

110

6136327

08/07/95 12:38 PM 6136327 110.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
INTERCOUNTY CLEARANCE CORP
105 CHAMBERS ST
NEW YORK, NY 1007-1089
REC BY: B GRAY DEPUTY - MP

MORTGAGE, DEED OF TRUST, DEED TO
SECURE DEBT AND SECURITY AGREEMENT

Date: As of July 16th, 1991

Mortgagor/Grantor: NATIONAL WAREHOUSE INVESTMENT COMPANY,
a California limited partnership

Address: c/o The Shidler Group
Four Embarcadero Center, Suite 3150
San Francisco, California 94111

Mortgagee/
Beneficiary/
Grantee: UNIBANK A/S

Address: 13-15 West 54th Street
New York, New York 10019

Mortgage Amount: \$10,500,000

Location of
Premises: County of Salt Lake,
State of Utah

Instrument Prepared by,
Record and return to: ROBINSON SILVERMAN PEARCE
ARONSOHN & BERMAN
1290 Avenue of the Americas
New York, New York 10104

Attn.: Michael B. Levy, Esq.

Please Return to:
Intercounty Clearance Corporation
105 Chambers Street
New York, NY 10007
1165
Salt Lake UT 6136327

THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIX-
TURE FILING PURSUANT TO O.C.G.A. § 11-9-402(6), IC § 26-1-9-
402(b), CODE OF IOWA § 544.9402(6), KAN STAT ANN 84-9-402(6)
(1983), MICHIGAN COMPILED LAWS § 440.9313, N.H. RSA 362-A:9-
402(6), ORS § 79.4020(6), OKLAHOMA STATUTES, WIS. STAT.
§ 409.402 (1989-90) AND IS ALSO TO BE INDEXED IN THE INDEX OF
FINANCING STATEMENTS UNDER THE NAMES OF GRANTOR, AS DEBTOR,
AND GRANTEE, AS SECURED PARTY.

PK 7201 PG 102

RECITAL

The Mortgagor is the owner of the Premises described in Schedule A hereto. The Mortgagee has lent to Holman/Shidler Investment Corporation ("Borrower"), the Mortgage Amount, which is evidenced by a note (the "Note") of Borrower of even date herewith in that amount. The Mortgagor has executed and delivered to the Mortgagee its guaranty of the Note (the "Guaranty"), dated the date hereof, and the Mortgagor, in order to secure its obligations pursuant thereto, has duly authorized the execution and delivery of this Mortgage.

CERTAIN DEFINITIONS

The Mortgagor and the Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof owned by Mortgagor, other than those owned or rented by lessees and service vendors now or at any time hereafter affixed to, attached to, placed upon, or located at and used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Premises or the Improvements on the Premises together with any proceeds realized from the sale, transfer or conversion of any of the above.

"Documents" means the Note, this Mortgage, the Loan Agreement, the Environmental Indemnity, the Guaranty, the Personal Guaranty, and all other documents further evidencing and/or securing the loan evidenced by the Note.

"Environmental Indemnity" means that certain environmental indemnity agreement of even date herewith executed by Borrower, Robert W. Holman and Jay H. Shidler in favor of the Mortgagee.

"Events of Default" means the events and circumstances described as such in Section 2.01 hereof.

"Guarantor" means, collectively, Robert W. Holman, Jay H. Shidler and Mortgagor.

"Guaranty" means, the Guaranty as defined in the Loan Agreement.

"Improvements" means all improvements, structures or buildings, and replacements and alterations thereof, to be erected or now or hereafter located upon the Premises including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said improvements, structures or buildings.

"Involuntary Rate" means the Default Rate (as defined in the Loan Agreement), but in no event higher than the maximum rate allowed by the applicable law.

"Loan Agreement" means that certain loan agreement of even date herewith between Borrower and the Mortgagee, setting forth, inter alia, certain of the terms and conditions of the advance and repayment of the loan evidenced by the Note.

"Mortgage Amount" means \$10,500,000.

"Mortgagee" means Unibank A/S, its successors and assigns and shall also mean the "Beneficiary" or the "Grantee" as the context requires.

"Mortgagor" means National Warehouse Investment Company, a California limited partnership, and shall also mean the "Grantor" or the Trustor, as the context requires.

"Personal Guaranty" means the Personal Guaranty as defined in the Loan Agreement.

"Premises" means the Premises described in Schedule A hereto including all of the easements, rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in and to the strips and gores, streets, and ways adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

"Trustee" means the Trustee, if any, named on the cover page of this instrument.

All terms of this Mortgage which are not defined above have the meaning set forth in this Mortgage.

GRANTING CLAUSE

NOW, THEREFORE, the Mortgagor, for consideration paid, in order to secure the Mortgagor's obligations under the Guaranty, and the performance and observance of all the provisions hereof hereby gives, grants, bargains, sells, MORTGAGES AND WARRANTS, aliens, demises, releases, conveys, assigns, transfers, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, with mortgage covenants, all its estate, right, title and interest in, to and under any and all of the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;

(iv) all proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims, including, without limitation,

proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor and real estate tax and assessment refunds and credits at any time accruing to the benefit of the Mortgagor or the Mortgaged Property, even if relating to taxes and assessments payable for a period or periods prior to the date hereof;

(v) all leases and rents of the Premises or any part thereof now or hereafter entered into and all right, title and interest of the Mortgagor thereunder; and including, without limitation, the Mortgagor's right, if any, to cash or securities deposited thereunder;

(vi) all utility or municipal deposits made by or on behalf of Mortgagor or made in connection with the Premises;

(vii) to the extent assignable, all plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the construction of the Improvements;

(viii) to the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering of any services, and supply of any materials or the conduct of operations in and the management of the Premises including, without limitation, construction contracts, architect agreements, management agreements, contracts of sale, options and other agreements and deposits made thereunder and proceeds of same, however characterized affecting the operation, maintenance, management, leasing or sale of the Premises and/or the Improvements; and

(ix) to the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Premises and/or the Improvements and/or Chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees;

TO HAVE AND TO HOLD in fee simple unto the Mortgagee, its successors and assigns forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if Borrower or Mortgagor, and the successors or assigns of Borrower or Mortgagor, shall well and truly pay unto Mortgagee, its successors, or assigns the principal amount of the Note, and interest as provided in the Note, and all other amounts payable pursuant to this Mortgage, and Borrower or Mortgagor shall well and truly abide by

and comply with each and every covenant and agreement set forth herein and in the Note, as the case may be, then these presents and the estate hereby granted shall cease, determine and be void; and

Insofar as the Mortgaged Property is located in Georgia, THIS INSTRUMENT IS A DEED passing legal title pursuant to the laws of the State of Georgia governing deeds to secure debt, and it is not a mortgage; and

This instrument is also a security agreement granting a present and continuing security interest and security title in the portion of the Mortgaged Property constituting personal property or fixtures, and a financing statement filed as a fixture filing, pursuant to the Uniform Commercial Code of the laws of such states.

This instrument is made and intended to secure payment and performance of: (i) the Grantor's obligations under the Guaranty with respect to an indebtedness of Borrower to Grantee evidenced by the Note, of even date herewith, made by Borrower payable to the order of Grantee, in the original principal amount of Ten Million Five Hundred Thousand (\$10,500,000) Dollars bearing interest and payable as provided in the Note, the final payment being due on July __, 1995, if not sooner paid; (ii) any and all renewal or renewals, extension or extensions, modification or modifications of the Note, or substitution or substitutions for the Note, either in whole or in part; (iii) all advances to or for the benefit of Grantor, if any, made by Grantee pursuant to the terms of this instrument or the Documents; (iv) all expenses incident to the collection of the indebtedness secured by this instrument; (v) all duties and obligations of Grantor under this instrument and the other Documents; and (vi) all indebtedness now or hereafter owing by Borrower or Grantor to Grantee pursuant to the Documents, and any and all renewal or renewals, extension or extensions, modification or modifications of said indebtedness, and substitution or substitutions for said indebtedness, either in whole or in part. (The obligations and indebtedness which this instrument is given to secure are herein sometimes collectively called the "Indebtedness"; this instrument is hereinafter sometimes called this "Mortgage".)

ARTICLE I

PARTICULAR COVENANTS, WARRANTIES AND REPRESENTATIONS OF THE MORTGAGOR

The Mortgagor covenants, warrants, represents and agrees as follows:

Section 1.01. (a) The Mortgagor warrants that it has a good and marketable title to an indefeasible fee estate in the Premises subject in all cases to no lien, charge or encumbrance except such as are listed as exceptions to title in the title policy insuring the lien of this Mortgage or are permitted under the Loan Agreement. The Mortgagor is a duly organized and validly existing California limited partnership, qualified to do business in each jurisdiction where

the Premises are located, with full power and authority to consummate the transactions contemplated hereby.

(b) The Mortgagor further warrants that it will own the Chattels free and clear of liens and claims except as permitted by the Loan Agreement; and that this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property subject only to the exceptions referred to above. The Mortgagor has full power and lawful authority to mortgage and convey the Mortgaged Property in the manner and form herein done or intended hereafter to be done. The Mortgagor will preserve such title, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

Section 1.02. The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, and for filing, registering or recording this Mortgage and, promptly after Mortgagee's demand therefor, will execute and deliver one or more financing statements, chattel mortgages or comparable security instruments, and renewals thereof to evidence more effectively the lien hereof upon the Chattels.

Section 1.03. (a) The Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property.

(b) The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery and recording of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

Section 1.04. Intentionally omitted.

Section 1.05. (a) The Mortgagor will, so long as it is owner of any part of the Mortgaged Property, do all

things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges, as a limited partnership under the laws of the State of California and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court and applicable to the Mortgagor.

(b) Except as previously disclosed to Mortgagee in writing, the Mortgaged Property currently complies with and will continue to comply with all applicable restrictive covenants, zoning and subdivision regulations, rules, ordinances, statutes, orders and decrees and building codes, all applicable health laws and regulations and all other applicable laws, rules and regulations in all material respects. If the Mortgagor receives notice from any federal, state, county or local governmental authority that it is not in compliance with any of same, Mortgagor will provide Mortgagee with a copy of such notice promptly.

(c) Except as set forth in the Loan Agreement, there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor, threatened against or affecting the Mortgaged Property or the Improvements, at law or in equity or before or by any governmental authority.

Section 1.06. All rights, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 1.07. (a) The Mortgagor, from time to time, will pay and discharge prior to delinquency all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes imposed upon Mortgagor or the Mortgaged Property), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against it or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or

assessed against it or the Mortgaged Property or the revenues, rents, issues, income or profits thereof. Notwithstanding anything to the contrary contained in the foregoing, in no event shall Mortgagor be obligated to pay or discharge income, franchise or other similar taxes, inheritance, discharge estate and gift taxes, imposed on the Mortgagee.

In the event that a default shall have occurred in the making of any installment of interest or principal due under the Note, Mortgagee may, at its option, to be exercised by thirty (30) days' written notice to the Mortgagor, require the deposit by the Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this subsection (a) and Section 1.09(a). The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the obligations in respect to which such amounts were deposited or, at the option of the Mortgagee, to the payment of said obligations in such order or priority as the Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, the Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with the Mortgagee. The Mortgagee shall not be required to segregate the amounts deposited with it under this Section 1.07, but may commingle same with any other funds held by it. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the Involuntary Rate to the indebtedness hereby secured.

(b) The Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee. The Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien (other than the lien for taxes not yet due) to be created upon or attach to the Mortgaged Property; provided, however, that Mortgagor shall not be deemed to be in default hereunder by reason of the filing of any such lien unless Mortgagor fails to discharge such lien by bonding, payment or otherwise within forty-five (45) days after the filing of same.

(c) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section so long as the Mortgagor shall in good faith and at its own expense contest the same or the

validity thereof by appropriate legal proceedings which shall operate to prevent the sale or forfeiture of the Premises or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security reasonably satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation under this Section 1.07 and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section shall become necessary to prevent the delivery of a tax deed or other similar instrument conveying the Mortgaged Property or any portion thereof because of non-payment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or other similar instrument.

Section 1.08. Intentionally Omitted.

Section 1.09. (a) The Mortgagor will maintain liability insurance with respect to the Mortgaged Property and will keep the Improvements and Chattels insured against loss by fire, casualty and such other hazards as may be customarily insured against for the benefit of the Mortgagee. Such insurance shall be written in forms, amounts (which, with respect to insurance against fire, casualty and other hazards, shall be at least equal to the replacement cost of the Improvements), and by companies reasonably satisfactory to the Mortgagee. The policies shall by their terms be non-cancellable without at least thirty (30) days' prior written notice to the Mortgagee and losses thereunder shall be payable to the Mortgagee pursuant to the standard mortgagee endorsement. The policy or policies of such insurance, or certificate thereof, shall be delivered to the Mortgagee. Not later than thirty (30) days prior to the expiration of each such policy, Mortgagor shall deliver a valid policy or certificate evidencing a renewed policy (or new policies marked "premium paid") upon the terms required by this Mortgage. The Mortgagor shall give the Mortgagee prompt notice of any loss covered by such insurance and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss in excess of \$10,000. Any moneys received as payment for any loss under any such insurance shall be paid over to the Mortgagee to be applied at the option of the Mortgagee to reduce the Indebtedness or to restore the Mortgaged Property. Notwithstanding anything to the contrary herein contained, provided that (x) the cost of the repair or restoration of the Mortgaged Property, as reasonably estimated by Mortgagee, shall not exceed thirty percent (30%) of the appraised value of the Mortgaged Property and (y) such repair or restoration can reasonably be completed at least ninety (90) days prior to the maturity date of the Note, such proceeds shall be made available to Mortgagor for the repair or restoration of the Mortgaged Property, further subject to the following conditions: (i) there does not exist an Event of Default under this Mortgage, (ii) Mortgagor deposits (the "Additional Deposit") with Mortgagee an amount, in cash, which Mortgagee, in its reasonable discretion, determines is necessary, in addition to the net proceeds of insurance, to pay, in full, the cost of the repair, rebuilding and restoration, (iii) rental income insurance is available to compensate for any decrease in income from the Mortgaged Property due to the

casualty during the period of repair and (iv) such other reasonable conditions as a reasonably prudent lender would impose in a similar situation. In any event, the Mortgaged Property shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the Improvements may reasonably exceed the greater of (x) \$50,000 or (y) ten percent (10%) of the then fair market value of the Improvements as estimated by Mortgagee, then prior to the commencement of such work, the Mortgagee must approve final plans and specifications of such work which plans Mortgagee will review and approve or disapprove within ten (10) days after its receipt of the same. In the event Mortgagee fails to notify Mortgagor of such approval or disapproval within ten (10) days of such receipt, said plans shall be deemed approved. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon Mortgagee's being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractor's sworn statements, title continuations and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' and materialmen's lien claims. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If at any time the undisbursed balance of the insurance proceeds and the Additional Deposit held by Mortgagee shall not, in the reasonable opinion of Mortgagee, be sufficient to pay in full, the balance of the costs, which will be incurred in connection with the completion of the repair, rebuilding or restoration, Mortgagor shall deposit the deficiency with Mortgagee before any further disbursements are made by Mortgagee. Any surplus which may remain out of said insurance proceeds or any amounts otherwise deposited with Mortgagee by or on behalf of Mortgagee, and the Additional Deposit, if any, after payment of the cost of repair, rebuilding and restoration, shall be paid to any party entitled thereto as the same may appear on the records of the Mortgagee. Interest shall be allowed to Mortgagor on any proceeds of insurance or Additional Deposit held by Mortgagee. The insurance proceeds and any Additional Deposit made by Mortgagor need not be kept separate and apart from any other funds of Mortgagee. If the insurance proceeds are made available for repair, rebuilding or restoration, such work shall be done and completed by Mortgagor in an expeditious and diligent fashion, in compliance with all applicable laws, rules and regulations and in accordance with the plans and specifications approved by Mortgagee.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.09 unless the Mortgagee has approved the insurance company and the form and content of the insurance policy, including, without limitation, the naming thereon of the Mortgagee as a named insured with loss payable to the Mortgagee under a

standard mortgage endorsement of the character above described. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies or certificates of such insurance.

(c) The insurance required by this Mortgage may be effected by blanket and/or umbrella policies issued to Mortgagor covering the Mortgaged Property and other properties (real and personal) owned or leased by Mortgagor, provided that such policies otherwise comply with the provisions of this Mortgage and allocate to the Mortgaged Property the coverage specified from time to time by Mortgagee (which, with respect to insurance against fire, casualty and other hazards, shall be at least equal to the replacement cost of the Improvements), without possibility of reduction or co-insurance by reason of, or damage to, any other property (real or personal) named therein, and if the insurance required by this Mortgage shall be effected by any such blanket or umbrella policies, Mortgagor shall furnish to Mortgagee valid certificates of insurance evidencing such policies, with schedules attached thereto showing the amount of insurance afforded by such policies applicable to the Mortgaged Property.

Section 1.10. If an Event of Default shall have occurred and be continuing with respect to the performance by Mortgagor of any of the covenants contained in this Mortgage, or any covenant contained in the Guaranty, the assignment of leases, if any, or the other Documents, the Mortgagee may make advances and/or disbursements to perform the same, and all sums so advanced and/or disbursed shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor will repay within 10 days after Mortgagee's demand therefor all sums so advanced and/or disbursed with interest at the Involuntary Rate, provided that Mortgagee provides reasonable documentation of the nature and amount of same with such demand. The provisions of this Section 1.10 shall not be deemed a waiver of any default in any covenant contained in this Mortgage, or contained in the Note, the assignment of leases, if any, or the other Documents.

Section 1.11. (a) The Mortgagor will keep accurate records and books of account in which full, accurate and correct entries will be made of all dealings or transactions in relation to Mortgagor's business and affairs in accordance with Modified GAAP (as such term is defined in the Loan Agreement). The Mortgagor will permit the Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Premises and examine its records and books of account and to discuss its affairs, finances and accounts with the Mortgagor, at such reasonable times as may be requested by the Mortgagee on two (2) days advance written notice.

(b) The Mortgagor will, and will cause the Guarantors to, at their own cost and expense, deliver to the Mortgagee the financial statements required to be delivered to Mortgagee pursuant to, and in accordance with, Section 6.01(b) of the Loan Agreement.

(c) Intentionally Omitted.

Section 1.12. (a) The Mortgagor will not threaten, commit, permit or suffer any waste to occur on or to the Mortgaged Property, or any part thereof, or alter the Mortgaged Property or any part thereof in any manner or make any change in its use which will in any way materially increase any risk of fire or other hazards arising out of construction or operation of the Mortgaged Property. The Mortgagor will, at all times, maintain the Mortgaged Property in good operating order and condition and will promptly make, from time to time, all structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals, replacements, additions and necessary improvements in connection therewith. The Improvements shall not be removed, demolished or substantially altered (other than in the ordinary course of business), nor shall any Chattels be removed without the prior written consent of the Mortgagee, except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the Chattels removed.

(b) In the event that the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or any other casualty, or in the event of a taking of a portion of the Mortgaged Property as a result of any exercise of the power of eminent domain, the Mortgagor shall promptly restore, replace, rebuild, or alter the same as nearly as possible to the condition they were in immediately prior to such fire, other casualty or taking, and shall take such other reasonable additional actions and measures as shall be necessary to avoid any default or forfeiture under any applicable agreement or termination of any leases as a result thereof. Although damage to or destruction of the Mortgaged Property, or any portion thereof, shall not of itself constitute a default hereunder, the failure of the Mortgagor to restore, replace, rebuild or alter the same, as hereinabove provided, shall constitute a default hereunder regardless of the availability of insurance proceeds or condemnation awards for such purpose (except to the extent that Mortgagee is obligated pursuant to the terms of this Mortgage to make such proceeds available to the Mortgagor for such purpose and fails to do so).

(c) Except as set forth in the Loan Agreement, the Mortgaged Property currently complies with, and in the future the Mortgagor will promptly comply, or cause compliance with all laws, ordinances, rules, regulations and other requirements (including, without limitation zoning and subdivision) of all governmental authorities whatsoever having jurisdiction of or with respect to the Mortgaged Property or any portion thereof or the use and occupation thereof, except where failure to comply would not have a material adverse effect on Mortgagor, or the ownership or operation of the Mortgaged Property, or on Mortgagee.

(d) The Mortgagor will not, without the prior written consent of the Mortgagee, initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof.

Section 1.13. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to the Mortgagee up to the Mortgage Amount. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings the Mortgagee may be represented by counsel selected by the Mortgagee but the Mortgagor may appear by its counsel to contest the amount of the condemnation award. The proceeds of any award or compensation so received shall, at the option of the Mortgagee, either be applied, without premium, to the prepayment of the Note or be paid over to the Mortgagor for restoration of the Improvements. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment of interest at the rates provided for herein or in the Note.

Section 1.14. (a) The Mortgagor will not, without the prior written consent and approval of the Mortgagee in each instance, (i) execute an assignment of the rents from the Premises or any part thereof, (ii) enter into any leases, lettings or license arrangement affecting the Premises or any part thereof (other than in the ordinary course of business), or (iii) in any other manner impair the value of the Mortgaged Property or the security of the Mortgage. Reference is hereby made to Section 291-f of the Real Property Law (to the extent that any portion of the Mortgaged Property is located in the State of New York), and Mortgagor will not, without the prior written consent and approval of Mortgagee in each instance, (i) terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or of any part thereof, now existing or hereafter to be made, (ii) modify or vary any such lease in any manner which would reasonably be expected to have a material adverse effect on the Premises or Mortgagor's ability to fulfill its obligations hereunder, or (iii) accept prepayments of any installments of rents to become due under such leases, except prepayments not to exceed one month's rent in the nature of security for the performance of the lessees thereunder. Mortgagee shall not unreasonably withhold or delay its consent to any leases, lettings or license agreements affecting the Premises or amendments, modifications or terminations thereof. If Mortgagee shall not have responded to Mortgagor's request for consent to any such transaction within five (5) days after receipt of the documentation evidencing the same, Mortgagee shall be deemed to have consented thereto.

(b) The Mortgagor will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or any part thereof now or hereafter existing, on the part of the lessor thereunder to be kept and performed and shall use reasonable efforts to compel performance by the lessee under each lease of all obligations, covenants,

and agreements by such lessee to be performed thereunder; provided, however, that Mortgagor shall not be required to bring any action against any tenant to compel such performance as a result of the foregoing. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, the Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by the Mortgagee. The Mortgagor shall promptly notify the Mortgagee of (i) the commencement of any action or proceeding by any lessee, the purpose of which shall be the cancellation of any lease or diminution or offset against the rent payable under any such lease, or (ii) the interposition by any lessee of any defense in any action or proceeding brought by the Mortgagor against such lessee, or (iii) a written notice received by the Mortgagor from any lessee claiming constructive eviction, and will cause a copy of any process, pleading or notice received by the Mortgagor in reference to any such action, defense or claim to be promptly delivered to the Mortgagee.

(c) Not more than twice in any consecutive twelve (12) month period (unless there has been a materially adverse change in the rents collected from the Premises), the Mortgagor shall furnish to the Mortgagee, within thirty (30) days after a request by the Mortgagee to do so, a written statement containing a schedule of all leases of all or any part of the Premises, the names of the respective lessees, the terms of their respective leases, the space occupied and the rentals payable thereunder, and, if also requested, true copies of all such leases.

Section 1.15. The Mortgagee and its authorized representatives shall have the right at all reasonable times during usual business hours to enter upon and inspect all portions of the Mortgaged Property upon two (2) days' advance written notice (except in the event of an emergency, in which case no notice shall be required) which notice need not be in writing.

Section 1.16. To the extent not so provided by applicable law each new lease of the Premises, or any part thereof shall provide that, in the event of the enforcement by the Mortgagee of the remedies provided for by law or equity or by this Mortgage, the lessee thereunder will, upon request of any person succeeding to the interest of the Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one month in advance, (ii) any amendment or modification of the lease made without the consent of the Mortgagee or such successor in interest, or (iii) any work required to be done by the Mortgagor pursuant to the terms of said lease. Each such lease shall also provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attornment.

Section 1.17. The Mortgagor agrees that if any action or proceeding be commenced, excepting an action to foreclose this Mortgage or to collect the indebtedness hereby secured, to which action or proceeding the Mortgagee is a

party by reason of the execution of this Mortgage or the Note which it secures, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the reasonable out-of-pocket expenses of any such litigation to prosecute or defend the transaction and the rights and lien created hereby (including, without limitation, reasonable attorneys' fees) shall, subject to the provisions of Section 6.01(j) of the Loan Agreement, be paid by the Mortgagor together with interest thereon from the date of payment by the Mortgagee at the Involuntary Rate. All such sums paid and the interest thereon shall be a lien upon the Mortgaged Property, and shall be secured hereby.

Section 1.18. The Mortgagor agrees that in the event of the passage after the date of this Mortgage of any law deducting any lien from the value of land for the purpose of taxation, or changing in any way the laws now in force for the taxation of mortgages or debts secured by a mortgage, or the manner of the collection of any such taxes, so as to impose upon Mortgagee any tax that previously would have been payable by Mortgagor, the whole of the principal sum secured by this Mortgage, together with interest due thereon, shall at the option of the Mortgagee become immediately due and payable unless Mortgagor is lawfully permitted to pay and pays the amount of such taxes or to reimburse and reimburses Mortgagee therefor.

Section 1.19. (a) The Mortgaged Property is and at all times will be provided with adequate water, sewer and other utility facilities, in compliance with all applicable laws and regulations.

(b) The Mortgaged Property has frontage on, and direct access for ingress and egress to, legally dedicated street(s).

(c) The Mortgagor has not made or assumed any contract, agreement or arrangement involving the payment of fees or commissions which would bind Mortgagee or its successors following a foreclosure of this Mortgage.

(d) At all times prior to the payment in full of the indebtedness evidenced by the Note and other sums secured hereby, the Mortgaged Property shall be managed by the Mortgagor or by a management company pursuant to an agreement both of which shall have been approved in writing by the Mortgagee prior to the execution thereof.

Section 1.20. Except as otherwise provided in the Loan Agreement, the Mortgagor shall not, directly or indirectly, by transfer, mortgage or conveyance, do or suffer the assignment, transfer, sale, conveyance, or encumbrance junior or senior hereto of the Mortgaged Property or any part thereof or any interest therein or in the Mortgagor without in each instance the prior written consent of the Mortgagee and except for Permitted Indebtedness (as defined in the Loan Agreement).

Section 1.21. (a) Except as previously disclosed to Mortgagee in writing, Mortgagor represents and warrants that to the best of Mortgagor's knowledge the following statements are true in all material respects:

(i) No Hazardous Materials (as hereinafter defined) have been or are stored, treated, disposed of or incorporated into, on or around the Premises and no underground storage tanks exist on the Premises;

(ii) The Premises is in compliance with all applicable environmental, health and safety requirements;

(iii) Any business currently or heretofore operated on the Premises has disposed of its waste on the Premises in accordance with all applicable statutes, ordinances and regulations;

(iv) Mortgagor has received no notice of any pending or threatened action or proceeding arising out of any alleged violation of environmental, health and safety requirements; and

(v) Any business operated on the Premises has all governmental permits required under applicable statutes, ordinances and regulations which permits are in full force and effect and no condition exists which might threaten the validity of such permits.

(b) Mortgagor, at Mortgagor's sole cost and expense, agrees to ameliorate and remove from the Mortgaged Property with all reasonable due care, any contamination of the Mortgaged Property by Hazardous Materials which subsists or exists on the Mortgaged Property the presence of which violates any applicable environmental, health or safety requirement, such amelioration or removal to be accomplished in accordance with applicable law and in accordance with the terms and procedures as may be required by federal, state, or local governmental agencies having jurisdiction including, but not limited to, any Regional Water Quality Control Board and the Environmental Protection Agency. "Hazardous Material(s)" for purposes of this instrument shall mean any asbestos-containing materials and all toxic substances or hazardous substances or hazardous wastes as such terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, *et seq.*, the Resource Conservation and Recovery Act 42 U.S.C. Section 9601, *et seq.*, or any other applicable federal, state or municipal law, regulation, ordinance or requirement, all as amended or hereinafter amended.

(c) The provisions of this Section 1.21 shall be in addition to any and all obligations and liabilities Mortgagor may have to the Mortgagee at common law, and shall survive the transactions contemplated herein.

Section 1.22. The Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property, non-compliance with which shall affect the security of this Mortgage, or shall impose any duty or obligation upon the Mortgagor and the Mortgagor shall do or cause to be done all things reasonably necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

ARTICLE II

EVENTS OF DEFAULT AND REMEDIES

Section 2.01. One or more of the following events shall be "Events of Default" hereunder:

(a) if (i) there shall have been an event of Default, as defined in the Loan Agreement or, (ii) default shall be made in the payment of any tax required by Section 1.07 to be paid and said default shall have continued for a period of ten (10) days, or (iii) default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in Sections 1.01(a) (subject to Mortgagor's right to contest certain liens pursuant to Section 1.07), the first sentence of Section 1.09(a), 1.14(a) or 1.20 (subject to Mortgagor's right to contest certain liens pursuant to Section 1.07) hereof (for the purposes of this clause, and for subparagraph (b) below, if any representation made in Section 1.01 shall be incorrect, it shall be deemed to be a default); or

(b) if default shall be made in the due observance or performance of any other covenant or agreement on the part of the Mortgagor contained herein and such default shall have continued for a period of twenty (20) days after written notice thereof shall have been given to the Mortgagor by the Mortgagee, provided that if any such default cannot reasonably be cured within the applicable grace period and Mortgagor has in good faith commenced to cure such default and is diligently pursuing such a cure, then the Mortgagor shall have such reasonable additional period as may be necessary to cure such default if such extension of time to cure shall not subject the Mortgagee to criminal prosecution, or would not reasonably be expected to result in the loss or forfeiture of all or any portion of the Mortgaged Property, provided that the Mortgagor duly commences to effect such cure during such 20-day period and thereafter diligently completes same; or

(c) if the Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Code or any similar law, federal or state, or if, by decree of a court of competent jurisdiction, the Mortgagor shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Mortgaged Property; or

(d) if a decree or order for relief is entered by a court having jurisdiction in the Mortgaged Property in respect of the Mortgagor or any other Guarantor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Mortgagor or any other Guarantor or for any substantial part of the Mortgaged Property, or ordering the winding-up or liquidation of any of its affairs and such decree or order shall continue

unstayed or unappealed and in effect for a period of sixty (60) consecutive days; or

(e) if final judgment for the payment of money shall be rendered against the Mortgagor which judgment has a material adverse effect, as determined by Mortgagee in its reasonable discretion, on Mortgagor or the ownership of the Mortgaged Property or the operation thereof and the Mortgagor shall not discharge or bond the same or cause it to be discharged or bonded within forty-five (45) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal; or

(f) if the holder of a junior or senior mortgage or other lien or encumbrance on the Mortgaged Property, or any part thereof, institutes foreclosure or other proceedings for the enforcement of its remedies thereunder provided that no such action by the holder of any lien or encumbrance which Mortgagee has the right to contest pursuant to Section 1.07 shall be deemed an Event of Default hereunder provided that Mortgagor shall be contesting same in accordance with Section 1.07 (this subsection (g) shall not be construed to imply that the Mortgagee consents to any junior or senior lien or encumbrance other than any liens or encumbrances permitted by the Loan Agreement).

Upon the occurrence and during the continuance of one or more Events of Default hereunder:

I. The Mortgagee may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding;

II. The Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, the Mortgagee, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid; and likewise, from time to time, at the expense of the Mortgagor, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall have the right to manage and

operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all gross receipts, earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagee; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvement and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, the Mortgagee may apply the moneys arising as aforesaid in a manner consistent with the Loan Agreement; and

III. The Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may exercise any of the following remedies:

(1) sell the Mortgaged Property or any part thereof to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, at one or more sales, as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law. Grantee may hold one or more sales hereunder until the Indebtedness has been satisfied in full; or

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, this Mortgage, or the other Documents or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect; or

(4) with respect to the personal property and fixtures in which a security interest is herein granted, at Grantee's option, Grantee may exercise any or all of the rights accruing to a secured party under this Mortgage, the Uniform Commercial Code (O.C.G.A. §§11-9-101 et seq., IC 26-1-9-101 et seq., N.H. RSA 382-A:9-101 et seq. or the applicable section of any other Uniform Commercial Code affecting the personal property and fixtures) and any other applicable law. Grantor shall, if Grantee requests, assemble all such personal property and make it available to Grantee at

a place or places, to be designated by Grantee, which shall be reasonably convenient to Grantor and Grantee. Any notice required to be given by Grantee of a public or private sale, lease or other disposition of the personal property or any other intended action by Grantee shall be delivered in a manner consistent with that provided for under Section 9.02 of the Loan Agreement, at least ten (10) business days prior to such proposed action, and shall constitute reasonable fair notice to Grantor of any such action.

Section 2.02. (a) The Mortgagee may, to the extent permitted by applicable law, adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Article II, the Mortgagee, or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties, interests and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(c) Notwithstanding anything to the contrary contained herein the purchase money, proceeds or avails of any sale made under or by virtue of this Article II, together with any other sums received by the Mortgagee under this Mortgage, shall be applied as provided for in Section 8.03 of the Loan Agreement.

(d) Upon any sale made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the

costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

Section 2.03. (a) Subject to the provisions of Section 4.20 hereof, the Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage or any guarantee executed by the Guarantor and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Mortgaged Property or any part thereof and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the indebtedness hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Guaranty, and to enforce payment of all other charges, payments and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest thereon at the Involuntary Rate. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of indebtedness and interest due upon the Guaranty to the full amount thereof, and all other payments, charges and costs due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property, provided, however, that in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property or any part thereof and the distribution from the estate of the Mortgagor.

(b) No recovery of any judgment by the Mortgagee and no levy of any execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

Section 2.04. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the principal of, or interest on, the Note and other sums required to be paid by the Mortgagor pursuant to any provisions of this Mortgage, or of the Documents, or of any nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor does hereby (a) waive personal service of process and consent to service by certified mail to the address of the Mortgagor set forth on the cover page of this Mortgage (with copies to be sent as provided in Section 4.03), and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof or any business or businesses conducted thereon and of all the earnings, revenues, rents, issues, profits and income thereof. After the happening of

any Event of Default, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Mortgage indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such receiver or receivers.

Section 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

Section 2.06. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such rights or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee.

Section 2.07. The Mortgagor will not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage or any guarantee, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment, or order of any court of competent jurisdiction, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor for itself and all who may claim under it, waive, to the extent that it lawfully may, all right to have the Mortgaged Property or any part thereof marshaled upon any foreclosure hereof.

Section 2.08. During the continuance of any Event of Default and pending the exercise by the Mortgagee of its right to exclude the Mortgagor from all or any part of the Premises, the Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Premises or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Premises to the Mortgagee or to a

receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

ARTICLE III

CONCERNING THE TRUSTEE

Section 3.01. The Trustee, by its acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms hereof.

Section 3.02. The Trustee may resign at any time upon giving thirty (30) days' notice in writing to the Grantor and to the Beneficiary.

Section 3.03. The Beneficiary may, with or without cause, remove the Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of the Trustee, or in its sole discretion for any reason whatsoever the Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor Trustee, and all powers, rights, duties and authority of the Trustee, as aforesaid, shall thereupon become vested in such successor. Such appointment shall be by written instrument filed for recordation in the same official office as this Deed of Trust is recorded. Neither the Trustee nor any such substitute trustee shall be required to make oath, file inventory or give bond for the faithful performance of his duties unless required by the Beneficiary. The Beneficiary's power of appointment may be exercised as often and whenever the Beneficiary deems it advisable and the exercise of such power, no matter how often, shall not be an exhaustion thereof. Such appointment may be executed by any person acting in a representative capacity and shall be conclusively presumed to have been executed with appropriate authority.

ARTICLE IV

MISCELLANEOUS

Section 4.01. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of the Mortgagor and the successors and assigns of the Mortgagee. If there be more than one mortgagor, the covenants and warranties hereof shall be joint and several. As used herein, the singular shall include the plural as the context requires.

Section 4.02. In the event any one or more of the provisions contained in this Mortgage or in the Note or in any of the other Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such in-

validity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 4.03. All notices and other communications provided for hereunder shall be in the English language, in writing (including telegraphic communication) and sent by certified mail, return receipt requested, by overnight courier or by facsimile or by hand delivery addressed as follows:

To the Mortgagor: c/o The Shidler Group
Four Embarcadero Center
Suite 3150
San Francisco, CA 94111
Attention: Robert W. Holman, Jr.
Telecopier: (415) 391-6259

with copies to:

The Shidler Group
Four Embarcadero Center
Suite 3150
San Francisco, CA 94111
Attention: Henry D. Bullock
Telecopier: (415) 391-6259

c/o The Shidler Group
810 Richard Street
Suite 1000
Honolulu, Hawaii 96813
Attention: Jay H. Shidler
Telecopier: (908) 528-7127

Skadden, Arps, Slate, Meagher & Flom
919 Third Avenue
New York, New York 10022
Attention: Benjamin F. Needell, Esq.
Telecopier: (212) 735-2001

If to the Mortgagee:

Unibank A/S
13-15 West 54th Street
New York, New York 10019
Attention: Carsten Beith,
Asst. Vice President
Corporate Finance
Telecopier: (212) 603-1685

with a copy (except for Notices of
Borrowing under the Loan Agreement)
to:

Robinson Silverman Pearce
Aronsohn & Berman
1290 Avenue of the Americas
New York, New York 10104
Attention: Michael B. Levy, Esq.
Telecopier: (212) 541-4630

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall be deemed to have been given for all purposes herein on the earlier of actual receipt with respect to personal delivery or overnight courier, or three (3) days after the date of the mailing thereof, or, with respect to facsimiles, upon receipt of confirmation or receipt of an answerback.

Section 4.04. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

Section 4.05. This Mortgage, and any instruments made in connection herewith, may be assigned by the Mortgagee without notice to, or the consent of, the Mortgagor or any other party in accordance with the terms and conditions of the Loan Agreement.

Section 4.06. The information set forth on the cover hereof is hereby incorporated herein.

Section 4.07. The Involuntary Rate provided for herein shall continue to accrue and be paid on any amount to which the Involuntary Rate is applied until said amount is paid in full.

Section 4.08. The creation of this Mortgage, the attachment and perfection of the lien, security title or security interest in the Mortgaged Property, and the rights and remedies of the Mortgagee and the enforcement thereof with respect to the Mortgaged Property, as provided herein and by the laws of the state in which the Mortgaged Property is located, shall be governed by and construed in accordance with the internal laws of the state in which the Mortgaged Property is located (except where the laws or conflict of laws rules of such state would otherwise require; see, e.g., Section 9-103(3)(b) of the Uniform Commercial Code). Otherwise to the extent permitted by applicable law, the Note, the other Documents and all other obligations of Mortgagor shall be governed by and construed in accordance with the internal laws of the State of New York.

Section 4.09. Neither this Mortgage nor any provision hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the Mortgagee.

Section 4.10. (a) This Mortgage shall be deemed to be a Security Agreement pursuant to the Uniform Commercial Code of the State in which the Mortgaged Property or any part thereof is located and Mortgagor (as Debtor) hereby grants to Mortgagee (as Secured Party) a continuing security interest in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property.

(b) The Mortgagor and the Mortgagee agree that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing the

express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such property is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) above that notice of the Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

Section 4.11. (a) The Mortgagor represents and warrants to the Mortgagee that the Premises do not comprise Property identified by the Secretary of Housing and Urban Development as an area having special flood hazards, or to the contrary, that the Premises have been so identified but that the Premises has been insured under the National Flood Insurance Act of 1968, as amended by Flood Disaster Protection Act of 1973.

(b) The Mortgagor covenants and warrants that if the Premises are so identified by the Secretary of Housing and Urban Development as having special flood hazards, it will keep the Premises insured against loss by flood hazards in an amount at least equal to the replacement value of the Improvements, or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, whichever is less.

Section 4.12. Wherever "attorneys' or counsel fees" are referred to herein, it shall include such reasonable fees whether incurred out of court or in litigation, including, without limitation, appeals and bankruptcy proceedings.

Section 4.13. Whenever reference is made in this Mortgage to a lease, lessee, tenancy or tenant, such refer-

ence shall be deemed to include a sublease, sublessee, subtenancy or subtenant, as the case may be.

Section 4.14. Intentionally omitted.

Section 4.15. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage. Any counterpart or group of counterparts of this Mortgage recorded in a single county or state may be treated with respect to the rights and remedies available to Mortgagee as a separate mortgage or group of mortgages covering only the portions of the Mortgaged Premises located in the county or state where that counterpart or those counterparts are recorded.

Section 4.16. If the payment of the mortgage indebtedness is now or hereafter further secured by assignments of leases or rentals, security agreements, financing statements, mortgages, collateral assignments, pledges, contracts of guaranty, or other additional security documents, any default under the provisions of any such further security documents shall constitute and be a default under this Mortgage, and the Mortgagee may, at its option, exhaust any one or more of the said security documents and the security thereunder as well as the Mortgaged Property covered by this Mortgage either concurrently or independently and in such other and further manner as the Mortgagee may elect, and Mortgagee may apply the proceeds received therefrom upon the mortgage indebtedness without waiving or affecting Mortgagee's rights and remedies under this Mortgage exercised hereunder or whether contained or exercised under any other such security documents.

Section 4.17. Intentionally omitted.

Section 4.18. Nothing contained herein shall create any joint venture, partnership, agency or trust arrangement between Mortgagor and Mortgagee.

Section 4.19. The lien of this Mortgage may be released from portions of the Mortgaged Property upon the sale(s) thereof, upon satisfaction of certain conditions and in accordance with the terms and provisions more particularly set forth in the Loan Agreement.

Section 4.20. Notwithstanding any other provision of this Mortgage, the obligation of Mortgagor to pay the amounts to be paid by it pursuant to the Guaranty, and to perform and observe and make good the other covenants, warranties and agreements contained herein, shall not be enforced by any action or proceeding against Mortgagor or its partners wherein or whereby any deficiency or other money judgment shall be sought against Mortgagor or its partners (a "Deficiency Action") and neither Mortgagor nor its partners shall be liable for such deficiency or other money judgment; provided that Mortgagor may be made a party defendant in a foreclosure action against the Premises and any judgment in such foreclosure action shall be enforceable against Mortgagor, and provided further that nothing contained above shall be deemed (i) to affect the lien of this Mortgage, (ii) to be

a release or impairment of the other obligations of Mortgagor under the Guaranty, this Mortgage or any other Documents, (iii) to limit Mortgagee from enforcing its rights under the Note, this Mortgage or any Document, or to constitute a waiver, release or discharge of any indebtedness or obligation under the Note or secured by this Mortgage, or (iv) to affect the personal liability of the Guarantors under the Guaranty or of the indemnitors under the Environmental Indemnity. Nothing set forth in (i) to (iv) of the preceding sentence shall be deemed to give rise to any personal liability of Mortgagor or its partners, except to the extent that they are personally liable pursuant to the Guaranty or the Environmental Indemnity. Notwithstanding the foregoing, Mortgagor shall be personally liable to Mortgagee at all times for the misapplication by the Mortgagor in a manner which is fraudulent and/or contrary to the provisions of the Mortgage of (a) any insurance proceeds paid under any insurance policies by reason of damage, loss or destruction to the Premises or the Improvements to the full extent of such proceeds or (b) proceeds or awards resulting from condemnation or other taking in lieu of condemnation of any portion of the Premises or the Improvements to the full extent of such proceeds or awards or (c) tenant security deposits, but only to the extent actually received by Mortgagor and not applied on account of a tenant default; and Mortgagor, Guarantors and the aforesaid indemnitors shall be personally liable for any damages to Mortgagee resulting from any fraud or intentional misrepresentation made by Mortgagor, Guarantors or the aforesaid indemnitors, as the case may be.

Section 4.21. THE MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE, THE NOTE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THE LOAN, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE MORTGAGOR OR MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO MAKE THE LOAN AND ACCEPT THE GUARANTY SECURED HEREBY.

Section 4.22. To facilitate recordation, in certain counterparts hereof only that portion of Schedule A and only that cover page which contain specific descriptions of the Mortgaged Property located in the recording jurisdiction in which the particular counterpart is to be recorded and only acknowledgments which are acceptable for such jurisdiction are included. Complete copies of this Mortgage containing the entire Schedule A, all cover pages and all acknowledgments have been retained by Mortgagor and Mortgagee.

Section 4.23. Notwithstanding anything to the contrary contained in this Mortgage, in no event shall this document, or the execution or delivery hereof, be deemed (i) an encumbrance or an agreement to encumber all or any part of the Mortgaged Property; (ii) a mortgage until such time as such document is effective in accordance with the terms hereof; and/or (iii) effective until the Termination Date (as defined in the Loan Agreement) with respect to the Mortgaged Property. Mortgagee shall have no right, title or interest in or to the Mortgaged Property and covenants and agrees that

it shall not take any action with respect to the Mortgage, and further covenants and agrees that it will not place the Mortgage or any UCCs or other documents executed in connection herewith of record until the Termination Date with respect to the Mortgaged Property. Mortgagee acknowledges that a breach of its covenants contained in the preceding sentence may cause Mortgagor substantial harm and hereby agrees to indemnify Mortgagor for any and all costs, expenses and liabilities incurred or suffered by Mortgagor as a result of Mortgagee's breach thereof.

ARTICLE V

PARTICULAR STATE PROVISIONS

Section 5.01. To the extent that the Mortgaged Property is located in the State of Alabama, the following provisions shall apply:

(a) In addition to the rights and remedies provided herein, the Mortgagee, its agents and assigns, upon the occurrence and during the pendency of an Event of default hereunder shall have the right to enter upon and take possession of the Mortgaged Property and after, or without, taking such possession of the same, to the extent permitted by applicable law, sell the Mortgaged Property en masse or in parcels, as Mortgagee may deem best, at public outcry, in front of the courthouse door of the county wherein said property or any part thereof is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, either weekly or daily, or as otherwise required by law, and, upon payment of the purchase money, Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed, bill of sale or other appropriate instrument of conveyance to the property so purchased in the name and on behalf of Mortgagor and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale shall be prima facie evidence of his authority in the premises, and any recitals in said deed, bill of sale or other instrument essential to the validity of the sale shall be binding on Mortgagor, or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction or otherwise as now provided by law in the case of past due mortgages, and Mortgagee, or the then-holder of the indebtedness thereby secured, may bid at any such sale and become the purchaser of the property sold if the highest bidder therefor, and in lieu of paying cash therefor, make settlement by crediting upon the indebtedness secured hereby the net proceeds of such sale after deducting therefrom the expenses of sale as provided in this section. Mortgagee or any court of competent jurisdiction may conduct any number of sales from time to time, and the power of sale hereby granted shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property remaining unsold, but shall continue unimpaired until all the Mortgaged Property shall have been sold or all indebtedness secured hereby paid. The power of sale hereby granted to Mortgagee is coupled with an interest

and is irrevocable. The proceeds of any such sale shall be applied in such order as provided in this Mortgage. In any event, the purchaser under the foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(b) Certification is hereby made that this Mortgage is not intended to be a future advance or open end mortgage and that no additional or subsequent advances will be made under this Mortgage.

Section 5.2. To the extent that the Mortgaged Property is located in the State of Colorado, the following provisions shall apply:

(a) Insofar as the Mortgaged Property is located in Colorado, the Mortgagor hereby grants, bargains, sells and conveys to the Public Trustee, in trust for the use and benefit of Mortgagee, all of its right, title and interest in the Mortgaged Property for the purpose of securing the indebtedness and the performance of all covenants and agreements in the Note and this Deed of Trust, and upon payment and performance in full of all of the obligations secured hereby, Beneficiary will execute and deliver to Mortgagor such documents as may be required to release this Deed of Trust of record.

(b) "Public Trustee" shall mean the Public Trustee for the City and County of Denver, Colorado.

(c) Beneficiary may foreclose this Deed of Trust, insofar as it encumbers the Mortgaged Property, either by judicial action or through the Public Trustee. Foreclosure through the Public Trustee will be initiated by Beneficiary's filing of its notice of election and demand for sale with the Public Trustee. Upon the filing of such notice of election and demand for sale, the Public Trustee shall promptly comply with all notice and other requirements of the laws of Colorado then in force with respect to such sales, and shall give four weeks' public notice of the time and place of such sale by advertisement weekly in some newspaper of general circulation then published in the County or City and County in which the Mortgaged Property is located. Any sale conducted by the Public Trustee pursuant to this section shall be held at the front door of the county courthouse for such County or City and County, or on the Mortgaged Property, or at such other place as similar sales are then customarily held in such County or City and County, provided that the actual place of sale shall be specified in the notice of sale. The proceeds of any sale under this section shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the indebtedness in the order of priority therefor set forth in the Loan Agreement. At the conclusion of any foreclosure sale, the officer conducting the sale shall execute and deliver to the purchaser at the sale a certificate of purchase, which shall describe the property sold to such purchaser and shall state that upon the expiration of the applicable periods for redemption, the holder of such certificate will be entitled to a deed to the property described in the certificate. After the expiration of all applicable periods of redemption, unless the property sold has been redeemed by

Grantor, the officer who conducted such sale shall, upon request, execute and deliver an appropriate deed to the holder of the certificate of purchase or the last certificate of redemption, as the case may be, and such deed shall operate to divest Grantor and all persons claiming under Grantor of all right, title and interest, whether legal or equitable, in the property described in the deed. Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Colorado law, and any such inconsistency shall be resolved in favor of Colorado law applicable at the time of foreclosure.

(d) The Public Trustee shall have all of the rights and duties conferred upon a public trustee under Colorado law applicable at the time such right is to be exercised or such duty enforced.

Section 5.03. To the extent that the Mortgaged Property is located in the State of Florida, the following provision shall apply:

(a) It is agreed that any additional sum or sums advanced by the then holder of the Note secured hereby to or for the benefit of Mortgagor, whether such advances are obligatory or are made at the option of Mortgagee, or otherwise, at any time within twenty (20) years from the date of this Mortgage, with interest thereon at the rate agreed upon at the time of each additional loan or advance, shall be equally secured with and have the same priority as the original indebtedness and be subject to all of the terms and provisions of this Mortgage, whether or not such additional loan or advance is evidenced by a promissory note of the borrowers and whether or not identified by a recital that it is secured by this Mortgage; provided that the aggregate amount of principal indebtedness outstanding and so secured at any one time shall not exceed the sum of \$10,500,000, plus interest and disbursements made for the payment of taxes, levies or insurance on the property covered by this Mortgage with interest on such disbursements, and provided further that it is understood and agreed that this future advance provision shall not be construed to obligate the Mortgagee to make any such additional loans or advances. It is further agreed that any additional note or notes executed and delivered under this future advance provision shall be included in the word "Note" wherever it appears in the context of this Mortgage.

(b) The filing of a notice limiting the amount secured by this Mortgage, unless required by law, shall be deemed an Event of Default under this Mortgage.

Section 5.04. [Intentionally Omitted]

Section 5.05. To the extent that the Mortgaged Property is located in the State of Iowa, the following provisions shall apply:

(a) No part of the Mortgaged Property constitutes and no portion of the Mortgaged Amount will be used to purchase real property which is a single-family or a two-family dwelling occupied or to be occupied by the Borrower,

or agricultural products or property used for an agricultural purpose as defined in Iowa Code Section 535.13, or agricultural land as defined in Iowa Code Section 172C.1(5) or 175.2(1), or property used for an agricultural purpose as defined in Iowa Code Section 570.A.1(2).

(b) Borrower represents that there are no known wells, solid waste disposal sites, hazardous wastes or underground storage tanks situated on the Mortgaged Property.

(c) The loan evidenced by the Loan Agreement (i) does not constitute a consumer credit transaction as defined in Iowa Code Section 537.1301(ii) and (ii) is for a business purpose as defined in Iowa Code Section 535.2, 2(a), (5).

(d) The mailing address of the Mortgagee is 13-15 West 54th Street, New York, New York 10019.

(e) Mortgagor hereby agrees that in the event of judicial foreclosure of this Mortgage, the Mortgagee may, at its sole option, elect:

(i) Pursuant to Iowa Code § 628.26 as now enacted or hereafter modified, amended or replaced to reduce the period of redemption after sale on foreclosure to six months, or

(ii) Pursuant to Iowa Code § 628.27 as now enacted or hereafter modified, amended or replaced to reduce the period of redemption after sale on foreclosure to sixty days, or

(iii) Pursuant to Iowa Code § 628.28 as now enacted or hereafter modified, amended or replaced or any other Iowa Code Section to reduce the period of redemption after sale on foreclosure to such time as may be then applicable and provided by law, or

(iv) Pursuant to Iowa Code § 654.20 as now enacted or hereafter modified, amended or replaced to foreclose without redemption.

(f) This Mortgage secures credit in the amount of \$10,500,000. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

(g) In the event of foreclosure of this Mortgage, the Mortgagor hereby agrees that the court may, and requests the court to, enter a special order directing the clerk of court to enter and record the judgment contained in the foreclosure decree on the note secured by this Mortgage without requiring that the note be first filed with the clerk of court for cancellation. The Mortgagor further agrees, because the note secured by this Mortgage is also secured by other mortgages and will be necessary to a foreclosure of those mortgages, that notwithstanding Iowa Rule of Civil Procedure 228, as presently enacted or as hereinafter amended or replaced, the clerk of court may, in the event of foreclo-

sure of this Mortgage, enter and record the judgment contained in the foreclosure decree on the note secured by this Mortgage without requiring that the note be first filed with the clerk of court for cancellation.

(h) If any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the other Loan Documents is found by a court of law to be in violation of any applicable local, State or Federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such Court shall declare such portion, provision or provisions of this Mortgage or the other Loan Documents to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and other Loan Documents shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations, and interest of Mortgagor and Mortgagee hereof under the remainder of this Mortgage and the other Loan Documents shall continue in full force and effect.

(i) The lien on the rents herein granted shall be effective from the date hereof and not just in the event of default.

(j) Mortgagor hereby consents to and agrees that at any time after commencement of a judicial action of foreclosure, through and including during the period of redemption, the Court having jurisdiction of the case shall at the request of the Mortgagee appoint a receiver to take possession of the Mortgaged Property and of the rents and profits accruing therefrom, and Mortgagor hereby waives its right to possession, statutory or otherwise. Mortgagor agrees that this Mortgage gives to the Mortgagee the right to possession before sale and termination of the right of redemption, pledges the rents and profits, creates in favor of the Mortgagee a lien upon and interest in the right of possession given by Iowa statute, and upon the revenue which arises from it, and waives the right to challenge the appointment of a receiver.

(k) In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the debt secured hereby, all right, title and interest of the Mortgagor in and to the proceeds for any loss and to any insurance policies then in force shall pass to the purchaser or grantee, regardless of whether or not there is a deficiency judgment after foreclosure sale or non-judicial foreclosure.

(l) Supplementing Section 2.01 hereof, following an Event of Default, the Mortgagee shall have the right to nonjudicial foreclosure pursuant to Iowa Code Section 654.18 and Chapter 655A as now enacted or hereafter modified, amended or replaced.

(m) Mortgagor hereby represents, warrants and agrees that the liens granted hereby are not the type of lien referred to in Chapter 575 of the 1989 Iowa Code Supplement, as now enacted or hereafter modified, amended or replaced.

Mortgagor, for itself and all persons claiming by, through or under Mortgagor, agrees that it claims no lien or right to a lien of the type contemplated by Chapter 575 or any other chapter of the Code of Iowa and further waives all notices and rights pursuant to said law with respect to the liens hereby granted, and represents and warrants that it is the sole party entitled to do so and agrees to indemnify and hold harmless Mortgagee from any loss, damage, and costs, including reasonable attorney fees, threatened or suffered by Mortgagee arising either directly or indirectly as a result of any claims of the applicability of said law to the liens hereby granted.

(n) Notwithstanding any reference to highest lawful rate, maximum interest rate permitted to be charged by relevant law or other like references, or other like terms, such references shall not be deemed to establish a maximum lawful rate of interest as contemplated by Iowa Code Section 535.2 since the parties have agreed in writing to a rate of interest pursuant to Iowa Code Section 535.2, 2. There shall be no automatic reduction to the highest lawful rate or other like term as to any Mortgagor or other party barred by law from availing itself in any action or proceeding of the defense of usury, or any Mortgagor or other party barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Mortgagor agrees that any late payment fee, late fee, late charge, delinquency charge, or other like charge shall be interest for the purposes of Iowa law.

Section 5.06. To the extent that the Mortgaged Property is located in the State of Kansas, the following provisions shall apply:

Mortgagor shall not claim or exercise any right under any statute heretofore or hereafter enacted, by any governmental authority or otherwise, to redeem the property sold or any part thereof after any sale or sales hereunder, and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws.

Section 5.07. To the extent that the Mortgaged Property is located in the State of Louisiana, the following provisions shall apply:

The said Mortgagor further declares that he does consent, agree and stipulate that in the event said Note be not paid at maturity, it shall be lawful for and he hereby authorizes the said Mortgagee or any future holder or holders of said note to cause all and singular the property hereinbefore described and mortgaged to be seized and sold under executory or other legal process issued by any court of competent jurisdiction, without appraisalment, to the highest bidder, payable cash; the said Mortgagor hereby expressly dispensing with all and every appraisalment thereof, the said Mortgagor hereby confessing judgment in favor of said Mortgagee, or any future holder or holders of said Note for the full amount of said Note, in principal and interest,

together with all attorneys' fees, costs and insurance premiums aforesaid. The receipt of any person, firm or corporation to whom there has been paid a premium of insurance by any holder of said Note, together with affidavit of payment by the holder paying same, shall constitute authentic evidence of such payment sufficient for issuance of executory process insofar as the recovery of such sum so paid as an insurance premium together with interest, and principal and interest as attorneys' fees, is concerned.

Mortgagor hereby expressly waives: (a) the benefit of appraisal as provided in Articles 2332, 2336, 2723 and 2724, Louisiana Code of Civil Procedure, and all other laws conferring the same; (b) the demand and three (3) days delay accorded by Articles 2639 and 2721, Louisiana Code of Civil Procedure; (c) the notice of seizure required by Articles 2293 and 2721, Louisiana Code of Civil Procedure; (d) the three (3) days delay provided by Articles 2331 and 2722, Louisiana Code of Civil Procedure; and (e) the benefit of other provisions of Articles 2331, 2722 and 2723, Louisiana Code of Civil Procedure, not specifically mentioned above; and Mortgagor expressly agrees to the immediate seizure of the Mortgaged Property, or any part or parcel thereof, upon the occurrence and during the continuance of an Event of Default hereunder.

The said Mortgagor declares that the Note herein described and paraphed for identification with this Mortgage and said Mortgage securing it are not given or issued in evidence of any specific debt, but are intended and shall be used as collateral to secure payment of any indebtedness now existing or hereafter to arise on the part of the Mortgagor or Borrower.

Mortgagor specifically waives the Homestead Exemption provided for in Article XII, Section 9 of the Constitution of 1974 of the State of Louisiana as well as any and all rights accorded them as Homestead Exemptions under that article or any other constitutional or statutory provisions whatsoever, which waiver is in favor of the named Mortgagee or any future holder or holders of this Mortgage together with interest, attorneys' fees and costs as permitted hereby.

Section 5.08. To the extent that the Mortgaged Property is located in the State of Michigan, the following provisions shall apply:

(a) This Agreement constitutes a mortgage and security agreement and does not constitute a deed of trust or deed to secure debt.

(b) Upon the occurrence and during the continuance of any Event of Default, the Mortgagee may, with or without entry, personally or by its agent or attorneys, insofar as applicable:

At the option of Mortgagee, commence foreclosure proceedings against the Premises through judicial proceedings or by advertisement pursuant to the statutes in such case made and provided and sell the Premises or cause the same to

be sold in accordance with such statutes. By execution of this Mortgage, Mortgagor hereby grants to Mortgagee the power to sell and convey the Premises at public sale in accordance with the statutes providing therefor. Mortgagor agrees that no notice of any sale other than as specifically required by applicable law need be given by Mortgagee, or any other person. Mortgagee shall have the privilege of selling such Premises together or in lots or parcels, as to it shall seem expedient, and shall receive the proceeds of such sale.

(c) If an Event of Default shall have occurred and be continuing, Mortgagee may receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and Mortgagor agrees to consent to a receiver if this is believed necessary or desirable by Mortgagee to enforce its rights hereunder. Mortgagee shall be entitled to all of the rights and benefits conferred by Act No. 210 of the Michigan Public Acts of 1953 as amended by Act No. 151 of the Michigan Public Acts of 1966 (MCL §554.231 et seq.) The collection of rents, issues, profits or revenues of the Mortgaged Property by Mortgagee shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any said Event of Default.

(d) The failure of Mortgagor to pay any taxes or assessments assessed against the Mortgaged Property, or any installment thereof, or any premiums payable with respect to any insurance policy covering the Mortgaged Property, shall constitute waste, as provided by Act No. 236 of the Michigan Public Acts of 1961 as amended (MCL §600.2927). Mortgagor further hereby consents to the appointment of a receiver under said statute, should Mortgagee elect to seek such relief thereunder.

(e) If Mortgagee (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note or in any other document or instrument securing the Note; (iv) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (v) changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage or in any other document or instrument securing the Note; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (vii) consents to the granting of any easement or other right affecting the Mortgaged Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (v) above) the original liability under the Note, this Mortgage or any other obligation of Mortgagee or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Mort-

gagor from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing. In the event of the sale or transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

(f) A portion of the indebtedness secured hereby may consist of future advances.

Section 5.09. To the extent that the Mortgaged Property is located in the State of New Hampshire, the following provisions shall apply:

(a) The Mortgagor will comply with N.H. RSA 146-C, Underground Storage Facilities, and the rules and regulations of the New Hampshire Division of Water Supply and Pollution Control, Ws-411, et seq., relating to the inspection and replacement of underground fuel storage tanks located on the Mortgaged Premises.

(b) Notwithstanding any other provisions set forth herein and without limitation thereof, this Mortgage is upon the STATUTORY CONDITIONS, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE.

(c) Any sale of the Mortgaged Property or any part thereof by the Mortgagee after an Event of Default pursuant to subparagraph (1) of Subdivision III of Section 2.01 of this Mortgage shall be pursuant to the STATUTORY POWER OF SALE, by public sale to the highest bidder as provided in N.H. RSA 479:25-27-a, as the same may be amended from time to time.

(d) There is no homestead interest in the Mortgaged Property.

Section 5.10. To the extent that the Mortgaged Property is located in the State of New York, the following provisions shall apply:

(a) All covenants hereof shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of Sections 254, 271 and 272 of the Real Property Law of the State of New York. If there is a conflict between any provision of this Mortgage and the provisions of Section 254 of the Real Property Law of the State of New York, the Mortgagor agrees that the applicable provision of this Mortgage shall control.

(b) The Mortgagor will, in compliance with Section 13 of the Lien Law of the State of New York, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the Improvements and will apply the same first to the payment of the cost of the Improvements before using any part of the total of the same for any other purpose.

Section 5.11. To the extent that the Mortgaged Property is located in the State of North Carolina, the following provisions shall apply:

(a) The Trustee, its successors and assigns, shall be deemed to be a grantee pursuant to the GRANTING CLAUSE (set forth on page 3 of this instrument) and the HABENDUM CLAUSE (set forth on page 4 of this instrument). The Trustee shall have such rights, title and powers as are customarily possessed by trustees under deeds of trust in North Carolina, including those powers herein given to the Mortgagee, and the Trustee shall hold the Mortgaged Property IN TRUST for the benefit of the Beneficiary, pursuant to the terms and provisions of this instrument.

(b) THIS INSTRUMENT IS A DEED OF TRUST pursuant to the laws of the State of North Carolina governing deeds of trust, and is also a security agreement granting a present and continuing security interest in the portion of the Mortgaged Property constituting personal property or fixtures, and a financing statement filed as a fixture filing, pursuant to the Uniform Commercial Code of the State of North Carolina, and it is not a mortgage. This deed of trust is given to secure all present obligations of the Borrower. The amount of present obligations secured by this instrument is Ten Million Five Hundred Thousand Dollars (\$10,500,000).

(c) Upon the occurrence and during the continuance of one or more of the Events of Default set forth in Section 2.01 of this Deed of Trust, and in addition to all other rights and remedies set forth in this Deed of Trust or as otherwise provided under applicable law, the Beneficiary may notify the Trustee to exercise the power of sale granted hereunder and upon such notification it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property or any part thereof at public sale to the highest bidder for cash, in compliance with all applicable requirements of North Carolina law governing the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall collect the purchase proceeds and convey title to the portion of the Mortgaged Property so sold to the purchaser in fee simple. In the event of a sale of the Mortgaged Property or any part thereof, the proceeds of sale shall be applied in the order of priority therefor set forth in the Loan Agreement. The Grantor agrees that in the event of a sale hereunder, the Beneficiary shall have the right to bid at such sale and shall have the right to credit all or any portion of the indebtedness secured hereby against the purchase price. The Trustee shall have the right to designate the place of sale in compliance with applicable law and the sale shall be held at the place designated by the notice of sale. The Trustee may require the successful

bidder at any sale to deposit immediately with the Trustee cash or certified check or cashier's check in an amount up to ten percent (10%) of the bid provided notice of such deposit requirement is published as required by law. The bid may be rejected if the deposit is not immediately made. Such deposit shall be refunded in case of a resale because of an upset bid or if the Trustee is unable to convey the portion of the Mortgaged Property so sold to the bidder because the power of sale has been terminated in accordance with applicable law. If the purchaser fails to comply with its bid, the deposit shall be applied to the expenses of the sale and the residue, if any, shall be applied to the indebtedness secured hereby. In all other cases, the deposit shall be applied to the purchase price. Pursuant to Section 25-9-501(4) of the North Carolina General Statutes (or any amendment thereto), the Trustee is expressly authorized and empowered to expose to sale and sell together with the real estate any portion of the Mortgaged Property which constitutes personal property. If personal property is sold hereunder, it need not be at the place of sale. The notice of sale, however, shall state the time and place where such personal property may be inspected prior to sale. The Mortgaged Property may be sold in such parcels or lots as the Trustee may determine without regard to principles of marshalling and the Mortgaged Property may be sold at one sale or in multiple sales as determined by the Trustee. The exercise of the power of sale hereunder by the Trustee on one or more occasions shall not be deemed to extinguish the power of sale which power of sale shall continue in full force and effect until all of the Mortgaged Property shall have been finally sold and properly conveyed to the purchasers at the sales. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by the Trustee, including reasonable attorneys' fees, and a partial commission computed on five percent (5%) of the outstanding indebtedness in accordance with the following schedule: one-fourth (1/4th) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (1/2) thereof after issuance of said notice; three-fourths (3/4th) thereof after such hearing; and the full commission after the initial sale.

(d) The Grantor consents that the whole or any part of any other security now or hereafter held by the Beneficiary for the Indebtedness may be exchanged, compromised or surrendered from time to time; that the time or place of payment of the Indebtedness or of any other security therefor may from time to time be exchanged or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; that the Borrower may be granted indulgences generally; that any of the provisions of the Documents, any other deeds of trust, mortgages, deeds to secure debt, or any other security therefor may be modified or waived; that any party liable for the payment of the Indebtedness may be granted indulgences or released; and that any deposit balance to the credit of the Borrower or any other party liable for the payment of the Indebtedness or liable upon any other security therefor may be released, in whole or in part, at, before, and/or after the stated, extended or accelerated maturity of the Indebted-

ness, all without notice to or further assent by the Grantor, this deed of trust remaining in full force and effect notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release. The Grantor waives any rights of Grantor pursuant to North Carolina General Statutes Section 26-7, or any similar or subsequent law and any right to require that an action be brought against the Borrower or any other person or to require that any other deed of trust be foreclosed or that resort be had to any other security or to any balance of any deposit account or credit on the books of the Beneficiary in favor of the Borrower or any other person.

(e) The Grantor hereby waives any rights or remedies on account of any extensions of time, releases granted or other dealings between the Beneficiary and any subsequent owner of the Mortgaged Property herein conveyed or pledged as said activities are contemplated or otherwise addressed in Section 45-45.1 of the North Carolina General Statutes or any similar or subsequent law; the foregoing waiver shall not be construed as affecting or otherwise amending the covenants and agreements of the Grantor contained in Section 1.20 of this Mortgage.

Section 5.12. To the extent that the Mortgaged Property is located in the State of Oklahoma, the following provisions shall apply:

(a) A POWER OF SALE HAS BEEN GRANTED IN THIS MORTGAGE. A POWER OF SALE MAY ALLOW THE MORTGAGEE TO TAKE THE MORTGAGED PROPERTY AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON AN EVENT OF DEFAULT BY THE MORTGAGOR UNDER THIS MORTGAGE.

(b) Upon the occurrence and the continuance of any Event of Default under this Mortgage, the Mortgagee is authorized and empowered to sell the Premises or any part thereof situated in the State of Oklahoma without the necessity of a foreclosure action and pursuant to the "Power of Sale Mortgage Foreclosure Act" (46 O.S. §§ 40 et seq.) ("Act") as required by said Act and pursuant to any and all amendments thereto and replacements thereof.

The sale of the Mortgaged Premises will occur only after Mortgagee complies with all applicable notice provisions, and after the passage of time, prescribed in the Act. The manner of sale (e.g., time, place and procedure) and the application of the proceeds of sale may also be governed by the Act.

Mortgagor understands and hereby acknowledges that the Act provides Mortgagor with certain rights and protection with regard to Mortgagee's utilization of its Power of Sale rights including, without limitation, the right to receive certain notices and to make certain elections prescribed in the Act; and in connection therewith, Mortgagor acknowledges its right to consult with an attorney for clarification thereof.

(c) Following an Event of Default, as set forth in Section 2.01 hereof, Mortgagee may foreclose the lien of this Mortgage, and in so doing, Mortgagee shall have

the option, to apply for and will be entitled, as a matter of right, to the appointment of a receiver to take possession and control of, operate, maintain and preserve the Mortgaged Premises or any part thereof, and to apply the net proceeds to the secured indebtedness; and the receiver may be authorized to sell or dispose of all or any part of the Mortgaged Premises under orders of the court. Mortgagor hereby waives all notice of the filing and hearing of any such application for the appointment of receiver and irrevocably consents to every appointment made pursuant thereto.

(d) Mortgagor further agrees that: (a) in the event of any foreclosure sale, the Mortgaged Premises or any part thereof may be sold with or without appraisal as Mortgagee may elect at any time prior to the entry of the decree of foreclosure; (b) Mortgagee may elect to have the Mortgaged Premises sold together or in separate parcels and Mortgagor waives any and all rights which Mortgagor may have to insist on sale of the Mortgaged Premises in one unit or in separate parcels; and (c) if the highest bidder at the foreclosure sale becomes the purchaser, free of any right of Mortgagor to redeem or repurchase the Mortgaged Premises, the proceeds from such sale will be applied as provided for in the Loan Agreement.

(e) The total indebtedness which this Mortgage secures is \$10,500,000; such indebtedness is also secured by mortgages or deeds of trust encumbering certain other properties located in other states. The value of the Oklahoma property is \$550,000; which value represents .76% of the total value of all of the mortgaged properties securing the indebtedness. Accordingly, the Oklahoma mortgage tax is \$64, calculated as follows: $\$10,500,000 \times .76\% \times \$.80/\$1,000$ (rate for mortgages with terms of 4-5 years).

Section 5.13. To the extent that the Mortgaged Property is located in the State of Oregon, the following provisions shall apply:

(a) this instrument shall be a Trust Deed made pursuant to ORS § 86.705 *et seq.*, as now enacted or hereafter modified, amended, renumbered or replaced; and the Mortgagor, as grantor, hereby conveys and warrants to Lawyers Title Insurance Corporation, as trustee, in trust, with power of sale, for the benefit of Mortgagee, as beneficiary, for the purpose of securing the Indebtedness, all of the Mortgaged Property located in the State of Oregon.

(b) No part of the Mortgaged Property constitutes or will constitute property upon which are situated four or fewer residential units, and this trust deed is in no manner to be construed as a residential trust deed (as such term is defined in ORS § 86.705, as the same may be amended, modified, renumbered or replaced).

(c) The loan evidenced by the Note is to be used solely for business or commercial purposes, and no portion of the proceeds of such loan shall be used for personal or family purposes.

(d) This instrument is a fixture financing statement which shall, pursuant to ORS § 79.4020(6), upon

filing in the mortgage records of the county or counties in which the Mortgaged Property is located, perfect the Mortgagee's security interest in any portion of the Mortgaged Property that may be deemed to be fixtures under Oregon law. The address of the Mortgagee, which is the secured party, from which information concerning the security interest may be obtained, is the address of the Mortgagee set forth on the cover page of this instrument.

(e) Upon the occurrence and continuance of an Event of Default, Mortgagee, in addition to any other remedy that may be available to Mortgagee pursuant to this instrument or under applicable law, shall have the right to cause the trustee to foreclose the lien of this instrument by advertisement and sale pursuant to ORS § 86.705 et seq., as the same may be amended, modified, renumbered or replaced.

(f) Mortgagor acknowledges that UNDER OREGON LAW MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY BANKS AFTER OCTOBER 3, 1989, CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE BANK TO BE ENFORCEABLE AGAINST IT. Nothing in this Section 5.13(f) shall, however, be deemed to amend or modify the terms of Section 4.08 hereof with regard to the law applicable to the Note, the other Documents and all other obligations of Mortgagor.

Section 5.14. To the extent that the Mortgaged Property is located in the Commonwealth of Pennsylvania, the following provision shall apply:

Mortgagor hereby irrevocably authorizes and empowers any attorney of the record, or the Prothonotary, Clerk or similar officer of any court in the Commonwealth of Pennsylvania or elsewhere, upon the occurrence and during the continuance of any Event of Default, as attorney for Mortgagor, to sign an agreement for entering therein an appropriate amicable action in ejectment for possession of the Mortgaged Property (or any part thereof), without the necessity of filing any bond, against Mortgagor and to appear for Mortgagor, at any time or times, in any such court, as of any term, and therein to CONFESS or enter JUDGMENT against Mortgagor and in favor of Mortgagee for the recovery by Mortgagee of possession of the Mortgaged Property (or any part thereof), plus costs of suit and reasonable attorneys' fees, for which this Mortgage, or a copy hereof verified by affidavit, shall be a sufficient warrant, whereupon a writ of possession of the Mortgaged Property (or any part thereof) may be issued forthwith without any prior writ or proceeding whatsoever. Mortgagor expressly agrees that if for any reason after any such action has been commenced, the same shall be discontinued, marked satisfied of record or be terminated, or possession of the Mortgaged Property (or

any part thereof) remain in or be restored to Mortgagor, Mortgagee may, whenever and as often as Mortgagee shall have the right to take possession again of the Mortgaged Property (or any part thereof), bring one or more further amicable actions in the manner herein before set forth to recover possession of the Mortgaged Property (or any part thereof) and to CONFESS JUDGMENT therein as hereinabove provided, and the authority and power above given to any such attorney shall extend to all such further amicable actions in ejectment as hereinabove provided whether before or after an action of mortgage foreclosure is brought or other proceedings in execution are instituted upon this Mortgage or the Note, and after judgment thereon or therein and after a judicial sale of the Mortgaged Property or any part thereof. No exercise of the foregoing warrant and power shall adversely affect or diminish any other right, power or privilege of Mortgagee at law or in equity or under this Mortgage or the Note. As used in this paragraph the term "Mortgagor" shall be deemed to include Mortgagor, its successors and assigns and all those claiming by, through or under Mortgagor, its successors or assigns.

Section 5.15. To the extent that the Mortgaged Property is located in the State of Texas, the following provisions shall apply:

(a) To the extent that the Mortgaged Property (hereinafter defined) is located in Texas, this Mortgage shall be deemed and construed to be a Deed of Trust, the Trustee or its successors and assigns shall be deemed a Grantee pursuant to the granting clause set forth below and the Trustee shall have such rights and powers as are customarily possessed by trustees for such purpose, including, as appropriate, those powers herein given to the Mortgagee, and shall hold the Mortgaged Property in trust for the Beneficiary, pursuant to the terms and provisions hereof.

(b) The term "Mortgaged Premises" shall include any form of reservation for utility capacity that may be granted by any governmental subdivision, including, without limitation, the reservations described in this Mortgage. Grantor shall not transfer, sell, assign or convey, either in whole or in part, other than to Beneficiary, any capacity for utilities which may be granted by any governmental subdivision. Upon the occurrence and continuance of an Event of Default and demand by Beneficiary, Grantor shall take such action as may be required and pay any necessary fees in order to transfer to Beneficiary any Restricted Wastewater Capacity Reservation or Wastewater Capacity Reservation covering capacity of the utilities which may be available to the Mortgaged Property. Grantor acknowledges that without the availability of utilities to the Mortgaged Property the value of the collateral would be significantly diminished and that the credit being extended by Beneficiary to Borrower in connection herewith is based upon such availability.

(c) Notwithstanding anything to the contrary contained in this Mortgage, to the extent that the Mortgaged Property is located in the State of Texas, any foreclosure initiated pursuant to Article II of this Mortgage, shall be governed by the following: Beneficiary may require the Trustee to sell all or part of the Mortgaged Property, at public auction, to the highest bidder, for cash, at the door of the county courthouse of the county in Texas in which such Mortgaged Property or any part thereof is situated, or if the Mortgaged Property is located in more than one county such sale may be made at the courthouse in any county in which the Mortgaged Property is situated. The sale shall take place at such area of the courthouse as shall be properly designated from time to time by the Commissioners Court (or, if not so designated by the Commissioners Court, at such other area in the courthouse as may be provided in the notice of sale hereinafter described) of the specified county, between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. (the commencement of such sale to occur within three hours following the time designated in the hereinafter described notice of sale as the earliest time at which such sale shall occur, if required by applicable law) on the first Tuesday of any month, after giving notice of the time, place and terms of said sale (including the earliest time at which such sale shall occur) and of the property to be sold, in the manner hereinafter described. Notice of a sale of all or part of the Mortgaged Property by the Trustee shall be given by posting written notice thereof at the courthouse door (or other area in the courthouse as may be designated for such public notices) of the county in which the sale is to be made, and by filing a copy of the notice in the office of the County Clerk of the county in which the sale is to be made at least twenty-one (21) days preceding the date of the sale, and if the property to be sold is in more than one county, a notice shall be posted at the courthouse door (or other area in the courthouse as may be designated for such public notices) and filed with the County Clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on Grantor and each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Any notice that is required or permitted to be given to Grantor may be addressed to Grantor at Grantor's address as stated above. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at the address of Grantor, as is shown by the records of Beneficiary. Notwithstanding the foregoing provisions of this paragraph, notice of such sale given in accordance with the requirements of the applicable laws of the state of Texas in effect at the time of such sale shall constitute sufficient notice of such sale. Trustee may sell all or any portion of the Mortgaged Property, together or in lots or parcels, and

may execute and deliver to the purchaser or purchasers of such property good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of Grantor. In no event shall Trustee be required to exhibit, present or display at any such sale any of the personalty described herein to be sold at such sale. Trustee, or his successor or substitute, is hereby authorized and empowered to appoint any one or more persons as his attorney(s)-in-fact to act as Trustee under him and in his name, place and stead, such appointment to be evidenced by a written instrument executed by Trustee, or his successor or substitute, to perform any one or more act or acts necessary or incident to any sale under the power of sale hereunder, including, without limitation, the posting and filing of any notices, the conduct of the sale and the execution and delivery of any instruments conveying the Mortgaged Property as a result of the sale, but in the name and on behalf of Trustee, or his successor or substitute; and all acts done or performed by said attorney(s)-in-fact shall be valid, lawful and binding as if done or performed by Trustee, or his successor or substitute. Trustee making such sale shall receive the proceeds thereof and shall apply the same in accordance with the Loan Agreement (after deducting the reasonable expenses of Trustee and a reasonable Trustee's fee or commission). Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The sale or sales by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and if the proceeds of such sale or sales of less than the whole of the Mortgaged Property shall be less than the aggregate of the Indebtedness and the expenses thereof, this Mortgage and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale or sales had been made; provided, however, that Grantor shall never have any right to require the sale or sales of less than the whole of the Mortgaged Property, but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Mortgaged Property. If an Event of Default shall have occurred and be continuing hereunder, the holder of the Indebtedness, or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire due, and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Indebtedness; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part of the Indebtedness secured hereby, this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this subparagraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness. At any such sale made after an Event of Default hereunder (i) Grantor hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, suc-

cessors, personal representatives and assigns, that any and all recitals made in any deed of conveyance given by Trustee with respect to the identity of Beneficiary, the occurrence or existence of any Event of Default, the acceleration of the maturity of any of the Indebtedness, the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution and application of the money realized therefrom, or the due and proper appointment of a substitute Trustee, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by Beneficiary or by Trustee hereunder, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Grantor hereby ratifies and confirms every act that Trustee or any substitute Trustee hereunder may lawfully do in the Mortgaged Premises by virtue hereof, and (ii) the purchaser may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Mortgage, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract. Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any trustee's or foreclosure sale hereunder, and the amount of Beneficiary's successful bid may be credited on the indebtedness secured hereby. In the event of a trustee's sale hereunder and if at the time of such sale Grantor or any other party occupies the portion of the Mortgaged Property so sold or any part thereof, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property.

(d) This Mortgage shall be a security agreement between Grantor, as the debtor, and Beneficiary, as the secured party, covering the Mortgaged Property constituting personal property or fixtures governed by the Texas Uniform Commercial Code (hereinafter called the "Code"), and Grantor grants to Beneficiary a security interest in such portion of the Mortgaged Property. In addition to Beneficiary's other rights hereunder, Beneficiary shall have all rights of a secured party under the Code. Grantor shall execute and deliver to Beneficiary all financing statements that may be required by Beneficiary to establish and maintain the validity and priority of Beneficiary's security interest, and Grantor shall bear all costs thereof, including all Code searches reasonably required by Beneficiary. If Beneficiary should dispose of any of the Mortgaged Property pursuant to the Code, ten (10) days' written notice by Beneficiary to Grantor shall be deemed to be reasonable notice; provided, however, Beneficiary may dispose of such property in accordance with the foreclosure procedures of this Mortgage in lieu of proceeding under the Code. Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, identity, or structure and shall execute and deliver to Beneficiary, prior to or concurrently with the

occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Mortgaged Property described or referred to herein. Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Premises, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of Grantor, as debtor, is as stated above.

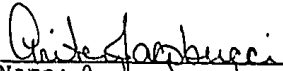
(e) THIS MORTGAGE AND THE OTHER DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN GRANTOR AND BENEFICIARY WITH RESPECT TO THE TRANSACTIONS ARISING IN CONNECTION WITH THE MORTGAGE AND OTHER DOCUMENTS AND SUPERSEDE ALL PRIOR WRITTEN OR ORAL UNDERSTANDINGS AND AGREEMENTS BETWEEN GRANTOR AND BENEFICIARY IN CONNECTION THEREWITH.

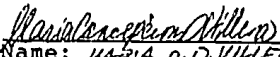
(f) In the event that notwithstanding the provisions of Section 4.08 of this Mortgage the usury laws of the State of Texas are held to apply to and control the transactions contemplated by this Mortgage and the other Documents, the following shall apply: It is the intention of the parties hereto to comply with the usury laws of the State of Texas and of the United States of America. The parties hereto do not intend to contract for, charge or receive any interest or other charge which is usurious, and by execution of this Mortgage, Grantor agrees that Beneficiary has no such intent. This Mortgage, the Note, and all other agreements between Grantor and Beneficiary, which are now existing or hereafter arising, whether written or oral, are hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity of the Note, or otherwise, shall the amount paid, or agreed to be paid, to Beneficiary or any other holder of the Note for the use, forbearance or detention of the money to be due thereunder or otherwise, or for the payment or performance of any covenant or obligation contained therein or in the Mortgage or any other document evidencing, securing, or pertaining to the Indebtedness, exceed the Maximum Rate. If from any circumstance whatsoever fulfillment of any provisions of this Mortgage, the Note or any other document, at the time performance of such provisions shall be due, shall involve transcending the valid limits prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate, and if from any such circumstance Beneficiary or any other holder of the Note shall ever receive as interest or otherwise an amount which will exceed the Maximum Rate, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of any other principal indebtedness of Grantor and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note and such other indebtedness, such excess shall be refunded to Grantor. All sums paid and agreed to be paid to Beneficiary or any other holder of the Note for use, forbearance or detention of the

Mortgage is to serve as a financing statement pursuant to Section 409.402 of the Wisconsin Statutes.

IN WITNESS WHEREOF, this Mortgage has been duly executed under seal by the Mortgagor.

Signed, sealed and delivered in the presence of:


Name: Anita Jacobucci

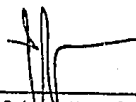

Name: MARIA C. D. VILLELA

[Corporate Seal]

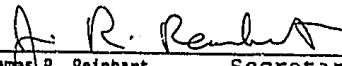


NATIONAL WAREHOUSE INVESTMENT COMPANY, a California limited partnership

By: Holman/Shidler Investment Corporation, a Hawaii corporation, general partner


By: _____
Name: Robert W. Holman, Jr.
Title: President

Attest:


James R. Reinhart, Secretary
Assistant Secretary

BK7201PG1149

CORPORATE GENERAL PARTNER ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN FRANCISCO)

On this 12th day of July, 1991, before me, the undersigned officer, personally appeared Robert W. Holman, Jr. and James R. Reinhart personally known and acknowledged themselves to me to be the President and Assistant Secretary respectively of Holman/Shidler Investment Corporation, a Hawaii corporation (the "Corporation") said Corporation acting in its capacity as the corporate general partner of National Warehouse Investment Corporation, a California limited partnership (the "Partnership"), pursuant to the partnership agreement of the Partnership, and that as such officers, being duly authorized to do so pursuant to its by-laws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by themselves as such officers as their free and voluntary act and deed and the free and voluntary act and deed of said Corporation and Partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Xenia May-Wah Tan
Notary Public

NOTARIAL SEAL

My Commission Expires:



September 22, 1992

BK7201PG1150

Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the period until payment in full of the Note (or any renewals, extensions and rearrangements thereof) so that the actual rate of interest on account of the Indebtedness is uniform throughout the term of the Note (and all renewals, extensions and rearrangements thereof) and does not exceed the Maximum Rate. The terms and provisions of this subparagraph shall control and supersede all other agreements of Grantor and Beneficiary. The term "Maximum Rate", as used herein, shall mean, on any day, the highest non-usurious rate of interest (if any) permitted by applicable law on such day. For purposes of TEX. REV. CIV. STAT. ANN. Art. 5069-1.04(a), as it may from time to time be amended, the Maximum Rate shall be the "indicated rate ceiling" referred to in and determined under Art. 5069-1.04(a)(1), from time to time in effect; provided, however, that the "highest non-usurious rate of interest permitted by applicable law" for purposes of the Note shall not be limited to the applicable rate ceiling under Art. 5069-1.04 if federal laws or other state laws now or hereafter in effect and applicable to the Note (and the interest contracted for, charged and collected thereunder) shall permit a higher rate of interest.

Section 5.16. To the extent that the Mortgaged Property is located in the State of Utah, the following provisions shall apply:

(a) Insofar as the Mortgaged Property is located in Utah, this instrument shall be a Trust Deed, and the Mortgagor, as Trustor, hereby CONVEYS AND WARRANTS TO Lawyers Title Insurance Corporation, AS TRUSTEE, IN TRUST, WITH POWER OF SALE, all of the Mortgaged Property located in the State of Utah, FOR THE PURPOSE OF SECURING THE INDEBTEDNESS.

(b) The Mortgagor hereby requests that a copy of any Notice of Default and of any Notice of Sale given in connection with the exercise of the Power of Sale under the applicable Utah Statutes be mailed to the Mortgagor at the Mortgagor's address specified in Section 4.03 of this Mortgage.

(c) Supplementing the remedies granted to the Mortgagee pursuant to Section 2.01 hereof, if an Event of Default shall have occurred and be continuing, in such event, Mortgagee shall have the following remedy:

To cause the Trustee to sell the Mortgaged Property in the manner provided by law by exercise of the power of sale hereby conferred, or at the option of the Mortgagee, the Mortgagee may foreclose this instrument in the manner provided by law for the foreclosure of mortgages on real property.

Section 5.17. To the extent that the Mortgaged Property is located in the State of Wisconsin, the following provisions shall apply:

(a) Mortgagor agrees that Mortgagee may foreclose in accordance with the provisions of Sections 846.101 and 846.103 of the Wisconsin Statutes (1989-90), as the same may be hereafter amended or renumbered. This

Salt Lake City, UT

Exhibit A

A parcel of land situated in the County of Salt Lake, State of Utah, more particularly described as follows:

Beginning at a point on the South line of the Salt Lake Garfield and Western Railroad property and the East line of Redwood Road, said point being approximately 66.61 feet South and 36.66 feet East from the North quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence along the East line of Redwood Road South $0^{\circ}54'51''$ East 167.96 feet; thence South $1^{\circ}41'39''$ East 300.04 feet; thence South $6^{\circ}48'55''$ East 52.58 feet; thence North $89^{\circ}50'17''$ East 1000.74 feet, more or less; thence North 520 feet, more or less to the South line of the Salt Lake Garfield and Western Railroad property; thence along said South line of Railroad property West 1,013.34 feet; more or less to the East line of Redwood Road, to the point of beginning.