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87499523

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS  
AND  
SECURITY AGREEMENT

Dated: September 1, 1987

in the amount of

\$5,000,000.00

(the "Mortgage Amount")

From

ASSOCIATED RETAIL STORES, INC.  
A New York Corporation

having an address at:  
601 West 26th Street  
New York, New York 10001

(the "Mortgagor")

GLENFED FINANCIAL CORPORATION

having an office at:  
104 Carnegie Center  
Princeton, New Jersey 08540

(the "Mortgagee")

LOCATION OF PREMISES:

Street Address : 3434 South Halstead Avenue  
City of : Chicago  
County of : Cook  
State of : Illinois  
Block : 4  
Lot : 49 & 50

After recording, please return to:

DREYER AND TRAUB

101 Park Avenue

New York, New York 10178

Attention: Klaus W. Geipel, Esq.

This instrument was prepared by the above named attorney.

BOX 334

87-00462

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## Recital

The Mortgagor is the legal or equitable (or both) owner of the Premises described in Schedule A hereto. The Mortgagor is indebted to the Mortgagee for the Mortgage Amount pursuant to a loan agreement (the "Loan Agreement"), dated the date hereof, between them, such borrowing being evidenced by one or more notes (collectively, the "Note") of the Mortgagor, dated the date hereof, obligating it to pay the Mortgage Amount. To secure payment of the Note, the Mortgagor has duly authorized the execution and delivery of this Mortgage.

## Certain Definitions

The Mortgagor and the Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and plural forms of such terms.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery, articles of personal property, and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon and used in any way in connection with the maintenance or operation of the Improvements specifically excluding inventory.

"Events of Default" means the events and circumstances described as such in Section 2.01 hereof.

"Guarantor" means the party or the parties who have guaranteed all or any portion of the Mortgagor's obligations to the Mortgagee.

"Improvements" means all structures or buildings, and replacements thereof, now or at any time hereafter located upon the Premises, including, but not limited to, all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of such structures or buildings.

"Intangibles" means all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code of the jurisdiction wherein the Premises are located) in any way relating to the Premises or the Improvements and in which the Mortgagor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises, or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Mortgagor insuring the Mortgaged Property, or any part thereof, and all right, title and interest of the Mortgagor thereunder.

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07/28/87

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"Involuntary Rate" means the rate of interest per annum provided in the Note plus four percent (4%) but in no event to exceed the maximum rate of interest allowed to be charged under applicable law.

"Premises" means the premises described in Schedule A hereto, including all of the air space, easements, rights, privileges, royalties and appurtenances thereunto belonging or in anywise appurtenant, and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in the streets and ways adjacent thereto, either at law or in equity, in possession or expectancy, now or at any time hereafter acquired.

The defined terms used in this Mortgage which are not defined above have the meanings set forth in this Mortgage.

## Granting Clause

NOW, THEREFORE, the Mortgagor, in consideration of the premises and in order to secure payment of both the principal of, and the interest and any other sums payable on, the Note or this Mortgage and the performance and observance of all the provisions of this Mortgage and of the Note, hereby gives, grants, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, creates a security interest in, pledges, sets over and confirms unto the Mortgagee all of its estate, right, title and interest in, to and under any and all of the following described property (the "Mortgaged Property"), whether now owned or held or hereafter acquired:

- (a) the Premises;
- (b) the Improvements;
- (c) the Chattels;
- (d) the Intangibles;
- (e) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, proceeds of insurance and condemnation awards and all rights of the Mortgagor to refunds of real estate taxes and assessments; and
- (f) all leases of the Premises now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the

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expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right, upon the happening of an Event of Default, to receive and collect the rents thereunder.

TO HAVE AND TO HOLD unto the Mortgagee, its successors and assigns, forever.

Property of Cook County Clerk's Office

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## ARTICLE I

### Particular Covenants of the Mortgagor

The Mortgagor covenants and agrees as follows:

Section 1.01. The Mortgagor warrants that it has a good and marketable title to an indefeasible fee estate in the Premises subject to no lien, claim, charge or encumbrance, except such as are listed as exceptions to title in the title policy insuring the lien of this Mortgage; that it will own the Chattels free and clear of liens and claims; and that this Mortgage is and will remain a legal, valid, binding and enforceable first lien on the Mortgaged Property, subject only to the exceptions referred to above. The Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein done or intended hereafter to be done. The Mortgagor will preserve such title, and will forever warrant and defend the same to the Mortgagee and will forever warrant and defend the priority and validity of the lien and security interest of this Mortgage against the claims of all persons and parties whomsoever.

Section 1.02. The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all such further acts, instruments and assurances as the Mortgagee shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter to be conveyed or assigned, or which the Mortgagor may now or hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of this Mortgage, or for filing, registering or recording this Mortgage and, on demand, will execute and deliver, and hereby authorizes the Mortgagee to execute and file in the name of the Mortgagor to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments to evidence more effectively the lien and security interest hereof upon the Mortgaged Property, or any part thereof.

Section 1.03. (a) The Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage and any security instrument creating or evidencing the lien or security interest hereof upon the Chattels or the Intangibles and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law to publish notice of and fully to protect the lien and security interest hereof upon, and the interest of the Mortgagee in, the Mortgaged Property.

(b) The Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or the Intangibles, and any instrument of further assurance, and all

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federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

Section 1.04. The Mortgagor will punctually pay the principal and interest and all other sums to become due in respect of the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

Section 1.05. The Mortgagor will, if other than a natural person, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation, partnership, trust or other entity under the laws of the jurisdiction of its formation or incorporation and will comply, subject to Mortgagor's right to contest pursuant to Section 1.07(c), with all regulations, rules, ordinances, laws, statutes, orders and decrees of any governmental authority applicable to it or to the Mortgaged Property, or any part thereof.

Section 1.06. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, the Mortgagor, or constructed, assembled or placed by the Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will promptly execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

Section 1.07. (a) The Mortgagor, from time to time and prior to the time any interest or penalties for late payment thereof shall become due and payable, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against it or the Mortgaged Property or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property, or arising in respect of the occupancy, use or possession thereof. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee receipts evidencing the payment of all such

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07/28/87

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taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against it or the Mortgaged Property, or any part thereof, or the revenues, rents, issues, income or profits thereof.

The Mortgagee may, at its option, following any Event of Default or any event which, with notice, passage of time, or both, would constitute an Event of Default, require the deposit by the Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this clause 'a' when they become due. The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole discretion. Such amounts shall be held by the Mortgagee in an account of Mortgagee's selection and applied to the payment of the obligations in respect of which such amounts were deposited or, at the option of the Mortgagee, to the payment of such obligations in such order or priority as the Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one (1) month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, within ten (10) days after demand by the Mortgagee, the Mortgagor shall deposit the amount of the deficiency with the Mortgagee. Nothing herein shall be deemed to affect any right or remedy of the Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Involuntary Rate, to the indebtedness secured hereby.

(b) The Mortgagor will pay, from time to time, when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others, which, if unpaid, might result in, or permit the creation of, a lien or security interest on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom, and in general will do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of the Mortgagor and without expense to the Mortgagee.

(c) Nothing in this Section shall require payment or discharge of any obligation imposed upon the Mortgagor by this Section so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property, or any part thereof, to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation hereunder and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided further that if, at any time, payment of



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07/28/87

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any obligation imposed upon the Mortgagor by clause (a) above shall become necessary to prevent the delivery of a tax deed, or its equivalent, conveying the Mortgaged Property, or any portion thereof, because of non-payment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or its equivalent.

Section 1.08. The Mortgagor will pay any taxes, except income or franchise taxes, imposed on the Mortgagee by reason of its ownership of the Note or this Mortgage.

Section 1.09. (a) The Mortgagor shall keep the Improvements and Chattels insured against loss by fire, casualty and such other hazards as may be specified by the Mortgagee for the benefit of the Mortgagee. Such insurance shall be written in forms, amounts, and by companies reasonably satisfactory to the Mortgagee, and losses thereunder shall be payable to the Mortgagee pursuant to a standard first mortgage endorsement substantially equivalent to the New York standard mortgage endorsement. The policy or policies of such insurance shall be delivered to the Mortgagee. The Mortgagor shall give the Mortgagee prompt notice of any loss covered by such insurance and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss in excess of \$25,000.00. Any moneys received as payment for any loss under any such insurance shall be applied in the manner set forth in Section 3.13 herein.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.09, unless the Mortgagee is included thereon as a named insured with loss payable to the Mortgagee under a standard mortgage endorsement of the character above described. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies of such insurance.

(c) If the Premises are located in an area which has been identified by the Secretary of the United States Department of Housing and Urban Development as a flood hazard area, the Mortgagor will keep the Improvements covered by flood insurance in an amount at least equal to the full amount of the Note or the maximum limit of coverage available for the Premises under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as the foregoing may have been or may hereafter be amended or modified (and any successor act thereto), whichever is less.

(d) Notwithstanding anything to the contrary which is contained herein or in provisions of applicable law, the proceeds of insurance policies coming into the possession of the Mortgagee shall not be deemed trust funds.



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Section 1.10. If the Mortgagor shall fail to perform any of the covenants contained in Section 1.01, 1.03, 1.07, 1.08, 1.09 or 1.12, the Mortgagee may make advances to perform the same in its behalf, and all sums so advanced shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor will repay on demand all sums so advanced on its behalf together with interest at the Involuntary Rate. The provisions of this Section shall not prevent any default thereon by the Mortgagor in the observance or performance of any covenant contained in Section 1.01, 1.03, 1.07, 1.08, 1.09 or 1.12, from constituting an Event of Default.

Section 1.11. (a) The Mortgagor shall keep adequate records and books of account in accordance with generally accepted accounting principles and will permit the Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Premises and examine its records and books of account and to discuss its affairs, operations, condition, finances and accounts with the officers of the Mortgagor, at such reasonable times and during regular business hours as may be requested by the Mortgagee.

(b) The Mortgagor and the Guarantor will deliver to the Mortgagee within ninety (90) days after the close of their respective fiscal years a balance sheet and a statement of profit, loss and cash flow setting forth in each case, in comparative form, figures for the preceding year. The Mortgagor also will deliver to the Mortgagee within thirty (30) days after the end of each calendar month its unaudited financial statement showing, among other things, expenses incurred and income received. Throughout the term of this Mortgage, the Mortgagor and the Guarantor, with reasonable promptness, will deliver to the Mortgagee such other information with respect to the Mortgagor or the Guarantor as the Mortgagee may reasonably request from time to time. All financial statements of the Mortgagor or the Guarantor shall be prepared in accordance with generally accepted accounting principles, shall be delivered in duplicate, and shall be accompanied by the certificate of a principal financial or accounting officer of the Mortgagor, dated within five (5) days of the delivery of such statements to the Mortgagee, stating that he knows of no Event of Default to the best of his knowledge, nor of any event which, with notice, or lapse of time, or both, would constitute an Event of Default, which has occurred and is continuing, or, if any such event or Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Mortgagor has taken or proposes to take with respect thereto, and, except as otherwise specified, stating that the Mortgagor has fulfilled all its obligations under this Mortgage which are required to be fulfilled on or prior to the date of such certificate.

(c) The Mortgagor, within three (3) days upon request in person or within ten (10) days upon request by mail, will furnish a written statement, duly acknowledged, of the amount due whether for principal or interest on this Mortgage and whether any offsets, counterclaims, deductions or defenses exist against the Mortgagee, or the indebtedness secured hereby.

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07/28/87

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Section 1.12. The Mortgagor will not commit any waste on the Mortgaged Property, or make any change in the use of the Mortgaged Property which will in any way increase any ordinary fire or other hazard arising out of construction or operation. The Mortgagor will, at all times, maintain the Improvements and Chattels in good operating order and condition and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end. The Improvements shall not be demolished or substantially altered, nor shall any Chattels be removed, without the prior written consent of the Mortgagee, except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the removed Chattels.

Section 1.13. (a) The Mortgagor, immediately upon obtaining knowledge of the institution or pending institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee thereof. The Mortgagee may participate in any such proceedings and may be represented therein by counsel of its selection. The Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit or facilitate such participation. In the event of such condemnation proceedings, any award or compensation payable is hereby assigned to and shall be paid to the Mortgagee. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. The proceeds of any award or compensation so received shall, at the option of the Mortgagee, either be applied toward prepayment of the Note at the rate of interest provided therein regardless of the rate of interest payable on the award by the condemning authority, or shall be paid over to the Mortgagor from time to time for restoration of the Improvements.

(b) Notwithstanding the foregoing, the Mortgagee will allow use of proceeds of minor condemnation awards (not to exceed \$25,000.00) for the repair, restoration and rebuilding of the property taken, provided the Mortgagee determines (i) the amount of such proceeds shall be sufficient to pay in full all costs of such repair, restoration and rebuilding (or if the Mortgagor deposited with the Mortgagee an amount equal to the difference between the estimated cost of such repair, restoration and rebuilding and the condemnation proceeds), (ii) that such restoration, repair and rebuilding can be completed on or prior to the maturity date of the Note, (iii) there is no taking of any portion of the Improvements, (iv) no lessees or others who are in actual occupancy of the Improvements are dispossessed (permanently or temporarily) or become entitled to rent abatements on account of such condemnation, (v) the value and utility of the Mortgaged Property, or any part thereof, is not materially impaired and (vi) the Premises may be used for purposes substantially similar to those for which it had been used prior to such condemnation. Such proceeds shall be subject to Section 3.13, provided that references therein to insurance proceeds shall be deemed to refer to condemnation proceeds.

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Section 1.14. (a) The Mortgagor will not (i) execute an assignment of the rents, or any part thereof, from the Premises without the Mortgagee's prior written consent, (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Premises or of any part thereof, now existing or hereafter to be made, having an unexpired term of one (1) year or more, provided, however, that any lease may be cancelled if promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the reasonable judgment of the Mortgagee, at least equivalent to that of the lessee whose lease was cancelled, on substantially the same terms as the terminated or cancelled lease, (iii) modify any such lease so as to shorten the unexpired term thereof or so as to decrease the amount of the rents payable thereunder, (iv) accept prepayments of any installments of rents to become due under such leases, except prepayments in the nature of security for the performance of the lessees thereunder or (v) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage.

(b) The Mortgagor will not execute any lease of all or a substantial portion of the Premises except for actual occupancy by the lessee thereunder and will at all times promptly and faithfully perform or cause to be performed all of the covenants, conditions and agreements contained in all leases of the Premises on the part of the lessor thereunder to be kept and performed and will at all times do all things reasonably necessary to compel performance by the lessee under each lease of all obligations, covenants and agreements by such lessee to be performed thereunder. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, the Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by the Mortgagee.

(c) Each lease of the Premises, or any part thereof, shall provide that, in the event of the enforcement by the Mortgagee of the remedies provided for by law or by this Mortgage, the lessee thereunder will, upon request of any person succeeding to the interest of the Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that such successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by such lessee of its obligations under such lease, or (ii) any amendment or modification of the lease made without the consent of the Mortgagee or such successor in interest. Each lease shall also provide that, upon request by such successor in interest such lessee shall execute and deliver an instrument or instruments confirming such attornment.

(d) The Mortgagor shall furnish to the Mortgagee, within thirty (30) days after a request by the Mortgagee to do so, a written statement containing the names of all lessees of the Premises, the terms of their respective leases, the space occupied and the rentals payable thereunder.

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Section 1.15. Subject to the conditions specified in the next paragraph of this Section, the Mortgagee will, upon request of the Mortgagor, execute non-disturbance and attornment agreements, in the Mortgagee's then standard form, with lessees of the Premises which shall provide that in the event the Mortgagee or any purchaser at foreclosure shall succeed to the Mortgagor's interest in the Premises, the leases of such lessees will remain in full force and effect and be binding upon the Mortgagee or such purchaser and such lessee as though each was the original party thereto.

The Mortgagee's obligation to execute such agreements shall be subject to the following conditions: (i) the credit of the lessee and the terms of the lease shall be satisfactory to the Mortgagee; (ii) the Mortgagee shall have received and approved the standard form of lease to be used in connection with the leasing of the Premises; (iii) upon each request for such an agreement the Mortgagee shall receive a photocopy of the executed lease on which all changes from the standard form shall be indicated by appropriate markings, to be certified to be true and complete by the responsible officer of the Mortgagor or by its counsel; (iv) the Mortgagee shall receive a letter, signed by the Mortgagor and addressed to the lessee, to be forwarded to the lessee by the Mortgagee, giving notice of the assignment of each lease provided for herein; and (v) the Mortgagee shall have received the approval of any lender to which this Mortgage is to be assigned of the execution and delivery of such an agreement.

Section 1.16. The Mortgagor will comply with the terms, covenants and provisions of the Loan Agreement, all of which are incorporated by reference and made a part hereof, and permit no failures of observance or performance to occur thereunder.

(End of Article I)

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## ARTICLE II

### Events of Default and Remedies

Section 2.01. If one or more of the following Events of Default shall happen, that is to say:

(a) if (i) default shall be made in the payment of any principal, interest or other sums due under the Note in any such case, when and as the same shall become due and payable, whether at maturity or by acceleration or as part of any payment or otherwise (excluding prepayment), in each case, as in the Note and this Mortgage provided and such default shall have continued for ten (10) days or (ii) default shall be made in the payment of any tax required by Section 1.07 to be paid, and such default shall have continued for twenty (20) days; or

(b) if default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in Sections 1.01, 1.03, 1.08 or 1.09 and such default shall have continued for twenty (20) days after notice thereof shall have been given to the Mortgagor by the Mortgagee. For the purposes of this clause, if any representation or warranty made in Section 1.01 shall be incorrect it shall be deemed to be a default; or

(c) if default shall be made in the due observance or performance of any other covenant, condition or agreement in the Note, this Mortgage, the Loan Agreement, any guaranty executed by Guarantor, or in any other document executed or delivered to the Mortgagee in connection with the loan secured hereby and such default shall have continued for thirty (30) days after notice thereof shall have been given to the Mortgagor by the Mortgagee, or, in the case of such other documents, such shorter grace period, if any, as may be provided for therein; provided, however, if in the Mortgagee's reasonably exercised sole opinion such default is not capable of being cured within the period referred to above and is not curable by the payment of money, the Mortgagor shall have such additional amount of time as the Mortgagee deems reasonably necessary so long as (i) the Mortgagor immediately proceeds to cure such default upon receipt of notice from the Mortgagee, (ii) thereafter, the Mortgagor diligently continues to cure such default so as to accomplish the same within the shortest amount of time reasonably possible, (iii) such additional amount of time to cure does not impair any rights or remedies of the Mortgagee or the value and security of this Mortgage, or both, and (iv) the Mortgagor promptly provides to the Mortgagee such documents, instruments, records and papers relating to curing such default as the Mortgagee may reasonably request; or

(d) if by order of a court of competent jurisdiction, any trustee, receiver or liquidator of the Mortgaged Property, or any part thereof, or of the Mortgagor shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after the date of such appointment; or



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(e) if the Mortgagor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by any receiver, liquidator, assignee, trustee, custodian, or sequestrator (or other similar official) of the Mortgagor or of any substantial part of its property, or if the Mortgagor shall make any general assignment for the benefit of creditors, or if the Mortgagor shall fail generally to pay its debts as such debts become due, or if the Mortgagor shall take any action in furtherance of any of the foregoing; or

(f) if any of the creditors of the Mortgagor shall commence against the Mortgagor an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect and if such case shall not be discharged or dismissed within sixty (60) days after the date on which such case was commenced, or if the Mortgagor shall be adjudicated an insolvent, or file a petition under any other reorganization, arrangement, composition, readjustment, liquidation, or dissolution provision under any federal or state law, statute, rule, regulation or code now or hereafter in effect, or file an answer admitting to any of the material allegations of any petition filed against it in any action or proceeding described in clauses (d) through (f) of this Section 2.01; or

(g) if final judgment for the payment of money shall be rendered against the Mortgagor and the Mortgagor shall not discharge the same or cause it to be discharged within sixty (60) days from the date of entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal; or

(h) if any of the events enumerated in clauses (d) through (g) of this Section 2.01 shall happen to any Guarantor or any of its property; or

(i) if it shall be illegal for the Mortgagor to pay any tax referred to in Section 1.08 hereof or if the payment of such tax by the Mortgagor would result in the violation of applicable usury laws; or

(j) if there should occur a default which is not cured within the applicable grace period, if any, under any other mortgage or deed of trust of all or part of the Premises regardless of whether any such other mortgage or deed of trust is prior or subordinate to this Mortgage; it being further agreed by the Mortgagor that an Event of Default hereunder shall constitute an Event of Default under any such other mortgage or deed of trust held by the Mortgagee; or

(k) subject to any rights of the Mortgagor provided under the Loan Agreement, if the Mortgagor shall transfer, or agree to transfer, in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Mortgaged Property, or any interest therein (including any air or



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development rights) without, in any such case, the prior written consent of the Mortgagee. The Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Mortgage and any other documents which evidence or secure the loan secured hereby, and any such transferee shall assume all of the Mortgagor's obligations hereunder and thereunder and agree to be bound by all provisions and perform all obligations contained herein and therein. Consent to one such transfer shall not be deemed to be a waiver of the right to require consent to future or successive transfers. As used herein "transfer" shall include, without limitation, any sale, assignment, lease or conveyance except leases for occupancy subordinate to this Mortgage and to all advances made and to be made hereunder or, in the event the Mortgagor or Guarantor (or a general partner or co-venturer of either of them) is a partnership, joint venture, trust or closely-held corporation, the sale, conveyance, transfer or other disposition of more than ten percent (10%) of any class of the issued and outstanding capital stock of such closely-held corporation or of the beneficial interest of such partnership, venture or trust, or a change of any general partner or any joint venturer, either voluntarily, involuntarily, or otherwise, or in the event the Mortgagor or Guarantor (or a general partner or co-venturer of either of them) is a publicly-held corporation, the sale, conveyance, transfer or other disposition of more than ten percent (10%) of the stock-holdings of any of the Major Shareholders. For purposes of this clause (k), "Major Shareholders" shall mean those five individuals or entities that own the greatest number of shares of each class of stock issued and outstanding of the corporation. In the event the Mortgagor or Guarantor is a limited partnership, and so long as a limited partner has contributed to (or remains personally liable for) the partnership capital contributions (present and future) required of such limited partner by the limited partnership agreement, such limited partner may sell, convey, devise, transfer or dispose of all or a part of his limited partnership interest to his spouse, children, grandchildren or a family trust in which his spouse, children or grandchildren are sole beneficiaries; or

(l) subject to any rights of the Mortgagor provided under the Loan Agreement, if the Mortgagor shall encumber, or agree to encumber, in any manner, either voluntarily or involuntarily, by operation of law or otherwise, all or any portion of the Mortgaged Property, or any interest therein (including any air or development rights) without, in any such case, the prior written consent of the Mortgagee. The Mortgagee may grant or deny such consent in its sole discretion and, if consent should be given, any such encumbrance shall be subject to this Mortgage and any other documents which evidence or secure the loan secured hereby. Consent to one such encumbrance shall not be deemed to be a waiver of the right to require consent to future or successive encumbrances. As used herein "encumber" shall include, without limitation, the placing or permitting the placing of any mortgage, deed of trust, assignment of rents or other security device; or

(m) if an Event of Default shall occur under any other mortgage or agreement from the Mortgagor or any affiliate, parent, subsidiary or related entity of the Mortgagor to the Mortgagee;

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## THEN AND IN EVERY SUCH CASE:

I. During the continuance of any such Event of Default, the Mortgagee by notice given to the Mortgagor, may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration by the Mortgagee the principal of the Note and such accrued and unpaid interest shall become and be immediately thereupon due and payable, anything in the Note or in this Mortgage or any other instruments or documents executed in connection herewith or therewith to the contrary notwithstanding.

II. During the continuance of any such Event of Default, the Mortgagee personally, or by its agents or attorneys, may enter into and upon the Premises, and each and every part thereof, and is hereby given a right and license and appointed the Mortgagor's attorney-in-fact to do so, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, the Mortgagee, at the expense of the Mortgaged Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid; and likewise, from time to time, at the expense of the Mortgaged Property, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property, and every part thereof, all of which shall for all purposes constitute property of the Mortgagor; and in furtherance of such right the Mortgagee may collect the rents payable under all leases of the Premises directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists hereunder accompanied by a demand on such lessee for the payment to the Mortgagee of all rents due and to become due under its lease, and the Mortgagor FOR THE BENEFIT OF THE MORTGAGEE AND EACH SUCH LESSEE hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of the Mortgagee's statement of default and shall unequivocally be authorized to pay said rents to the Mortgagee without regard to the truth of the Mortgagee's statement of default and notwithstanding notices from the Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to the Mortgagee pursuant to such a demand shall constitute performance in full of the lessee's obligation under the lease for the payment of rents by the lessee to the Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, 15

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assessments, insurance and prior or other proper charges upon the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees engaged and employed by it and incurred by the Mortgagee in remedying such event of default the Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the principal of the Note and the interest thereon, when and as the same shall become payable, and, second, to the payment of any other sums required to be paid by the Mortgagor under this Mortgage.

III. The Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may:

(1) sell the Mortgaged Property to the extent permitted and pursuant to procedures provided by law, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; or

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

Section 2.02. (a) The Mortgagee may adjourn from time to time any sale to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Article II, the Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose the Mortgagee may execute all necessary

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instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its such attorney or such substitute shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for that purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor.

(c) In the event of any sale or sales made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire principal of, and interest on, the Note, if not previously due and payable, and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, immediately thereupon shall become due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding.

(d) The purchase money, proceeds or avails of any sale or sales made under or by virtue of this Article II, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of such sale, including reasonable compensation to the Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all reasonable expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the Involuntary Rate on all advances made by the Mortgagee and all taxes, assessments or other charges, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at the Involuntary Rate from and after the happening of any Event of Default described in clause (a) of Section 2.01 hereof from the due date of any such payment of principal until the same is paid.

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Third: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage or of the Note.

Fourth: To the payment of the surplus, if any, to whomsoever may lawfully be entitled to receive the same.

(e) Upon any sale made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Mortgaged Property, and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

Section 2.03. (a) In case an Event of Default described in clause (a) of Section 2.01 hereof shall have happened and be continuing, then, upon written demand of the Mortgagee, the Mortgagor will pay to the Mortgagee the whole amount which then shall have become due and payable on the Note, for principal or interest or both, as the case may be, and after the happening of said Event of Default will also pay to the Mortgagee interest at the Involuntary Rate on the then unpaid principal of the Note, and the sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of collection, including just and reasonable compensation to the Mortgagee, its agents, and counsel and any expenses incurred by the Mortgagee hereunder. If the Mortgagor shall fail forthwith to pay such amounts upon such demand, the Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by its counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Mortgagor and collect, out of the property of the Mortgagor wherever situated, as well as out of the Mortgaged Property, in any manner provided by law, moneys adjudged or decreed to be payable.

(b) The Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Mortgaged Property and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the debt hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Note, and to enforce payment of all other charges, payments



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and costs due under this Mortgage and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest at the Involuntary Rate. In case of the commencement of any case against the Mortgagor under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect or any proceedings for its reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises provided, however, that in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of any sale of the Mortgaged Property and the distribution from the estate of the Mortgagor.

(c) No recovery of any judgment by the Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property, or any part thereof, or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

(d) Any moneys thus collected by the Mortgagee under this Section 2.03 shall be applied by the Mortgagee in accordance with the provisions of subsection (d) of Section 2.02.

Section 2.04. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the principal of, or interest on, the Note and all other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage or of any other nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding and (b), if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Premises and of all the earnings, revenues, rents, issues, profits and income thereof. After the happening of any Event of Default and during its continuance, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the indebtedness secured hereby, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such a receiver.

Section 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any



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part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

Section 2.06. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy and each such remedy shall be cumulative, and shall be in addition to every other remedy given under this Mortgage, or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time, as often as may be deemed expedient by the Mortgagee. Nothing in this Mortgage or the Note or any other documents executed in connection herewith or therewith shall affect the obligation of the Mortgagor to pay the principal of, and interest on, the Note in the manner and at the time and place therein respectively expressed.

Section 2.07. The Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take, or insist upon any benefit of any law now or hereafter in force providing for valuation or appraisal of the Mortgaged Property prior to any sale thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold and the Mortgagor hereby expressly waives all benefit or advantage of any such law, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

Section 2.08. During the continuance of any Event of Default and after the exercise by the Mortgagee of its right to exclude the Mortgagor from all or any part of the Premises, the Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Premises, or any portion thereof that is in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Premises, to the Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

Section 2.09. Notwithstanding any provision contained in any section of this Article II to the contrary, it is understood and agreed that to the extent of any contradiction inconsistently or otherwise, it is expressly intended that the provisions of the Loan Agreement shall control.

(End of Article II)

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## ARTICLE III

### Miscellaneous

Section 3.01. If any one or more of the provisions contained in this Mortgage or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 3.02. Any notice, request or demand, document, consent or other instrument to be given, sent or furnished by any party to any other party shall be in writing and personally delivered or sent by regular U.S. First Class mail, express mail, or Federal Express (or similar type of overnight mail delivery). Notice shall be deemed received when (i) hand delivered; (ii) five (5) days after deposited in the U.S. mails, postage prepaid; or (iii) the day after deposited in a United States post office box for express mail postage prepaid or delivered to Federal Express properly addressed to Borrowers, or to the Lender, as applicable; in all cases notices should be given at the addresses stated on page one, or to such other addresses as Borrowers, or Lender may from time to time specify in writing.

Section 3.03. All of the grants, terms, conditions, provisions and covenants of this Mortgage shall run with the land, and shall apply to, bind and inure to the benefit of the successors and assigns of the Mortgagor and the successors and assigns of the Mortgagee.

Section 3.04. The enforcement of this Mortgage shall be governed, construed and interpreted in accordance with the laws of the State where the Premises are located. No provision in this Mortgage, the Note or the Loan Agreement shall require the payment or permit the collection of interest in excess of the maximum amount permitted by law in commercial mortgage loan transactions between parties of the character of the parties hereto. The Mortgagor shall not be obligated to pay any interest in excess of such maximum amount.

Section 3.05. This Mortgage and all of the terms, covenants, agreements, provisions, representations, warranties, conditions and grants contained in this Mortgage cannot be altered, amended, waived, modified or discharged orally, and no executory agreement shall be effective to alter, amend, modify, waive or discharge, in whole or in part, anything contained in this Mortgage unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

Section 3.06. The Mortgagor acknowledges that it has received a true copy of this Mortgage, without cost or expense to it.

Section 3.07. This Mortgage may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an

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original and all such counterparts shall together constitute but one and the same mortgage.

Section 3.08. The information set forth on the cover hereof is incorporated by reference in this Mortgage.

Section 3.09. The Mortgagor and the Mortgagee shall, upon their mutual agreement, to do so, execute such documents as may be necessary in order to effectuate the modification of this Mortgage, including the execution of substitute mortgages, so as to create two or more liens on the Mortgaged Property in such amounts as may be mutually agreed upon but in no event to exceed, in the aggregate, the Mortgage Amount; in such event, the Mortgagor covenants and agrees to pay the reasonable fees and expenses of the Mortgagee and its counsel in connection with any such modification.

Section 3.10. The Mortgagor recognizes that the Mortgagee may sell and transfer interests in the loan to one or more participants and that all documentation, financial statements, appraisals and other data, or copies thereof, relevant to the Mortgagor, any Guarantor or the loan, may be exhibited to and retained by any such participant or prospective participant.

Section 3.11. The Mortgagor agrees that this Mortgage also shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code in the jurisdiction wherein the Premises are situated (the "Code"), and a fixtures filing for the purposes of Article 9 of the Code, and a security interest shall attach to the Mortgaged Property for the benefit of the Mortgagee. The Mortgaged Property includes inter alia, the Chattels and the Intangibles, regardless of whether they now are held or hereafter acquired, of the Mortgagor in, to and under the Mortgaged Property. By executing and delivering this Mortgage, the Mortgagor has granted, in the same manner and with the same effect described in the granting clause hereof, to the Mortgagee, as additional security, a security interest in the Chattels and the Intangibles which are subject to the Code. If any Event of Default shall occur, the Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Code, including, but not limited to, the right to take possession of the Chattels and the Intangibles, or any part thereof, and the right to advertise and sell the Chattels and the Intangibles, or any part thereof, pursuant to and in accordance with the power of sale. The Mortgagor agrees that any notice of sale or other action intended by the Mortgagee with respect to the Chattels and the Intangibles, or any or any part thereof, shall constitute reasonable notice if it is sent to the Mortgagor not less than ten (10) days prior to any such sale or intended action. The proceeds of any such sale of the Chattels and the Intangibles, or any part thereof, shall be applied in the manner set forth in clauses First through Fourth of Section 2.02(d) of this Mortgage. This Section is intended to apply to all personal property which is now or hereafter shall become a part of the Mortgaged Property. If requested by the Mortgagee, the Mortgagor shall promptly assemble and inventory that portion of the Mortgaged Property which is deemed to be personal property to assist the Mortgagee in connection with any sale which is contemplated by this Section.

Section 3.12. The following is hereby deemed added to Section 1.09:

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(e) Notwithstanding the foregoing, the Mortgagee shall allow the use of the proceeds of any insurance carried pursuant to this Section 1.09 in the manner provided hereinbelow for the repair, restoration and rebuilding of the Improvements located on the Premises, provided the Mortgagee determines (i) that the amount of such insurance proceeds shall be sufficient to complete such repair, restoration and rebuilding (or if there shall be a deficiency, the Mortgagor deposits with the Mortgagee an amount equal to the difference between the Mortgagee's reasonably estimated cost of such restoration and the insurance proceeds) and (ii) that such repair, restoration and rebuilding can be completed on or before the maturity date of the Note.

Any language in this Section to the contrary notwithstanding, the Mortgagor shall be entitled to any surplus funds which remain after full restoration as reasonably determined by the Mortgagee.

(f) The Mortgagor shall give the Mortgagee prompt written notice of damage to or destruction of the Improvements, or any part thereof, and, unless the indebtedness secured hereby is paid in full to Mortgagee within thirty (30) days of the date thereof, the Mortgagor shall promptly commence and diligently continue to perform the repair, restoration and rebuilding of all portions of the Improvements so damaged or destroyed (the "Work") so as to restore the Improvements in full compliance with all legal requirements and so that the Mortgaged Property shall be at least equal in value and general utility as it was prior to such damage or destruction, and, if such damage or destruction, in the opinion of the Mortgagee, shall exceed \$25,000.00 hereinafter, collectively "Major Work"), the Mortgagor shall, prior to the commencement of the Work, furnish to the Mortgagee for its approval: (1) complete plans and specifications for the Work, with satisfactory evidence of the approval thereof by an architect reasonably satisfactory to the Mortgagee (the "Architect") which shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the Work, (2) certified copies of all permits and approvals required by law in connection with the commencement and continuation of the Work and (3) a surety bond or guaranty of payment and completion of the Work or other security, which bond or guaranty or other security shall be in form and substance reasonably satisfactory to Mortgagee and shall be signed by a surety or guarantor or other appropriate party who is reasonably acceptable to the Mortgagee, and in an amount not less than the Architect's estimate of the entire cost of completing the Work, less the amount of insurance proceeds, if any, then held by the Mortgagee for application towards the cost of the Work. After commencing the Work, the Mortgagor shall perform the Work diligently and continuously and in good faith in accordance with the plans and specifications referred to in this subsection (f), if applicable.

Notwithstanding the foregoing, the Mortgagor shall be entitled to receive directly proceeds of insurance for damage or destruction, in the opinion of Mortgagee which does not exceed \$25,000.00.

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(g) The insurance proceeds, less the actual cost, if any, to the Mortgagee of such recovery and of paying out such proceeds (including reasonable attorney's fees and actual costs allocable to inspecting the Work and the plans and specifications therefor) shall be applied by the Mortgagee as follows:

(i) Payment of the cost of the Work shall be paid out from time to time to the Mortgagor or, at the Mortgagee's option, exercised from time to time, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons or entities rendering services or materials for the Work, as the Work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which the Mortgagee may freely waive:

(A) If the Work is Major Work, as determined by the Mortgagee, the Architect shall be in charge of the Work to the extent permitted under this Section 3.13;

(B) Each request for payment shall be made on not less than ten (10) days' prior notice to the Mortgagee and shall be accompanied by a certificate of the Architect if one is required under subsection (f) above, otherwise by a certificate of an officer or partner of the Mortgagor, stating (i) that all of the Work completed has been done in compliance with the approved plans and specifications, if required under subsection (f), and in accordance with all applicable provisions of law; (ii) the sum requested is justly required to reimburse the Mortgagor for payments by the Mortgagor to, or is justly due to, the contractor, subcontractor, materialmen, laborer, engineer, architect or other persons or entities rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by the Mortgagee does not exceed the value of the Work done to the date of such certificate; and (iii) that the amount of such proceeds and other deposits with the Mortgagee including deficiency deposits will be sufficient on completion of the Work to pay for the same in full (giving in such detail as the Mortgagee may reasonably require an estimate of the cost of such completion);

(C) Each request shall be accompanied by waivers of liens reasonably satisfactory to the Mortgagee covering that part of the Work previously paid for, if any, and by a search prepared by the title company which insured the lien of this Mortgage or by other evidence reasonably satisfactory to the Mortgagee, that there has not been filed with respect to the Mortgaged Property, or any part thereof,



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any mechanic's or other lien or instrument for the retention of title in respect of any part of the Work not discharged of record and that there exist no encumbrances on or affecting the Mortgaged Property, except in the Loan Agreement or elsewhere herein, or any part thereof, other than encumbrances, if any, existing as of the date hereof and which have been approved by the Mortgagee, and by such other documents and instruments as the Mortgagee may reasonably request;

(D) The request for any payment after the Work has been completed shall be accompanied by a copy of all certificates, permits, licenses, waivers and other documents required by law to render occupancy of the Premises and Improvements legal or as may be reasonably requested by the Mortgagee; and

(ii) Upon completion of the Work and payment in full therefor, or upon failure on the part of the Mortgagor to commence, as provided in subsection (f), or diligently to continue the Work, or at any time upon request by the Mortgagor, the Mortgagee may apply the amount of any such proceeds then or thereafter with the Mortgagee to the payment of the indebtedness secured hereby, provided, however, that nothing herein contained shall prevent the Mortgagee from applying at any time the whole or any part of such proceeds to the curing of any Event of Default under this Mortgage or the Note.

(h) If within one hundred and twenty (120) days after the occurrence of any damage to or destruction on the Mortgaged Property, or any part thereof, requiring Major Work to restore the Mortgaged Property, or any part thereof, the Mortgagor shall not have submitted to the Mortgagee and received the Mortgagee's approval of plans and specifications for the repair, restoration and rebuilding of the Mortgaged Property, or any part thereof, so damaged or destroyed (approved by the Architect and by all governmental authorities whose approval is required), or if, after such plans and specifications are approved by all such governmental authorities and the Mortgagee, the Mortgagor shall fail to commence promptly such repair, restoration and rebuilding, or if thereafter the Mortgagor fails diligently to continue such repair, restoration and rebuilding or is delinquent in the payment to mechanics, materialmen or others of the cost incurred in connection with such Major Work, or, in the case of any damage or destruction not requiring Major Work, to repair, restore or rebuild the Mortgaged Property, or any part thereof, so damaged or destroyed then, in addition to all other rights herein set forth, and after giving the Mortgagor ten (10) days' written notice of the nonfulfillment of one or more of the foregoing conditions, the Mortgagee, or any lawfully appointed receiver of the Mortgaged Property, or any part thereof, may at their respective options, perform or cause to be performed such repair, restoration and rebuilding, and may take such other steps as they deem advisable to perform



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such repair, restoration and rebuilding, and upon not less than twenty-four (24) hours prior written notice to the Mortgagor (absent emergency circumstances), the Mortgagee may enter upon the Mortgaged Property, or any part thereof, to the extent necessary for any of the foregoing purposes. The Mortgagor hereby waives, for the Mortgagor and all others holding under the Mortgagor, any claim against the Mortgagee and such receiver arising out of anything done by the Mortgagee or such receiver pursuant hereto, and the Mortgagee may, at its option, apply insurance proceeds (without the need by the Mortgagee to fulfill any other requirements of this Mortgage) to reimburse the Mortgagee, or such receiver for all actual amounts expended or incurred by them, respectively, in connection with the performance of such Work, and any excess costs shall be paid by the Mortgagor to the Mortgagee upon demand.

Section 3.13. Anything in Section 2.01(1) to the contrary notwithstanding, it shall not be an Event of Default thereunder if the Mortgagor engages in subordinate financing pursuant to and in compliance with that which is provided for in the Loan Agreement.

Section 3.14. Anything contained in Section 1.09 and 1.13 to the contrary notwithstanding, it is understood and agreed that wherever a conflict may arise between the terms of this Mortgage and the Ground Lease on the premises, the terms of the Ground Lease shall control.

(End of Article III)

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## ARTICLE IV

### Certain Illinois Provisions

Section 4.01. This Mortgage is given to secure not only the Mortgage Amount, but also such future advances, which may be made pursuant to the Loan Agreement, regardless of whether such advances are obligatory or made in the sole discretion of the Mortgagee, to the same extent as if such advances were made on the date hereof. The total amount of indebtedness that may be secured hereby may increase or decrease from time to time, and there is no limitation as to the amount of such future advances which may be made by the Mortgagee.

(End of Article IV)

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IN WITNESS WHEREOF, this Mortgage has been duly executed by the  
Mortgagor.

ASSOCIATED RETAIL STORES, INC.  
A New York Corporation

By:   
Charif Souki  
Vice President

Attest:

  
Vice President

  
Secretary

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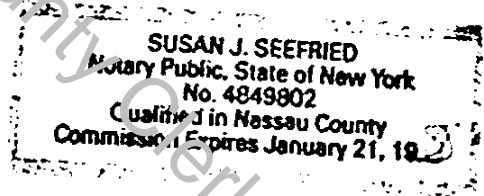
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STATE OF NEW YORK     )  
                                  )ss.:  
COUNTY OF NEW YORK    )

15<sup>th</sup> September  
The foregoing instrument was acknowledged before me this ~~15<sup>th</sup>~~ day of ~~August~~,  
1987, by CHARIF SOUKI, Senior Vice President of ASSOCIATED RETAIL STORES, INC.,  
a New York corporation, on behalf of the corporation.

Susan J. Seefried  
Notary Public



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FEDERAL TAX IDENTIFICATION NUMBER:  
133108377

SCHEDULE A

Lots 49 and 50 in block 4 in Brown's Addition to Chicago being a subdivision of the south 45 acres of the east half of the North east quarter of section 32, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Perm Tax # 17 32 227 032 0000

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COOK COUNTY RECORDER

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