

shall state that the Borrower is not liable therefor and such judgment shall constitute a lien on, and will be and can be enforced only against the mortgaged property and not against any other asset of the Mortgagor. The foregoing provisions concern the liability of the Mortgagor and shall not affect, impede, impair or limit the Mortgagee's rights and remedies under this Mortgage against the Mortgaged Property, or affect the priority and enforceability of the Mortgage against the Mortgaged Property.

### 3.09 Performance of Terms of Underlying Mortgage

Mortgagee hereby agrees to fully and faithfully perform each and every term, condition and covenant of that certain mortgage given by the Mortgagee to Equitable Life Assurance Society of the United States (the "Underlying Mortgage") to secure a Promissory Note in the original principal balance of \$975,000. If Mortgagee fails to perform under the Underlying Mortgage, Mortgagor shall have the right, but not the duty to perform under the Underlying Mortgage and deduct from the next payment due hereunder or the Note secured hereby and all loss, costs, damages, expenses and payments incurred therewith including, but not limited to, the payment of reasonable attorney's fees and expenses. All notices received by Mortgagee from the holder of the Underlying Mortgage shall be promptly delivered to Mortgagor.

### 3.10 Disposition of Insurance Proceeds

Subject to the prior right of the Mortgagee in the Underlying Mortgage, in the event of an insurance loss on the mortgaged property, all insurance proceeds will be paid if the Mortgagor elects to repair and restore the Mortgaged Property; if the Mortgagor does not so elect, then the insurance proceeds shall be paid to the Mortgagee.

### 3.11 No Alteration of Underlying Mortgage

It is the intent of the parties hereto that the terms, conditions and provisions of this Mortgage cannot and will not change, alter or modify any of the provisions, covenants and agreements of the Underlying Mortgage and all the covenants and provisions of this Mortgage are subordinates, junior and inferior to all the covenants and provisions of the Underlying Mortgage.

### 3.12 Purchase of the Mortgaged Property

Mortgagor has of even date herewith acquired the Mortgaged Property from the Mortgagee pursuant to that certain purchase contract for the Mortgaged Property between Mortgagee and Mortgagor. In addition to Mortgagor's other remedies and not in lieu of any other remedies, Mortgagor shall have the right, from time to time to set off and reduce payments under this Mortgage and the Note it secures by its actual damages, including reasonable attorney's fees, resulting from the breach by Mortgagee of any representation or warranty or failure to perform any covenant or agreement in said Purchase Contract; provided that no such set-off or reduction shall be made unless Mortgagor's actual damages equal or exceed \$1,000.00 and further provided that this provision shall have no effect on Mortgagee's right to foreclose for any wrongful setoff or other non-payment. This provision shall not inure to the benefit of any subsequent purchaser of the Mortgaged Property.

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