

by statute, and may be pursued separately, successively or together at the sole discretion of Mortgagee.

37. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

38. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note, shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note, and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

39. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

40. Except as provided herein or in the Note, Mortgagor hereby waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of the Note, and all other notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of the Note, and agrees that Mortgagor's liability shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Mortgagee. Mortgagor consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Mortgagee with respect to the payment or other provisions of the Note, and to the release of the collateral or any part thereof, with or without substitution.

41. Any notice, demand, request or other communication which Mortgagor or Mortgagee shall desire to give the other hereunder shall be deemed sufficient if in writing and mailed by certified mail, return receipt requested, prepaid in the United States, addressed to the address hereinabove set forth (if to Mortgagor, to the attention of Robert J. DeMonte) or to such other address as either party may hereafter designate in writing, and shall be deemed given when received. Copies of notices shall also be given as follows: if to Mortgagee, to Mitchell J. Nelson, Esq., Wien, Malkin & Bettex, 60 East 42nd Street, New York, New York 10165

42. Notwithstanding any other provision of this or any other document to the contrary, in no event shall the rate of interest under the Note or this Mortgage exceed the