



Doc#: 0527618061 Fee: \$60.50  
Eugene "Gene" Moore  
Cook County Recorder of Deeds  
Date: 10/03/2005 03:01 PM Pg: 1 of 19

**MORTGAGE**

This Instrument prepared by /  
and after recording return to: /  
CERTES CAPITAL /  
OPPORTUNITY /  
FUND II, LLC /  
510 Lake Cook Road, #105 /  
Deerfield, Illinois 60015 /

**MORTGAGE**

**THIS MORTGAGE** ("Mortgage") effective as of this 24<sup>TH</sup> day of July, 2003, is made by STROHMIAN BOOKS, LTD. (hereinafter referred to as "Mortgagor"), in favor of CERTES CAPITAL OPPORTUNITY FUND II, LLC (hereinafter referred to as "Mortgagee").

**THIS MORTGAGE** supercedes and cancels the previous mortgage entered into on the same date, made by Mortgagor in favor Mortgagee for the amount of SIX HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$675,000.00) and further memorializes the total debt owed by mortgagor to mortgagee, as set forth below.

**WITNESSETH**

**WHEREAS**, to secure the payment of an indebtedness (the "indebtedness") in the principal amount of ONE MILLION, THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$1,300,000.00), which indebtedness is to be used for the acquisition of the Mortgaged Property, defined below, to be paid with interest thereon evidenced by that certain Promissory Note executed on the date hereof, and any amendments, modifications, extensions, renewals, or replacements thereof (the "Note"), Mortgagor hereby mortgages, conveys, transfers and grants unto Mortgagee, its successors and assigns forever the real property legally described as:

**\*\*\* Please Refer to the Attached Legal Description \*\*\***

(the Mortgage, the Note and all other documents securing the Indebtedness, shall hereinafter be referred to as the "Loan Documents");

**TOGETHER WITH** all improvements of every nature whatsoever now or hereafter situated on the Mortgaged Property, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Mortgaged Property or the improvements thereon, or in connection with any construction

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thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("Improvements");

**TOGETHER WITH** all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Mortgaged Property, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

**TOGETHER WITH** all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in Code, defined below), security deposits, impounds, reserves, tax refunds and other rights to monies from the Mortgaged Property and/or the businesses and operations conducted by Mortgagor thereon, to be applied against the Indebtedness (hereinafter defined); provided, however, that Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

**TOGETHER WITH** all interest of Mortgagor in all leases now or hereafter on the Mortgaged Property, whether written or oral, together with all security therefore and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

**TOGETHER WITH** all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Mortgaged Property or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to the Mortgaged Property or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Mortgaged Property or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the revised Uniform Commercial Code of the State of Illinois in effect from time to time ("Code")) this instrument

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shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee, as a secured party, and Mortgagor, as debtor, all in accordance with the Code;

**TOGETHER WITH** all of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Mortgaged Property, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Mortgaged Property; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Mortgaged Property; and (iv) all choses in action and causes of action relating to the Mortgaged Property;

**TOGETHER WITH** all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Mortgaged Property, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) "securities," "investment property," "financial assets," and "securities entitlements" (each as defined in the Code); and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Mortgaged Property; and

**TOGETHER WITH** all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Mortgaged Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Mortgaged Property or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof.

**TO HAVE AND TO HOLD** the Mortgaged Property, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Mortgaged Property after the occurrence of any Event of Default (hereinafter defined); Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois to the extent applicable.

## I. MORTGAGOR REPRESENTATIONS AND COVENANTS

1.1 Mortgagor represents to and covenants with Mortgagee that Mortgagor holds fee simple title to the Mortgaged Property, free and clear of any and all liens and encumbrances (except for taxes not yet due or payable and such other encumbrances of record which do not

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interfere with the intended use of the Mortgaged Property) and Mortgagor has the power and authority to mortgage the Mortgaged Property.

1.2 During the term of the loan securing the Indebtedness (the "Loan"), Mortgagor will not sell, transfer or assign any portion of the Mortgaged Property without the prior written consent of the Mortgagee. Notwithstanding the foregoing, Mortgagor may sell, transfer or assign any Lease or the Mortgaged Property, or Mortgagor's interests therein, to any entity wholly owned by the same individual(s) and/or entity(s), as the case may be, and in the same percentages, that comprise the ownership of Mortgagor; provided, however, that Mortgagor and any such transferee entity execute any and all documents requested by Mortgagee in connection with such transfer including, but not limited to, an assignment and assumption of the Loan Documents and/or Other Documents, as hereinafter defined.

1.3 Mortgagor shall maintain or cause to be maintained the Mortgaged Property in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Mortgagor shall refrain from, and shall not permit the commission of waste in or about the Mortgaged Property. Mortgagor covenants and agrees that in the ownership, operation and management of the Mortgaged Property, Mortgagor will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions. Mortgagee shall have the right at any time, and from time to time, during normal business hours (and after reasonable prior notice to Mortgagor) to enter the Mortgaged Property for the purpose of inspecting the same.

## II. INSURANCE

2.1 Mortgagor shall at all times keep or cause to be kept the Mortgaged Property, as to Mortgagor's interest therein, including all buildings, improvements, fixtures and articles or personal property now or hereafter situated on the Mortgaged Property insured against loss or damage by fire and such other hazards in such amounts as may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Mortgaged Property; with inflation guard endorsement; (b) if there are tenants under leases at the Mortgaged Property, rent or business loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Mortgaged Property shall contain a boiler and sprinkler system, respectively; (d) if the Mortgaged Property is located in a flood hazard district, flood insurance whenever in the reasonable opinion of the Mortgagee such protection is necessary and available; and (e) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain or cause its Tenants (if any) to maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Mortgaged Property and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require, but in no event less than One Million and 00/100 Dollars (\$1,000,000.00). All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgage clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including



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a provision requiring the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days prior written notice to Mortgagee. Mortgagor shall deliver all policies or certificates, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies or certificates not less than thirty (30) days prior to their respective dates of expiration.

2.2 Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee.

2.3 In the event of loss, Mortgagor shall give prompt notice thereof to Mortgagee, who, if such loss exceeds the lesser of fifteen percent (15%) of the Indebtedness ("Threshold") shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then Mortgagee, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Mortgagee determines that the work required to complete the repair or restoration of the Mortgaged Property necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Mortgagee shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. Mortgagee may, but need not, have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this paragraph, after the payment of all of Mortgagee's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Indebtedness to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Section 2.4 below; provided, however, that Mortgagee hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of Section 2.4 below, if (i) Mortgagee has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (ii) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists. If insurance proceeds are made available to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall repair, restore or rebuild or shall cause the repair, restoration or rebuilding of the damaged or destroyed portion of the Mortgaged Property so that the condition and value of the Mortgaged Property are substantially the same as the condition and value of the Mortgaged Property prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

2.4 If insurance proceeds are made available by Mortgagee to Mortgagor, Mortgagor shall comply with the following conditions:

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and

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specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld.

(b) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted in Section 2.3 above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be satisfied as to the following:

(i) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(ii) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and any permitted title exceptions (the "Permitted Exceptions") or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

(iii) prior to each disbursement of any such proceeds, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(c) If Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Mortgagor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

2.5 Notwithstanding anything contained in this Article II to the contrary, Mortgagee agrees that the insurance proceeds may, at the election of Mortgagor, be applied as provided in Section 2.3 hereof, if and so long as the following conditions are satisfied: (i) there is not then an Event of Default by Mortgagor under this Mortgage, the Note or any other loan documents evidencing the loan or Mortgagor's indebtedness to Mortgagee (the "Other Loan Documents"), (ii) no fact, circumstance, event or condition has occurred which might become an Event of Default under this Mortgage, the Note or the Other Loan Documents, (iii) the proceeds of insurance together with funds of Mortgagor on deposit with the Mortgagee are sufficient in Mortgagee's reasonable judgment to fully repair and restore the Mortgaged Property so damaged to its condition immediately prior to the time of such casualty, (iv) the Mortgaged Property may legally be restored to the

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condition and use existing immediately prior to such casualty, and (v) any tenant of the Mortgaged Property has not terminated its Lease.

## III. PAYMENT OF TAXES AND ASSESSMENTS

3.1 Mortgagor or its tenants shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, if any, water charges, sewer service charges, and all other liens or charges levied or assessed against the Mortgaged Property of any nature whatsoever when due. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. With respect to any tax or assessment which Mortgagor may desire to contest, Mortgagor shall pay such tax or assessment in full under protest or post a bond, title indemnity or other security reasonably acceptable to Mortgagee in order to prevent a default under this Mortgage on account thereof.

## IV. SECURITY AGREEMENT

Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by the Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the Other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto.

4.1 Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Other Loan Documents.

4.2 The Collateral is to be used by Mortgagor solely for business purposes.

4.3 The Collateral will be kept at the Mortgaged Property and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Mortgaged Property but will not be affixed to any other Mortgaged Property.

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4.4 The only persons having any interest in the Mortgaged Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

4.5 No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code as may be in effect from time to time, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the revised Code as may be in effect from time to time regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

4.6 Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefore, with judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to the Mortgaged Property, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption, if any, in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Mortgaged Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee, which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) business days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of



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reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, via hand delivery or overnight carrier to the address of Mortgagor hereinafter set forth at least ten (10) business days before the time of the sale or disposition. Mortgagee may buy at any public sale. Any such sale may be held in conjunction with any foreclosure sale of the Mortgaged Property. If Mortgagee so elects, the Mortgaged Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

4.7 The terms and provisions contained in this Article IV, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

4.8 This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Mortgaged Property is located.

4.9 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover the Lease as well as all other Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof as well as any amendments to or replacement of said leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

4.10 Mortgagor hereby represents and warrants to Mortgagee that:

- (a) Mortgagor is the record owner of the Collateral;
- (b) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage, and

4.11 Mortgagor agrees that:

(a) Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

(b) Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral, if any, consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(c) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without giving the Mortgagee at least 30 days prior written notice in each instance.

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4.12 The parties agree that all references to the Uniform Commercial Code paragraphs and sections shall apply to respective provisions of the Illinois Code.

## V. PROTECTION OF MORTGAGEE'S SECURITY

If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Mortgaged Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Article III, above, or to protect the Mortgaged Property or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the Other Loan Documents, or the Mortgaged Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the Other Loan Documents or the Mortgaged Property, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Article V shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

## VI. REIMBURSEMENT FOR MORTGAGEE'S LEGAL EXPENSES

In the event that Mortgagee is made a party to any suit or proceedings by reason of the interest of Mortgagee in the Mortgaged Property, Mortgagor shall reimburse Mortgagee for all costs and expenses, including reasonable attorney's fees, incurred by Mortgagee in connection

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therewith, whether or not said proceeding or suit ever goes to trial. All amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand with interest thereon at the rate applicable under the Note from the date of such expenditure.

## VII. CONDEMNATION

If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefore in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all expenses, including reasonable costs and attorney's fees, to the restoration or repair of the property damaged, if the property can be restored or repaired to constitute a complete architectural unit. In the event the said property cannot be restored or repaired to constitute a complete architectural unit, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable.

## VIII. EVENTS OF DEFAULT

For purposes of this Mortgage, each "Event of Default" more specifically set forth in the Note, shall also constitute an "Event of Default" hereunder.

## IX. LENDER'S DETERMINATION OF FACTS

Mortgagee will at all times be free independently to establish to its satisfaction and in its absolute discretion the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition, warranty or covenant of this Mortgage or in any other Loan Documents.

## X. ACCELERATION AND DEFAULT RATE

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Indebtedness hereby secured to be immediately due and payable without notice to the Mortgagor. Then, at any time thereafter, at the sole option of the Mortgagee, the principal balance and accrued interest on the Note shall become immediately due and payable, and any other sums secured hereby shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest, after acceleration, at the Default Rate, which shall mean the maximum per annum rate then in effect under the Note plus, during the continuance of an Event of Default, additional post default interest of four percent (4%) per annum until the

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Indebtedness is paid in full; provided, however, that the provisions of this Section 10 shall be in addition to and not in limitation of the remedies available to Mortgagee upon the occurrence of an Event of Default under the Note, the Mortgage or the Other Loan Documents.

## XI. RIGHTS, POWERS AND REMEDIES OF MORTGAGEE

11.1 When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with Illinois Code Mortgage Foreclosure Act (the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

11.2 In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this Section 11.2 and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

11.3 The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Mortgagee may determine in its sole and absolute discretion.

11.4 Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Mortgaged Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times



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when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

11.5 At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Mortgaged Property. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Mortgaged Property, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as Mortgagee deems are necessary;
- (e) insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (f) receive all of such avails, rents, issues and profits.

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11.6 Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Mortgaged Property; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

11.7 If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

11.8 If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 11.4 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

11.9 Without limiting the generality of the foregoing, all expenses incurred by Mortgagee of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Article XI of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

11.10 Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

11.11 Mortgagee shall release this Mortgage and the lien hereof by proper instrument

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upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

## XII. BUSINESS PURPOSE

Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for business purposes only and that the principal obligation constitutes a business loan, which comes within the purview of applicable law.

## XIII. WAIVER OF REDEMPTION

13.1 Notwithstanding any statute, law or rule to the contrary, Mortgagor shall exercise any available right of redemption or reinstatement within twenty-one (21) days following notice of foreclosure of the Loan by Mortgagee, and if Mortgagor fails to do so within said twenty-one (21) day time period, Mortgagor shall be deemed to have waived all rights of redemption and/or equity of redemption which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, Mortgagee or any other entity, except decree or judgment creditors of Mortgagor who may acquire any interest in or title to the Mortgaged Property or the trust estate subsequent to the date hereof.

13.2 Mortgagor hereby waives the benefit of all appraisal, valuation, stay, or extension laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein.

13.3 Mortgagor hereby waives the benefit of any rights or benefits provided by the Homestead Exemption laws, if any, now or hereafter in force.

## XIV. MORTGAGEE'S RIGHT OF INSPECTION

Mortgagee and its representatives shall have the right to inspect the Mortgaged Property and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

## XV. FURTHER INSTRUMENTS

Upon request of Mortgagee, Mortgagor will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

## XVI. NOTICES

Except as otherwise provided herein, any notice required hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered either when served

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personally, by nationally recognized overnight courier or three (3) days after deposit in the United States mails with proper postage prepaid, and addressed to the party to be notified

## XVII. COVENANTS RUN WITH LAND

This Mortgage and all provisions hereof shall run with the Mortgaged Property and shall be binding upon and enforceable against Mortgagor, its partners, principals and affiliates, and their permitted successors, grantees and assigns, any subsequent owner or owners of the Mortgaged Property who acquire the Mortgaged Property subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

## XVIII. REMEDIES CUMULATIVE

The rights and remedies herein provided are cumulative and Mortgagee may recover judgment on the Note, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security or any right or remedy afforded by this Mortgage; and no enumeration of special rights or powers by any provision of this Mortgage shall be construed to limit any grant of general rights or powers, or to take away or limit any and all rights granted to or vested in the Mortgagee by virtue of the laws of Illinois as the case may be.

## XIX. SUCCESSORS AND ASSIGNS

All of the covenants and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the Managers, Members, affiliates, successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming through or under them. Any reference herein to Mortgagee shall include the successors and assigns of Mortgagee. The Mortgagor shall not assign its interest hereunder without the prior written consent of the Mortgagee.

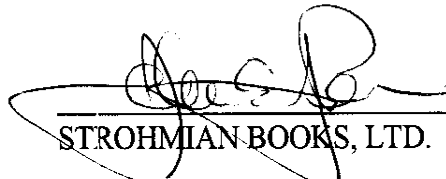
**[SIGNATURE PAGE FOLLOWS]**



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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed, the day and year first above written.

MORTGAGOR:

  
STROHMIAN BOOKS, LTD.

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## EXHIBIT 1: PROPERTY LEGAL DESCRIPTION

UNIT 715 IN THE PRINTER'S ROW CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

LOTS 3, 4, 9, 10, 15 AND 16 (EXCEPT FROM SAID LOTS THAT PART TAKEN AND USED FOR DEARBORN STREET AND PLYMOUTH COURT) IN WALLACE AND OTHER'S SUBDIVISION OF BLOCK 135 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 25396708, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

P/W: 17-116-407-021-1086

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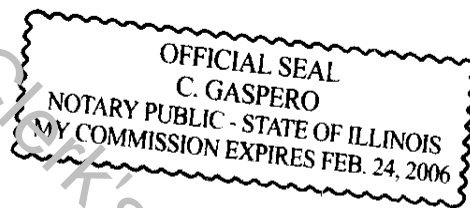
## ACKNOWLEDGEMENT

State of Illinois        )  
                                   )        SS.  
 County of Cook        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that John Lapine, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, as aforesaid, for the uses and purposes therein set forth.

Given under my hand and official seal this 21 day of JULY, 2003.

  
 \_\_\_\_\_  
 Notary Public



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