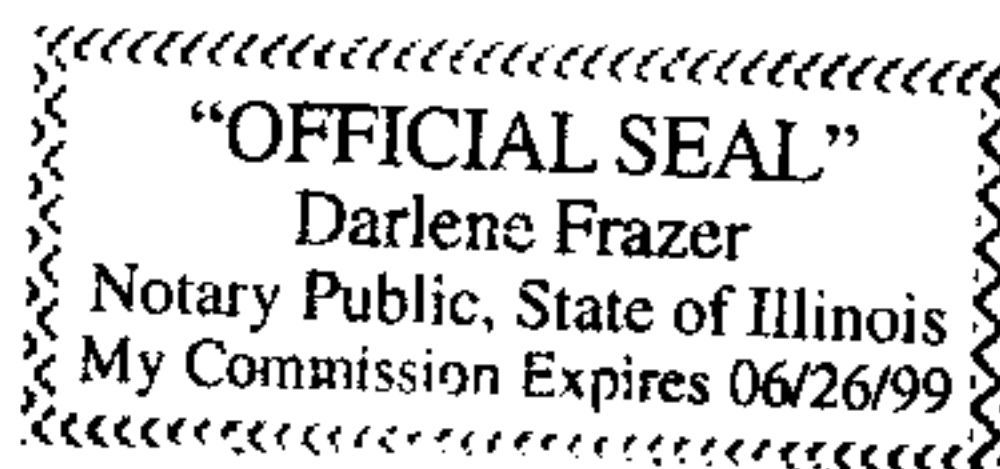
Address: 231 South LaSalle Street  
Chicago, Illinois 60697  
Facsimile No.: (312) 828-1974  
Attention: Timothy Pepowski

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS.

I, Darlene Frazer, the undersigned, a Notary Public in and for said County in said State, hereby certify that DAVID Bootwell, whose name as Controller of HARBERT PROPERTIES CORPORATION, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 13<sup>th</sup> day of August, 1996.

[NOTARIAL SEAL]



Darlene Frazer  
Notary Public

My commission expires:

6/26/99

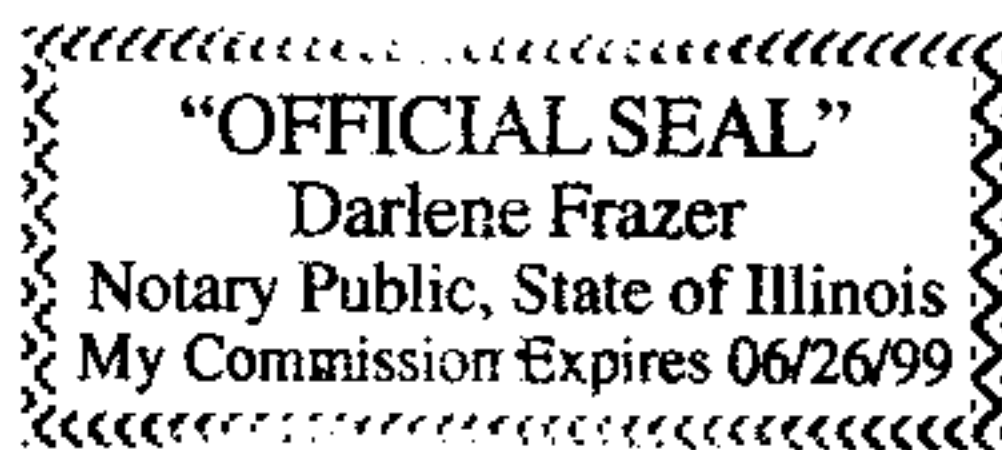


STATE OF Illinois )  
COUNTY OF COOK ) SS.

I, Darlene Frazer, the undersigned, a Notary Public in and for said County in said State, hereby certify that Timothy J. Pepowski and whose name as        Senior Vice President of BANK OF AMERICA ILLINOIS, an Illinois banking corporation, in its capacity as Agent as described in said instrument, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said national banking association, in its capacity as such Agent.

Given under my hand and official seal, this 13<sup>th</sup> day of August, 1996.

[NOTARIAL SEAL]



Darlene Frazer  
Notary Public

My commission expires: 6/26/99



EXHIBIT "A"  
THE LAND

PARCEL I

All of East 1/2 of SE 1/4 of Section 30, Township 19 South, Range 2 West, lying West of the right of way for Highway I-65 and lying South of the right of way for Shelby County Road No. 17. All of NE 1/4 of NE 1/4 of Section 31, Township 19 South, Range 2 West lying west of the right of way for Highway I-65. All of NE diagonal 1/2 of SE 1/4 of NE 1/4 of Section 31, Township 19 South, Range 2 West, lying west of the right of way for Highway I-65. LESS AND EXCEPT that part of the above described property included in that certain deed recorded in Probate Office of Shelby County, Alabama, in Deed Book 154, Page 285. All being situated in Shelby County, Alabama.

LESS AND EXCEPT Part of the SE 1/4 of the NE 1/4 of Section 31, Township 19 south, Range 2 west, more particularly described as follows: Commence at P.C. Station 13+54.43 on the West line of Block 3 of Cahaba Valley Park North as recorded in Map Book 13 Page 140 in the Probate Office of Shelby County, Alabama; thence run southeasterly along the westerly line of said Block 3 and along the easterly right of way line of Cahaba Valley Parkway for 237.74 feet; thence 90 deg. 00 min. 00 sec. left and northeasterly for 766.75 feet to a point on the easterly line of said Block 3, said point also being the Point of Beginning; thence continue northeasterly along the same course for 291.65 to a point on the westerly right of way line of interstate highway I-65; thence 110 deg. 26 min. 35 sec. right and run southerly along said right of way line for 478.30 feet to a point on east line of said Block 3, said point also being at the angle point of the easterly line of said Block 3 where it diverges westerly from said right of way line; thence 144 deg. 01 min. 18 sec. right and run northwesterly along said easterly line of said Block 3 for 465.17 feet to the Point of Beginning. Said excluded parcel contains 1.50 acres, or 65,354 square feet, more or less.

PARCEL II

All right, title and interest, if any, of the Mortgagor in and to lands within the SE 1/4 of the NE 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, lying South of the South right-of-way line of Shelby County Road No. 17. No warranties of title or right to convey are made concerning the foregoing Parcel II.

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