

maximum rate of interest permitted to be charged by applicable law, and any interest paid in excess of the permitted rate shall be refunded by Mortgagee. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding under the Note or this Mortgage and shall be applied in such order as Mortgagee may determine. If the excessive amount of interest paid exceeds the sums outstanding under the Note or this Mortgage, the portion exceeding the said sums outstanding under the Note or this Mortgage shall be refunded by Mortgagee. Any such crediting or refund shall not cure or waive any default by Mortgagor hereunder or under any other security document. Mortgagor agrees that in determining whether or not any interest payable under the Note or this Mortgage exceeds the highest rate permitted by law, any nonprincipal payment (except payments specifically stated in the Note to be "interest") including, but without limitation, prepayment fees and late charges, shall to the extent permitted by law be deemed to be an expense, fee or premium, rather than interest.

43. Mortgagor shall forthwith cause this Mortgage and all other instruments pertaining thereto to be recorded and filed, and pay all necessary recording fees and expenses in connection therewith and upon demand of Mortgagee cause same to be re-recorded and refiled as and to the extent and in the manner required by law in order to preserve the lien hereof as a mortgage of an interest in real property and as a security interest in the personal property and all property described or included in the Mortgaged Property or intended so to be, and shall at any future time, and as often as it may be necessary, do and cause to be done such things as may be required by law fully to protect the security of Mortgagee as the holder of the Note, and this Mortgage, and shall promptly notify Mortgagee, and upon demand Mortgagor shall institute and prosecute to a conclusion all necessary proceedings to that end and shall cause to be executed and recorded and filed all such other and further assurances, deeds, mortgages, assignments, transfers, security agreements, financing statements or other instruments in writing, in such form as Mortgagee may deem necessary to preserve the lien of this Mortgage on all real and personal property covered hereby, to protect Mortgagee's security in the Mortgaged Property, and to carry out the intent and meaning of this Mortgage.

44. This Mortgage may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement binding on all the parties hereto notwithstanding that all parties shall not have executed the same counterpart.

45. This Mortgage is subject and subordinate to and "wraps around" each Senior Mortgage.

46. Mortgagor covenants and agrees that to the extent Mortgagee shall pay any installment of principal or interest or any other sums due under each Senior Mortgage in excess of the payments required to be made hereunder, Mortgagee shall become entitled to a pro rata lien on the Mort-