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**MORTGAGE, FINANCING STATEMENT
AND SECURITY AGREEMENT**

THIS MORTGAGE, FINANCING STATEMENT AND SECURITY AGREEMENT (this "Mortgage") is made on March 20, 1991 by and among HARBERT PROPERTIES CORPORATION, an Alabama corporation ("Borrower"), and UNITED OF OMAHA LIFE INSURANCE COMPANY a Nebraska corporation ("Lender").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited the receipt of which is hereby acknowledged, Borrower hereby irrevocably warrants, grants, bargains, sells, transfers, conveys and assigns to Lender, for the benefit and security of Lender, subject to the terms and conditions of this Mortgage all of the following-described estate, property and interest of Borrower now or hereafter acquired, it being the intent of the parties that all such estate, property and interest be and hereby are intended to be real property notwithstanding the separate itemization; together with all cash and noncash proceeds thereof, which may be referred to in this Mortgage as the "Mortgaged Estate":

Land, Rents and Derivative Interests

The real property located in the City of Hoover, County of Shelby, State of Alabama, described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"); all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all estate, right, title and interest of Borrower in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Borrower in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Borrower, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or

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✓ Cash Title

proposed, adjoining the Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

Improvements

Any and all buildings and improvements now or hereafter erected on the Property, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (the "Improvements");

Personal Property

All right, title and interest of Borrower in and to all tangible personal property now owned or hereafter acquired by Borrower and now or at any time hereafter located on or at the Property and used in connection therewith, including, but not limited to: all building materials stored on the Property, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, appliances (including dishwashers, garbage disposal units, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and maintenance and other supplies; other than such property owned by tenants of Borrower and not acquired from Borrower subsequent to the date of this Mortgage and other than such machinery, apparatus, equipment, fittings, fixtures and articles of personal property used in Borrower's business unless such items are also used in the operation or maintenance of Mortgaged Estate or unless the Improvements are used as a hotel, motel, apartment building, restaurant or other building of lodging or food service (the "Personal Property");

Intangibles

All of Borrower's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and

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certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Mortgaged Estate, whether now existing or entered into or obtained after the date hereof; and

Escrows

All of Borrower's interest in all existing and future escrow accounts established with respect to the Property including but not limited to escrows established for the payment of taxes, insurance, liens and encumbrances; and

Claims and Awards

All the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Estate, and Borrower hereby authorizes, directs and empowers Lender, at its option, on Borrower's behalf, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

TO HAVE AND TO HOLD the Mortgaged Estate hereby granted or mortgaged, unto Lender, and its successors and assigns, in fee simple forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the obligations secured hereby shall be paid when due, and if the Borrower shall keep, perform and observe the obligations, covenants, agreements and provisions in this Mortgage, then this Mortgage and the estate and rights hereby granted shall cease, terminate and be void, but otherwise shall be and remain in full force and effect.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS, INCLUDING ALL REPLACEMENTS, RENEWALS, AMENDMENTS, EXTENSIONS, SUBSTITUTIONS AND MODIFICATIONS:

(i) Payment of all indebtedness and performance of all obligations and covenants of Borrower under or pursuant to the following:

(a) Promissory Note dated March 20, 1991 executed by Borrower in favor of Lender in the aggregate principal amount of \$3,210,000.00 (the "Note");

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(b) This Mortgage;

(c) Assignment of Rents and Leases dated the date of the Note and recorded simultaneously with this Mortgage given by Borrower to Lender (the "Assignment of Rents");

(d) Environmental Indemnity Agreement dated the date of the Note between Lender and Borrower ("Indemnity"); and

(e) All other Loan Documents (as defined herein);

(ii) Payment of all future advances, all sums advanced by Lender to protect the Mortgaged Estate or otherwise pursuant to the terms of the Loan Documents with interest on all the foregoing at the Late Rate specified in the Note from the date of Lender's advance to the date of Borrower's payment.

The indebtedness and the obligations secured by this Mortgage which are described in (i) and (ii) above are referred to herein as the "Secured Obligations."

This Mortgage, the Note, the Assignment of Rents and Leases, the Indemnity, that certain Commitment Letter dated December 28, 1990 and amended by letter dated January 15, 1991 by Lender to Borrower (the "Commitment Letter") and any other writing given to evidence or further secure the payment and performance of any of the several Secured Obligations are hereafter referred to as the "Loan Documents."

All capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Note.

ARTICLE I

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF BORROWER

Borrower hereby represents, warrants, covenants and agrees:

Section 1.01. Payment of Secured Obligations. Borrower hereby grants this Mortgage to secure the payment and performance when due of the Secured Obligations. The consideration received by Borrower to execute and deliver this Mortgage and the liens and security interests created

herein is sufficient and will provide a direct economic benefit to Borrower.

Section 1.02. Title of Borrower. Borrower has and shall maintain, subject to Permitted Encumbrances set forth in Exhibit B hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Estate, which is free from encumbrance; and Borrower has full right to make this conveyance.

Section 1.03. Capital Improvements. Borrower shall not make any expenditures for Improvements on the Property which, individually or in the aggregate, would materially and adversely affect the value, utility or current use of the Mortgaged Estate.

Section 1.04. Maintenance, Repair, Alterations. Borrower shall: (i) keep the Mortgaged Estate in good condition and repair, subject to reasonable and ordinary wear and tear; (ii) not remove, demolish or substantially alter any of the Improvements unless required by law or by order of a governmental body having jurisdiction over the same; (iii) complete promptly and in good and workmanlike manner any improvement construction or restoration on the Property and pay when due all claims for labor performed and materials furnished therefor; have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics and materialmen's liens filed against the Property; provided, however, that Borrower shall give written notice thereof to Lender, and Lender may, at its sole option, require Borrower to post a bond or other collateral satisfactory to Lender (and acceptable to the title company insuring the Mortgage) in connection with any such action by Borrower; (iv) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Estate or any part thereof; (v) keep and maintain grounds, sidewalks, roads, parking and landscaped areas in good and neat order and repair; and (vi) not commit, suffer or permit any act to be done in or upon the Mortgaged Estate in violation of any law, ordinance or regulation.

Section 1.05. Required Insurance. Borrower shall provide, maintain and keep at all times in force the following policies of insurance:

(a) Insurance against loss or damage to the Improvements and, if required by Lender, the Personal Property, by fire, seepage, backup of sewers and drains and any of the risks covered by insurance of the type now known as "fire and extended coverage",

such insurance to be on an "all risks" basis and in an amount (i) not less than the full replacement cost of the Improvements and Personal Property and (ii) sufficient to prevent Borrower from becoming a co-insurer in any loss, and with a deductible satisfactory to Lender;

(b) Business interruption or loss of rent insurance in an amount not less than one year's rents;

(c) Comprehensive general liability insurance against claims for "personal injury," including, without limitation, bodily injury, death or property damage occurring on, in or about the Mortgaged Estate and the adjoining streets, sidewalks and passageways in an amount which Lender may reasonably require;

(d) During the course of any construction or repair of Improvements on the Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements;

(e) Such other insurance, including, without limitation, earthquake insurance, boiler and machinery insurance and flood insurance, all as may from time to time be reasonably required by Lender, against such hazards and risks, as is commonly obtained by prudent owners of property similar in use to the Mortgaged Estate and located in the same area in which the Property is located.

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Section 1.06. Delivery of Insurance Policies, Payment of Premiums. All policies of insurance shall be issued by companies, in amounts, with deductibles, for periods, with endorsements and with other terms, all as required by the provisions of the Loan Documents and as otherwise reasonably satisfactory to Lender. All such policies shall name Lender as an insured and shall contain a standard Lender's endorsement and loss payable clause in favor of and acceptable to Lender. All companies issuing insurance must be authorized and qualified to issue insurance in the state in which the insured property is located. Borrower shall furnish Lender with an original or certified copy of all policies of required insurance. Each policy must contain a provision that the policy may not be terminated, materially modified or allowed to elapse without at least twenty (20) days' prior written notice to Lender.

Thirty (30) days prior to the expiration of each such policy, Borrower shall furnish Lender with satisfactory

evidence of the reissuance of a policy continuing insurance in force as required by this Mortgage. In all cases, Borrower shall immediately give notice to Lender of any notice received by Borrower of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or to make the deposits required hereunder, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and Borrower will pay all premiums thereon promptly upon demand by Lender. Until such payment is made by Borrower, the amount of all such premiums, together with interest thereon after notice from Lender that such payment has been made, shall be secured by this Mortgage.

Section 1.07. Insurance Proceeds. After the occurrence of any casualty to the Mortgaged Estate or any part thereof, Borrower shall give prompt written notice thereof to Lender and promptly submit a claim to the insurer for payment of insurance proceeds. Borrower shall provide Lender with a copy of such claim.

(a) All proceeds of insurance paid or payable under any insurance policy (the "Insurance Proceeds") with respect to the Mortgaged Estate shall be paid to Lender, and each insurer is hereby authorized and directed to make payment for any such loss directly to Lender instead of payment to Borrower. Any Insurance Proceeds shall be applied first to the payment of all costs and expenses incurred by Lender in obtaining such proceeds. The balance of the proceeds, if any, may be applied at the option of Lender, (i) toward altering, restoring or rebuilding the Mortgaged Estate or such portion thereof that may have been altered, damaged or destroyed or (ii) against sums secured hereby without prepayment premium, in such order as Lender may in its absolute discretion elect. Such damage or destruction shall not affect the lien of this Mortgage or the obligations of Borrower hereunder, and Lender is authorized to compromise and settle all loss claims on said policies if not adjusted promptly by Borrower.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Secured Obligations, any unpaid portion of the Secured Obligations shall remain in full force and effect, and Borrower shall not be excused in the payment thereof.

(c) The application or release by Lender of any Insurance Proceeds shall not cure or waive any Event of Default or notice of default under this Mortgage or invalidate any act done pursuant to such notice. If Lender elects not to so apply the Insurance Proceeds to the restoration, rebuilding or repair of the Mortgaged Estate pursuant to Section 1.07(a) hereof, Borrower shall not be required to restore, rebuild or repair the portion of the Mortgaged Estate damaged or destroyed which is covered by such Insurance Proceeds, and the failure to do so shall not constitute an Event of Default under this Mortgage.

Section 1.08. Indemnification; Subrogation; Waiver of Offset.

(a) Borrower shall indemnify and hold Lender harmless from all liability arising in connection with any litigation concerning this Mortgage or the Mortgaged Estate, including all reasonable attorneys' fees and expenses incurred by Lender in any such litigation.

(b) Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Mortgaged Estate, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(c) All sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations of Borrower hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower, or any action taken with respect to this Mortgage by any trustee or receiver of Borrower, or by any court, in any such proceeding; or (v) any other occurrence whatsoever, whether similar

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or dissimilar to the foregoing; whether or not Borrower shall have notice or knowledge of any of the foregoing. To the extent permitted by law, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Secured Obligation.

(d) Borrower's indemnity shall be inapplicable to Lender's willful or wanton misconduct.

Section 1.09. Taxes and Impositions.

(a) Borrower agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other fees, taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Estate, or become due and payable, and which create a lien upon any part of the Mortgaged Estate, or any part thereof, or which are imposed upon Lender's interest in Mortgaged Estate (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"). Borrower shall have the right to contest, in good faith, the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction over the Property; provided, however, Borrower shall give written notice thereof to Lender and Lender may, in its sole discretion, require Borrower to post a bond or other collateral satisfactory to Lender in connection with any such action by Borrower) and not caused by the willful or wanton misconduct of Lender.

(b) If at any time after the date hereof, there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Estate in lieu of or in addition to the Impositions payable by Borrower pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Lender and measured by or based in whole or in part upon the amounts of the outstanding Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Borrower shall pay and discharge the same as herein provided with respect to the payment of Impositions. In addition to the other remedies of Lender under Article V of this Mortgage, at the option of Lender, all Secured Obligations, together with all accrued interest thereon, shall become due and payable 180 days after Borrower

receives written notice thereof in the event that Borrower shall not be permitted to pay such fees, taxes or assessments on behalf of Lender.

(c) Borrower covenants to furnish Lender within 30 days after the date upon which any such Imposition is due and payable by Borrower, official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

(d) Borrower covenants and agrees to use its best efforts to prevent the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Mortgaged Estate as a single lien.

Section 1.10. Escrows. On the first day of each calendar month, Borrower shall deposit with Lender a non-interest-bearing amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage and one-twelfth of the annual Impositions estimated by Lender to be next due on the Mortgaged Estate. Such deposits are hereby pledged as additional security for the Secured Obligations. Borrower further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums and Impositions to be sent or mailed directly to Lender. Upon receipt of such bills, statements or other documents, and provided Borrower has deposited sufficient funds pursuant to this Section 1.10, Lender shall pay such amounts as may be due out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Lender shall notify Borrower; and Borrower shall immediately deposit an amount equal to such deficiency with Lender. Notwithstanding the foregoing, nothing contained herein shall cause Lender to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited, pursuant to this Section 1.10. If Borrower fails to deposit sufficient sums pursuant to this Section 1.10, Lender may, at Lender's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Lender upon demand, or at the option of Lender, Lender may, without making any advance whatever, apply any sums held by it upon any Secured Obligations.

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Section 1.11. Utilities. Borrower shall pay when due all utility charges which are incurred for the benefit or otherwise affect the Mortgaged Estate for gas, electricity, water, telephone telecable or sewer services and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 1.12. Actions Affecting Mortgaged Estate. Borrower shall appear in and contest any action or proceeding purporting to affect the title of Borrower in the Mortgaged Estate, security hereof or the rights or powers of Lender; and Borrower shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees incurred by Lender, in any such action or proceeding in which Lender may appear.

Section 1.13. Actions by Lender To Preserve Mortgaged Estate. Should Borrower fail to make any payment or to do any act as and in the manner provided in this Mortgage, Lender, in its sole discretion, without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower from any Secured Obligation, may make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Lender shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Estate; (ii) to direct Borrower to terminate any management agent and to employ such management agent as Lender may reasonably determine; (iii) to make additions, alterations, repairs and improvements to the Mortgaged Estate which Lender may reasonably consider necessary or proper to keep the Mortgaged Estate in good condition and repair; (iv) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Lender may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. All costs and expenses reasonably incurred by Lender in connection with the exercise by Lender of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, shall be secured hereby; and upon demand by Lender, all such costs and expenses shall be repayable by Borrower to Lender.

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Section 1.14. Survival of Warranties. Borrower shall fully and faithfully satisfy and perform the Secured Obligations. All representations, warranties and covenants of Borrower contained in any Loan Document or writing delivered in connection with the Loan shall remain continuing obligations, warranties and representations of Borrower during any time when any portion of the Secured Obligations remain outstanding. In the event of a transfer to which Lender has consented under Section 1.21(c), the representations, warranties and covenants of Harbert Properties Corporation shall not survive such transfer.

Section 1.15. Eminent Domain. Should the Mortgaged Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Borrower receive any notice or other information regarding any such proceeding, Borrower shall give prompt written notice thereof to Lender. Lender may participate in any such Condemnation proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings and shall consult with Lender and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Estate and all judgments, decrees and awards for injury or damage to the Mortgaged Estate or any part thereof or interest therein shall be paid to Lender and shall be applied first to all costs and expenses incurred by Lender in obtaining the proceeds. The balance of the proceeds, if any, shall be applied at the option of Lender (i) toward altering, restoring or rebuilding the Mortgaged Estate or such portion thereof that may have been altered, damaged or destroyed or (ii) against Secured Obligations without prepayment premium, in such order as Lender may in its absolute discretion elect. If Lender elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Estate, Borrower shall not be required to repair or restore that portion of the Mortgaged Estate affected by Lender's election and the failure to do so shall not constitute a breach by Borrower of its obligation to maintain the Mortgaged Estate set forth in Section 1.04 hereof.

Borrower hereby assigns and transfers to Lender, and agrees to execute such further assignments of, all such proceeds, judgments, decrees and awards as Lender may request. Lender is hereby authorized, in the name of

Borrower, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Lender shall not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in the collection of any proceeds, judgments, decrees or awards.

Section 1.16. Additional Security. In the event Lender at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with or after any sale is made hereunder.

Section 1.17. Successors and Assigns. This Mortgage and all warranties and covenants of Borrower contained in the Loan Documents apply to, inure to the benefit of and bind all parties hereto, their heirs, successors and assigns.

Section 1.18. Inspections. Lender or its representatives are authorized to enter at any reasonable time upon or in any part of the Mortgaged Estate for the purpose of inspecting the same and all books, records and documents relating thereto, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents. Prior to Lender giving Borrower notice of default, inspections shall be at Lender's expense, and Lender will take reasonable steps not to unduly interfere with the business of Borrower while conducting such inspection.

Section 1.19. Liens. Borrower shall promptly pay, discharge and obtain the release of, at Borrower's cost and expense, all liens, encumbrances and charges upon the Mortgaged Estate, or any part thereof or interest therein, except Permitted Encumbrances. Borrower shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics and materialmen's liens filed against the Property; provided, however, that Borrower shall give written notice thereof to Lender, and Lender may, at its sole option, require Borrower to post a bond or other collateral satisfactory to Lender (and acceptable to the title company insuring the Mortgage) in connection with any such action by Borrower.

So long as any Secured Obligation shall remain unpaid, Borrower shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Lender all such instruments and documents as in the opinion of Lender are necessary or desirable to preserve

the first priority lien created by this Mortgage.

Section 1.20. No Event of Default Under Loan Documents. Borrower agrees to notify Lender immediately in writing of any Event of Default. Borrower shall also notify Lender in writing of any event or condition which with the lapse of time or the giving of notice would constitute an Event of Default.

Section 1.21. Transfer of Interests in Borrower or Mortgaged Estate. Borrower shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein (including rents, issues or profits arising from the Property) or in Borrower, without the prior written consent of Lender, in its sole discretion; provided, however, that such consent of Lender shall not be required for any such transfer by devise or descent, or for the grant of a leasehold interest of five years or less upon market terms in the Mortgaged Estate. Notwithstanding the foregoing, in the event that no Event of Default has occurred and no event has occurred which, with the giving of appropriate notice, would constitute an Event of Default, the following shall be permitted:

- (a) Without consent of Lender, the transfer of Harbert Properties Corporation stock, provided that Harbert Corporation, a Delaware corporation, retains at least fifty percent (50%) ownership and voting interest.
- (b) With the prior written consent of Lender, the transfer of title or an interest in the Property to a Related Entity and in the event of such transfer, no transfer fee shall be charged. For the purposes of this provision, a "Related Entity" shall include and be limited to any corporation, partnership or joint venture in which Borrower or Harbert Corporation, a Delaware corporation, owns a fifty percent (50%) or greater interest and such corporation, partnership or joint venture has a net worth equal to or greater than that of Harbert Properties Corporation as of the date hereof.
- (c) The transfer of the Property with Lender's prior written consent. Lender's consent may be subject to Lender's review and approval of (i) the transferee's creditworthiness, (ii) transferee's management experience,

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(iii) the purchase terms, (iv) transferee's assumption of Borrower's obligations under the Loan, and (v) payment of a transfer fee equal to one percent (1%) of the unpaid principal balance of the Loan as of the date of transfer.

Section 1.22. Maintenance of Net Worth by Tenant Under Master Lease. Borrower covenants that Harbert International, Inc., Lessee under a Master Lease executed between Borrower, as Lessor, and Harbert International, Inc., as Lessee, will maintain throughout the term of the Loan total stockholders equity of not less than One Hundred Million Dollars (\$100,000,000.00). Borrower will provide an annual Financial Statement on Harbert International, Inc. to Lender within one hundred twenty (120) days of the end of each calendar year that this mortgage is outstanding and failure of Borrower to provide such statement. The failure of Harbert International, Inc. to maintain One Hundred Million Dollars (\$100,000,000.00) of stockholders equity will constitute a default under this Mortgage.

Section 1.23. Inferior Liens. Borrower shall not permit any additional mortgages, security interests, or liens to be placed against the Mortgaged Estate, provided Borrower shall be permitted to purchase furniture, furnishings, and office equipment for use on or in connection with the Property with purchase money financing provided by the Seller of such items and others, and the existence of such purchase money financing with respect to such items shall not constitute a violation of this provision.

Section 1.24. Environmental Matters.

(a) Borrower represents and warrants to Lender that to the best of its knowledge: (i) Borrower is in compliance in all respects with all applicable Environmental Requirements relating to the Mortgaged Estate and the Use of the Mortgaged Estate, and Borrower has not engaged in any Environmental Activity, nor to the best knowledge of Borrower has any Environmental Activity otherwise occurred, in violation of any applicable Environmental Requirements; (ii) no investigations, inquiries, orders, hearings, actions or other proceedings by or before any governmental agency are pending or threatened in connection with any Environmental Activity or alleged Environmental Activity; (iii) Borrower has no liability, absolute or contingent, strict or joint and several, in connection with any

Environmental Activity; (iv) the Use of the Mortgaged Estate for its intended purpose will not result in any Environmental Activity in violation of any applicable Environmental Requirements; and (v) Borrower has not engaged in any Environmental Activity and no Environmental Activity has otherwise occurred, and no notice, order, directive, complaint or other communication, written or oral, has been made or issued by any governmental agency or other person, entity or agency alleging the occurrence of any Environmental Activity in violation of any Environmental Requirements. At the date of execution hereof, a portion of the Mortgaged Estate is leased to Law Engineering Company ("LEC"). The use of small amounts of hazardous or toxic substances in the ordinary course of Borrower's, LEC's, or other tenants' business and their use of such substances in accordance with all laws, ordinances, rules, orders and regulations of all state, federal, municipal and other agencies, including the U.S. Environmental Protection Agency, having jurisdiction over the Mortgaged Estate is hereby approved by Lender.

(b) Borrower shall at all times from the date of this Indemnity until the Termination Date, at its sole expense: (i) comply in all material respects with all applicable Environmental Requirements relating to the Mortgaged Estate and the Use of Mortgaged Estate, and not engage in or otherwise permit the occurrence of any Environmental Activity; and (ii) promptly following the discovery by Borrower, deliver to Lender notice of any event that would render any representation or warranty contained in subparagraph (a) of this section incorrect in any respect if made at the time of such discovery.

(c) Borrower shall indemnify, defend and save and hold harmless each Indemnitee from and against any and all losses, liabilities, damages, costs and expenses (including, but not limited to, loss of property value, or defects in title to the Mortgaged Estate, and the reasonable fees and disbursements of the Indemnitee's legal counsel) suffered or incurred by any Indemnitee as a result of: (i) the occurrence of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Requirements relating to the Mortgaged Estate or the Use of the Mortgaged Estate on or before the Termination Date; (ii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency which has resulted or is alleged to have resulted

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directly or indirectly from any Environmental Activity relating to the Mortgaged Estate or Use of the Mortgaged Estate on or before the Termination Date; (iii) any failure of any representation or warranty of Borrower set forth in subparagraph (a) of this section to be correct in all material respects as of the date of this Indemnity; (iv) any failure of Borrower to perform any covenant set forth in subparagraph (b) of this section; or (v) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (i) through (iv) of subparagraph (c) of this section or any allegation of any such matters, provided this indemnity is not applicable to willful or wanton acts of Lender.

(d) Borrower shall pay to each Indemnitee all costs and expenses (including the reasonable fees and disbursements of Indemnitee's legal counsel) incurred by any Indemnitee in connection with the Indemnity or the enforcement of the terms of the Indemnity.

(e) Borrower's obligations under this Indemnity shall survive the Termination Date, the repayment of the Loan, the expiration or termination of the Note and any transfer of Borrower's title to the Mortgaged Estate. If Lender acquires title to the Property through foreclosure or deed in lieu of foreclosure (the date of such acquisition is referred to herein as the "Transfer Date"), Borrower's indemnity shall not apply to any loss or cost incurred as a result of Lender's actions as owner and operator of the Property after Lender has acquired title to the Property, which actions are the cause of damage resulting from the introduction and release of a hazardous or toxic substance at the Property by Lender. In addition, if Borrower provides to Lender, at Borrower's expense, an environmental audit of the Property in form and substance satisfactory to Lender, including soil and ground water testing, immediately prior to the Transfer Date, showing the Property to be free of any hazardous or toxic substance, then Borrower's indemnity shall not apply to any loss or cost incurred by Lender as a result of the introduction and release of a hazardous or toxic substance at the Property from and after the Transfer Date.

ARTICLE II

LENDER'S POWERS

At any time, or from time to time, without liability therefor, Lender without affecting the personal liability, if any, of any person for payment of the Secured Obligations or the effect of this Mortgage upon the remainder of the Mortgaged Estate, may without notice (i) release any part of the Mortgaged Estate, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Secured Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any obligation herein mentioned, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof and pay or discharge the Secured Obligations of Borrower hereunder, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Lender.

ARTICLE III

ASSIGNMENT OF RENTS

Borrower hereby assigns and transfers to Lender all the rents, issues and profits of the Mortgaged Estate. The terms of such assignment are more specifically set forth in the Assignment of Rents which terms, by this reference, are incorporated herein.

ARTICLE IV

SECURITY AGREEMENT

Section 4.01. Creation of Security Interest. With respect to any portion of the Mortgaged Estate which constitutes Personal Property, fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Mortgage shall constitute a security agreement between Borrower as the debtor and Lender as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Mortgaged Estate. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the UCC. Borrower will execute and deliver to Lender all financing and continuation statements and other information that are

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from time to time required or appropriate to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof, and pay all costs and expenses of any searches required by Lender. Lender may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Lender should proceed to dispose of such property in accordance with the provisions of the UCC, 5 days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

Borrower shall give advance notice in writing to Lender of any proposed change in Borrower's name, identity, address, or business form or structure and will execute and deliver to Lender, prior to or concurrently with the occurrence of any such change, all additional financing statements that Lender may require to establish and maintain the validity and priority of Lender's security interest with respect to any of the Mortgaged Estate described or referred to herein.

Some of the items of the Mortgaged Estate described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Estate is situated. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, and from Borrower, as debtor, at the addresses stated in Section 6.04 of this Mortgage.

Section 4.02. Warranties, Representations and Covenants of Borrower. Borrower hereby warrants, represents and covenants, with respect to the Personal Property that all covenants and obligations of Borrower contained herein relating to the Mortgaged Estate shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

ARTICLE V

EVENTS OF DEFAULT
AND REMEDIES UPON DEFAULT

Section 5.01. Events of Default. Any one or more of the following events shall be deemed an Event of Default hereunder:

(a) failure by Borrower to pay within five days of the date such payment is due and payable (calculated by including the due date), except with respect to the Final Payment for which there is no grace period, (i) any payment of principal of or interest on the Note or (ii) any other sum secured hereby or due hereunder or under any other Loan Document, together with interest at the Late Rate;

(b) failure by Borrower to punctually perform or observe any covenant or agreement contained in this Mortgage (other than the monetary obligations described in paragraph (a) above) and such failure shall not have been cured within 30 days after written notice from Lender of such failure, provided if the nature of a non-monetary default is such that it cannot reasonably be cured within such thirty-day period, but is capable of cure within 60 days, Borrower may have an additional 30 days to effect such cure provided Borrower commences such cure within the original thirty-day period and completes the same no later than 60 days from receipt of such notice;

(c) the occurrence of a default or an event of default under any Loan Document (other than this Mortgage)

(d) Borrower or any guarantor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Borrower or any guarantor or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to

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pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Borrower or any guarantor seeking any reorganization, dissolution or similar relief under any present or future federal state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Borrower or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Borrower and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Estate, or any judgment involving monetary damages shall be entered against Borrower which shall become a lien on the Mortgaged Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 60 days after its entry or levy;

(g) any suit or proceeding shall be filed against Borrower or any endorser, surety or guarantor of Borrower on any of the Loan Documents which, if adversely determined, could substantially impair the ability of Borrower or any endorser, surety or guarantor of Borrower to perform any of their obligations contained in the Loan Documents, as determined by Lender in its sole and absolute discretion;

(h) if, during the term of the Note secured by this Mortgage, Borrower shall without the prior written approval of Lender, sell, convey, alienate, transfer, mortgage, encumber or assign the Mortgaged Estate or any part thereof or any interest therein (including rents, issues or profits from the Property), or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily, or if there is any merger, consolidation or dissolution affecting Borrower, or if

there is a transfer of an interest in Borrower, unless such transaction is specifically authorized by Section 1.21 hereof;

(i) at any time any representation, warranty or statement made by Borrower in any Loan Document or certificate delivered by Borrower shall be or become incorrect or misleading in any material respect, or any material misrepresentation shall at any time be made to Lender by Borrower.

Section 5.02. Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Lender may:

(i) Declare all Secured Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise provided herein, and Borrower hereby waives notice of intent to accelerate the Secured Obligations;

(ii) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Estate, take any action described in Article II, III or IV hereof, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Secured Obligations, all in such order as Lender may determine. The entering upon and taking possession of the Mortgaged Estate, the taking of any action described in Article II, III or IV hereof, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Estate or the collection, receipt and application of rents, issues or profits, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of

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Default, including the right to exercise the power of sale herein conferred;

(iii) Commence an action to foreclose this Mortgage, appoint a receiver, specifically enforce any of the covenants hereof, or sell the Mortgaged Estate pursuant to the power of sale herein conferred;

(iv) Exercise any or all of the remedies available to a secured party under the UCC; and

(v) Apply any sums or amounts received pursuant to Section 1.07, 1.10 or 1.15 or as rents or income of the Mortgaged Estate or otherwise, upon any Secured Obligation in such manner and order as Lender may elect. The receipt, use or application of any such sums by Lender hereunder shall not be construed to affect the maturity of any Secured Obligation or any of the rights or powers of Lender under the terms of the Loan Documents or any of the obligations of Borrower or any guarantor under the Loan Documents.

Section 5.03. Exercise of Power of Sale.

(a) If a default or Event of Default should occur hereunder, the holder of the debt hereby secured shall have the right to enter upon and take possession of the Mortgaged Estate and after, or without, taking such possession of the same, sell the Mortgaged Estate at public outcry, in front of the courthouse door of the county wherein the Mortgaged Estate is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, Lender or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Estate so purchased in the name and on behalf of Borrower, and the certificate of the holder of the mortgaged indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past-due mortgages. Lender, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of Mortgaged Estate if the highest bidder therefor.

(b) As may be permitted by law, after deducting all costs, fees and expenses, including costs of evidence of

title in connection with sale, the proceeds of sale shall be applied to payment of (i) reasonable attorneys' fees and expenses incurred by the Lender in exercising the power of sale or foreclosing this Mortgage, and (ii) second, as directed by Lender or as may be required by law.

(c) Lender may in the manner provided by law postpone sale of all or any portion of the Mortgaged Estate.

(d) At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Estate, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Estate.

Section 5.04. Appointment of Receiver. If an Event of Default shall have occurred, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Mortgaged Estate or the interest of Borrower therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided in Section 5.02(ii) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Estate unless such receivership is sooner terminated.

Section 5.05. Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Mortgage or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised without prejudice to any other

power or remedy, concurrently, independently, in any order and in any manner from time to time and as often as may be deemed expedient by Lender. No remedy or power is intended to be exclusive of any other power or remedy and Lender may pursue inconsistent remedies.

The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval of Lender hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions. Nothing contained in this Mortgage shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Estate pursuant to the powers granted herein.

Section 5.06. No Waiver of One Default to Affect Another. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other than existing default or shall impair any rights, powers or remedies consequent thereon.

Section 5.07. Marshalling. Notwithstanding the existence of any other security interest in the Mortgaged Estate held by Lender or by any other party, Lender shall have the right to determine the order in which any of the Mortgaged Estate or any part thereof shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any party who now or hereafter acquires a security interest in any of the Mortgaged Estate and who has actual or constructive notice hereof hereby waives, to the extent permitted by law, any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Governing Law. This Mortgage shall be governed by the laws of the state in which the Property is located. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 6.02. Waiver of Rights. To the extent permitted by law, Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Mortgaged Estate, or (ii) in any way extending the time for the enforcement of the collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting the Secured Obligations other than that provided by applicable law. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension, redemption or homestead exemption, and Borrower, for Borrower, Borrower's representatives, heirs, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Estate, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Secured Obligations and marshalling in the event of foreclosure of the liens hereby created.

Section 6.03. Statements by Borrower. Borrower, within 10 days after being given notice, will furnish, or cause to be furnished, to Lender a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating that no offset or defense exists against such amounts or specify what offsets or defenses exist. Within one hundred twenty (120) days after the close of Borrower's fiscal year which is December 31, Borrower will submit (i) annual income and expense statements on the Mortgaged

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Estate prepared in accordance with generally accepted accounting principles (ii) current rent rolls annually and (iii) upon request by Lender, such other reports and statements which are prepared by Borrower and its representatives and agents in the ordinary course of business.

Section 6.04. Notices. Whenever Lender or Borrower shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be deemed to have been given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the following addresses:

If to Borrower: Harbert Properties Corporation
1901 Sixth Avenue North
Suite 2520
Birmingham, Alabama 35203
Attention: President

If to Lender: United of Omaha Life Insurance
Company
Mutual of Omaha Plaza
Omaha, NE 68175
Attention: Real Estate and
Mortgage Loan

With a copy to:

Camp and Company
Suite 300
3300 Cahaba Road
Birmingham, Alabama 35223

Attention: William M. Silsbee,
Jr.

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change.

Section 6.05. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 6.06. Invalidity of Certain Provisions; Conflicting Provisions. To the extent any conflict exists between the terms of the Commitment Letter and the terms of the other Loan Documents, the terms of the other Loan Documents will govern.

Section 6.07. Subrogation. To the extent that proceeds of the Note or advances under this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Estate, such proceeds or advances have been or will be advanced by Lender at Borrower's request, and Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released of record.

Section 6.08. Change in Ownership. If the ownership of the Mortgaged Estate or any part thereof or interest therein becomes vested in a person other than Borrower owning the same on the date hereof, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Mortgage and the Secured Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability hereunder or upon the Secured Obligations. No sale of the Mortgaged Estate, and no forbearance on the part of Lender, and no extension of the time for the payment of the Secured Obligations, given by Lender, shall operate to release, discharge, modify, change or affect the original liability, if any, of Borrower or the liability of any guarantors or sureties of Borrower, either in whole or in part except a transfer to which Lender has consented under Section 1.21(c) hereof.

Section 6.09. Assignment of Lender's Interest. Borrower hereby specifically grants unto Lender the right and privilege, at Lender's option, to transfer and assign to any third person all or any part of Lender's rights hereunder. Upon any such transfer, Borrower at Lender's request, shall provide an estoppel certificate to such third person in form and content satisfactory to Lender, in its reasonable discretion.

Section 6.10. Time Is of the Essence. Time is of the essence under this Mortgage and the other Loan Documents.

Section 6.11. Limitation of Interest. All agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to

Lender for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Lender or holder of the Note shall ever receive as interest under the Note or this Mortgage or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note and such other Secured Obligations, such excess shall be refunded to Borrower, or to the maker of the Note, or other evidence of the Secured Obligations, if other than Borrower. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of the Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Borrower, or the maker of the Note, or other evidence of the Secured Obligations, if other than Borrower, and Lender.

Section 6.12 Non-Recourse.

Except for those matters set forth in the immediately following paragraph, the liability of Borrower for the repayment of the indebtedness evidenced by the Note, and the performance of obligations under the other Loan Documents, shall be limited to the security given by Borrower and other parties for the Note and other obligations under the Loan Documents.

Notwithstanding anything to the contrary contained herein and notwithstanding any delay by Lender in exercising any right, power or remedy in connection with any default under any Loan Document, Borrower and Harbert International, Inc. shall be jointly, severally and personally liable beyond their interest in the security granted to Lender, to the extent of (a) any funds received by Borrower or any other person or entity for or on

account of Borrower as security deposits under any Leases; (b) any Rents received or held by Borrower after the occurrence of an Event of Default; (c) any Rents received by Borrower which are prepaid more than one month in advance; (d) all condemnation awards and payments and insurance proceeds received by Borrower that have not been applied as required by the terms of the Loan Documents; (e) the cost to repair the Mortgaged Estate as a result of a casualty not reimbursed by insurance to the extent that such insurance is required by the terms of the Loan Documents; (f) any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Lender as a result of any fraud, material misrepresentation or bad faith by Borrower or Harbert International, Inc.; (g) any liability, damage, cost or expense (including reasonable attorneys' fees), incurred by Lender under the terms of the Environmental Indemnity Agreement; (h) any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Lender due to Borrower's or Borrower's representative's waste of Mortgaged Estate; and (i) any failure to pay delinquent real estate taxes or assessments. Nothing contained herein shall limit or affect Lender's rights under any master lease, guaranty or other collateral which may now or hereafter be given in connection with the Note.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed on the day and year set forth in the acknowledgement attached hereto and effective on the date first written above.

ATTEST:

HARBERT PROPERTIES CORPORATION

By Jack E Hendrix
 Name Jack E Hendrix
 Title Vice President

By [Signature]
 Name FRANCOIS J. EARLES
 Title PRESIDENT

ATTACHMENTS

Acknowledgments

Exhibit A: Legal Description

Exhibit B: Permitted Encumbrances

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STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that BARNETT J. EARLES, whose name as PRESIDENT of Harbert Properties Corporation, an Alabama corporation, is signed to the foregoing Mortgage, Financing Statement and Security Agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 the 20th day of March, 1991.

Bonnell H. McVair
NOTARY PUBLIC

My Commission Expires: MY COMMISSION EXPIRES JULY 31, 1992

EXHIBIT "A"

Lot 3-A, according to a Resurvey of an Amendment to The Concourse at Riverchase as recorded in Map Book 14 page 120 in the Probate Office of Shelby County, Alabama, being situated in Shelby County, Alabama. Mineral and mining rights excepted. Together with ingress and egress over and across that certain road described in the Declaration of Easement recorded in Real 332 page 637 in said Probate Office.

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EXHIBIT B

PERMITTED ENCUMBRANCES

1. General and special taxes or assessments for 1991 and subsequent years not yet due and payable.
2. Building setback line of 35 feet reserved from Westerly and South lines of subject property as shown by recorded plat.
3. Public Utility easements as shown by recorded plat.
4. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 127, page 140; Deed Book 269, page 577; and Deed Book 94, page 349, in Probate Office.
5. Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) as shown by Amendment No. 2 as recorded in Misc. Book 19 beginning at Page 633, except as modified in deed recorded in Deed Book 220, page 119, and as modified by Change of Use Agreement recorded in Real 207, page 548, in Probate Office.
6. Land Use Agreement dated April 26, 1977, between The Harbert-Equitable Joint Venture and Blue Cross and Blue Shield of Alabama, recorded in Misc. Book 19 beginning at page 690, and amended in Misc. Book 43, page 82, and Real 16, page 64, in Probate Office.
7. Agreement with Alabama Power Company regarding electric service recorded in Misc. Book 15, page 401, in Probate Office.
8. 65 foot wide private access and public utility easement on property bordering Easterly line of said Lot 3-A.
9. Easement to Alabama Power Company as shown by instrument recorded in Real 270, page 122, in Probate Office.