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

dated as of March 19, 1993

between

HARBERT PROPERTIES CORPORATION
an Alabama corporation, as

Mortgagor

and

CONTINENTAL BANK N.A.,
a national banking association, as
Agent for the Lenders, as

Mortgagee

THE MAXIMUM PRINCIPAL AMOUNT SECURED AND WHICH UNDER ANY CONTINGENCY MAY AT ANY TIME HEREAFTER BE SECURED BY THIS FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (THIS "MORTGAGE") IS \$2,500,000.00. ALL SUCH AMOUNTS HAVE BEEN ADVANCED AS OF THE DATE HEREOF. AS OF THE DATE OF RECORDATION OF THIS MORTGAGE, AMOUNTS HAVE BEEN ADVANCED AND ARE OUTSTANDING UNDER THE CREDIT AGREEMENT (AS HEREIN DEFINED) WHICH ARE IN EXCESS OF THE MAXIMUM PRINCIPAL AMOUNT SECURED BY THIS MORTGAGE AS AFORESAID.

Inst # 1993-08142

03/26/1993-08142
08:26 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
043 MCD 3862.50

9098845.2 031993 1326C 91907733

Calvin Little

This instrument prepared by
and after recording return to:

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

FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT

THIS FUTURE ADVANCE MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called the "Mortgage") is made as of March 19, 1993 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 CONTINENTAL BANK N.A. ("Continental"), a national banking association, as agent for itself and the other Lenders (as such term is hereinafter defined) (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

A. Credit Agreement and Loan Amount. Harbert International, Inc., a Delaware corporation (the "Company") and Harbert Corporation, a Delaware corporation (the "Parent") have entered into a certain Credit Agreement (the "Original Credit Agreement") dated as of March 26, 1991 which Original Credit Agreement has been amended by certain amendatory agreements and most recently by Amendatory Agreement No. 7 dated as of even date herewith (herein, the Original Credit Agreement as previously amended, as so amended by said Amendatory Agreement No. 7 and as the same may be further amended, supplemented, revised or restated from time to time, is called the "Credit Agreement") with various financial institutions and Continental (such financial institutions and Continental shall hereinafter be collectively referred to as the "Lenders" and individually as a "Lender"), which Credit Agreement provides for the Company's and the Parent's performance of certain covenants and making of certain representations and warranties and for loans and advances to be made from time to time by the Lenders to the Mortgagor pursuant to the terms and conditions set forth therein. Any capitalized term which is not specifically defined in this

Mortgage, but is defined in the Credit Agreement, shall have the same meaning for purposes of this Mortgage as it has for purposes of the Credit Agreement. The Mortgagor is a wholly-owned Subsidiary of the Parent. This Mortgage is a Collateral Document and a Loan Document for all purposes of the Credit Agreement.

B. Original Notes. Pursuant to the Original Credit Agreement, the Company and the Parent have executed and delivered to the Lenders those certain revolving promissory notes payable to the order of the Lenders (herein such revolving promissory notes, 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, shall be called the "Notes"), due and payable as set forth in the Credit Agreement, subject to extension or acceleration as set forth in the Credit Agreement, which such Notes originally represented indebtedness in a maximum aggregate principal amount at any time of TWO HUNDRED SEVENTY-FIVE MILLION DOLLARS (\$275,000,000.00), which amount shall be adjusted as set forth in the Credit Agreement, and bearing interest as provided in the Credit Agreement on the principal amount thereof from time to time outstanding. All principal and interest on the Notes are payable in lawful money of the United States of America to such account as the Mortgagee shall specify from time to time by notice to the Parent and the Company. The interest rates applicable to the Notes will vary from time to time in accordance with certain formulas more fully set forth in the Credit Agreement.

C. No Further Advances; No Revolving Credit. Amendatory Agreement No. 5 dated as of April 27, 1992 provides, among other things, that after the Amendment Effective Date (as defined therein) the aggregate principal amount of the Notes at any time outstanding shall not exceed \$52,144,706.75, and that payments of principal of the Notes will permanently reduce the Lenders' Commitments under the Credit Agreement. As a consequence, the Notes and the Credit Agreement no longer represent revolving indebtedness.

D. Other Security Documents. Pursuant to the terms of the Credit Agreement and the aforesaid Amendatory Agreement No. 7, the Mortgagor has executed and delivered to the Mortgagee this Mortgage.

E. 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 of any kind which may at any time be or become due or owing to the Mortgagee or the Lenders under or with respect to the Credit Agreement including without limitation, the Obligations (as that term is defined in the

Credit Agreement) or the Loan Documents (defined for purposes hereof as in the Credit Agreement); (iii) all of the covenants, obligations and agreements (and the truth of all representations and warranties) of the Mortgagor, the Company and the Parent in, under or pursuant to the Credit Agreement, the Notes, this Mortgage, the Collateral Documents and all of the other Loan Documents; (iv) any and all advances, costs or expenses paid or incurred by the Mortgagee or any of the Lenders pursuant to the Loan Documents to protect any or all of the Collateral (hereinafter defined), perform any obligation of the Mortgagor hereunder or collect any amount owing to the Mortgagee or any of the Lenders which is secured hereby; (v) any and all other liabilities, obligations and indebtedness, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, recourse or nonrecourse, now or hereafter existing or due or to become due, owing by the Company or the Parent to the Mortgagee or any of the Lenders in connection with the Credit Agreement, the Notes or the Loan Documents (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; (vi) interest on all of the foregoing; and (vii) all costs of enforcement and collection of the Notes, this Mortgage and the other Collateral Documents, and the other documents, instruments, obligations and liabilities described hereinabove, provided, however, that in no event shall the maximum amount of the Liabilities secured by this Mortgage exceed the maximum amount that can be secured by this Mortgage without rendering this Mortgage, as it relates to the Mortgagor, void or voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer. Any future advances under the Notes, whether obligatory or made at the option of the Mortgagee, shall be secured by this Mortgage, and shall be entitled to the same priority as if such future advances were made on the date hereof.

F. The Collateral. For purposes of this Mortgage, the term "Collateral" means and includes all of the following and all right, title and interest of the Mortgagor in and to all of the following:

(i) Real Estate. All of the Mortgagor's right, title and interest in and to the land described on Exhibit A attached hereto (the "Land"), together with all and singular of 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 of Mortgagor's 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 are herein referred to collectively as the "Real Estate");

(ii) Improvements and Fixtures. All buildings, structures, replacements, fixtures, fittings and other improvements, if any, of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor, together with all building or construction materials located on the Real Estate pursuant to Contracts for Construction (hereafter defined), fittings and fixtures of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate or any Improvement and owned or purported to be owned by the Mortgagor, including all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing are herein referred to collectively as the "Improvements");

(v) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Premises (defined hereafter) (all of the foregoing are herein collectively called the "Rents");

(vi) Leases. All rights of the Mortgagor under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any Person agrees to pay money to the Mortgagor or any consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing are herein referred to collectively as the "Leases");

(vii) Plans. All rights of the Mortgagor, if any, to plans and specifications, designs, drawings and other matters prepared in connection with construction of improvements and maintenance of the Premises (all of the foregoing are herein called the "Plans");

(viii) Contracts for Construction or Services. All rights of the Mortgagor, if any, under any contracts executed by the Mortgagor 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 construction of improvements on and maintenance of the Premises, including any architect's contract (all of the foregoing are herein referred to collectively as the "Contracts for Construction");

(ix) Contracts for Sale or Financing. All rights of the Mortgagor, if any, as seller or borrower under any agreement,

contract, understanding or arrangement pursuant to which the Mortgagor has or may hereafter have, 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 are herein referred to collectively as the Contracts for Sale"); and

(x) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Premises, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing, excluding however any personal property at any time located on or in any portion of the Premises but without limiting any rights of the Mortgagee in such personal property under any separate security agreement. (All of the Real Estate, and the Improvements, and any other property which is real estate under Applicable Law, are sometimes referred to collectively herein as the "Premises".)

G R A N T

NOW THEREFORE, for and in consideration of the Lenders' executing and delivering the Credit Agreement, and of the Lenders' making any loan, advance or other financial accommodation to or for the benefit of the Company or the Parent, including sums advanced under the Notes, and in consideration of the various agreements contained herein, in the Notes, the Credit Agreement, the other Loan Documents and any other Collateral Documents, 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 and all other Liabilities, and any extensions, renewals, modifications and refinancings 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 Liabilities, and the performance of all and singular the covenants, conditions and agreements in this Mortgage, in the Notes, in the Credit Agreement and in the other Loan Documents,

THE MORTGAGOR HAS BARGAINED AND SOLD AND HEREBY GRANTS, BARGAINS, SELLS AND CONVEYS THE PREMISES TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS, FOR THE BENEFIT OF LENDERS AND THEIR SUCCESSORS AND ASSIGNS FOREVER, AND GRANTS TO THE MORTGAGEE AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS FOR THE BENEFIT OF THE LENDERS

AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS A CONTINUING LIEN ON, AND SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the state or other jurisdiction in which the Real Estate is located providing for the exemption of homesteads from sale on execution or otherwise.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Company, the Parent or the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable in respect of the Notes and all other Liabilities, and any extensions, renewals, modifications and refinancings 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 shall pay all charges incurred herein by Mortgagee on account of Mortgagor or the Parent, including, but not limited to, attorneys' fees, and shall pay any and all other Liabilities, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Notes, in the Credit Agreement and in the other Loan Documents expressed to be kept, performed, and observed by or on the part of the Mortgagor, the Company or Parent, all without fraud or delay, and the Mortgagee and the other Lenders under the Credit Agreement have no further obligation (whether contingent, conditional or otherwise) to make any advance, disbursement or payment of any kind or to extend any credit under or with respect to the Credit Agreement, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale that at the execution and delivery hereof:

1. Subject to the Permitted Exceptions as defined below, the Mortgagor is the owner of the Land free of any encumbrances and of the lawful claims of any other party and Mortgagor further agrees to warrant and defend the Land against all and every person or persons lawfully claiming or who may claim the same or any part thereof.

2. That the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than the "Permitted Exceptions." "Permitted Exceptions" refers to (i) matters expressly permitted by Section 8.2.3 of the Credit Agreement, (ii) the matters set forth on that certain Commitment

for Title Insurance, issued by First American Title Insurance Company as No. 79435-B dated March 16, 1993 [excluding items [none] as shown on said Commitment], (iii) mineral and mining rights to the extent not owned by the Mortgagor and (iv) such other matters to which the Mortgagee shall specifically consent in writing.

3. That it has good and lawful right to mortgage the Collateral.

4. Subject to the Permitted Exceptions as defined above, that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever.

I. C O V E N A N T S A N D A G R E E M E N T S
 O F T H E M O R T G A G O R

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

1.1. [Intentionally Deleted].

1.2. Payment of Taxes. The Mortgagor will pay or cause to be paid before delinquent all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and Liens, ordinary or extraordinary, governmental or nongovernmental, 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 Loan Documents, whether levied against the Mortgagor or the Mortgagee or otherwise, and will submit to the Mortgagee all receipts showing payment of all of such taxes, assessments and charges; provided, however, that the Mortgagor shall not (unless otherwise required by law) be required to pay any such taxes, assessments, levies, claims, charges, expenses or Liens which are being contested in good faith and by appropriate proceedings and as to which reserves are being maintained in accordance with GAAP so long as forfeiture of any part of the Collateral or interference with the Mortgagor's use or occupancy of the Premises will not result from the failure of the Mortgagor to pay any such taxes, assessments, levies, claims, charges, expenses or Liens during the period of any such contest. The Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations as set out in this Section 1.2.

1.3. Maintenance and Repair. Except as otherwise provided hereunder and to the extent expressly permitted by the Credit

Agreement, the Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Collateral the doing or suffering of which has a reasonable likelihood of resulting in a Materially Adverse Effect (as defined in the Credit Agreement) or otherwise impair the security of this Mortgage; not remove or demolish any of the Improvements; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Premises or the Improvements except as required by any applicable governmental requirement, as otherwise approved in writing by the Mortgagee or as necessary in order to comply with the other covenants and restrictions hereof or of the Credit Agreement or any other Loan Document; maintain, preserve and keep the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; not commit, suffer, or permit waste of any part of the Premises.

1.4. Sales; Liens. Except as permitted hereunder or under the Credit Agreement (including without limitation Section 8.2.11 thereof) and except for items or portions of the Collateral constituting fixtures and systems determined by the Mortgagor in good faith to be obsolete or no longer needed or useful in the operation of the Improvements, the Mortgagor will not: sell, contract to sell, assign, transfer or convey, or permit to be transferred or conveyed, the Collateral or any part thereof or any interest or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may be holding title to the Premises) or remove any of the Collateral from the Premises or from the state in which the Real Estate is located; or create, suffer or permit to be created or to exist any mortgage, Lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever upon the Collateral or any part thereof, except those for current taxes not then due and payable, Permitted Exceptions and mechanics' and similar Liens being diligently contested in good faith and otherwise in accordance with Section 1.10. The Mortgagee agrees to release the lien of this Mortgage from time to time to the extent required by Section 8.2.11 of the Credit Agreement.

1.5. Access by Mortgagee. The Mortgagor will at all times: deliver to the Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or certified copies (in all other cases) of all Leases, agreements creating or evidencing Plans, Contracts for Construction, Contracts for Sale, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; and permit the Mortgagee and its agents and designees to inspect the Premises at all reasonable times upon reasonable notice (provided, however,

if a Default or any default under Section 9.1.4 of the Credit Agreement (an "Unmatured Insolvency Default") has not occurred, such inspections shall occur no more than two (2) times during any twelve (12) month period).

1.6. Stamp and Other Taxes. If the federal government 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 Lenders' receipt of interest payments on the principal portion of the indebtedness secured hereby), assessment or imposition upon this Mortgage, the Notes, any of the other Liabilities, or any of the other Loan Documents, the interest of the Mortgagee or the Lenders in the Collateral, or any of the foregoing, or upon the Mortgagee or the Lenders 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 this Mortgage, the Notes, or any of the other Loan Documents, within ten (10) days after Mortgagee's request therefor the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee or the Lenders as they become due and payable. Thereafter, if the Mortgagor fails to make payment of all such sums within 5 days of the Mortgagee's demand therefor, such failure shall constitute a Default (hereinafter defined) hereunder and all sums hereby secured shall become immediately due and payable at the option of the Mortgagee. Notwithstanding the foregoing, the Mortgagor shall not be required to pay such assessments, taxes or charges so long as Mortgagor is diligently contesting the validity thereof in appropriate proceedings and shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto and so long as the Lien of this Mortgage shall not be in any way impaired. 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, the Mortgagee or the Lenders, then at the option of the Mortgagee the Company and the Parent shall be required to prepay the \$2,500,000.00 hereby secured which repayment shall reduce the Commitments, and the failure of the Company and the Parent to pay within thirty (30) days of Mortgagee's demand shall constitute a Default hereunder. Upon repayment of the funds, this Mortgage shall be released.

1.7. Insurance. The Mortgagor will at all times maintain or cause to be maintained on the Improvements, if any, all insurance required at any time or from time to time by the provisions of the Credit Agreement. The Mortgagor shall deliver to and keep deposited with the Mortgagee original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and (to the extent available with standard non-contributory Mortgagee and loss payable clauses satisfactory to the Mortgagee) and clauses providing for not less than 30 days' prior

written notice to the Mortgagee of cancellation or material modification of such policies attached thereto in favor of the Mortgagee, its successors and assigns. The Mortgagor's making any payments and deposits required by the provisions of Section 1.20 of this Article I shall not relieve the Mortgagor of, or diminish in any way, its obligations as set out in this Section 1.7. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance satisfactory to the Mortgagee, together with receipts for the payment of premiums thereon, shall be delivered to and held by the Mortgagee, which delivery shall constitute an assignment to the Mortgagee of all return premiums to be held as additional security hereunder. All renewal and replacement policies shall be obtained before the expiration of the expiring policies and copies thereof or certificates of insurance promptly delivered to Mortgagee. The Mortgagor, upon the Mortgagee's request, shall furnish to each Lender at reasonable intervals a certificate of an Authorized Officer setting forth the nature and extent of all insurance maintained by the Mortgagor in accordance with this Section 1.7 (provided, however, so long as no Default or Unmatured Insolvency Default has occurred and is continuing, such request shall occur no more than two (2) times during any twelve (12) month period). The Mortgagor agrees that the proceeds on account of any loss paid to the Mortgagee under any of such policies shall be applied as follows:

(a) If a Default or an Unmatured Insolvency Default has occurred and is then continuing, such proceeds (but in no event in excess of \$2,500,000.00 of such proceeds) shall be applied, at the option of the Mortgagee, toward prepayment of the Notes or any of the other Liabilities, or to the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral as the Mortgagee in its sole and unreviewable discretion may elect. If the Mortgagee elects to apply such insurance proceeds toward the prepayment of the Notes pursuant to this Section 1.7(a), it shall apply such proceeds as set forth in the Credit Agreement to the prepayment of the Notes, which prepayment shall, without any further action, automatically and permanently reduce the Commitments by an amount equal to the amount of such prepayment.

(b) If no Default or Unmatured Insolvency Default has occurred and is continuing, then such proceeds (but in no event in excess of \$2,500,000.00 of such proceeds), together with any interest thereon, shall be held by the Mortgagee as additional Collateral hereunder, but, so long as no Default or Unmatured Insolvency Default has occurred and is continuing, such proceeds may, in the Mortgagor's discretion, either:

(i) be applied by the Mortgagee and the Lenders to the repayment of the Notes or the other Liabilities under the

Credit Agreement, which repayment shall reduce the Commitments, as provided in the Credit Agreement; or

(ii) at any time, but subject to the following paragraph (d), be used by the Mortgagor to repair or replace the damaged or destroyed Improvements or other Collateral giving rise to such proceeds or to purchase, erect and/or install, as applicable, additional improvements to the Real Estate or additional property for use in connection with the Real Estate (which such improvements and other property shall be made subject to this Mortgage).

(c) The Mortgagor shall have no obligation to repair or rebuild any damaged or destroyed Improvements or Collateral unless the Mortgagee shall make sufficient insurance proceeds available for such purpose.

(d) Insurance proceeds not applied to repayment of the Liabilities shall be made available to the Mortgagor for the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral subject to the following conditions:

(i) no Default or Unmatured Insolvency Default under this Mortgage or the Loan Documents shall have occurred and be continuing (and if such an event shall occur during restoration, the Mortgagee may, at its election, apply any insurance proceeds then remaining in its possession to the reduction of the indebtedness evidenced by the Notes and the other Liabilities);

(ii) the Mortgagor shall have submitted to the Mortgagee plans and specifications for the restoration which shall be reasonably satisfactory to the Mortgagee, which plans and specifications shall not be substantially modified, changed or revised without the Mortgagee's prior written consent and shall be in conformity with all governmental regulations, including, without limitation, building, zoning, land use and environmental regulations;

(iii) the Mortgagor, if so requested by the Mortgagee, shall have submitted to the Mortgagee contracts, reasonably acceptable to the Mortgagee, with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, the Mortgagor shall have deposited the amount of such deficiency with the Mortgagee;

(iv) any insurance proceeds in excess of \$500,000.00 to be released pursuant to the foregoing provisions may, at the

option of the Mortgagee, be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may, at the Mortgagee's option, be made directly to the Mortgagor or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer reasonably acceptable to the Mortgagee;

(v) the Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all Liens or claims for Lien;

(vi) all title insurance charges and other costs and expenses paid to or for the account of the Mortgagor in connection with the release of such insurance proceeds shall constitute so much additional indebtedness secured hereby to be payable upon demand with interest thereafter at the rate of interest from time to time applicable under the Credit Agreement for Reference Rate Loans (as defined in the Credit Agreement). The Mortgagee may deduct any such costs and expenses from insurance proceeds at any time remaining in its possession;

(vii) if the Mortgagor fails to diligently prosecute the restoration to completion but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurance underwriters, the Mortgagee shall have the right, but not the obligation, to restore or rebuild the Improvements and the other Collateral, or any part thereof, for or on behalf of the Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds deposited by the Mortgagor as aforesaid and advancing additional funds for the purpose of restoration, all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest at the Default Rate (as defined in the Credit Agreement).

The Mortgagor hereby empowers the Mortgagee, in its discretion, during the continuance of a Default or Unmatured Insolvency Default to settle, compromise and adjust any and all claims or rights under any insurance policy maintained by the Mortgagor relating to the Collateral. As long as no Default or Unmatured Insolvency Default is continuing the Mortgagor may settle such claims provided that the Mortgagee consents to the settlement reached, which consent shall not be unreasonably withheld or delayed. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all

right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee rather than Mortgagor to collect any amounts owing on any insurance policy or resulting from any condemnation, to rebuild or replace any damaged or destroyed Improvements or other Collateral or to perform any other act hereunder, but if Mortgagee does not collect the proceeds under the insurance policy, Mortgagee will reasonably cooperate with Mortgagor in Mortgagor's attempts to obtain the insurance proceeds. The Mortgagee shall not, by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

In no event shall the Mortgagor be required to apply in excess of \$2,500,000.00 of insurance proceeds in the aggregate to the payment of the Liabilities, and upon application of insurance proceeds aggregating \$2,500,000.00 to the payment of the Liabilities, this Mortgage shall be released.

1.8. Eminent Domain. If the Collateral, or any part or interest in any thereof, is taken by condemnation (other than a temporary taking), the compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee), and all Condemnation Awards shall be applied as follows:

(a) If a Default or an Unmatured Insolvency Default has occurred and is then continuing, such Condemnation Awards (but in no event in excess of \$2,500,000.00 of such Condemnation Awards) shall be applied, at the option of the Mortgagee, toward prepayment of the Notes or any of the other Liabilities, or to the rebuilding or repairing of the damaged or destroyed Improvements or other Collateral as the Mortgagee in its sole and unreviewable discretion may elect. If the Mortgagee elects to apply such Condemnation Awards toward the prepayment of the Notes pursuant to this Section 1.8(a), it shall apply such proceeds as set forth in the Credit Agreement to the prepayment of the Notes, which prepayment shall, without any further action, automatically and permanently reduce the Commitments by an amount equal to the amount of such prepayment.

(b) If no Default or Unmatured Insolvency Default has occurred and is continuing, then such Condemnation Awards (but in

no event in excess of \$2,500,000.00 of such Condemnation Awards), together with any interest thereon, shall be held by the Mortgagee as additional Collateral hereunder, but, so long as no Default or Unmatured Insolvency Default has occurred and is continuing, such Condemnation Awards may, in the Mortgagor's discretion, either:

(i) be applied by the Mortgagee and the Lenders to the repayment of the Notes or the other Liabilities under the Credit Agreement, which repayment shall reduce the Commitments, as provided in the Credit Agreement; or

(ii) at any time, but subject to the following paragraph (d), be used by the Mortgagor to repair or replace the damaged or destroyed Improvements or other Collateral giving rise to such Condemnation Awards or to purchase, erect and/or install, as applicable, additional improvements to the Real Estate or additional property for use in connection with the Real Estate (which such improvements and other property shall be made subject to this Mortgage) (such repair, replacement, purchase, erection and installation, as applicable, being referred to below as "restoration"). The Mortgagor may elect to rebuild the Improvements and other Collateral on other land so long as Mortgagee consents (which consent shall not be reasonably withheld) and so long as Mortgagor mortgages such land, Improvements and other Collateral to the Mortgagee.

(c) The Mortgagor shall have no obligation to repair or rebuild any damaged or destroyed Improvements or Collateral unless the Mortgagee shall make sufficient Condemnation Awards available for such purpose.

(d) Condemnation Awards not applied to repayment of the Liabilities shall be made available to the Mortgagor for the restoration of the damaged or destroyed Improvements or other Collateral subject to the following conditions:

(i) no Default or Unmatured Insolvency Default under this Mortgage or the Loan Documents shall have occurred and be continuing (and if such an event shall occur during restoration, the Mortgagee may, at its election, apply any Condemnation Awards then remaining in its possession to the reduction of the indebtedness evidenced by the Notes and the other Liabilities);

(ii) the Mortgagor shall have submitted to the Mortgagee plans and specifications for the restoration which shall be reasonably satisfactory to the Mortgagee, which plans and specifications shall not be substantially modified, changed or revised without the Mortgagee's prior written consent and shall be in conformity with all governmental regulations,

including, without limitation, building, zoning, land use and environmental regulations;

(iii) the Mortgagor, if so requested by the Mortgagee, shall have submitted to the Mortgagee contracts, reasonably acceptable to the Mortgagee, with good and responsible contractors and materialmen covering all work and materials necessary to complete restoration and providing for a total completion price not in excess of the amount of Condemnation Awards available for restoration, or, if a deficiency shall exist, the Mortgagor shall have deposited the amount of such deficiency with the Mortgagee;

(iv) any Condemnation Awards in excess of \$500,000.00 to be released pursuant to the foregoing provisions may, at the option of the Mortgagee, be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements may, at the Mortgagee's option, be made directly to the Mortgagor or to or through any contractor or materialman to whom payment is due or to or through a construction escrow to be maintained by a title insurer reasonably acceptable to the Mortgagee;

(v) the Mortgagee may impose such further conditions upon the release of the Condemnation Awards (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all Liens or claims for Lien;

(vi) all title insurance charges and other costs and expenses paid to or for the account of the Mortgagor in connection with the release of such Condemnation Awards shall constitute so much additional indebtedness secured hereby to be payable upon demand with interest thereafter at the rate of interest from time to time applicable under the Credit Agreement for Reference Rate Loans. The Mortgagee may deduct any such costs and expenses from the Condemnation Awards at any time remaining in its possession;

(vii) if the Mortgagor fails to diligently prosecute the restoration to completion but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurance underwriters, the Mortgagee shall have the right, but not the obligation, to restore or rebuild the Improvements and the other Collateral, or any part thereof, for or on behalf of the Mortgagor in lieu of applying said Condemnation Awards to the indebtedness hereby secured and for such purpose may do all necessary acts, including using funds deposited by the Mortgagor as aforesaid and advancing additional funds for the purpose of restoration,

all such additional funds to constitute part of the indebtedness hereby secured payable upon demand with interest at the Default Rate.

The Mortgagor hereby empowers the Mortgagee, in the Mortgagee's absolute discretion, during the continuance of a Default or Unmatured Insolvency Default to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof. As long as no Default or Unmatured Insolvency Default is continuing the Mortgagor may settle such claims provided that the Mortgagee consents (which consent shall not be unreasonably withheld or delayed) to the settlement reached.

In no event shall the Mortgagor be required to apply in excess of \$2,500,000.00 of Condemnation Awards in the aggregate to the payment of the Liabilities, and upon payment or application of Condemnation Awards aggregating \$2,500,000.00 to the payment of the Liabilities, this Mortgage shall be released.

1.9. Governmental Requirements. 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 noncompliance with which could be reasonably expected to give rise to a Materially Adverse Effect, 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 noncompliance with which could be reasonably expected to give rise to a Materially Adverse Effect. Unless required by Applicable Law, or unless the Mortgagee has otherwise first agreed in writing, the Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. The Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining the Mortgagee's prior written consent thereto. Notwithstanding the foregoing, the Mortgagor shall have the right to contest diligently any such governmental requirement so long as the contest is in good faith and by appropriate proceedings and as to which adequate reserves are being maintained in accordance with GAAP, so long as forfeiture of any part of the Collateral will not result from the Mortgagor's failure

to comply with such governmental requirement during the period of such contest.

1.10. No Mechanic's Liens. The Mortgagor will not suffer any mechanic's, laborer's or materialmen's Lien to be created or remain outstanding upon the Premises or any part thereof. Anything herein contained to the contrary notwithstanding, the Mortgagor shall not be deemed in Default with respect to the provisions of this Section if the Mortgagor provides the Mortgagee with written notice of the Mortgagor's good faith intention to diligently contest such claim or Lien) (and the Mortgagor does so contest such claim or Lien) at the Mortgagor's sole expense and, if requested by the Mortgagee, the Mortgagor furnishes to the Mortgagee either a bond, in form and with sureties reasonably satisfactory to the Mortgagee, or an updated title insurance policy or endorsement to the Mortgagee's existing policy acceptable to the Mortgagee indemnifying or insuring Mortgagee against any loss or damage on account of any such Lien claim. The Mortgagor agrees to promptly deliver to the Mortgagee a copy of any notices that the Mortgagor receives with respect to any pending or threatened Lien or the foreclosure thereof. It is the intent hereof that this Mortgage shall extend to all right, title and interest of the Mortgagor in any and all improvements and fixtures now or hereafter on the Premises, prior to any other Lien (other than Permitted Exceptions) thereon that may be claimed by any Person, so that subsequently accruing claims for Lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the foregoing provisions.

1.11. 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 reasonably request to establish and maintain a valid and perfected first and prior Lien on and security interest in the Collateral; maintain its principal place of business at all times at the address shown above except as otherwise permitted in the Credit Agreement; keep all of its books and records relating to the Collateral on the Premises or at such address, except as otherwise permitted in the Credit Agreement; keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing or except as otherwise permitted hereunder (including, without limitation, Section 1.4 hereof) or under the Credit Agreement; 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 more than 30 days before the same shall be due and payable except as the Mortgagee may otherwise consent in writing.

1.12. Utilities. The Mortgagor will pay or cause to be paid all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services available for use at the Premises, provided, however, the foregoing shall not require the Mortgagor to pay such utility charges so long as it is diligently contesting the validity thereof in good faith by appropriate proceedings and shall have set aside on its books adequate reserves in accordance with GAAP with respect thereto.

1.13. Contract Maintenance; Other Agreements; Leases. The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each material obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on it under any agreement between the Mortgagor and a third party relating to the Collateral or the Liabilities secured hereby, including, without limitation, the Leases, Contracts for Sale and the Contracts for Construction, if any, (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 material and adverse termination or amendment of the rights of the Mortgagor under any Third Party Agreement; (ii) collect rents or the proceeds of any Leases more than 30 days before the same shall be due and payable; (iii) modify or amend any Leases, or, except where the lessee is in default, 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 Leases, or grant any options to renew; (v) create or permit any Lien or encumbrance (other than this Mortgage and the Permitted Exceptions) which, upon foreclosure, would be superior to any Leases; or (vi) in any other manner impair the Mortgagee's rights and interest with respect to the Rents. 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 shall permit the Mortgagee, in the Mortgagee's sole discretion, to cure any such default which is curable by Mortgagor. All security or other deposits, if any, received from tenants under the Leases shall 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.

1.14. Notify the Mortgagee of Default. The Mortgagor shall notify the Mortgagee in writing forthwith promptly 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.

1.15. No Assignments; Future Leases. Except in connection with transactions expressly permitted by the Credit Agreement or the Loan Documents, the Mortgagor will 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. In addition, 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 to any Person, except with the prior written consent of the Mortgagee and, if granted, under Leases approved in writing by the Mortgagee.

1.16. 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 all sums due under the Notes, the other Liabilities and all other sums payable under this Mortgage. For so long as no Default or Unmatured Insolvency Default hereunder shall have occurred or be continuing, 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 or Unmatured Insolvency 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 IV 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 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 or Unmatured

Insolvency Default, this Section 1.16 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 or Unmatured Insolvency 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 the Credit Agreement and the other Loan Documents.

(c) The Mortgagor shall at all times fully perform the obligations of the lessor under all Leases. The Mortgagor shall at any time or from time to time, upon request of the Mortgagee, transfer and assign to the Mortgagee in such form as may be satisfactory to the Mortgagee, the Mortgagor's interest in the Leases, subject to and upon the condition, however, that for so long as no Default or Unmatured Insolvency Default hereunder shall be continuing the Mortgagor shall have a license to collect and receive all Rents under such Leases upon accrual, but not prior thereto, as set forth in paragraph (a) above.

(d) Subject to the restrictions arising under the Credit Agreement applicable to assignments and participations by Mortgagee and Lenders, the Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgage 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 and during the continuance of any Default or Unmatured Insolvency 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 and 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.

1.17. The Mortgagee's Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), as agent or attorney-in-fact of the Mortgagor, make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner

deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the Default Rate, shall be added to the indebtedness hereby secured and shall be repaid to the Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do all or any of the following to the extent Mortgagor may be obligated to perform such acts under the terms of this Mortgage: make payments of principal or interest or other amounts on any Lien, encumbrance or charge on any of the Collateral; complete construction; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; purchase, discharge, compromise or settle any tax Lien or any other Lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of the Mortgagor hereunder, in the absence of bad faith, material breach of this Mortgage by Mortgagee, gross negligence and/or wilful misconduct of Mortgagee, the Mortgagee shall be the sole judge of the legality, validity and amount of any Lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default or an Unmatured Insolvency Default. Notwithstanding the foregoing, the Mortgagee shall not exercise the rights granted to it under this Section 1.17 unless a Default or an Unmatured Insolvency Default has occurred and is continuing, provided, however, that the Mortgagee may exercise such rights prior to a Default or an Unmatured Insolvency Default or if any performance or other exercise of the rights granted hereunder are, in the Mortgagee's reasonable, good faith judgment, necessary to preserve the Collateral or the Mortgagee's security interest therein such as (by way of illustration and not of limitation) repairs or measures to prevent immediate and material damage to all or any portion of the Collateral or the renewal or replacement of insurance about to expire thereon.

1.18. Subrogation. To the extent that the Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any Lien or other interest prior or superior to the lien of this Mortgage, or the Mortgagor or any other Person pays any such sum with the proceeds of the loan secured hereby, the Mortgagee shall have and be entitled to a Lien or other interest on the Collateral equal in priority to the Lien or other interest discharged and the Mortgagee shall be subrogated to, and receive and enjoy all rights and Liens possessed, held or enjoyed by, the holder of such Lien, which shall remain in existence and benefit the Mortgagee in securing the Liabilities. Without limiting the generality of the foregoing, and in addition

thereto (rather than in limitation thereof), the Mortgagee shall be subrogated, notwithstanding their release of record, to the Liens of all mortgages, trust deeds, superior titles, vendors' Liens, Liens, charges, encumbrances, rights and equities on the Premises, to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Notes or the Credit Agreement or of any other indebtedness secured hereby.

1.19. Hazardous Material. The Mortgagor hereby indemnifies the Mortgagee and agrees to hold the Mortgagee and all Lenders free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages of any and every kind whatsoever paid, incurred or suffered by or asserted against the Mortgagee or any Lender, as a result of, or arising out of, or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from, any real property owned or operated by the Mortgagor, the Company, the Parent or any of the Subsidiaries of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), any so-called "Superfund" or "Superlien" law, or any other federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards on conduct concerning, any Hazardous Material), regardless of whether caused by, or within the control of, the Mortgagor, the Company, the Parent or any of the Subsidiaries, except for any such losses, liabilities, damages, injuries, costs, expenses or claims arising for the account of the Mortgagee or any Lender by reason of the such party's gross negligence or wilful misconduct, and if and to the extent that the foregoing undertaking may be unenforceable for any reason, the Mortgagor hereby agrees to make the maximum contribution to the payment and satisfaction of each of the losses, liabilities, damages, injuries, costs, expenses, or claims which are permissible under Applicable Law; and the provisions of and undertakings and indemnification set out in this sentence shall survive the satisfaction and release of this Mortgage and the payment and satisfaction of the Notes and all other Liabilities, and shall continue to be the personal liability, obligation and indemnification of the Mortgagor, binding upon the Mortgagor, forever. The provisions of the preceding sentence shall govern and control over any inconsistent provision of this Mortgage or any of the other Loan Documents.

For purposes of this Mortgage, "Hazardous Material" means and includes (a) any asbestos, PCBs or dioxins or insulation or other material composed of or containing asbestos, PCBs or dioxins and (b) any petroleum product and any hazardous or toxic waste, substance or material defined as such in (or for purposes of)

CERCLA, any so-called "Superfund" or "Superlien" law, or any other Applicable Law regulating or pertaining to any such waste, substance or material, as now or at any time hereinafter in effect.

1.20. Reserve for Taxes, Assessments, Insurance and Rents. Except as otherwise provided in the last paragraph of this Section 1.20, the Mortgagor covenants and agrees to pay to the Mortgagee monthly until the Notes and all of the other Liabilities have been paid in full, monthly until the Liabilities are fully paid, the following sums:

(i) A sum equal to the amount of 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 without interest accruing thereon, to pay each of the said items; and

(ii) [intentionally deleted]

All payments described above in this Section 1.20 shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the foregoing items in such order as the Mortgagee shall elect in its sole discretion.

Except as otherwise provided in the last paragraph of this Section 1.20, the Mortgagor shall also pay to the Mortgagee, at least 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 with sufficient funds to pay any such tax, assessment, and insurance premiums, under this Section 1.20 at least 30 days in advance of the due date thereof. The Mortgagor's failure timely to make any payments required under this Section 1.20 shall be a Default under this Mortgage.

Except as otherwise provided in the last paragraph of this Section 1.20, the Mortgagee shall, within 20 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, as applicable, statements for insurance premiums or rent and additional rent), cause proper amounts to be withdrawn from such 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 as required by this Mortgage, the Mortgagor shall nevertheless have full and sole responsibility

at all times to cause all taxes, assessments, insurance premiums and rent and additional rent to be fully and timely paid, and the Mortgagee 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 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 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, insurance premiums, rent and additional rent then accrued (as estimated by the Mortgagee) with respect to the then-current twelve-month period, the Mortgagor shall, within 10 days after receipt of notice thereof from the Mortgagee, deposit with the Mortgagee 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. If the Premises are sold under foreclosure or are otherwise acquired by the Mortgagee, accumulations under this Section 1.20 may be applied to the Liabilities in such order of applications as the Mortgagee may elect in its sole discretion.

Anything contained in this Section 1.20 to the contrary notwithstanding, the Mortgagee hereby (by acceptance of this Mortgage and without the necessity of any written waiver, consent or acknowledgment from the Mortgagor) waives the requirement of all deposits described in this Section 1.20; provided, however, that the Mortgagee shall have the right, in its sole discretion, to rescind such waiver from and after the occurrence of any Default or Unmatured Insolvency Default.

1.21. [Intentionally Deleted]

1.22. Payment of Taxes, etc. Except as contested in good faith and by appropriate proceedings and as to which reserves are maintained as required by the Credit Agreement the Mortgagor will pay or cause to be paid all taxes, assessments, and other charges against the Real Estate, when and as often as the same shall become due and payable.

1.23. [Intentionally Deleted].

1.24. [Intentionally Deleted].

1.25. [Intentionally Deleted].

1.26. [Intentionally Deleted].

1.27. [Intentionally Deleted].

1.28. Rent Paid upon Redemption. To the extent permitted by law, the price payable by the Mortgagor, or by any other party, so entitled, in the exercise of the right of redemption, if any, from sale under order or decree of foreclosure of this Mortgage shall include all rents paid and other sums advanced by Mortgagee on behalf of Mortgagor.

1.29. No Merger; After-Acquired Title. 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 Collateral, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Collateral 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.

II. D E F A U L T

Each of the following shall constitute a default ("Default") hereunder:

2.1 The Credit Agreement. The occurrence of any Event of Default under the terms and provisions of the Credit Agreement; or

2.2 Provisions of this Mortgage. The occurrence of any event designated a Default by Sections 1.6 or 1.20 of this Mortgage.

III. R E M E D I E S

3.1. 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 may become immediately due and payable pursuant to the terms of the Credit Agreement.

3.2. Remedies Cumulative. No remedy or right of the Mortgagee hereunder or under the Notes, the Credit Agreement or any other Collateral Documents, or otherwise, or available under Applicable Law or in equity, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under Applicable Law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Default shall impair any such remedy or right or be construed to be a waiver of any such Default or an acquiescence therein, nor shall it affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be

deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in equity or in the Notes, the Credit Agreement or any other Collateral Documents or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

3.3. Possession of Premises; Remedies under Notes and Related Documents. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction in progress thereon at the expense of the Mortgagor, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of the Mortgagee in its sole discretion, to a reduction of such of the Liabilities in such order as the Mortgagee may from time to time elect. The Mortgagee, in addition to the rights provided under the Notes or any other Loan Documents is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Improvements from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection and completion of Improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor. All such expenditures by the Mortgagee shall be Liabilities hereunder. Upon the occurrence of any Default, the Mortgagee may also exercise any or all rights or remedies under the Notes, the Credit Agreement and any other Collateral Documents.

3.4. Power of Sale; Foreclosure; Receiver. (a) Upon the occurrence of any Default, Mortgagee may sell the Premises at public outcry to the highest bidder for cash in front of the Courthouse door in the county where the Premises is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publications once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Premises so purchased. Mortgagee may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the applicable portion of the Premises may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other

manner Mortgagee may elect. To effect said sale, if and to the extent permitted by law, Mortgagee may enter and take possession of all the Premises and may remove all or any portion of the Premises. The Mortgagee is hereby appointed the Mortgagor's attorney-in-fact to execute all such documents or instruments, and to do all such acts, as Mortgagee may deem necessary, appropriate or advisable to accomplish any or all of the acts referred to in this Section. The proceeds of any foreclosure sale pursuant to this Section shall be applied in payment (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Mortgagee may lawfully elect: (a) amounts due upon the Notes, and the other Liabilities with interest to the date of sale, (b) costs and expenses of making the sale, including attorneys' fees for such services as may be incurred in the collection of said indebtedness or the foreclosure of this Mortgage, (c) rents, insurance premiums, repairs, taxes, special assessments, Liens, water charges and interest, penalties and costs, in connection with the Premises, (d) any other Lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (e) all moneys advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor, the Company or the Parent in the performance of any obligation or condition contained in any Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any Loan Documents, with interest on such advances at the Default Rate. The surplus of the proceeds of the sale, if any, shall then be paid to the party or parties appearing to be the owner of record of the Premises at the time of the sale after deducting any expense of ascertaining who is such owner.

(b) The Mortgagee may proceed, in lieu of or in addition to exercising the power of sale set forth above, by suit or suits for foreclosure of its Lien as the Mortgagee may be advised by counsel, to enforce the payment and performance of the Liabilities and to foreclose this Mortgage, and to exercise any and all rights under any other instruments securing the Liabilities, and in any such event the Mortgagee shall be entitled to reasonable fees for its services and the services of its attorneys and agents, and for all expenses, costs and outlays.

Anything herein to the contrary notwithstanding, the Mortgagee shall have and be entitled to exercise any and all rights, remedies and powers, whether or not herein expressly authorized or provided, allowed by the law of the State of Alabama, and all such rights, remedies and powers shall be cumulative and in addition to the rights, remedies and powers hereinabove granted and conferred, and in the event any of the rights, remedies or powers hereinabove granted and conferred shall not be in conformity with the law of the State of Alabama, then the Mortgagee shall have and be entitled to exercise such rights, remedies and powers allowed, granted or

permitted under the law of the State of Alabama for the foreclosure of the Lien of this Mortgage, or the sale of any of the property subject hereto, the same as if specifically recited and provided herein.

(c) Upon the occurrence of any Default, and fifteen (15) days after written notice to Mortgagor unless within such period the Default shall have been cured, the Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver of the Collateral and the court may appoint a receiver, either before or after sale, without notice and without regard to the solvency or insolvency of the Mortgagor at the time of the application for such receiver and without regard to the then value of the Collateral and the Mortgagee may be appointed as such receiver. Such receiver shall have full power to collect the rents, revenues, issues, income and profits from the Premises and all other powers necessary or incidental for the protection, possession, control, management and operation of the Premises. Said receiver shall also have full power and authority, at the expense of the Collateral and of the Mortgagor, to maintain, restore and keep insured the Collateral and to pay all taxes, assessments and other charges arising in connection therewith.

3.5. Remedies for Leases and Rents. If any Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after any sale thereunder, the Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases, and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, 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 of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii)

insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other Person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management is delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of any Liabilities. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Default theretofore or thereafter occurring or affect any notice or Default hereunder or invalidate any act done pursuant to any such Default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by the Mortgagee or a receiver and the collection, receipt and application of the Rents, the Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of a Default. Any of the actions referred to in this Section 3.5 may be taken by the Mortgagee irrespective of whether any notice of Default (other than any notice required by the Credit Agreement or this Mortgage as a condition to the existence of a Default) has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

3.6. Personal Property. If any Default shall occur, the Mortgagee may exercise from time to time any rights and remedies available to it under Applicable Law upon default in payment of indebtedness. The Mortgagor shall, promptly upon request by the Mortgagee, assemble the Collateral and make it available to the Mortgagee at such place or places, reasonably convenient for both the Mortgagee and the Mortgagor, as the Mortgagee shall designate.

The Mortgagor hereby expressly waives, to the fullest extent permitted by Applicable Law, any and all notices, advertisements, hearings, or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies after a Default occurs. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least ten (10) days before such disposition, postage prepaid, addressed to the Mortgagor either at the address shown above or at any other address of the Mortgagor appearing on the records of the Mortgagee. Without limiting the generality of the foregoing, whenever there exists a Default hereunder, the Mortgagee may, with respect to so much of the Collateral as is personal property under Applicable Law, to the fullest extent permitted by Applicable Law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any Person obligated on the Collateral to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral and render all or any part of the Collateral unusable, all without being responsible for loss or damage, (vi) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any lawful public or private sale, and (vii) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by the Mortgagee to the payment of expenses in connection with the Collateral (including attorneys' fees and legal expenses) and any balance of such proceeds will be applied by the Mortgagee toward the payment of such of the Liabilities and in such order of application as the Mortgagee may from time to time elect.

Without limiting the foregoing, the Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other Applicable Law as in effect from time to time or otherwise available to it under Applicable Law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Notes and, to the fullest extent permitted by Applicable Law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of

substitution to take possession of the Collateral upon any Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

3.7. Performance of Third Party Agreements. The Mortgagee may, in its sole discretion at any time after the occurrence of a Default (or prior thereto if so provided elsewhere in this Mortgage), 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.

3.8. No Liability on Mortgagee. Notwithstanding anything contained herein, prior to the succession of the Mortgagee (or its assignee or designee), by foreclosure, exercise of remedies or otherwise, to the interests of the Mortgagor under any of the Third Party Agreements, 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 of the following accruing and/or occurring prior to any such succession by Mortgagee (or its assignee or designee) to the interests of the Mortgagor (provided, however, that the following indemnity shall not be qualified as to liabilities, losses or damages arising from any Third Party Agreements, Mortgagee, or its assignee or designee, is not required by law to assume or does not assume): 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 and 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. To the extent permitted by Applicable Law, 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 tenant, licensee, employee, stranger or other Person. No liability shall be enforced or asserted against the Mortgagee in connection with its exercise of the powers granted to it under this Mortgage except such liability as may result from the Mortgagee's bad faith, material breach of this Mortgage, gross negligence or wilful misconduct, and the Mortgagor expressly waives and releases any such liability.

IV. G E N E R A L

4.1. Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other Person (except any Person expressly released in writing by the Mortgagee) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, the Mortgagee may at any time and from time to time, without notice to or the consent of any Person (but only to the extent that such actions are allowed to be taken by Mortgagee pursuant to the Credit Agreement), release any Person liable for the payment or performance of the Notes or any of the other Liabilities or any guaranty given in connection therewith; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Notes or any of the other Liabilities or any guaranty given in connection therewith; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind for repayment of the Notes or the other Liabilities or any guaranty given in connection therewith; release any Collateral or other property securing any or all of the Notes or the other Liabilities or any guaranty given in connection therewith; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; consent to the creation of a condominium regime on all or any part of the Premises or the submission of all or any part of the Premises to the provisions of any condominium act or any similar provisions of law of the state where the Premises are located, or to the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right the Mortgagee may have.

4.2. Legal Expenses. The Mortgagor agrees to indemnify, defend and hold the Mortgagee harmless from and against all loss, damage and expense, including (without limitation) attorneys' fees, costs and expenses incurred in connection with any suit or proceeding in or to which the Mortgagee may be made or become a party for the purpose of protecting the lien or priority of this

Mortgage. The provisions of this Section 4.2 shall survive the satisfaction and release of this Mortgage and the repayment and satisfaction of the Liabilities.

4.3. Collateral Documents. If there shall be any inconsistency between the provisions of this Mortgage and the Credit Agreement, the Credit Agreement shall prevail.

4.4. Obligatory Future Advances; Partial Release.

(a) This Mortgage is granted to secure future advances and loans from the Mortgagee to or for the benefit of the Parent or the Company or their respective successors and assigns or the Premises, as provided in the Credit Agreement regardless of whether, at the time or times of such advances, the Mortgagor is then the owner of the Collateral or any interest in any part thereof, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage and the obligations of the Parent and the Company under the other Loan Documents and the Credit Agreement. All advances, disbursements or other payments required by the Credit 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 Mortgage is recorded. As of the date of recordation of this Mortgage, amounts have been advanced and are outstanding under the Credit Agreement which are in excess of the maximum principal amounts secured by this Mortgage as aforesaid. Nothing in this paragraph shall be construed to dictate the order of sale by Mortgagee of any assets (including, without limitation, the Premises) securing sums advanced by Mortgagee pursuant to the Credit Agreement.

(b) If it is contemplated by the Credit Agreement that partial releases of this Mortgage will be given or such releases are otherwise agreed to by the Mortgagee, no such release (or any other release) shall affect the lien of this Mortgage on the remainder of the Premises encumbered hereby.

4.5. Security Agreement; Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the real estate mortgage records of the Office of the Judge of Probate of the County in which the Premises are located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, the Mortgagor is the debtor (with its address as set forth in the preamble of

this Mortgage), the Mortgagee is the secured party (with its address as set forth in the preamble of this Mortgage) and the name of the record owner of the Premises is the Mortgagor.

4.6. Intentionally Omitted.

4.7. Notices. All notices and other communications provided to any party hereto under this Mortgage shall be in writing or by telex or by facsimile and addressed or delivered to it at its address set forth on the signature pages hereof or at such other address as may be designated by such party from time to time in a notice complying as to delivery with the terms of this Section to the other parties. Any notice, if mailed and properly addressed with postage prepaid, shall be deemed given when received; any notice, if transmitted by telex or facsimile, shall be deemed given when transmitted (answerback confirmed in the case of telexes and receipt confirmed in the case of facsimiles).

4.8. Successors; the Mortgagor; Gender. All provisions hereof shall bind the Mortgagor and the Mortgagee and their respective successors, vendees and assigns and shall inure to the benefit of the Mortgagee and the Mortgagor and their respective successors and permitted assigns hereunder or under the Credit Agreement; provided, however, that the foregoing shall not in any way limit, restrict or modify the provisions of Section 1.4 above. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

4.9. Care by the Mortgagee. The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral assigned by the Mortgagor to the Mortgagee or in the Mortgagee's possession if it takes such action for that purpose as the Mortgagor requests in writing, but failure of the Mortgagee to comply with any such request shall not of itself be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Mortgagee to preserve or protect any rights with respect to such Collateral against prior or other parties, or to do any act with respect to the preservation of such Collateral not so requested by the Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

4.10. No Obligation on Mortgagee. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding (i) the Mortgagor shall be and remain liable under and with respect to the Collateral to perform all of the obligations assumed by it under or with respect to each thereof, (ii) except as herein otherwise expressly provided, the Mortgagee shall have no obligation or liability under or with respect to the Collateral by reason or arising out of this Mortgage

and (iii) except as herein otherwise expressly provided, the Mortgagee shall not be required or obligated in any manner to perform or fulfill any of the obligations of the Mortgagor under, pursuant to or with respect to any of the Collateral.

4.11. No Waiver; Writing. To the extent permitted by Applicable Law, (i) no delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy, (ii) the granting or withholding of consent by the Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions, and (iii) no amendment, waiver or supplement in any way affecting this Mortgage shall in any event be effective unless set forth in a writing signed by the Mortgagee.

4.12. Governing Law; Submission to Jurisdiction; Severability. This Mortgage shall be a contract made under and governed by the internal laws of the State in which the Premises are located. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Mortgage shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage, it being the parties' intention that this Mortgage and each provision hereof be effective and enjoyed to the fullest extent permitted by Applicable Law. Except as provided herein with respect to foreclosure or power of sale procedures or otherwise required by Applicable Law, the Mortgagee may enforce any claim arising out of this Mortgage, the Notes or the other Loan Documents in any state or Federal court having subject matter jurisdiction and located in Chicago, Illinois. Nothing herein contained shall preclude the Mortgagee from bringing an action or proceeding in respect hereof in any other country, state or place having jurisdiction over such action. The Mortgagor irrevocably waives, to the fullest extent permitted by law, any objection which it may have now or hereafter to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

4.13. Waiver. The Mortgagor, on behalf of itself, and all Persons now or hereafter interested in the Premises or the Collateral, to the fullest extent permitted by Applicable Law hereby waives all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and hereby

further waives the pleading of any statute of limitations as a defense to any and all Liabilities secured by this Mortgage, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Collateral. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor, for itself, and for all Persons hereafter claiming through or under it or who may at any time hereafter become holders of Liens junior to the lien of this Mortgage, hereby expressly waives and releases, to the extent permitted by Applicable Law, all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

4.14. JURY TRIAL. THE MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY LOAN DOCUMENTS TO WHICH IT IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY LOAN DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

4.15. Intentionally Omitted.

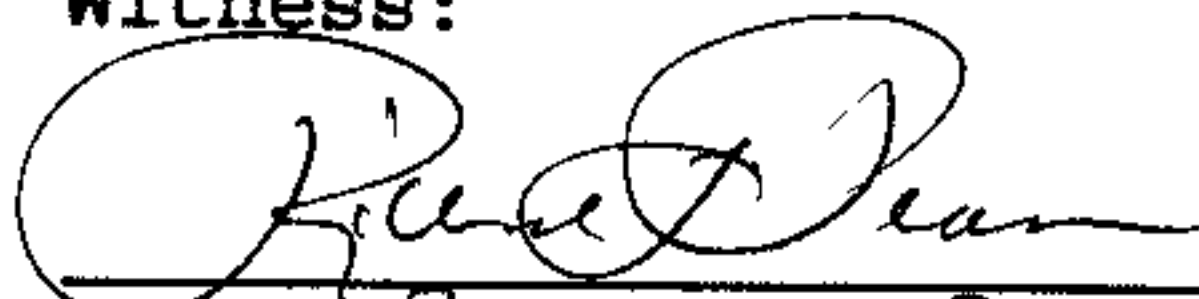
4.16. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint 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.

4.17. Time of Essence. Time is declared to be of the essence in this Mortgage, the Notes and the Loan Documents and of every part hereof and thereof.

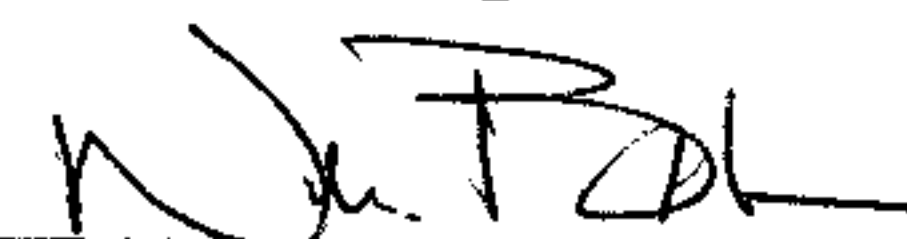
4.18. Nature of Mortgagor's Liability. The Mortgagor has executed this Mortgage as an accommodation for the obligations described herein of the Parent and the Company to the Mortgagee and in no event shall the Mortgagor be liable or responsible for the payment or performance of the Notes, the Liabilities or any other obligations of the Parent and the Company to the Mortgagee or any other Person to the Mortgagee or any Lender under the Notes, the Credit Agreement or any Loan Document or otherwise. Without limiting the generality of the foregoing, the Mortgagee and the Lenders agree that (i) in the event of the exercise by the Mortgagee or any Lender under or pursuant to this Mortgage, neither the Mortgagee nor any Lender will seek or enforce a deficiency judgment against Mortgagor; and (ii) in the event that suit is brought on any of the Liabilities, any judgment obtained in such a suit shall be enforced, with respect to the Mortgagor, only against the Collateral (including all condemnation awards, insurance proceeds and escrow funds) and the rents, issues and profits thereof Mortgagor shall not be liable for any deficiency. Each and all of the provisions of this Mortgage shall be construed as if such provisions expressly contained the provisions of this Section 4.18 and the limitations on the amounts secured by this Mortgage set forth in Paragraph E of the Recitals hereto.

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:


Name: Richard L. Pearson

HARBERT PROPERTIES CORPORATION
an Alabama corporation

By: 
Name: WILLIAM W. BRODKE
Title: VICE PRESIDENT

Address: One Riverchase Parkway South
Birmingham, Alabama 35244
Facsimile No.: (205) 987-5505
Attention: Swift C. Barnes, III
Chief Financial Officer

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:

CONTINENTAL BANK N.A., as Agent

By: 
Name: BRUCE A. SIMONS
Title: SR. VICE PRESIDENT

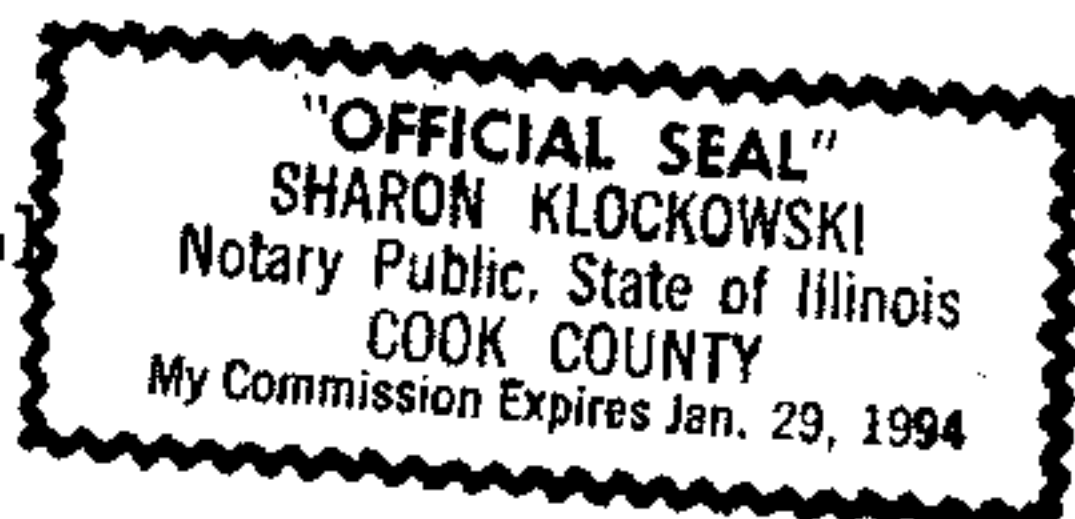
Address: 231 South LaSalle Street
Chicago, Illinois 60697
Facsimile: (312) 987-1974
Attention: Bruce A. Simons

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, Sharon Klockowski, the undersigned, a Notary Public in and for said County in said State, hereby certify that William W. Brooke, whose name as Vice President 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 19th day of March, 1993.

[NOTARIAL SEAL]



Sharon Klockowski
Notary Public

My commission expires: January 29, 1994

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, Sharon Klockowski, the undersigned, a Notary Public in and for said County in said State, hereby certify that Bruce A. Simons, whose name as Senior Vice President of CONTINENTAL BANK N.A., a national banking association, 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 19th day of March, 1993.

[NOTARIAL SEAL]



Sharon Klockowski
Notary Public

My commission expires: January 29, 1994

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.

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.

STATE OF ALABAMA)
SHELBY COUNTY)

CERTIFICATE

I, David A. Boutwell, the duly elected, qualified and serving Controller and Assistant Secretary of Harbert Properties Corporation (the "Corporation") hereby certify and attest that (1) the execution and delivery by the Corporation of the foregoing Future Advance Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement have been authorized by the Board of Directors of the Corporation, which such authorization remains in full force and effect and has not been rescinded and (2) William W. Brooke is the duly elected, qualified and serving Vice President and Secretary of the Corporation and pursuant to resolutions adopted by the Board of Directors of the Corporation, William W. Brooke, as such Vice President and Secretary, was and is authorized to execute and deliver the foregoing Future Advance Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement for and on behalf of the Corporation, which such authorization remains in full force and effect and has not been rescinded.

WITNESS my hand this the 19th day of March, 1993.

David A. Boutwell

Name: David A. Boutwell
Controller and Assistant Secretary

STATE OF ILLINOIS)

COUNTY OF COOK)

I, Sharon Klockowski, the undersigned Notary Public in and for said County in said State, hereby certify that David A. Boutwell, whose name as Controller and Assistant Secretary of Harbert Properties Corporation., a corporation, is signed to the foregoing Certificate and who is known to me, acknowledged before me on this day that, being informed of the contents of said Certificate, in his capacity as such Controller and Assistant Secretary and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 19th day of March, 1993.



Sharon Klockowski

Notary Public

My Commission Expires: 1-29-94

I, William W. Brooke, the duly elected, qualified and serving Vice President and Secretary of Harbert Properties Corporation, hereby certify and attest that David A. Boutwell, whose name is signed to the foregoing Certificate, is the duly elected, qualified and serving Controller and Assistant Secretary of Harbert Properties Corporation and that the signature appearing above ~~his name~~ is the genuine signature of David A. Boutwell.

William W. Brooke
Name: William W. Brooke-08142
Title: Vice President and Secretary