

37. This Mortgage is, and always will be kept a first lien upon the Mortgaged Premises and the Mortgagor will not create or suffer to be created any lien or charge prior to or upon a parity with the lien of this Mortgage upon the Mortgaged Premises, or any part thereof, or upon the rents, issues, profits, revenues and other income therefrom.

38. That Mortgagor shall give the Mortgagee the first opportunity on adequate and reasonable submissions for the first permanent financing, to be secured by a first priority mortgage on the unencumbered fee simple title (or unencumbered leasehold interest) of any improvements to be constructed on the Mortgaged Premises or on any adjoining or adjacent land, now or hereafter owned or controlled by Mortgagor or by any of the principals of the Mortgagor or by Mortgagor's related business entities and proposals for such financing shall not be submitted to any lender other than the Mortgagee until the Mortgagee shall have after a reasonable time for consideration and study of such submissions declined to make such financing available; and further, in the event Mortgagee shall so decline to make such financing available, Mortgagor shall not thereafter apply for such permanent financing from any lender other than Mortgagee unless simultaneously with such application of such other lender Mortgagor certifies to Mortgagee in writing that the submission to such other lender is being made on the same basis and with the same disclosures as were offered and/or exhibited to Mortgagee. Should any lender other than Mortgagee agree to make such permanent financing available, Mortgagor covenants and agrees that before accepting such financing Mortgagee shall be given the last opportunity to make such financing available on the same terms and conditions pursuant to which such other lender expressed an interest in making such financing available. Provided, however, that Mortgagee acts upon an application for such financing within sixty (60) days from the date of receipt of same.

39. Funds to be advanced upon the Note described above are to be used for the construction of certain improvements on said land in accordance with a certain Construction Loan Agreement of even date by and between Mortgagor and Mortgagee, said Construction Loan Agreement being incorporated herein by reference as if set forth verbatim herein. This Mortgage and Security Agreement secures the payment of all sums and the performance of all covenants and obligations required of Mortgagor by said Construction Loan Agreement, and on the failure of Mortgagor to keep and perform all of the covenants, conditions and agreements contained in said Construction Loan Agreement, the principal sum and all interest and other charges provided for in the Note and secured hereby shall, at the option of the Mortgagee or other holder of the Note, become due and payable. Upon assignment to and purchase by the Mutual Life Insurance Company of New York of this Mortgage and Security Agreement, the terms and conditions of said Construction Loan Agreement shall cease to constitute a part of this Mortgage and Security Agreement.

40. Each and every provision of this mortgage shall bind, and shall inure to the benefit of, the respective distributees, legal representatives, successors and assigns of the parties hereto. If there is more than one Mortgagor, all their undertakings shall be deemed joint and several. All Mortgagee's rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available. This mortgage cannot be changed or terminated orally. No requirement whatsoever may be waived at any time except by a writing signed by the Mortgagee, nor shall any waiver be operative upon other than a single occasion.

41. The Declaration of Trust establishing MONY Mortgage Investors (the Trust) dated February 25, 1970, a copy of which, together with all amendments thereto (the "Declaration"), is duly filed in the office of the Secretary of the Commonwealth of Massachusetts, provides that the name "MONY Mortgage Investors" refers to the trustees under the Declaration collectively as trustees, but not individually or personally, and that no