Compared

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MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
Fee $310.00

This instrument was prepared by and recordation requested by, and when recorded, counterparts should be returned to:

Stuart K. Fleischman, Esq.
Shearman & Sterling
Citicorp Center
153 East 53rd Street
New York, New York 10022

Location: State: Iowa
County: Madison

This instrument is a Mortgage, Mortgage-Collateral Real Estate Mortgage, Leasehold Mortgage, Leasehold Mortgage - Collateral Real Estate Mortgage Assignment, Assignment of Rents, Security Agreement and Financing Statement of both real and personal property, including fixtures. Notwithstanding anything to the contrary herein contained, (a) as to any property located in the states of Iowa, Minnesota, Nebraska and Wisconsin, this instrument is a Mortgage and Leasehold Mortgage; and (b) as to any property located in the State of South Dakota, this instrument is a MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE - ONE HUNDRED EIGHTY DAY REDEMPTION. The total outstanding principal amount of indebtedness secured by this instrument shall not exceed Five Million Dollars ($5,000,000.00), but in the State of Minnesota shall not exceed Two Million Six Hundred Sixteen Thousand Dollars ($2,616,000.00). This instrument contains after-acquired property provisions and secures obligations containing provisions for changes in interest rates, extensions of time for payment and other modifications in terms of the obligations.

MORTGAGE, MORTGAGE-COLLATERAL REAL ESTATE MORTGAGE - ONE HUNDRED EIGHTY DAY REDEMPTION, LEASEHOLD MORTGAGE, ASSIGNMENT, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

Dated as of March 10, 1986

MANDOLFO INVESTMENTS, INC.,
Mortgagor

TO

COOPERATIEVE CENTRALE RAFFEISEN-BOERENLEENBANK
B.A., "RABOBANK NEDERLAND," New York branch, Mortgagee

RELEASED 2-8-01 SEE
RECORD 2001 PAGE 446

From assign of mtg
To SAFECO Credit Co, Inc
see mtg Rec 157-522
From Amendment
see mtg Rec 157-525
For Re-Recorded assign
see Mtg Rec 157-551

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MORTGAGE, MORTGAGE-COLLATERAL REAL ESTATE MORTGAGE - ONE HUNDRED EIGHTY DAY REDEMPTION, LEASEHOLD MORTGAGE, LEASEHOLD MORTGAGE-COLLATERAL REAL ESTATE MORTGAGE, ASSIGNMENT, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT, (this "Mortgage"), dated as of March 7, 1986, by MANDOLFO INVESTMENTS, INC., a Nebraska corporation, having an office at #15 Cooper Corral Drive, Plattsmouth, Nebraska 68048 and a Taxpayer Identification Number 470657092 ("Mortgagor") to COOPERATIEVE CENTRALE RAFFEISEN-BOERENLEEN BANK B.A., "Rabobank Nederland," New York branch, having an office at 245 Park Avenue, New York, New York 10167, the mortgagee hereunder to the extent that this Mortgage operates as a mortgage and leasehold mortgage, and the secured party hereunder to the extent that this Mortgage operates as a security agreement and financing statement ("Mortgagee").

W I T N E S S E T H :

WHEREAS, Mortgagor and Mortgagee have entered into that certain Credit Agreement (said credit agreement, as it may be amended, modified or supplemented from time to time, being the "Credit Agreement") dated as of the date hereof; and

WHEREAS, Mortgagor has requested that pursuant to the Credit Agreement Mortgagee make certain advances (the "Advances") to Mortgagor on the date hereof and hereafter for the purposes of refinancing its acquisition of certain properties or interests therein acquired from Pizza Hut, Inc., which Advances shall be evidenced by a promissory note as contemplated in the Credit Agreement; and

WHEREAS, the total indebtedness and liabilities to be secured by this Mortgage are as follows (all such indebtedness and liabilities or the instruments evidencing same, as applicable, being herein collectively called the "Obligations"):

(i) the aggregate principal amount of $5,000,000 (but to the extent the Premises are located in Minnesota, $2,616,000.00) or so much thereof that may be advanced or readvanced by Mortgagee under the Credit Agreement; plus

(ii) interest on the principal amount of all Advances made and to be made by Mortgagee under the Credit Agreement, as provided in the Credit Agreement; plus

(iii) all other amounts payable and all other obligations of Mortgagor under the Credit Agreement, the Note, this Mortgage and any other document which relates to any of the Credit Agreement or the Note or any of the security therefor (as the same may be amended, modified, extended, renewed, or supplemented from time to time, all of the foregoing being herein collectively called the "Loan Documents");

WHEREAS, to the extent the Premises (as hereinafter defined) are located in the states of Minnesota, Nebraska or South Dakota the Obligations shall be due and payable on March 31, 1991, unless the Mortgagee determines, in its sole discretion, that the Obligations are due prior to March 31, 1991, or the Credit Agreement provides that the Obligations are due prior to March 31, 1991; and

WHEREAS, it has been agreed that the payment and performance of the Obligations shall be secured by a mortgage of certain property as hereinafter defined.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the punctual payment by Mortgagor when due, whether at stated maturity, by acceleration or otherwise, of the Obligations and the performance and observance of all other covenants, obligations and liabilities of Mortgagor under this Mortgage, as the same may be extended, modified or renewed or repledged, Mortgagor does hereby grant, bargain, sell, mortgage, warrant, convey, alien, remise, release, assign, transfer, grant a security interest in, set over, deliver, confirm and convey unto Mortgagee, upon the terms and conditions of this Mortgage, with power of sale and right of entry as provided herein below, each and all of the real properties, and all other property, described in Granting Clauses FIRST through SEVENTH below (which, together with all other property located therein and described in the Granting Clauses herein, is hereinafter collectively called the "Premises").

Notwithstanding anything to the contrary herein contained, (i) to the extent the Premises are located in any of the following states, this Mortgage shall be deemed to be and shall be enforceable as a mortgage, leasehold mortgage, security agreement, financing statement, assignment and assignment of rents: Iowa, Minnesota, Nebraska and Wisconsin and (ii) to the extent the Premises are located in South Dakota, this Mortgage shall be deemed to be and shall be

enforceable as a mortgage-collateral real estate mortgage - one hundred eighty day redemption, security agreement, and financing statement.

GRANTING CLAUSES

All the estate, right, title and interest of Mortgagor in, to and under, or derived from:

GRANTING CLAUSE FIRST
Land

All that certain lot(s), piece(s) or parcel(s) of land more particularly described in Exhibit A-1, attached hereto and made a part hereof (as the description of the same may be amended, modified or supplemented from time to time), and all land exchanged therefor pursuant to existing agreements, and all and singular the reversions or remainders in and to said land and the tenements, hereditaments, easements (in gross and/or appurtenant), rights-of-way or use, rights (including alley, drainage, crop, mineral, mining, coal, water, oil and gas rights, rights of access and any other rights to produce or share in the production of anything from or attributable thereto), privileges, royalties and appurtenances to said land, now or hereafter belonging or in any wise appertaining thereto, including any such right, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any way affecting said land and/or other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land, all rights of ingress and egress by motor vehicles to parking facilities on or within said land, and all claims or demands of Mortgagor, either at law or in equity, in possession or expectancy, of, in or to the same (all of the foregoing hereinafter collectively called the "Land").

GRANTING CLAUSE SECOND
Leasehold Estate

All those certain leases and the leasehold estates created thereby more particularly described in Exhibit A-2

attached hereto and made a part hereof, as the same may be amended, renewed, modified, supplemented or extended from time to time (collectively referred to as the "Leases") of and in those certain pieces, plots and parcels of real property more particularly described in said Exhibit A-2 (the "Leased Land") and all and singular the reversions or remainders in and to said Leased Land and the tenements, rents, issues and profits, hereditaments, easements (in gross and/or appurtenant), rights-of-way or use, rights (including alley, drainage, mineral, mining, coal, oil and gas rights, water rights, rights of access and any other rights to produce or share in the production of anything from or attributable to the Leased Land), gores of land, streets, ways, alleys, passages and sewer rights relating, and all estates, titles, interests, liberties, rights, privileges, royalties and appurtenances of any nature whatsoever, to or emanating from the Leases, now or hereafter in any way belonging or in anywise appertaining thereto and all modifications, extensions, replacements and renewals of the Leases and all credits, deposits, options (including any options to purchase or renew set forth in the Leases), privileges and rights of Mortgagor under the Leases (all of the foregoing hereinafter collectively called the "Leasehold Estate").

GRANTING CLAUSE THIRD
Improvements

All buildings, structures, facilities and other improvements now or hereafter located on the Land and all building material, building equipment, supplies and fixtures of every kind and nature now or hereafter located on or attached or relating to the Land or attached to, contained in or used in connection with any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by Mortgagor or in which Mortgagor has or shall acquire an interest (all of the foregoing hereinafter collectively referred to as the "Improvements").

GRANTING CLAUSE FOURTH
Equipment and General Intangibles

To the extent any of the following are deemed to be an estate, right or interest in real property or fixtures

under applicable law, all machinery, apparatus, goods, equipment, materials, fittings, fixtures, chattels, appliances and machinery and tangible personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by Mortgagor or in which Mortgagor has or shall acquire an interest, wherever situated, and now or hereafter located on, attached to, appurtenant to, or contained in or used or usable in connection with the properties referred to in Granting Clause FIRST, SECOND, THIRD, FIFTH, SIXTH or SEVENTH, or placed on any part thereof, whether or not attached thereto (all of the foregoing hereinafter collectively referred to as the "Equipment"), including all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, including, without limitation, counters, cabinets, display cases, food preparation equipment, seating facilities and refuse containers, elevators, hoists, stores, ranges, ovens, vacuum and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, equipment, machinery, fittings and fixtures (the Land, the Improvements and the Equipment being hereinafter collectively called the "Mortgaged Property") and all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Premises.

GRANTING CLAUSE FIFTH
Leasehold and Other Contractual Interests

All the leases, subleases, lettings and licenses of, and all other contracts, bonds and agreements affecting the Mortgaged Property, now or hereafter entered into, and all amendments, modifications, supplements, additions, extensions and renewals thereof (all of the foregoing hereinafter collectively called the "Subordinate Leases"), and all right, title and interest of Mortgagor thereunder, including cash and securities deposited thereunder (as down payments, security deposits, or otherwise), the right to receive and collect the rents, security deposits, income, proceeds, earnings, royalties, revenues, issues and profits payable thereunder and the rights to enforce, whether at law or in equity or by any other means, all provisions and options

thereof or thereunder (all of the foregoing being hereinafter collectively called the "Rents"), and the right to apply the same to the payment and performance of the Obligations.

GRANTING CLAUSE SIXTH
Other and After Acquired Property

Any and all other estate, right, title or interest in real property or fixtures (including property exchanged therefor), of every kind and nature, which may from time to time be subjected to the lien hereof by Mortgagor through a supplement to this Mortgage or otherwise, or by anyone on its behalf or with its consent, or which may come into the possession of or be subject to the control of Mortgagee pursuant to this Mortgage, it being the intention and agreement of Mortgagor that any estate, right, title or interest in real property or fixtures hereafter acquired or constructed by Mortgagor and required to be subject to the lien and security interest of this Mortgage shall forthwith upon acquisition or construction thereof by Mortgagor and without any act or deed by Mortgagor be subject to the lien of this Mortgage as if such property were now owned by Mortgagor and were specifically described in this Mortgage and conveyed or encumbered hereby or pursuant hereto, and Mortgagee is hereby authorized to receive any and all such property as and for additional security hereunder.

GRANTING CLAUSE SEVENTH
Proceeds and Awards

All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor, all proceeds (including funds, accounts, deposits, deposit accounts, instruments, general intangibles, notes or chattel paper) of the conversion, voluntary or involuntary, of any of the property described in these Granting Clauses into cash or other liquidated claims, including proceeds of any sale of the Premises, proceeds of any loan secured by any interest in the Premises and proceeds of any hazard, title and other insurance and all judgments, condemnation awards, damages, awards, settlements and compensation (including interest thereon) heretofore or hereafter made to the present and all subsequent owners of the Premises and/or any other property or rights conveyed or encumbered hereby for any injury to or decrease in the value thereof for any reason, or by any governmental or other lawful authority for the taking by eminent domain, condemnation or otherwise of all or any part thereof, including awards for any change of grade of streets.

TO HAVE AND TO HOLD, subject to the matters described in Exhibit B attached hereto (herein collectively referred to as "Permitted Encumbrances"), all and singular the Premises, whether now owned or leased or hereafter acquired, granted, conveyed and mortgaged or intended so to be and whether now or hereafter existing, together with all rights, privileges and appurtenances thereunto belonging, unto Mortgagee, its successors and assigns, as applicable, forever, for the uses and purposes herein set forth, subject however to the provisions of ARTICLE VI hereof.

AND Mortgagor covenants with and represents and warrants and agrees with Mortgagee, its successors and assigns as follows:

ARTICLE I

Representations, Warranties and Covenants of Mortgagor

Mortgagor hereby represents, warrants and covenants as follows:

SECTION 1.01. Payment of Obligations. Mortgagor shall punctually pay when due, and timely perform, the Obligations.

SECTION 1.02. Warranty of Title. (a) Warranty of Title. Mortgagor has good, marketable and insurable title to the Land, the Leased Land, the Leasehold Estate and the Improvements free and clear of all liens, charges and encumbrances of every kind and character, subject only to Permitted Encumbrances, (ii) has and will continue to have full power and lawful authority to encumber and convey the Premises as provided herein and (iii) owns and will own all Equipment free and clear of all liens, charges and encumbrances of every kind and character, subject only to Permitted Encumbrances, except to the extent otherwise permitted under the Credit Agreement.

(b) Defense of Title and Litigation. This Mortgage is and will continue to remain a valid and enforceable first mortgage lien on the Premises, subject only to Permitted Encumbrances, enforceable against the Premises, Mortgagor and all third parties and securing the payment of the Obligations. All filings and other actions necessary or desirable to perfect and protect such lien will have been duly taken. If the lien or the validity, enforceability or priority of this Mortgage, or if title or any of the rights

of Mortgagor or Mortgagee in or to the Premises, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Mortgagor or Mortgagee with respect thereto, Mortgagor will promptly notify Mortgagee thereof and, at Mortgagor's sole cost and expense, will diligently endeavor to cure any defect which may develop or be claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and, subject to Mortgagee's approval, in its sole and absolute discretion, the compromise, release or discharge of any and all adverse claims. If in Mortgagee's opinion Mortgagor is not proceeding diligently as aforesaid, then Mortgagee (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered (but shall not be obligated) to take such additional steps as either of them may deem necessary or proper for the defense of any such action or proceeding or the protection of the validity, enforceability or priority of this Mortgage or of such title or rights, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests.

SECTION 1.03. Operation and Maintenance. (a) Repair and Maintenance. Mortgagor will operate and maintain the Mortgaged Property in good order, repair and operating condition, will promptly make all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, or otherwise necessary to insure that the same as part of the security under this Mortgage shall not in any way be diminished or impaired, and will not cause or allow any of the Mortgaged Property to be misused or wasted or to deteriorate, ordinary wear and tear excepted. To the extent that any lessor under any of the Leases shall be required by the terms of such Lease to repair, restore, replace or otherwise maintain the Leasehold Estate, Mortgagor shall use its best efforts to cause such lessor to perform such obligations. Without the prior written consent of Mortgagee no part of the Improvements shall be removed, demolished or structurally or materially altered. Mortgagor shall not be permitted to construct new buildings, structures, facilities or other improvements on the Land without Mortgagee's consent.

(b) Replacement of Equipment. Mortgagor will keep the Land, the Leasehold Estate and Improvements fully equipped and will replace all worn out or obsolete Equipment with fixtures or personal property comparable thereto when new, and will not, without Mortgagee's consent, remove from the Land, the Leasehold Estate and Improvements any fixtures or personalty covered by this Mortgage unless the same is replaced by Mortgagor with an article of equal suitability and value owned by Mortgagor free and clear of any lien or security interest (other than Permitted Encumbrances and the lien created by this Mortgage) and the removal of such fixtures or personalty and installment of such replacements will not have a material and adverse effect on the value or suitability of the Premises.

(c) Compliance with Laws. The Mortgaged Property and the present and contemplated operation, use and/or occupancy of the same comply with and do not conflict with or violate in any respect any of the orders, laws, ordinances, rules, regulations or requirements described in Section 4.01(a) of the Credit Agreement. Mortgagor has and will maintain all necessary certificates, licenses, authorizations, registrations, permits and/or approvals necessary for the operation, use and/or occupancy of the Mortgaged Property and the conduct of Mortgagor's business upon the Leased Land, including, where appropriate, a Permanent Certificate of Occupancy and Board of Fire Underwriters Certificate for those portions of the Improvements which have been completed as of the date hereof and all required zoning ordinance, building code, land use, environmental and other similar permits or approvals, all of which as of the date hereof are in full force and effect and not subject to any revocation, amendment, release, suspension or forfeiture, and promptly upon request by Mortgagee, Mortgagor shall deliver to Mortgagee copies of all of the same. If Mortgagor receives any notice that Mortgagor or the Mortgaged Property is in default under, or is not in compliance with, any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Mortgagor will promptly furnish a copy of such notice to Mortgagee.

(d) Zoning; Title Matters. Mortgagor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Land, the Leased Land or the Improvements or seek any variance under existing zoning ordinances applicable to the Land, the Leased Land or the Improvements that will have a material and adverse effect on the value, suitability or use of the

Premises, (ii) use or permit the use of the Mortgaged Property in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (iii) modify, amend or supplement any of the Permitted Encumbrances, (iv) impose any restrictive covenant or encumbrance upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality, or (v) permit or suffer the Mortgaged Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

(e) Status of the Mortgaged Property. (i) The Mortgaged Property is not located in an area identified by the Secretary of Housing and Urban Development or a successor thereto as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or if the Mortgaged Property is located in such an area, Mortgagor will obtain and maintain the insurance for the Mortgaged Property as specified in Section 1.04(a)(iv) hereof, (ii) the Mortgaged Property is served by all utilities required for the use thereof as herein contemplated, (iii) all streets necessary to serve the Land, the Leasehold Estate and the Improvements for the use thereof as herein contemplated have been completed and are serviceable and have been dedicated or accepted by the appropriate governmental entities and Mortgagor has access from public roads to the Land and the Improvements, (iv) the Mortgaged Property is free from damage caused by fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of a public enemy or any other casualty (whether or not covered by insurance), (v) there is no condemnation or similar proceeding pending or threatened affecting any part of the Mortgaged Property and (vi) the Mortgaged Property is not used for any agricultural purposes whatsoever.

(f) Use. Mortgagor will use the Mortgaged Property for substantially the same use as in effect as of the date hereof and for no other use unless consented to in writing by Mortgagee.

SECTION 1.04. Insurance. (a) Casualty Insurance. Mortgagor will keep the Mortgaged Property and the Rents insured with responsible and reputable insurance companies or associations satisfactory to, and for the benefit of, Mortgagee as follows:

(i) against damage or loss by fire and such other hazards (including flood, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, vandalism, malicious mischief, aircraft, vehicle and smoke) as are covered by the broadest form of extended coverage endorsement as is available from time to time, in an amount not less than the greater of (1) the full insurable value (as defined in subsection (h) of this Section) of the property insured and, in any case, (2) the Obligations, or (3) the amount sufficient (including taking into account any deductibles) to prevent Mortgagor from becoming a co-insurer;

(ii) against war risks as, when and to the extent such insurance is obtainable from the United States of America or an agency or instrumentality thereof and for the maximum obtainable amount of such insurance;

(iii) rent or business interruption or use and occupancy insurance on such basis and in such amounts as shall be satisfactory to Mortgagee and in any event not less than an amount equal to the original principal amount of the Obligations plus one (1) year's Impositions (as defined in Section 1.06 hereof) required by Section 1.06 and premiums for the insurance required by this Section;

(iv) if the Mortgaged Property is located in an area identified by the Secretary of Housing and Urban Development or any successor as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, modified, supplemented or replaced from time to time, then against damage or loss by flood on such basis and in such amounts as shall be required by Mortgagee;

(v) against damage or loss from (1) sprinkler system leakage and (2) boilers, boiler tanks, heating and air conditioning equipment, pressure vessels, auxiliary piping and similar apparatus, on such basis and in such amounts as shall be required by Mortgagee;

(vi) during the period of any operation, construction, repair, restoration or replacement of the Improvements and the Equipment, a standard all-risk one hundred percent (100%) builder's risk policy with extended coverage (including coverage against collapse, vandalism and malicious mischief) written on a completed

value basis, for an amount at least equal to the full insurable value of the Improvements and worker's compensation, in statutory amounts; and

(vii) against damage or loss by earthquake on such basis and in such amounts as shall be required by Mortgagee.

(b) Liability Insurance. Mortgagor shall procure and maintain comprehensive public liability insurance covering Mortgagor and Mortgagee against claims for bodily injury or death or property damage occurring in, upon or about, or resulting from, the Mortgaged Property, or any street, drive, sidewalk, curb or passageway adjacent thereto, in standard form and with responsible and reputable insurance companies or associations satisfactory to Mortgagee, in such amounts as may be satisfactory to Mortgagee, which insurance shall include blanket contractual liability coverage which insures contractual liability under the indemnification set forth in Section 3.03 hereof (but such coverage or the amount thereof shall in no way limit such indemnification).

(c) Other Insurance. Mortgagor, at Mortgagee's request, will procure and maintain such other insurance or such additional amounts of insurance, covering Mortgagor or the Mortgaged Property, as Mortgagee shall from time to time require.

(d) Form of Policy. All insurance required under this Section shall be fully paid for, nonassessable and the policies therefor shall contain such provisions, endorsements and expiration dates as Mortgagee shall from time to time request, and shall be in such form and amounts, and be issued by such insurance companies doing business in the state in which the Mortgaged Property is located as shall be approved by Mortgagee. Without limiting the foregoing, all such policies shall have endorsed thereon, in form acceptable to Mortgagee, the New York Standard Mortgagee Clause, or local equivalent, without contribution, in the name of Mortgagee. All such policies shall provide that the same shall not be cancelled, amended or materially altered (including by reduction in the scope or limits of coverage) without at least thirty (30) days' prior written notice to Mortgagee.

(e) Duplicate Originals or Certificates. Duplicate original policies evidencing the insurance required under this Section and any additional insurance which shall be taken out on the Mortgaged Property by or on behalf of Mortgagor shall be deposited with, and held by, Mortgagee

and, in addition, Mortgagor will deliver to Mortgagee (i) receipts evidencing payment of all premiums thereon and (ii) duplicate original renewal policies with evidence satisfactory to Mortgagee of payment of all premiums thereon, at least thirty (30) days prior to the expiration of each such policy. In lieu of the duplicate original policies provided herein to be delivered to Mortgagee, Mortgagor may deliver original certificates from the issuing insurance company evidencing that such policies are in full force and effect and containing information which, in Mortgagee's judgment, is sufficient to allow Mortgagee to determine whether such policies comply with the requirements of this Section.

(f) No Separate Insurance. Mortgagor shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section unless endorsed in favor of Mortgagee in accordance with the requirements of this Section and otherwise approved by Mortgagee in all respects.

(g) Transfer of Title. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Premises in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required under this Section or otherwise then in force with respect to the Premises, together with all proceeds payable thereunder and unearned premiums thereon, shall immediately vest in the purchaser or other transferee of the Premises.

(h) Replacement Cost. For purposes of this Section, the term "full insurable value" shall mean the actual cost of replacing the property in question, exclusive of the cost of excavations, foundations and footings, as determined from time to time (but not less often than once every calendar year) by the insurance company or companies holding such insurance or by an appraiser, engineer, architect or contractor proposed by Mortgagor and approved by said company or companies and Mortgagee.

(i) Approval Not Warranty. No approval by Mortgagee of any insurer shall be construed to be a representation, certification or warranty of its solvency and no approval by Mortgagee as to the amount, type and/or form of any insurance shall be construed to be a representation, certification or warranty of its sufficiency.

SECTION 1.05. Liens and Liabilities. (a) Discharge of Liens. Mortgagor will pay, bond or otherwise discharge, from time to time when the same shall become due, all 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.

(b) Creation of Liens. If any deed of trust, mortgage, trust deed, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, conditional sale or other title retention document, or any other type of preferential arrangement not permitted by the Credit Agreement becomes attached to the Premises without Mortgagee's consent, Mortgagor will promptly cause the same to be discharged and released.

(c) No Consent. Nothing in the Loan Documents shall be deemed or construed in any way as constituting the consent or request by Mortgagee, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Mortgaged Property. Mortgagor further agrees that Mortgagee does not stand in any fiduciary relationship to Mortgagor.

SECTION 1.06. Taxes and Other Charges. (a) Taxes on the Mortgaged Property. Mortgagor will promptly pay when due and before any penalty, interest or cost for non-payment thereof may be added thereto, all taxes, assessments, vault, water and sewer rents, rates, charges and assessments, levies, permits, inspection and license fees and other governmental and quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, heretofore or hereafter assessed, levied or otherwise imposed against or upon, or which may become a lien upon, the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, and all taxes levied on account of this Mortgage or the obligations secured hereby, or upon the interest of Mortgagee hereunder (collectively, "Impositions"). Mortgagor will also pay any penalty, interest or cost for non-payment of Impositions which may become due and payable, and such penalties, interest or cost shall be included within the term Impositions. Mortgagor shall not claim credit on or deductions from the Obligations secured hereby by reason of any municipal or governmental taxes, assessments or charges assessed or paid by Mortgagor upon the Mortgaged Property, nor claim any deduction from the taxable value of the Mortgaged Property by reason of this Mortgage.

(b) Receipts. Unless Mortgagor is making monthly deposits pursuant to Section 1.07, or unless Mortgagee otherwise directs, Mortgagor will furnish to Mortgagee upon Mortgagee's request proof of payment at the time same is made, and thereafter, upon receipt, validated receipts showing payment in full of all Impositions.

(c) Income and Other Taxes Imposed on Mortgagor. Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor the nonpayment of which may result in a lien against the Premises or otherwise diminish or impair the security of this Mortgage, and any stamp taxes which may be required to be paid in connection with this Mortgage, together with any interest or penalties thereon.

(d) Tax Indemnification. In the event of the enactment of or change in (including a change in interpretation of) any applicable law (i) deducting or allowing Mortgagor to deduct from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon, (ii) imposing, modifying or deeming applicable any reserve or special requirement against deposits in or for the account of, or loans by, or other liabilities of, or other assets held by, Mortgagee, or (iii) subjecting Mortgagee to any tax or changing in any way the laws for the taxation of mortgages, or other liens or debts secured thereby, or the manner of collection of such taxes, in each such case, so as to affect this Mortgage, the Obligations or Mortgagee, and the result is to increase the taxes imposed upon, or the cost to, Mortgagee or to reduce the amount of any payments receivable hereunder, then, and in any such event, Mortgagor shall, on demand, pay to Mortgagee additional amounts to compensate for such increased costs or reduced amounts, provided that Mortgagor shall have the right to prepay the Obligations, or any portion thereof, in accordance with the Credit Agreement, and, provided further, that if any such payment or reimbursement shall be unlawful or would constitute usury or render the Obligations wholly or partially usurious under applicable law, then Mortgagee may, at its sole option, declare the Obligations immediately due and payable or require Mortgagor to pay or reimburse Mortgagee for payment of the lawful and non-usurious portion thereof.

SECTION 1.07. Tax and Insurance Deposits. (a) Amount of Deposits. Mortgagee may require that Mortgagor deposit with Mortgagee or any service or financial institution pursuant to Section 1.07(e) (the "Depository"), monthly, one-twelfth (1/12) of the annual Impositions and

premiums for insurance required under Section 1.04, and Mortgagor shall, accordingly, make such deposits. In addition, if required by Mortgagee, Mortgagor shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make each of said payments of Impositions and premiums at least sixty (60) days before such payments are due. If the amount of any such payments is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Mortgagee's estimate thereof, and, when such amount is fixed for the then-current year, Mortgagor shall promptly deposit any deficiency with the Depository.

(b) Use of Deposits. All funds so deposited shall, until so applied, constitute security for the Obligations, shall be held by the Depository without interest (except to the extent required under applicable law), may be commingled with other funds of the Depository, and, provided that no Event of Default (as defined in Section 5.01 hereof) shall have occurred and be continuing hereunder, shall be applied in payment of Impositions prior to their becoming delinquent, but only to the extent that the Depository shall have such funds on hand, provided that the Depository shall have no obligation to use said funds to pay (i) any installment of Impositions prior to the last day on which payment thereof may be made without penalty or interest or to pay any insurance premium prior to the due date thereof or (ii) any Imposition unless Mortgagor shall have furnished Mortgagee and the Depository, if applicable, with the bills or invoices therefor in sufficient time to pay the same before any penalty or interest attaches and before said policies of insurance lapse, as the case may be. If an Event of Default shall have occurred and be continuing hereunder, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Mortgagee's option, be applied to the Obligations in the order determined by Mortgagee, or to cure said Event of Default, or returned to Mortgagor to be used for such purposes as Mortgagee shall direct, or as provided in this Section. If all of the Obligations shall be fully satisfied, paid and performed, all without fraud, delay, defalcation or abatement, then any of such funds so deposited and not applied as provided in this Section shall be returned to Mortgagor. To the extent permitted by applicable law, Mortgagor hereby grants to Mortgagee a security interest in any and all deposit accounts maintained by or with the Depository and in the funds held by the Depository and any proceeds thereof.

(c) Transfer of Mortgage. Upon an assignment or other transfer of this Mortgage, the Depository shall have the right to pay over the balance of such deposits in its possession to the assignee or other successor that agrees to assume the obligations of the Depository, if any, with respect to such deposits, and the Depository shall thereupon be completely released from all liability with respect to such deposits and Mortgagor or the owner of the Premises shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee or transferee.

(d) Transfer of the Premises. Subject to Article IV hereof, transfer of record title to the Mortgaged Property shall automatically transfer to the new owner the beneficial interest in any deposits under this Section. Upon full payment and satisfaction of this Mortgage or, at Mortgagee's option, at any prior time, the balance of amounts deposited in the Depository's possession shall be paid over to the record owner of the Premises, and no other party shall have any right or claim thereto in any event.

(e) Depository. At Mortgagee's request, Mortgagor agrees, at Mortgagor's expense, to make the aforesaid deposits with such service or financial institution as Mortgagee may from time to time designate in lieu of Mortgagee.

SECTION 1.08. Damage and Destruction. (a) Mortgagor's Obligations. In the event of any damage to, or loss or destruction of, the Mortgaged Property, Mortgagor shall (i) promptly notify Mortgagee of such event and take such steps as shall be necessary to preserve any undamaged portion of the Mortgaged Property and (ii) unless otherwise instructed by Mortgagee, regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by Mortgagee as provided herein, promptly (and, in any event, prior to the date on which any tenant under any Subordinate Lease shall be entitled to cancel or terminate said Subordinate Lease because of any such damage, loss or destruction) commence and diligently pursue to completion the restoration, replacement and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Mortgagee.

(b) Mortgagee's Rights; Application of Proceeds. In the event that any portion of the Mortgaged Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 1.04 hereof, then, subject to the right of any lessor under any of the Leases, (i) Mortgagee may, but shall not be obligated to, make proof of loss if not made promptly by Mortgagor and is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Mortgagee, and (iii) Mortgagee shall have the right to apply the insurance proceeds, first, to reimburse Mortgagee for all costs and expenses, including adjustors' and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such proceeds shall be applied, at Mortgagee's option, in payment (without premium or penalty) of all or any part of the Obligations, in the order and manner determined by Mortgagee (provided that to the extent that any portion of the Obligations shall remain outstanding after such application, such unpaid portion of the Obligations shall continue in full force and effect and Mortgagor shall not be excused in the payment thereof), or to the cure of any then current default hereunder, or to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Mortgaged Property so damaged, destroyed or lost, provided that any insurance proceeds held by Mortgagee to be applied to the restoration, replacement or rebuilding of the Mortgaged Property shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Mortgagor with such provisions and requirements as may be imposed by Mortgagee, or if all of the Obligations shall be fully satisfied, paid and performed, all without fraud, delay, defalcation or abatement, then the remainder of such proceeds shall be returned to Mortgagor. In the event that Mortgagor shall have received all or any portion of such insurance proceeds or any other proceeds in respect of such damage or destruction, Mortgagor, upon demand from Mortgagee, shall pay to Mortgagee an amount equal to the amount so received by Mortgagor, to be applied as Mortgagee shall have the right pursuant to clause (iii) of the immediately preceding sentence. Notwithstanding anything herein or at law or in equity to the contrary, none of the insurance proceeds or payments in lieu thereof paid to Mortgagee as herein provided shall be deemed trust funds and Mortgagee shall be entitled to dispose of such proceeds as provided in this Section and Section 1.04 hereof. Mortgagor expressly assumes all risk of

loss, including a decrease in the use, enjoyment or value, of the Mortgaged Property from any casualty whatsoever, whether or not insurable or insured against.

SECTION 1.09. Condemnation. (a) Mortgagor's Obligations; Proceedings. Promptly upon any officer of Mortgagor obtaining knowledge of any pending or threatened institution of any proceeding for the condemnation of the Mortgaged Property, or any part or interest therein, or of any right of eminent domain, or of any other proceedings arising out of injury or damage to, or decrease in the value of, the Mortgaged Property (including a change in grade of any street), or any part thereof or interest therein, Mortgagor will notify Mortgagee of the threat or pendency thereof. Mortgagee may participate in any such proceeding, and Mortgagor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, shall deliver to Mortgagee copies of all papers served in connection therewith, and shall consult and cooperate with Mortgagee, its attorneys and agents in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Mortgagor without Mortgagee's consent.

(b) Mortgagee's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Mortgaged Property, are hereby assigned and shall be paid to Mortgagee. Mortgagor agrees to execute and deliver such further assignments thereof as Mortgagee may request and authorizes Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award.

(c) Application of Proceeds. Mortgagee shall have the right to apply any proceeds, judgments, decrees or awards referred to in subsection (b) of this Section, first, to reimburse Mortgagee for all costs and expenses, including attorneys' fees and disbursements, and disbursements incurred in connection with the proceeding in question or the collection of such amounts, and, second, the remainder thereof as provided in Section 1.09(b)(iii) for insurance proceeds held by Mortgagee. In the event that Mortgagor shall have received all or any portion of such proceeds, judgments, decrees or awards, Mortgagor, upon demand from Mortgagee, shall pay to Mortgagee an amount equal to the amount so received by Mortgagor, to be applied as Mortgagee

shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, none of the proceeds, judgments, decrees or awards or payments in lieu thereof paid to Mortgagee as herein provided shall be deemed trust funds and Mortgagee shall be entitled to dispose of such proceeds as provided in this Section.

(d) Effect on the Obligations. Notwithstanding any condemnation, taking or other proceeding referred to in this Section causing injury to, or decrease in, value of the Mortgaged Property (including a change in grade of any street), or any interest therein, Mortgagor shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Mortgagee of such proceeds, judgments, decrees or awards and application against the Obligations, provided that if prior to the receipt by Mortgagee of such proceeds, judgments, decrees or awards the Premises shall have been sold on foreclosure of this Mortgage, or shall have been transferred by deed in lieu of foreclosure of this Mortgage, Mortgagee shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with attorneys' fees and disbursements incurred by Mortgagee in connection with the collection thereof.

SECTION 1.10. Covenants Concerning the Leases. Mortgagor hereby represents, warrants, covenants and agrees that:

(a) Each Lease is now a valid and subsisting lease and is in full force and effect in accordance with the terms thereof and has not been modified except as herein set forth; and all of the base rent, percentage rent, additional rent and other charges payable under each Lease prior to the execution hereof have been paid, and all of the terms, conditions and agreements contained in each Lease have been performed, and no default exists under any Lease. This Mortgage is lawfully executed and delivered in conformity with each Lease and is and will be kept a valid lien on the interests of the Mortgagor therein.

(b) Mortgagor will promptly pay when due and payable the base rent, percentage rent, additional rent and other charges mentioned in and payable under each Lease.

(c) Mortgagor will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Mortgagor as lessee under each Lease, within the grace periods provided in the applicable Lease, and will do all things necessary to preserve and to keep unimpaired its rights under each Lease. Mortgagor will enforce the obligations of the lessor under such Lease, to the end that Mortgagor may enjoy all of the rights granted to it as lessee under each Lease.

(d) Mortgagor will (i) promptly notify Mortgagee of the receipt by Mortgagor of any notice from any lessor under any Lease of default by Mortgagor in the performance or observance of any of the terms, covenants or conditions on the part of the Mortgagor to be performed or observed under such Lease, (ii) promptly notify the Mortgagee of the receipt by the Mortgagor of any notice from any lessor under any Lease to Mortgagor of termination of the applicable Lease pursuant to the provisions thereof, and (iii) promptly cause a copy of each such notice received by Mortgagor from the lessor under the applicable Lease to be delivered to Mortgagee.

(e) Mortgagor will promptly notify Mortgagee of any request made by either party to any of the Leases for arbitration proceedings pursuant to the applicable Lease and of the institution of any arbitration proceedings, and will promptly deliver to Mortgagee a copy of the determination of the arbitrators in each such arbitration proceeding.

(f) (i) Mortgagor will not, without the prior consent of Mortgagee, (1) terminate, cancel, modify, supplement or surrender or suffer to permit any termination, modification or surrender of any Lease, (2) fail or refuse to take timely and appropriate action to renew each Lease pursuant to the provisions thereof, (3) consent or refuse to consent to any action taken or to be taken by the lessor or anyone else under any of the Leases the result of which would diminish or impair the security of the Mortgage, (4) further encumber the Land, the Leased Land or the Leasehold Estate, notwithstanding any such right given to Mortgagor under the Leases, or (5) subordinate or consent to the subordination of any Lease to any mortgage on the lessor's interest in the premises demised by such Lease. Mortgagor hereby assigns to Mortgagee, as additional collateral for repayment of the Obligations, all of Mortgagor's rights and privileges

as lessee under the Leases to terminate, cancel, surrender, modify, change, supplement, amend or renew the Leases, consent or refuse to consent to any such action taken or, to be taken by lessor or anyone else under the Leases, or further encumber the Leasehold Estate, and any such termination, cancellation, surrender, modification, change, supplement or amendment of the Leases, failure to renew the term of the Leases, consent or refusal or encumbrance thereunder without the prior consent of Mortgagee shall be void and of no force and effect.

(ii) (1) Supplementing the provisions of paragraph (i) of this Section 1.10(f), in the event of the termination, rejection or disaffirmance by the lessor (or by any receiver, trustee, custodian or other party who succeeds to the rights of lessor) under any Lease pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law affecting the enforceability of creditors' rights (any such law hereinafter collectively referred to as a "Bankruptcy Law"), Mortgagor hereby grants Mortgagee the sole and exclusive right to make or refrain from making any election available to lessees under any Bankruptcy Law (including, without limitation, the election available pursuant to Section 365(h) of the Bankruptcy Code, as adopted in the Bankruptcy Reform Act of 1978, 11 U.S.C. § 365(h), and any successor provision); provided, however, that Mortgagor agrees that any such election, if made by Mortgagor, shall be void and of no force and effect.

(2) In the event of such a termination, rejection or disaffirmance by the lessor (or by any receiver, trustee, custodian or other party who succeeds to the rights of any lessor) under any Lease and Mortgagee elects to have Mortgagor remain in possession under any legal right Mortgagor may have to occupy the premises leased pursuant to such Lease, then (A) Mortgagor shall remain in such possession and shall perform all acts necessary for Mortgagor to retain its right to remain in such possession, whether such acts are required under the then existing terms and provisions of the applicable Lease or otherwise, (B) all of the terms and provisions of this Mortgage and the lien created hereby shall remain in full force and effect and shall be extended automatically to such possession, occupancy and interest of the Mortgagor, and (C) Mortgagor hereby grants to Mortgagee the sole and exclusive right to elect whether Mortgagor, pursuant to any right of offset available to lessees under any Bankruptcy Law, shall offset, against

rent under the applicable Lease, any damages sustained by reason of the failure by the lessor to perform its obligations, and Mortgagor agrees that any such election, if made by Mortgagor, shall be void and of no force and effect.

(3) Mortgagor, immediately upon obtaining knowledge of a breach by the lessor (or by any receiver, trustee, custodian or other party who succeeds to the rights of the lessor) under any Lease or any inability of such lessor to perform the terms and provisions of the applicable Lease (including, without limitation, by reason of a termination, rejection or disaffirmance by such lessor pursuant to any Bankruptcy Law), will notify Mortgagee of any such breach or inability. Mortgagor hereby absolutely and presently assigns to Mortgagee the proceeds of any claims that Mortgagor may have against such lessor for any such breach or inability by such lessor. Mortgagee shall have the sole right to elect, either (A) to proceed against such lessor as if it were the named lessee thereunder, in Mortgagor's name or in Mortgagee's name as agent for Mortgagor, and Mortgagor agrees to cooperate with Mortgagee in such action and shall execute any and all documents required in furtherance of such action or (B) to have Mortgagor proceed in Mortgagor's and Mortgagee's behalf in which event Mortgagee may participate in any such proceedings, and Mortgagor from time to time will deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, shall deliver to Mortgagee copies of all papers served in connection therewith and shall consult and cooperate with Mortgagee, its attorneys and agents in carrying on the defense of any such proceedings; provided that no settlement of any such proceedings shall be made by Mortgagor without Mortgagee's consent.

(4) Mortgagor hereby agrees, and it is a condition precedent to any Advances under the Credit Agreement that, each lessor under each Lease shall have agreed in writing in a form substantially the same as Exhibit C hereto, consenting or agreeing, as the case may be, (i) to the assignment of the applicable Lease to the Mortgagee, (ii) to the recording of a copy or memorandum of the applicable Lease (if the same has not already been recorded), (iii) to the Mortgage, (iv) to any assignment or transfer of the applicable Lease arising by reason of a default under the Mortgage and a foreclosure by the

Mortgagee of the security provided thereby, (v) not to amend, alter, modify or change any provision of the applicable Lease without the Mortgagee's prior consent, (vi) to send to the Mortgagee a copy of any notice of default under the applicable Lease and to allow the Mortgagee a period of thirty (30) days after notice to commence to cure such default or to commence proceedings to foreclose the Mortgage, (vii) that in the event of a termination, disaffirmance or rejection of the applicable Lease pursuant to any laws (including any bankruptcy laws) by the Mortgagee or the termination of the applicable Lease by the lessor, that the lessor will give the Mortgagee the right, within thirty (30) days of such event to enter into a new lease of the Premises, in its own name or through a designee at any time thereafter, for the remainder of the term of the applicable Lease and upon all of the terms and conditions, and subject to all the restrictions, thereof, or, if the Mortgagee shall elect not to exercise such right, lessor will give the Mortgagee the right to enter upon the Premises during such thirty (30) day period for the purpose of removing the Mortgagee's personal property therefrom, provided, the Mortgagee shall repair any damage arising from such removal, and (viii) if the Premises is or becomes subject to a mortgage or other lien or encumbrance at any time during the Lease or any extension thereof, lessor shall promptly obtain from any such mortgagee or lienholder an agreement in recordable form evidencing the mortgagee's recognition of the Lease and lessor's consents and agreements contained herein, it being understood that said document will include the Mortgagee's agreement not to disturb the Lessee under the Lease during the term of the Lease and any extension thereof. The rights granted to Mortgagee pursuant to this paragraph shall be exercisable by Mortgagee at its sole discretion and the granting of such rights shall not obligate Mortgagee to exercise the same or confer upon any person or other entity, including, without limitation, the lessor and Mortgagor, any right to require the exercise thereof by Mortgagee. Mortgagor hereby does agree to execute such other instruments as Mortgagee may request to confirm Mortgagee's or such designee's right, title and interest in and to the Leases and any improvements and property appurtenant thereto.

(g) Mortgagor will, after demand from Mortgagee, obtain and deliver to Mortgagee a written statement from the lessor under each Lease, duly acknowledged, and certifying to Mortgagee and/or any proposed assignee of

this Mortgage (i) stating that the applicable Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the date to which the rent, additional rent and other charges thereunder have been paid, (iii) stating whether or not, to the best knowledge of lessor under the applicable Lease, Mortgagor is in default under such Lease, and, if Mortgagor is in default, setting forth the specific nature of all such defaults, and (iv) as to any other matters reasonably requested by Mortgagee and reasonably related to such Lease.

(h) In the event that Mortgagor shall acquire the fee title and/or the lessor's interest under any Lease, Mortgagor agrees that, unless Mortgagor shall have obtained the prior written consent of Mortgagee, it shall not, as lessor under the applicable Lease, waive any duty or obligation of Mortgagor as lessee under the Lease (including, without limitation, lessee's duty to repair any casualty or condemnation or maintain the Premises), notwithstanding the provisions of Section 7.05 hereof.

(i) In the event that Mortgagor shall exercise any option to purchase a fee interest under any Lease, Mortgagor shall, not less than fifteen (15) days prior to such exercise, notify Mortgagee and shall, simultaneously with the conveyance pursuant to such option, execute all documents and take all steps as shall be necessary to grant and perfect a first priority mortgage upon such fee interest to Mortgagee.

ARTICLE II

Assignment of Subordinate Leases, Rents and Other Sums

SECTION 2.01. Assignment. (a) Mortgagor hereby absolutely and presently bargains, sells, transfers, assigns and sets over to Mortgagee all Rents and any and all cash collateral to be derived from the Mortgaged Property, or the use and occupation thereof, or under any contract or bond relating to the construction or reconstruction of the Premises, including all Rents accruing to Mortgagor under all Subordinate Leases and other leases now or hereafter covering the Mortgaged Property, whether before or after foreclosure or during the full period of redemption, if any, and the right to receive the same and apply them against the Obligations or against Mortgagor's other obligations hereunder, together with all Subordinate Leases, contracts,

bonds, leases and other documents evidencing the same now or hereafter in effect and all rights of Mortgagor thereunder. Nothing contained in the preceding sentence shall be construed to bind Mortgagee to the performance of any of the provisions of any such Subordinate Lease, contract, bond, lease or other document or otherwise impose any obligation upon Mortgagee (including any liability under a covenant of quiet enjoyment contained in any Subordinate Lease or other lease or under applicable law in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been foreclosed of all right, title and interest and all equity of redemption in the Mortgaged Property), except that Mortgagee shall be accountable for any money actually received pursuant to such assignment. Mortgagor shall deliver to Mortgagee, upon demand, an executed counterpart of each such Subordinate Lease, contract, bond, lease or other document. The assignment of said Subordinate Leases and Rents, and of the aforesaid rights with respect thereto and to the contracts, bonds, leases and other documents evidencing the same, is intended to be and is an absolute present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. All right, title and interest of Mortgagor, as lessor, in and to each Subordinate Lease entered into after the date of the execution and delivery hereof shall immediately, without any further mortgage, conveyance or assignment become subject to the lien of this Mortgage as fully as though such right, title and interest were now owned by Mortgagor and specifically described in the description of the Mortgaged Property.

(b) Notwithstanding anything to the contrary herein, so long as no Event of Default shall occur and be continuing, Mortgagor shall have the right and license to exercise all rights, options and privileges extended to the lessor under the terms of the Subordinate Leases, including the right to collect all Rents. If an Event of Default shall occur and be continuing, Mortgagor shall immediately upon receipt of such Rents, remit the same to Mortgagee at its address at 245 Park Avenue, New York, New York 10167, Attention: I. Donald Gibb, or at such other address as shall be designated by Mortgagee in a notice to Mortgagor.

(c) In the event of any Event of Default hereunder, the right and license set forth in subsection (b) of this Section may be revoked by Mortgagee, and thereafter Mortgagee shall have the right and authority to exercise any of the rights or remedies referred to or set forth in Article V hereof. In addition, upon such an Event of Default,

Mortgagor shall promptly pay to Mortgagee (i) all Rent prepayments and security or other deposits paid to Mortgagor pursuant to any Subordinate Lease assigned hereunder and (ii) all charges for services or facilities or for escalation which were paid pursuant to any such Subordinate Lease to the extent allocable to any period from and after such Event of Default.

(d) If Mortgagor is not required to surrender possession of the Mortgaged Property hereunder in the event of any such Event of Default and exercise of Mortgagee's remedies hereunder, Mortgagor will pay monthly in advance to Mortgagee, on its entry into possession pursuant to Article V hereof, or to any receiver appointed to collect said Rents, income, profits or proceeds, the fair and reasonable rental value for the use and occupation of the Mortgaged Property or such part thereof as may be in the possession of Mortgagor. Upon a default in any such payment, at the option of the Mortgagee, Mortgagor shall vacate and surrender such possession to Mortgagee or such receiver, and, in default thereof, may be evicted by summary or any other available proceedings or actions.

(e) Mortgagor, as and when requested from time to time by Mortgagee, will execute, acknowledge and deliver to Mortgagee, in form approved by Mortgagee, one or more general or specific assignments of the lessor's interest under any Subordinate Lease now or hereafter affecting the whole or any part of the Mortgaged Property. Mortgagor will, on demand, pay to Mortgagee, or reimburse Mortgagee for the payment of, any costs or expenses incurred in connection with the preparation or recording of any such assignment.

SECTION 2.02. Subordinate Leases and Rents.
(a) Mortgagor will (i) perform or cause to be performed the lessor's or sublessor's obligations under any Subordinate Lease now or hereafter affecting the whole or any part of the Mortgaged Property, (ii) enforce (including, without limitation, the termination and cancellation of any Subordinate Lease, provided and so long as the same is a bona fide enforcement of Mortgagor's right as lessor or sublessor under any such Subordinate Lease and such termination or cancellation, either by itself or in the aggregate with other terminations and cancellations, will not diminish or impair the security of this Mortgage) the performance by the lessee under its respective Subordinate Lease of all of said lessee's obligations thereunder, and (iii) give Mortgagee prompt notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Mortgagor.

(b) (i) Mortgagor will not, without Mortgagee's consent, (1) assign, mortgage, pledge or otherwise transfer, dispose of or encumber, whether by operation of law or otherwise, any Subordinate Lease or the rents or other income thereunder or therefrom, (2) accept or permit the acceptance of a prepayment of any rent for more than one (1) month in advance of the due date therefor, (3) cancel, terminate or accept a surrender of any Subordinate Lease, or (4) enter into any Subordinate Lease.

(ii) Supplementing the provisions of paragraph (i) of this Section, in the event of the termination, rejection or disaffirmance by any lessee (or by any receiver, trustee, custodian or other party who succeeds to the rights of any lessee) under any one or more of the Subordinate Leases pursuant to any Bankruptcy Law, Mortgagor hereby assigns to Mortgagee the proceeds of any claim (including, without limitation, the right to retain or apply any security deposit) that Mortgagor may have against the lessee (or mortgagee, custodian or other party who succeeds to the rights of any lessee) or any guarantor of any of the Subordinate Leases, under any one or more of the Subordinate Leases or any guaranty thereof based upon (1) any breach by such lessee of the terms and provisions of the applicable Subordinate Lease (including, without limitation, any claims that Mortgagor may have by reason of a termination, rejection or disaffirmance by such lessee pursuant to any Bankruptcy Law) and (2) the use and occupancy of the premises, whether or not pursuant to the applicable Subordinate Lease (including, without limitation, any claim for use and occupancy arising under any Bankruptcy Law). Mortgagor, immediately upon obtaining knowledge of any such breach or use by any such lessee, will notify Mortgagee of any such breach or use. If an Event of Default shall occur and be continuing, Mortgagee shall have the sole right to elect, either:

(A) to proceed against such lessee or guarantor as if it were the named lessor thereunder, in Mortgagor's name or in Mortgagee's name as agent for Mortgagor, and Mortgagor agrees to cooperate with Mortgagee in such action and shall execute any and all documents required in furtherance of such action; or

(B) to have Mortgagor proceed in Mortgagor's and Mortgagee's behalf, in which event Mortgagee may participate in any such proceedings, and Mortgagor from time to time will deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit

such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, shall deliver to Mortgagee copies of all papers served in connection therewith, and shall consult and cooperate with Mortgagee, its attorneys and agents in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Mortgagor without Mortgagee's consent.

(c) Mortgagor will, promptly upon Mortgagee's request from time to time, prepare and deliver to Mortgagee such information concerning the Subordinate Leases affecting the Mortgaged Property as Mortgagee shall reasonably request.

(d) Each and every Subordinate Lease shall contain provisions in form and substance substantially as follows:

"The lessee covenants and agrees that, if by reason of default under any mortgage which may now or hereafter affect the land and/or the building of which the premises that is the subject of this Lease forms a part (including, without limitation, the Mortgage, the Mortgage-Collateral Real Estate Mortgage, Leasehold Mortgage, Leasehold Mortgage-Collateral Real Estate Mortgage, Assignment, Assignment of Rents, Security Agreement and Financing Statement, dated as of March 10, 1986, by the landlord hereunder, as Mortgagor for the benefit of the mortgagee thereunder (the 'Mortgagee'), and any amendments, supplements or modifications thereof), the Mortgagee enters into and become possessed of the mortgaged property of which the premises that is the subject of this Lease forms a part either through possession or foreclosure action or proceeding, or in the event of the sale of the said mortgaged property as a result of any action or proceeding to foreclose the said mortgage, the tenant will attorn to the Mortgagee or such then owner and will recognize the Mortgagee or such then owner as its landlord under this Lease, unless the Mortgagee or such then owner shall elect to terminate this Lease and the rights of the lessee hereunder. The lessee agrees to execute and deliver, at any time and from time to time, upon the request of the Mortgagee or the then owner of the mortgaged property, any instrument which may be necessary or appropriate to evidence such attornment and lessee hereby irrevocably appoints the Mortgagee or the then owner of the mortgaged property the attorney-in-fact, and this appointment shall be deemed to be coupled with an interest of the lessee to execute and deliver for and on behalf of the lessee any such

instrument. The lessee further waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give the lessee any right of election to terminate this Lease or to surrender possession of the premises that is the subject of this Lease in the event any proceeding is brought by the Mortgagee under any such mortgage to terminate the same, and agrees that unless and until the Mortgagee, in connection with any such proceeding, shall elect to terminate this Lease and the rights of the lessee hereunder, this Lease shall not be affected in any way whatsoever by any such proceeding."

(e) Mortgagor hereby warrants and represents that, as of the date hereof, there are no Subordinate Leases in existence.

SECTION 2.03. Assignment of Rents in Minnesota. To the extent the Premises are located in the State of Minnesota, the following provisions shall apply:

(a) Upon or any time (i) after an Event of Default occurs and is continuing, or (ii) after the first publication of notice of sale for the foreclosure of this Mortgage pursuant to Minnesota Statutes, Chapter 580, or (iii) after the commencement of an action to foreclose this Mortgage pursuant to Minnesota Statutes, Chapter 581, or (iv) during the period of redemption after foreclosure of this Mortgage, then in any such event, Mortgagee shall, upon application to the district court where the Premises or any part thereof is located, by an action separate from the foreclosure under Chapter 580 or in the foreclosure action under Chapter 581 (it being understood and agreed that the existence of a foreclosure under Chapter 580 or a foreclosure action under Chapter 581 is not a prerequisite to any action for a receiver hereunder), be entitled to the appointment of a receiver for the rents, profits and all other income of every kind which shall accrue and be owing for the use or occupation of the Premises or any part thereof. Mortgagee shall be entitled to the appointment of a receiver without regard to waste, adequacy of the security or solvency of Mortgagor. The court shall determine the amount of bond to be posted by the receiver. The receiver, who shall be an experienced property manager, shall collect (until the Obligations are fully satisfied, paid and performed and, in the case of a foreclosure sale, during the entire redemption period) the Rents, profits and all other income of every kind, manage the Premises so as to prevent waste, execute leases within or beyond the period of the receivership if approved by the court and apply all rents, profits and other income collected by him in the following order:

A. To the payment of all reasonable fees of the receiver, if any, approved by the court;

B. To the repayment of tenant security deposits, with interest thereon, as required by Minnesota Statutes, Section 504.20;

C. To the payment when due of delinquent or current real estate taxes or special assessments with respect to the Premises, or the periodic escrow for the payment of the same;

D. To the payment when due of premiums for insurance of the type required hereby, or the periodic escrow for payment of the same, if any;

E. To the payment for the keeping of the covenants required of a lessor or licensor pursuant to Minnesota Statutes, Section 504.18, subdivision 1;

F. To the payment of expenses for normal maintenance of the Premises; and

G. The balance to Mortgagee (i) if received prior to the foreclosure sale, to be applied to the payment of the Obligations, and (ii) if received during the period of redemption, to be applied first to any deficiency and after payment in full of such deficiency, to be paid to the purchaser (including Mortgagee) at the foreclosure sale to effect a reinstatement or redemption, as the case may be, pursuant to Minnesota Statutes, Sections 580.30, 580.23 and 581.10. Provided that if this Mortgage is not reinstated nor the Premises redeemed as provided by said Sections 580.30, 580.23 or 581.10, the entire amount paid to Mortgagee pursuant hereto shall be the property of Mortgagee together with all or any part of the Premises acquired through foreclosure.

Mortgagee shall have the right, at any time and without limitation as provided in Minnesota Statutes, Section 582.03, to advance money to the receiver to pay any part or all of the items which the receiver should otherwise pay if cash were available from the Premises and sums so advanced with interest at the rate provided in the Credit Agreement, shall be secured hereby, or if advanced during the period of redemption, shall be a part of the sum required to be paid to redeem from the sale.

(b) At any time while Mortgagee is entitled to the appointment of a receiver as hereinbefore provided, but prior to the appointment or a receiver, Mortgagee shall have the right to collect the rents, profits and other income of every kind from the Premises and apply the same in the manner hereinbefore provided with respect to a receiver. For the purpose aforesaid, Mortgagee may enter and take possession of the Premises and manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Premises. Mortgagee may also take possession of, and for these purposes use, any and all of the fixtures and personal property contained in the Premises. The expense (including any receiver's fees, attorneys' fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. From and after the date notice of default is given by Mortgagee to Mortgagor, leases of all or any part of the Premises shall be submitted to and approved by Mortgagee before they become effective. Mortgagor will not, without the prior written consent of Mortgagee, assign the rents or any part thereof from the Premises, except as herein provided for. As additional and collateral security for the payment of the Obligations, Mortgagor will, as requested from time to time by Mortgagee, assign to Mortgagee or its nominee by specific or general assignment, any leases now or hereafter made upon the Premises, such assignments to be in form and content acceptable to Mortgagee. For the above said purposes, Mortgagor agrees to deliver to Mortgagee, upon Mortgagee's request, a true and complete copy of each and every lease which is at the time of such request outstanding upon the Premises and in addition thereto shall supply Mortgagee at its request with a complete list of each and every lease showing type, name of tenant, monthly rental, date to which paid, term of lease, date of occupancy, date of expiration and any and every special provision, concession or inducement granted to tenant. All present and future leases of all or any part of the Premises shall, at the option of Mortgagee, be subordinate to the lien of this Mortgage.

ARTICLE III

Additional Advances; Expenses; Indemnity

SECTION 3.01. Additional Advances and Disbursements. (a) Mortgagor agrees that, if Mortgagor shall default in any of its obligations hereunder to pay any

amount or to perform any action, including its obligation under Section 1.02 to defend title, under Section 1.06 to pay Impositions and under Section 1.04 to procure, maintain and pay premiums on the insurance policies referred to therein, then Mortgagee shall have the right, but not the obligation, in Mortgagor's name or in its own name, and without notice to Mortgagor, to advance all or any part of such amounts or to perform any or all such actions, and, for such purpose, Mortgagor expressly grants to Mortgagee, in addition and without prejudice to any other rights and remedies hereunder, the right to enter upon and take possession of the Mortgaged Property to such extent and as often as it may deem necessary or desirable to prevent or remedy any such default. No such advance or performance shall be deemed to have cured such default by Mortgagor or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions, and all other sums advanced or expenses incurred by Mortgagee hereunder (including all expenditures and expenses which may be paid or incurred in connection with Mortgagee's exercise of any of its rights or remedies provided herein) or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Obligations, shall bear interest at the rate stated in the Credit Agreement for overdue principal amounts and shall be secured by this Mortgage. Mortgagee, upon making any such advance, shall be subrogated to all of the rights of the person receiving such advance.

(b) To the extent that the Premises are located in the states of Nebraska and South Dakota, this Mortgage shall secure the payment of any additional amounts advanced from time to time, by Mortgagee to Mortgagor. The maximum amount of unpaid loan indebtedness shall be $5,000,000, exclusive of interest thereon, unpaid balances of advances paid with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Mortgage Property and other costs which Mortgagee is authorized by this instrument to pay on Mortgagor's behalf, all of which in addition to such loan indebtedness shall also be secured by this instrument.

(c) To the extent the Premises are located in the State of Minnesota, this Mortgage is given to secure not only existing indebtedness but also such future or additional advances, whether such advances are obligatory or optional, as are made within twenty (20) years from the date hereof, to the same extent as if such future or additional advances were made on the date hereof. The maximum amount of unpaid loan

indebtedness shall be $5,000,000 (but in Minnesota, $1,764,705.80), exclusive of interest thereon, unpaid balances of advances paid with respect to the Premises for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Premises and other costs which Mortgagee is authorized by this instrument to pay on Mortgagor's behalf, all of which in addition to such loan indebtedness shall also be secured by this instrument.

(d) (i) The following notice is included pursuant to Section 654.12A of the Iowa Code: NOTICE: This mortgage secures credit in the amount of $1,470,588.24. 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.

(ii) The credit amount set forth in the foregoing "Notice" provision is exclusive of unpaid balances of advances paid with respect to the Premises for the payment of taxes, assessments, and insurance premiums. Costs incurred for the purchase of the Premises and other costs which Mortgagee is authorized by this instrument to pay on Mortgagor's behalf, all of which in addition to such credit amount shall also be secured by this instrument.

SECTION 3.02. Other Expenses. Mortgagor will pay on demand all costs and expenses incurred by Mortgagee in connection with the Loan Documents and the other documents to be delivered under the Loan Documents pursuant to Section 2.01 of the Credit Agreement.

SECTION 3.03. Indemnity. Mortgagor agrees to indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee by reason or on account of, or in connection with (i) any default or Event of Default by Mortgagor hereunder or any other Loan Document, (ii) Mortgagee's or any such holder's exercise of any of its rights and remedies, or the performance of any of its duties, hereunder or under any other Loan Document, (iii) the construction, reconstruction or alteration of the Premises, (iv) any negligence or willful misconduct of Mortgagor, any lessee of the Premises, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (v) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk,

curb or passageway adjacent thereto, or (vi) any other transaction arising out of or in any way connected with the Premises, except for the willful misconduct or gross negligence of the indemnified person.

ARTICLE IV

Sale or Transfer of the Premises

SECTION 4.01. Continuous Ownership. Mortgagor acknowledges that the continuous ownership of the Premises by Mortgagor is of a material nature to the transaction hereinabove described and Mortgagee's agreement to create the Obligations. Except as otherwise provided herein or in the other Loan Documents, Mortgagor will not, whether voluntarily or involuntarily, (a) sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise (collectively or severally, "Transfer"), (b) permit to be the subject of a Transfer, (c) enter into an agreement to Transfer, or (d) grant an option which or take any action which pursuant to the terms of any agreement to which Mortgagor is a party may result in a Transfer of, the Premises, or any legal, beneficial or equitable interest therein, without Mortgagee's prior written consent. For purposes of this Mortgage, but without limiting the foregoing, (i) the issuance of any equity interest in Mortgagor (whether stock, partnership interest or otherwise) to any person or group of related persons, whether in a single transaction or a series of related or unrelated transactions, in such quantities that after such issuance such person or group shall have control of Mortgagor, shall be deemed a Transfer of the Premises, (ii) a Transfer by any party or parties having a direct or indirect interest in Mortgagor (whether stock, partnership interest or otherwise) of more than five percent (5%) of such interest (including a Transfer between parties having an interest in any such party, pursuant to a buy-sell, right of first refusal, buy-out or other similar transaction) whether in a single transaction or a series of related or unrelated transactions shall be deemed a Transfer of the Premises, except that the transfer of the outstanding capital stock of any corporate Mortgagor, by persons or parties (other than "insiders" within the meaning of the Securities Exchange Act of 1934, as amended) through the "over-the-counter" market or any recognized national securities exchange, shall not be included in the calculation of such five percent (5%), (iii) a take-over agreement shall be deemed a Transfer of the Premises, (iv) a Transfer of all or substantially all of the

assets of Mortgagor shall be deemed a Transfer of the Premises, (v) the execution and delivery of any documentation relating to a proposed zoning lot merger or the execution and delivery of any other documentation effecting or purporting to effect, or the taking or suffering of any other action effecting or purporting to effect, a transfer of, or the granting of a right to utilize, any development rights appurtenant to the Premises shall be deemed a Transfer of the Premises, and (vi) any person or legal representative of Mortgagor to whom Mortgagor's interest in the Premises passes by operation of law, or otherwise, shall be bound by the provisions of this Mortgage. The provisions of this Section shall apply to each and every such Transfer of all or any portion of the Premises or any legal or equitable interest therein, regardless of whether or not Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Transfer of all or any portion of the Premises or any legal or equitable interest therein.

ARTICLE V

Defaults and Remedies

SECTION 5.01. Events of Default. The term "Event of Default," as used in this Mortgage, shall mean the occurrence of any of the following events:

(a) if any Event of Default (as defined in the Credit Agreement) occurs; or

(b) if Mortgagor abandons the Mortgaged Property or ceases to do business or terminates its business for any reason whatsoever; or

(c) if the Premises shall be taken, attached or sequestered on execution or other process of law in any action against Mortgagor; or

(d) if Mortgagor shall fail at any time to obtain, provide, maintain, keep in force or deliver to Mortgagee the insurance policies required by Section 1.04 hereof; or

(e) if any Transfer shall occur in violation of the Loan Documents, or if Mortgagor shall enter into an agreement to Transfer or grant an option or take any action which, pursuant to the terms of any agreement to which Mortgagor is a party, may result in a Transfer of the Premises, or any legal, beneficial or equitable interest therein in violation of the Loan Documents, without Mortgagee's prior written consent; or

(f) if any claim of priority (except a claim based upon a Permitted Encumbrance) to this Mortgage or any other document or instrument securing the Obligations by title, lien or otherwise shall be upheld by any court of competent jurisdiction or shall be consented to by Mortgagor; or

(g) if Mortgagor, pursuant to Nebraska Revised Statutes Section 76-238.01 (Reissue 1981), as either may be amended from time to time, shall file for record a notice limiting the maximum amount which may be secured by this Mortgage.

SECTION 5.02. Remedies. Upon the occurrence of any one or more Events of Default, Mortgagee may (but shall not be obligated to), in addition to any rights or remedies available to it hereunder or under the other Loan Documents, take such action personally or by its agents or attorneys, with or without entry, and without notice, demand, presentment or protest (each and all of which are hereby waived), as it deems necessary or advisable to protect and enforce Mortgagee's rights and remedies against Mortgagor and in and to the Premises, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting its rights or remedies:

(a) declare the entire balance of the Obligations (including the entire principal balance thereof, all accrued and unpaid interest and any premium thereon and all other such sums secured hereby) to be immediately due and payable, and upon any such declaration the entire unpaid balance of the Obligations shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Mortgagor, anything in the Loan Documents to the contrary notwithstanding; or

(b) institute a proceeding or proceedings, judicial or otherwise, for the complete or partial (to the extent permitted by law) foreclosure of this Mortgage under any applicable provision of law and, in connection with any of the Premises located in Wisconsin, Mortgagor agrees that, to the extent permitted by law, this Mortgage may be foreclosed by Mortgagee, at its option, pursuant to the provisions of Section 846.103 of the Wisconsin Statutes of 1983-84, or any successor thereof; or

(c) cause any or all of the Premises, as an entirety or in parcels, to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law and, to the extent the Premises are located in the states of Minnesota or South Dakota, Mortgagee may foreclose this Mortgage by advertisement pursuant to the statutes in such case made and provided in addition to all other rights and remedies hereunder; or

(d) institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Loan Documents; or

(e) apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Premises, to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to or the necessity to disprove the adequacy of the security for the Obligations or the solvency of Mortgagor or any other person liable for the payment of the Obligations, and Mortgagor and each other person so liable waives or shall be deemed to have waived such necessity and consents or shall be deemed to have consented to such appointment; or

(f) subject to the provisions and restrictions of any applicable law, enter upon the Premises, and exclude Mortgagor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto, and Mortgagor agrees to surrender possession of the Premises and of such books, records and accounts to Mortgagee on demand after the happening of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Mortgagor; and upon each such entry and from time to time thereafter may, at the expense of Mortgagor, enter the Premises without interference by Mortgagor and as Mortgagee may deem advisable, (i) either by purchase, repair or construction, maintain and restore the Premises, (ii) insure or reinsure the same, (iii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon, (iv) complete the construction of the Improvements and, in the course of such completion, may make such changes in the contemplated or completed

Improvements as it may deem advisable, (v) in every such case in connection with the foregoing have the right to exercise all rights and powers of Mortgagor with respect to the Premises, either in Mortgagor's name or otherwise, including the right to make, terminate, cancel, enforce or modify Subordinate Leases, obtain and evict tenants and subtenants on such terms as Mortgagee shall deem advisable, and to take any actions described in subsection (g) of this Section; or

(g) subject to the provisions and restrictions of any applicable law, may, with or without the entrance upon the Premises, collect, receive, sue for and recover in its own name all Rents and cash collateral derived from the Premises, and after deducting therefrom all costs, expenses and liabilities of every character incurred by Mortgagee in collecting the same and in using, operating, managing, preserving and controlling the Premises, and otherwise in exercising Mortgagee's rights under subsection (f) of this Section, including all amounts necessary to pay Impositions, insurance premiums and other charges in connection with the Premises, as well as compensation for the services of Mortgagee and its respective attorneys, agents and employees, to apply the remainder as provided in Section 5.04 hereof; or

(h) release any portion of the Premises for such consideration as Mortgagee may require without, as to the remainder of the Premises, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release and applied to the Obligations, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder; or

(i) may take any other action, or pursue any other right or remedy, as Mortgagee may have under applicable law, and Mortgagor does hereby grant the same to Mortgagee.

In the event that Mortgagee shall exercise any of the rights or remedies set forth in subsections (f) and (g) of this Section, neither such party shall be deemed to have

entered upon or taken possession of the Premises except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a mortgagee in possession by reason of such entry or taking possession. Mortgagee will not be liable to account for any action taken pursuant to any such exercise other than for rents actually received by such party, nor liable for any loss sustained by Mortgagor resulting from any failure to let the Premises, or from any other act or omission of Mortgagee except to the extent such loss is caused by the willful misconduct or bad faith of such party. Mortgagor hereby consents to, ratifies and confirms the exercise by Mortgagee of said rights and remedies, and appoints Mortgagee as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and irrevocable, for such purposes.

SECTION 5.03. Rights Pertaining to Sales. Subject to the provisions or other requirements of law, the following provisions shall apply to any sale or sales of all or any portion of the Premises under or by virtue of this Article V, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Mortgagee may conduct any number of sales from time to time. The power of sale set forth in Section 5.02(c) hereof shall not be exhausted by any one or more such sales as to any part of the Premises which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until the Obligations shall have been paid in full. To the extent the Premises are located in the State of Minnesota, said sale may be as one tract or otherwise, at the sole option of Mortgagee. Mortgagor agrees that to the extent the Premises are located in the State of Minnesota, for the purpose of Section 580.08, Minnesota Statutes, the Premises are a single tract. To the extent the Premises are located in South Dakota, said sale may be as one tract, or otherwise as determined by Mortgagee, in its sole discretion. Mortgagor agrees that to the extent the Premises are located in the State of South Dakota, for the purpose of said sale each parcel of land is a single, compact and contiguous tract.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice.

(c) After each sale, Mortgagee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to such purchaser or purchasers all such instruments as may be advisable, in Mortgagee's judgment, for the purposes as may be designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (c) of this Section given by Mortgagee as to nonpayment of the Obligations, or as to the occurrence of any Event of Default, or as to Mortgagee having declared all or any of the Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to the appointment of any trustee, or as to any other act or thing having been duly done by Mortgagor, Mortgagee, or by such trustee, shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited. Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale, but in the name and on behalf of Mortgagee.

(e) The receipt of Mortgagee for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or

rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Mortgagor to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Mortgagee may bid for and acquire the Premises and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Mortgagee is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(h) In the event that Mortgagor, or any person claiming by, through or under Mortgagor, shall transfer or refuse or fail to surrender possession of the Premises after any sale thereof, then Mortgagor, or such person, shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have present or constructively in its possession any of the Premises.

(j) In the event of any sale referred to in this Section, the entire monetary Obligations, if not previously due and payable, immediately thereupon shall, notwithstanding anything to the contrary herein or in the other Loan Documents, become due and payable.

(k) In the event a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale of the Premises abandon the sale, and may institute suit for the collection of the Obligations and for the foreclosure of this Mortgage, or in the event that Mortgagee should institute a suit for collection of the Obligations, and for the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and sell the Premises in accordance with the provisions of this Mortgage.

(l) To the extent the Premises are located in the State of Iowa, it is agreed that the Premises are not used for agricultural purposes, as defined in Section 535.13 of the Iowa Code, and are not the residence of Mortgagor, and in the event of the foreclosure of this Mortgage and the sale of the Premises by sheriff's sale, in such foreclosure proceedings, the time of one hundred and eighty (180) days for redemption from said sale provided by statutes of the State of Iowa shall be reduced to ninety (90) days, provided Mortgagee waives in such foreclosure proceedings any rights to a deficiency judgment against Mortgagor which may arise out of the foreclosure proceedings; all pursuant to Section 628.28 of the Iowa Code.

SECTION 5.04. Application of Proceeds. The purchase money, proceeds or avails of any sale referred to in Section 5.03, together with any other sums which may be held by Mortgagee hereunder, whether under the provisions of this Article V or otherwise, shall, except as herein expressly provided to the contrary, be applied as follows:

First: To the payment of the costs and expenses of any such sale, including compensation to Mortgagee, its agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, together with interest thereon as provided herein, and all taxes, assessments and other charges, except any taxes, assessments or other charges subject to which the Premises shall have been sold.

Second: To the payment in full of the monetary Obligations (including principal, interest, premium and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of the Loan Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its judgment for the payment of sums which would have been paid by application under clauses First through Third above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of any withholding tax requirements of the Foreign Investments in Real Property Tax Act of 1980, as amended.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

SECTION 5.05. Additional Provisions as to Remedies. (a) No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and continuing, shall be in addition to every other right or remedy given hereunder, or under the other Loan Documents or now or hereafter existing at law or in equity, and may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

(b) No delay or omission by Mortgagee to exercise any right or remedy hereunder upon any default or Event of Default shall impair such exercise, or be construed to be a waiver of any such default or Event of Default or an acquiescence therein.

(c) The failure, refusal or waiver (by consent, waiver or otherwise) by Mortgagee of its right to assert any right or remedy hereunder upon any default or Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence.

(d) Mortgagee shall not have any obligation to pursue any rights or remedies it may have under any other agreement prior to pursuing its rights or remedies hereunder or under the other Loan Documents.

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

(f) Mortgagee may resort to any security given by this Mortgage or any other security now given or hereafter existing to secure the Obligations, in whole or in part, in such portions and in such order as Mortgagee may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights or benefits granted hereunder.

(g) Acceptance of any payment after the occurrence of any default or Event of Default shall not be deemed a waiver or a cure of such default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(h) In the event that Mortgagee shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Premises, subject to the lien hereof.

SECTION 5.06. Waiver of Rights and Defenses. To the full extent Mortgagor may do so in accordance with applicable law, Mortgagor agrees with Mortgagee as follows:

(a) Mortgagor will not at any time insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisement, valuation, stay, extension, moratorium, homestead or redemption, or of any statute of limitations or any other exemptions in the Premises under any present or future federal or state law, and Mortgagor, for itself and its heirs, devises, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Premises (other than Mortgagee), hereby, to the extent permitted by applicable law, waives and releases all rights of redemption, valuation, appraisement, homestead, notice of intention to mature or declare due the whole of the Obligations, and all rights to a marshaling of the assets of Mortgagor, including the Premises, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

(b) Mortgagor shall not have or assert and hereby waives any right under any statute or rule of law pertaining to any of the matters set forth in subsection (a) of this Section, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder.

(c) Mortgagor shall not be relieved of its obligation to pay the Obligations at the time and in the manner provided herein and in the other Loan Documents, nor shall the lien or priority of this Mortgage or any other Loan Documents be impaired by, and all rights of Mortgagee and all obligations of Mortgagor hereunder and under the other Loan Documents shall be absolute and unconditional irrespective of:

(i) any failure or refusal by Mortgagee (A) to comply with any request by Mortgagor to consent to any action by Mortgagor or (B) to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the other Loan Documents;

(ii) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, including, without limitation, any amendment, modification, extension, renewal or supplementation of any of the Loan Documents, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(iv) any exchange, release or non-perfection of any part of the Premises or any other security for the Obligations, whether intentionally or otherwise, or any release or amendment or waiver of or consent to departure from any assignment, guaranty or security document, for all or any of the Obligations; or

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Mortgagor or a third party grantor of a security interest.

ARTICLE VI

Release of Lien

SECTION 6.01. Release of Lien. If all of the Obligations shall be fully satisfied, paid and performed after the Termination Date, all without fraud, or delay or defalcation or abatement, then and in that event only all rights hereunder and this Mortgage and the estate hereby granted (except for the rights and obligations set forth in Section 3.03 hereof which shall continue in full force and effect regardless of the release of this Mortgage or any of the property covered hereby) shall cease and terminate and become void and the Premises shall become wholly released and cleared of the liens, security interests, conveyances and assignments evidenced hereby. In such event, Mortgagee shall execute and deliver such documents as the Mortgagor shall reasonably request to evidence such termination.

ARTICLE VII

Additional Provisions

SECTION 7.01. Provisions as to Payments, Advances. (a) To the extent that any part of the Obligations is used to pay indebtedness secured by any Permitted Encumbrance or other outstanding lien, security interest, charge or prior encumbrance against the Premises or to pay in whole or in part the purchase price therefor, Mortgagee shall be subrogated to any and all rights, security interests and liens held by any owner or holder of the same, whether or not the same are released. Mortgagor agrees that, in consideration of such payment by Mortgagee, effective upon such payment Mortgagor shall and hereby does waive and release all demands, defenses and causes of action for offsets and payments with respect to the same.

(b) Any payment made under this Mortgage by any person at any time liable for the payment of the Obligations, or by any subsequent owner of the Premises, or by any other person whose interest in the Premises might be prejudiced in the event of a failure to make such payment, or by any partner, stockholder, officer or director thereof, shall be deemed, as between Mortgagee and all such persons, to have been made on behalf of all such persons.

SECTION 7.02. Separability. If any term, covenant, condition or provision of this Mortgage is found to be invalid, illegal or unenforceable in any respect, by a final

judgment or award which shall not be subject to change by any appeal, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein. In such event, either party to this Mortgage may initiate an arbitration in accordance with the provisions of this Section, which arbitration shall be by three (3) arbitrators, each of whom shall have at least ten (10) years experience in a calling connected with the matter in dispute in the state in which the Premises are located. Said arbitrators shall devise a valid and enforceable substitute term, covenant, condition or provision for this Mortgage which shall as nearly as possible carry out the intention of the parties with respect to the terms, covenant, condition of provisions theretofore found invalid, illegal or unenforceable. Such substitute term, covenant, condition or provision, as determined by the arbitrators, shall thereupon be deemed a part of this Mortgage.

SECTION 7.03. Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and mailed or telegraphed or delivered, if to Mortgagor, at its address at #15 Copper Corral Drive, Plattsmouth, Nebraska 68048, Attention: Joseph Mandolfo; and if to Mortgagee, at its address at 245 Park Avenue, New York, New York 10167, Attention: I. Donald Gibb; or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and communications shall, when mailed or telegraphed, be effective when deposited in the mails or delivered to the telegraph company, respectively.

SECTION 7.04. Right to Deal. In the event that ownership of the Premises becomes vested in a person other than Mortgagor, and Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or the Obligations in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting.

SECTION 7.05. No Merger. (a) So long as any portion of the Obligations shall remain unpaid, unless Mortgagee shall otherwise consent in writing, Mortgagor shall not do anything to cause the fee title to the Premises and

Leasehold Estate created pursuant to the provisions of the Leases to merge with any other estate or interest in the Premises or become other than separate and distinct from all other estates and interests in the Premises, notwithstanding the union of such estates in Mortgagor, Mortgagee, or in any other person by purchase, operation of law or otherwise. If Mortgagor, Mortgagee or any other person shall acquire or shall become vested with the fee title to the Premises and this Mortgage and Leasehold Estate created pursuant to the provisions of the Leases and any other estate or interest in the Premises, by foreclosure of this Mortgage or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct from all other estates and interests in the Premises for all purposes after such acquisition and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate unless and until Mortgagee shall affirmatively elect in writing to merge such estates.

(b) Upon the foreclosure of the lien created hereby on the Premises, as herein provided, any Subordinate Leases then existing shall not be destroyed or terminated by application of the doctrine of merger or by operation of law or as a result of such foreclosure unless Mortgagee or any purchaser at a foreclosure sale shall so elect by written notice to the lessee in question.

SECTION 7.06. Applicable Law. This Mortgage shall be governed by, and construed in accordance with, the law of the state in which the Premises are located.

SECTION 7.07. Appointment of Mortgagee. Mortgagor hereby appoints Mortgagee as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgment, delivery and filing or recording for and in the name of Mortgagor of any of the documents or instruments referred to in Section 1.02(b).

SECTION 7.08. Sole Discretion of Mortgagee. Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or either shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be made in the sole discretion of Mortgagee.

SECTION 7.09. Provisions as to Covenants and Agreements. All of Mortgagor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

SECTION 7.10. Matters to be in Writing. This Mortgage cannot be altered, amended, modified, terminated or discharged except in a writing signed by the party against whom enforcement of such alteration, amendment, modification, termination or discharge is sought. No waiver, release or other forebearance by Mortgagee will be effective against Mortgagee unless it is in a writing signed by Mortgagee, and then only to the extent expressly stated.

SECTION 7.11. Submission to Jurisdiction. Without limiting the right of Mortgagee to bring any action or proceeding against the undersigned or its property arising out of or relating to the Obligations (an "Action") in the courts of other jurisdictions, Mortgagor hereby irrevocably submits to the jurisdiction of the state court or federal court in each jurisdiction in which the Premises are located, and Mortgagor hereby irrevocably agrees that any Action may be heard and determined in any such state or federal court. Mortgagor hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in the jurisdiction. Mortgagor hereby irrevocably agrees that the summons and complaint or any other process in any Action in any jurisdiction may be served by mailing to any of the addresses set forth herein or by hand delivery to a person of suitable age and discretion at any such address. Such service will be complete on the date such process is so mailed or delivered. Mortgagor may also be served in any other manner permitted by law.

SECTION 7.12. Construction of Provisions. The following rules of construction shall be applicable for all purposes of this Mortgage and all documents or instruments supplemental hereto, unless the context otherwise requires:

(a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Mortgage, unless expressly otherwise designated in context.

(b) The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to."

(c) The terms "Land," "Leased Land," "Leasehold Estate," "Improvements," "Equipment," "Mortgaged Property" and "Premises" shall be construed as if followed by the phrase "or any part thereof."

(d) The term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof."

(e) Words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(f) The term "person" shall include natural persons, firms, partnerships, corporations and any other public and private legal entities.

(g) The term "provisions", when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, conditions and/or."

(h) All Article, Section and Exhibit captions herein are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Mortgage.

(i) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

(j) The cover page of and all recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage.

(k) All obligations of Mortgagor hereunder shall be performed and satisfied by or on behalf of Mortgagor at Mortgagor's sole cost and expense.

(l) The term "lease" shall mean each and all of "tenancy, subtenancy, lease or sublease," the term "lessor" shall mean each and all of "landlord, sublandlord, lessor or sublessor" and the term "lessee" shall mean "tenant, subtenant, lessee and sublessee".

SECTION 7.13. Successors and Assigns. The provisions hereof shall be binding upon Mortgagor and the heirs, devises, representatives, successors and assigns of

Mortgagor, including successors in interest of Mortgagor in and to all or any part of the Premises, and shall inure to the benefit of Mortgagee and any holder of the Obligations and their respective heirs, successors, substitutes and assigns. All references in this Mortgage to Mortgagor or Mortgagee shall be construed as including all of such other persons with respect to the person referred to. Where two or more persons have executed this Mortgage, the obligations of such persons shall be joint and several except to the extent the context clearly indicates otherwise.

SECTION 7.14. South Dakota Collateral Real Estate Mortgage. THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO SDCL 44-8-26. THE PARTIES AGREE THAT THE PROVISIONS OF THE 180 DAY REDEMPTION MORTGAGE ACT GOVERN THIS MORTGAGE.

ARTICLE VIII

Fixture Filing

SECTION 8.01. Fixture Filing. A portion of the Premises are or are to become fixtures upon the Land or Leased Property described in Exhibits A-1 and A-2. To the extent permitted by applicable law, Mortgagor covenants and agrees that the filing of this Mortgage in the real estate records of the county in which the Premises are located shall also operate from the time of filing as a fixture filing with respect to all goods constituting part of the Premises which are or are to become fixtures related to the real estate described herein. For such purpose, the following information is set forth:

(a) Name and Address of Debtor:

Mandolfo Investments, Inc., a Nebraska corporation, having an address at #15 Copper Corral Drive, Plattsmouth, Nebraska 68048.

(b) Name and Address of Secured Party:

Cooperatieve Centrale Raffeisen-Boerenleenbank B.A., "Rabobank Nederland," New York branch,

a _____ corporation, having an office at 245 Park Avenue, New York, New York 10167.

(c) This document covers goods which are or are to become fixtures.

MANDOLFO INVESTMENTS, INC., Mortgagor

By: Joseph Mandolfo
Name: Joseph Mandolfo
Title: Chief Executive Officer and Authorized Signatory
Address: Route 2
Plattsmouth, NE 68048

Attest: Herbert J. Elworth
Name: Herbert J. Elworth
Assistant Secretary

[Corporate Seal]
No seal

WITNESSES:

Tonda Haith
Name: Tonda Haith
Address: 506 Main Street, Plattsmouth, NE 68048

Deana Veldhuis
Name: Deana Veldhuis
Address: 1209 - 2nd Ave., Plattsmouth, NE 68048

STATE OF NEBRASKA)
) ss.:
COUNTY OF CASS)

On this 1st day of March, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph Mandolfo, with a residence at Plattsmouth, Nebraska to me personally known, who, being by me duly sworn did say that he is the Chief Executive Officer and authorized signatory of Mandolfo Investments, Inc., that the seal affixed to the said instrument is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that said Joseph Mandolfo, as such Chief Executive Officer and authorized signatory, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it voluntarily executed.

GENERAL NOTARY-State of Nebraska
MARJORIE A. COSCORAN
My Comm. Exp. March 7, 1989

[Notarial Seal]

Marjorie A. Coscoran
Notary Public

575

EXHIBIT A-1

Description of Land

LOT 7, HELEN McCALL HUNTOON ADDITION PLAT #1 TO THE CITY OF WINTERSET, MADISON COUNTY, IOWA

EXHIBIT A-2

Description of Leases and Leased Lands

Intentionally Deleted Prior to Execution

EXHIBIT B

Permitted Encumbrances

Easement, filed 8-30-78 in Book 112 at page 466, grants to Northwestern Bell a Right of Way permit for telephone cable within 5 feet of the South property line of Lot 7.