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WHEREAS, the Mortgagee requires this Mortgage to be made, executed and delivered and the Mortgagor, desires to make, execute and deliver this Mortgage in consideration of the extension of the credit and as security for the payment and performance of the "indebtedness and obligations secured hereby" (as such term is herein defined), including without limitation, the credit, and all accrued interest thereon, including additional interest, evidenced by

WHEREAS, the Mortgagor is the owner of record of the "Mortgaged Premises" (as such term is herein defined);

WHEREAS, all payments made pursuant to the Note and this Mortgage shall be applied as follows: first, to accrued and unpaid interest on the unpaid balance of the credit at the "agreed rate" or the "default rate" (as each such term is defined in the Note), whichever is the case, if then due and payable; second, to all other indebtedness, sums, charges and obligations due and owing to the Mortgagee under the Note, this Mortgage or any of the other documents listed on Exhibit C hereto (the "Other Loan Documents"); and third, to the unpaid balance of the credit; and shall be made, in the manner and to the place provided in the Note, or at such place as the Mortgagee may, from time to time, designate in writing to the Mortgagor;

WHEREAS, in partial payment of the purchase price under the Purchase Contract, the Mortgagor has concurrently herewith executed and delivered a Secured Installment Note of even date herewith (the "Note") in the principal sum of FIVE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$5,750,000.00) (the "Credit"), payable to the order of the Mortgagee in and by which Note the Mortgagor promises to pay the credit, together with interest thereon at the rate or rates, at the time or times, and in the manner, as provided in the Note, with a final payment of the balance of the credit then remaining unpaid and all accrued interest thereon, if not sooner paid, due and payable on the tenth (10th) anniversary of the Closing Date (as defined in the Purchase Contract) (the "Date of Maturity");

WHEREAS, pursuant to a Purchase and Sale Contract dated as of November 3, 1988 among the Mortgagor, the Mortgagee and John Apostolon (the "Purchase Contract"), the Mortgagee has sold and transferred to the Mortgagor all of the issued capital stock of Giordano's International Franchise Systems, Inc. and the Business Assets (as such term is defined in the Purchase Contract);

WITNESSETH:

THIS MORTGAGE (this "Mortgage") is made as of the 22nd day of December, 1988 by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 19, 1988 AND KNOWN AS TRUST NO. 107225-02 (the "Mortgagor") and EREN BOGLIO, JOSE L. BOGLIO, CARLOS A. JUAN, AMERICANA ENTERPRISES, INC., an Illinois corporation, AMERICA'S BEST PIZZA, INC., an Illinois corporation, BOLA, INC., an Illinois corporation, and GIORDANO'S PIZZERIA, INC., an Illinois corporation (collectively referred to herein as the "Mortgagee").

MORTGAGE

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TOGETHER WITH all and singular the easements, covenants, rights, consents, licenses, permits, privileges, servitudes, tenements, hereditaments, appurtenances now or hereafter thereto belonging or appearing in any way, whether created by contract, law, ordinance or otherwise, and the reversion or reversions, remainders or remainders thereof, and

TOGETHER WITH all the right, title and interest, if any, of the Mortgagor in and to the land and lying in the streets, roads, alleys and other public ways (before or after vacation thereof) adjoining the Real Estate.

TOGETHER WITH all machinery, apparatus, equipment, systems affixed or appurtenant to the Real Estate or the buildings, structures and improvements thereon, or any part thereof, now owned or hereafter acquired by the Mortgagor and used or usable in connection with any present or future operations of the Real Estate or such buildings, structures and improvements, including, but without limitation upon the generality of the foregoing, all heating, lighting, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, sprinkler, elevating, communication and power equipment, systems, fittings and apparatus; all fuel, water, hydraulic, pneumatic, electric and electrical equipment, systems, fittings and apparatus; and all shades, blinds, awnings, floor coverings, partitions, conduits, ducts and compressors, and all the right, title and interest in and to all such machinery, apparatus, equipment, systems, and all additions and accessories thereto, including underfoot and above foot any and all additions and accessories thereto, whether in a single unit or generally controlled) are a part of the Real Estate and the buildings, structures and improvements and are declared to be a portion of the security for the indebtedness and obligations secured hereby and that in this Mortgage, the enumeration of any specific items of property shall in no wise exclude or be held to exclude any item of property not specifically mentioned.

TOGETHER WITH all buildings, structures and improvements, including without limitation, all additions and alterations thereto and all extensions and replacements thereof, if any, now or hereafter located or erected thereon;

TOGETHER WITH all machinery, apparatus, equipment, systems affixed or appurtenant to the Real Estate or the buildings, structures and improvements thereon, or any part thereof, now owned or hereafter acquired by the Mortgagor and used or usable in connection with any present or future operations of the Real Estate or such buildings, structures and improvements, including, but without limitation upon the generality of the foregoing, all heating, lighting, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, sprinkler, elevating, communication and power equipment, systems, fittings and apparatus; all fuel, water, hydraulic, pneumatic, electric and electrical equipment, systems, fittings and apparatus; and all shades, blinds, awnings, floor coverings, partitions, conduits, ducts and compressors, and all the right, title and interest in and to all such machinery, apparatus, equipment, systems, and all additions and accessories thereto, including underfoot and above foot any and all additions and accessories thereto, whether in a single unit or generally controlled) are a part of the Real Estate and the buildings, structures and improvements and are declared to be a portion of the security for the indebtedness and obligations secured hereby and that in this Mortgage, the enumeration of any specific items of property shall in no wise exclude or be held to exclude any item of property not specifically mentioned.

the Note and payments to be made by the Mortgagor to the Mortgagee totaling \$1,250,000 pursuant to a Covenant Not to Compete of even date herewith between Mortgagor and certain of the Mortgagees (the "Covenant");

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(c) the full and faithful performance and observance of each and all of the covenants, agreements, conditions, representations, warranties and provisions contained in the Note, this Mortgage and the Other Loan Documents;

(b) the prompt payment, as and when due, of all other indebtedness, charges, sums and obligations which the Mortgagor or any other obligor is obligated to pay under, pursuant to or in connection with the Note, this Mortgage and the Other Loan Documents;

(a) the prompt payment of the Credit and all accrued interest thereon as and when due in accordance with the Note;

THIS MORTGAGE IS GIVEN TO SECURE all of the following (the same being herein sometimes collectively referred to as the "Indebtedness and obligations secured hereby"):

TO HAVE AND TO HOLD the Mortgaged Premises unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth.

The Real Estate, and all appurtenances, equipment, property, interests and rights heretofore described, are herein sometimes collectively or severally, as the context requires, referred to as the "Mortgaged Premises".

TOGETHER WITH any and all awards, proceeds or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Estate, any easement thereon or appurtenant thereto, or any other property above described as a result of (a) any taking or condemnation thereof, or in whole or in part, pursuant to or by reason of eminent domain proceedings, or by purchase under threat or in lieu thereof, (b) the alteration of the grade of any street, road, alley or other public way, or (c) any other injury to or decrease in the value of the Real Estate and other property above described, by reason of fire or any other casualty, event or circumstance, to the extent of the indebtedness and obligations secured hereby at the date of receipt by the Mortgagee of any such awards, proceeds or payments, and of court costs and attorney's fees, costs and disbursements incurred or sustained by the Mortgagee in connection with the collection of such awards, proceeds or payments. The Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such awards, proceeds or payments.

TOGETHER WITH all other rights, title, interest, estate or other claims of every kind and character, both at law and in equity, which the Mortgagor now has or at any time hereafter acquires in and to the Real Estate and any other property herein described, or any part thereof, and all other property of the Mortgagor that is used or useful in connection with the Real Estate.

and during all such time as the Mortgagor may be entitled thereto (which are all rents, earnings, income, profits and avails thereof for so long as and during all such time as the Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the Real Estate and not secondarily).

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3. Maintenance, Repair and Restoration of Improvements. Payment of Prior Liens. The Mortgagor shall: (a) promptly repair, restore or rebuild the buildings, structures and improvements which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any proceeds, awards or payments of insurance, eminent domain or otherwise unless the awards

2. Payment and Performance. The Mortgagor will duly and punctually pay (1) the credit and all accrued interest thereon, including without limitation, the additional interest, at the time or times and in the manner provided in the Note and (2) any and all additional and other indebtedness and obligations secured hereby, as and when due, pursuant to the Note, the covenant, this Mortgage and the Other Loan Documents, and will otherwise fully and faithfully perform, observe and comply with all terms, covenants, representations, obligations and conditions contained in the Note, this Mortgage and the Other Loan Documents.

1. Title. The Mortgagor represents to, and covenants with, the Mortgagee that (1) at the time of the execution and delivery of this Mortgage, the Mortgagor is well seized of the Mortgaged Premises, in fee simple absolute, and has good right and full power to grant, assign, transfer, mortgage and convey the Mortgaged Premises in the manner and form herein provided, (2) the Mortgaged Premises are free and clear of all liens, charges, interests and encumbrances whatsoever, except for the permitted exceptions (the "Permitted Exceptions") set forth on Exhibit B attached to and made a part of this Mortgage, (3) this Mortgage is a valid and enforceable first and prior lien on the Mortgaged Premises subject only to the permitted exceptions, and (4) the Mortgagor shall, subject to the Mortgagor's right of possession prior to an "Event of Default" (as such term is herein defined), quietly enjoy and possess the Mortgaged Premises. The Mortgagor shall preserve the title of the Mortgaged Premises in its present condition and the present validity and priority of the lien of this Mortgage, and will defend the title to the Mortgaged Premises, the validity and priority of the lien hereof, and the rights, benefits and privileges accruing to the Mortgagee by reason of this Mortgage forever against all lawful claims and demands whatsoever.

THE MORTGAGOR, for itself, its successors and assigns, HEREBY COVENANTS AND AGREES AS FOLLOWS:

(e) the payment of all sums due from the Mortgagor to certain of the Mortgagees under the Covenant.

(d) the repayment, when required, of all costs and expenses, including without limitation, (1) expenditures to pay or discharge loans, insurance premiums, costs of repair to and maintenance of the Mortgaged Premises, taxes and any other liens, claims, security interests or encumbrances, whether the obligation of the Mortgagor or any other obligor as provided in the Note, this Mortgage or the Other Loan Documents and (2) court costs and reasonable attorneys' fees and expenses, paid, suffered or incurred by or for the account of the Mortgagee to protect, preserve, enforce or realize upon (1) this Mortgage, and the lien and security interests hereby created, (2) the indebtedness and obligations secured hereby, and (3) the Mortgaged Premises, all with interest thereon at the Default Rate; and



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6. Mortgagee's Balance on Tax Bills, etc. The Mortgagee in making any payment hereby authorized; (a) relating to taxes and assessments, may do so upon ten (10) days prior written notice to the Mortgagee according to any

5. Payment of Taxes. Subject to the provisions of Paragraph 29 hereof, the Mortgagee shall pay all general taxes before any penalty or interest accrues or attaches, and shall pay all special taxes, special assessments, water charges, sewer service charges, and all other charges against the Mortgaged Premises of any nature whatsoever when due, and shall, upon written request, furnish to the Mortgagee duplicate receipts therefor within thirty (30) days after the respective due dates of such taxes, assessments and charges.

4. Acts in Respect of Buildings and Other Real Estate. The Mortgagee shall not, without the prior written consent of the Mortgagee, which will not be unreasonably withheld; (a) construct or permit or suffer to be constructed any buildings, structures or improvements on the Mortgaged Premises, or remove, demolish or alter, materially or structurally, any buildings and improvements now located on the Mortgaged Premises; or (b) enter into or consent to any change in any private restrictive covenant, lease, joint or other public or other restriction, government or agreed zoning ordinance, or other public or private restriction, government or agreement, limiting or defining the occupancy, development, use or method of use, which may be made of the Mortgaged Premises or any part thereof; the Mortgagee shall not commit or suffer any act or waive of the Mortgaged Premises, or any part thereof.

assembly or placement on the Mortgaged Premises. and improvements now or at any time in process of construction, erection, completion with due and continuous diligence any of the buildings, structures and connections with any present or future use of the Mortgaged Premises; and (h) and concessions applicable to the Mortgaged Premises or connected for in variations and any non-conforming uses and structures, privileges, franchises, all rights, easements, permits (including without limitation, zoning, non-zoning conditions and regulations, if any, necessary to preserve and extend ten consent which shall not be unreasonably withheld; (g) observe and comply use or occupancy of the Mortgaged Premises without the Mortgagee's prior written consent; (f) suffer or permit no change in the general nature of the use of the Mortgaged Premises with respect to the Mortgaged Premises and the use or manner of use thereof; (e) except to the extent permitted pursuant to Paragraph 28 hereof, Mortgagee; (d) exhibit satisfactory evidence of the discharge of such lien to the superior lien to be permitted hereunder) other than the lien of general real estate taxes, which shall be paid as provided in Paragraph 5 hereof and upon Mortgagee Premises prior to or superior to the lien hereof (no such prior or immediately any indebtedness which may be secured by a lien or charge on the such liens being herein called singularly, "lien" and collectively, "liens"); (d) unless otherwise permitted pursuant to Paragraph 28 hereof, pay in full (c) subject to the provisions of Paragraph 29 hereof, keep the Mortgaged Premises; than that originally installed, made or constructed on the Mortgaged Premises; substitutions and replacements; as and when the same become necessary, required or appropriate, all of which shall be of equal or better class and type on payments of insurance are retained by the Mortgagee; (b) keep the Mortgaged Premises constantly in good order, condition and repair and make all repairs,



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C. In the event of any loss, damage or destruction by fire or other casualty, the proceeds of insurance shall be held by the Mortgagee in an interest bearing account at commercially reasonable rates. The Mortgagee shall be entitled to elect, in its discretion, to restore, repair or rebuild the Mortgaged Premises; provided (1) there shall not exist an "Event of Default" (as such term is herein defined) under this Mortgage, the Note or any of the Other Loan Documents or an event shall have occurred but for the giving of notice or passage of time, or both, would constitute an Event of Default under this Mortgage, the Note or any of the Other Loan Documents ("Incident event"); (2) the proceeds of insurance, if any, are sufficient in the Mortgagee's sole and absolute discretion, to repair, restore, replace or rebuild the Mortgaged Premises to a condition whereby the value thereof as repaired, restored, repaired or rebuilt would be equal to or greater than the value of the Mortgaged Premises immediately preceding the loss, damage or destruction, or, if the proceeds of insurance, if any, are not sufficient to so repair, restore, replace or rebuild, the Mortgagee shall have deposited with the Mortgagee or with an escrowee reasonably acceptable to the Mortgagee the amount of said deficiency, which funds shall be applied first to the cost of said re-

B. All proceeds of insurance in the event of any such loss, damage or destruction shall be payable to the Mortgagee, and each insurance company with which a claim therefor is filed is hereby authorized and directed to make payment thereof directly to the Mortgagee.

A. In the event of any loss, damage or destruction of or to the Mortgaged Premises by fire or other casualty, the Mortgagee shall immediately give notice thereof to the Mortgagee and the Mortgagee may thereupon make proof of such loss, damage or destruction if the same is not promptly made by the Mortgagee. The Mortgagee is authorized and empowered to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance, with the consent of the Mortgagee; provided, however, if the same is not effected by the Mortgagee within a reasonable period of time, not exceeding sixty (60) days after such loss, damage or destruction, unless a longer period is reasonably required but not to exceed ninety (90) days, the Mortgagee may, at any time thereafter, settle, adjust or compromise any claim for loss, damage or destruction under any policy or policies of insurance.

8. Disposition of Insurance Proceeds.

E. The Mortgagee shall not, by reason of accepting, rejecting, approving or obtaining insurance as herein provided, incur or be subject to any liability for payment of losses.

Mortgagee of such policy or policies, including all unearned premiums thereon, as additional security for the payment and performance of the indebtedness and obligations secured hereby. In the event of the foreclosure of this Mortgage, or of a transfer of title to the Mortgaged Premises either in lieu of foreclosure or by purchase at the foreclosure sale, the Mortgagee is hereby irrevocably appointed by the Mortgagee, as attorney for the Mortgagee, to assign any such policy or policies of insurance, and the Mortgagee or the purchaser(s) of the Mortgage(s) of the Mortgaged Premises shall succeed to all the rights of the Mortgagee, including any right to unearned premiums, in and to all policies of insurance assigned and delivered pursuant to this Paragraph 7 and the Mortgagee shall not have any right to reimbursement for premiums then unearned.

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In case of loss, damage or destruction by fire or other casualty after foreclosure proceedings have been instituted, the proceeds payable under any policy of insurance shall be applied to the amount due in accordance with any decree or order of foreclosure that may be entered in any such proceedings and the balance, if any, shall be paid as the court may direct, and if prior to the receipt by the Mortgagee of any such proceeds of insurance, the Mortgagee has been sold on foreclosure of this Mortgage, then the Mortgagee shall have the right to receive such proceeds to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought, recovered or denied, and of the costs and disbursements, including without limitation, reasonable attorneys' fees, costs and expenses, incurred by or sustained by the Mortgagee in connection with the collection of such proceeds or payment.

2. In the event the Mortgagor should elect not to restore, replace or rebuild the mortgaged premises or in the event the Mortgagor shall not be entitled to make such election pursuant to Paragraph 8c hereof, to the extent that the proceeds of insurance are at least \$150,000 (less the sum of insurance proceeds and condemnation proceeds previously received by the Mortgage under this Mortgage), the Mortgagee shall be entitled to payment of \$150,000 (less the sum of insurance proceeds and condemnation proceeds previously received by the Mortgage under this Mortgage) from such insurance proceeds. Mortgagee agrees to release this Mortgage and remit the balance of such insurance proceeds, if any, to the Mortgagor. To the extent that the proceeds of insurance are less than \$150,000 (less the sum of insurance proceeds and condemnation proceeds previously received by the Mortgage under this Mortgage) to secure the indebtedness and obligations secured hereby, any amounts received hereunder by the Mortgagee shall be considered a prepayment of the credit, without penalty or premium. The Mortgagee will thereafter release this Mortgage when the Mortgagor has paid to the Mortgagee the difference between the amount of all insurance proceeds and \$150,000 (less the sum of insurance proceeds and condemnation proceeds previously received by the Mortgage under this Mortgage).

3. Any insurance proceeds collected under any policy or policies of insurance required to be maintained by the Mortgagor in excess of that required to repair, restore, replace or rebuild the mortgaged premises in accordance with Paragraph 8c shall be deposited in a jointly controlled interest bearing account with such institution and at such interest rate mutually agreeable to the Mortgagee and the Mortgagor and may be applied to the cost of or capital improvements; provided, however, if said funds have not been so applied at the date of maturity said amounts shall be paid to the Mortgagee and applied to the indebtedness and obligations secured hereby.

4. Any insurance proceeds collected under any policy or policies of insurance required to be maintained by the Mortgagor in excess of that required to repair, restore, replace or rebuild the mortgaged premises in accordance with Paragraph 8c shall be deposited in a jointly controlled interest bearing account with such institution and at such interest rate mutually agreeable to the Mortgagee and the Mortgagor and may be applied to the cost of or capital improvements; provided, however, if said funds have not been so applied at the date of maturity said amounts shall be paid to the Mortgagee and applied to the indebtedness and obligations secured hereby.



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## 9. Condemnation.

A. In the event of any taking or condemnation of the Mortgaged Premises, or any part thereof, pursuant to or by reason of eminent domain proceedings, or by purchase under threat or in lieu thereof, or any alteration of the grade of any street or public way, or any other injury to or decrease in the value of the Mortgaged Premises, by any public or quasi-public authority or corporation, the Mortgagor shall give the Mortgagee immediate notice of any actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Mortgaged Premises and shall deliver copies of any and all papers served in connection therewith; provided, however, the Mortgagor shall not in any way be relieved from the terms, covenants, conditions and obligations contained in the Loan Documents, including, without limitation, full and final payment and discharge of all indebtedness and obligations secured hereby, and any reduction in the indebtedness and obligations secured hereby resulting from the application by the Mortgagee of any such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt.

B. The proceeds, if any, resulting from any total taking or condemnation of the Mortgaged Premises shall be retained and applied by the Mortgagee, as a prepayment, without premium, to the reduction of the indebtedness and obligations secured hereby, whether or not the same be due, in the following order of priority: first, the Note; second, the Covenant; thereafter to any other indebtedness and obligations secured hereby, if any. Any sum over \$150,000 (less the sum of insurance proceeds and condemnation proceeds previously received by the Mortgagee under this Mortgage) shall be paid to the Mortgagor. The Mortgagor shall make, execute, and deliver to the Mortgagee all further assignments and instruments deemed necessary by the Mortgagee to assign the proceeds of any taking or condemnation to the Mortgagee.

C. If the Mortgagor elects to rebuild, the proceeds, if any, resulting from any partial taking or condemnation of the Mortgaged Premises shall be held by the Mortgagee or an escrowee reasonably acceptable to the Mortgagee, without interest or other compensation to the Mortgagor (if held by the Mortgagee), and disbursed to the Mortgagor in reimbursement for the cost incurred by the Mortgagor in connection with the repair, restoration, replacement or rebuilding of the part of the Mortgaged Premises so altered, damaged or destroyed as a result of any such partial taking, alteration of grade or other injury, upon such terms and conditions as may be required by the Mortgagee, in its absolute discretion, and the balance of the proceeds, if any, remaining after such reimbursement shall be applied, as a prepayment, without premium, to the reduction of the indebtedness and obligations secured hereby, whether or not the same be due, and in any order of priority the Mortgagee may, in its absolute discretion, elect.

D. In case of the occurrence of any of the events set forth in subparagraph 9A hereof after foreclosure proceedings have been instituted, the award or payment shall be applied to the amount due in accordance with any decree or order of foreclosure that may be entered in any such proceedings and the balance thereof, if any, shall be paid as the court may direct, and if prior to the receipt by the Mortgagee of any such award or payment, the Mortgaged Premises have been sold on foreclosure of this Mortgage, then the Mortgagee shall have the right to receive such award or payment to the extent of

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any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought, recovered or denied, and of the costs and disbursements, including without limitation, reasonable attorney's fees, costs and expenses incurred or sustained by the Mortgagee in connection with the collection of such award or payment.

E. Pursuant to the assignment of such award or payment herein made by the Mortgagor, the Mortgagee is empowered to collect and receive the same and to give proper receipt or acquittance therefor in the name of the Mortgagor, and the same shall be paid forthwith to the Mortgagee for the uses and purposes set forth herein.

10. Indemnity. The Mortgagor hereby indemnifies, protects, saves and holds forever harmless the Mortgagee, their directors, officers, employees, agents and independent contractors, (for the purposes of this Paragraph 10 only, collectively, "indemnitees") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including without limitation, court costs and reasonable attorneys' fees and expenses, imposed upon, incurred by or asserted against indemnitees, or any of them, as a result of, in connection with or arising from (i) the lien hereby created on the Mortgaged Premises, (ii) the Mortgagor's ownership of the Mortgaged Premises or any interest therein or receipt by the Mortgagor of any rent or other sum therefrom, (iii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways, provided that the same are not caused by willful acts or omissions on the part of the Mortgagee, their employees, agents and independent contractors, (iv) any use, nonuse or condition of the Mortgaged Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways, provided that the same are not caused by willful acts or omissions on the part of the Mortgagee or its employees, agents and independent contractors, (v) any failure on the part of the Mortgagor to perform or comply with any of the terms, covenants, conditions and provisions of this Mortgage, or (vi) the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Premises or any part thereof. Any amounts payable to indemnitees, or any of them, under this Paragraph 10 which are not paid within three (3) business days after written demand therefor by the Mortgagee shall be so much additional indebtedness hereby secured and shall bear interest from the date of such demand to the date of receipt by indemnitees of payment at the Default Rate, and the Mortgagee shall, in addition to any other right, power or remedy available to the Mortgagee, have the same rights, powers and remedies in the event of nonpayment of any such sum by the Mortgagor as in the case of a default by the Mortgagor in the payment of the indebtedness and obligations hereby secured. The obligations of the Mortgagor under this Paragraph 10 shall survive any termination, release or satisfaction of this Mortgage.

11. Mortgagee's Right of Inspection. The Mortgagee and all persons authorized to act on behalf of the Mortgagee shall have the right to enter and inspect the Mortgaged Premises upon prior written notice at all reasonable times provided that such entry is made without interruption of any lawful business conducted thereon and access thereto shall be permitted for that

purpose; provided, however, nothing herein contained shall be construed as an obligation on the part of the Mortgagee to make any such entries and inspections.

## 12. Mortgagor and Lien Not Released.

A. From time to time the Mortgagee may, at the Mortgagee's option, without giving notice to or obtaining the consent of the Mortgagor or the Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor, licensee, tenant or contract purchaser without liability on the Mortgagee's part and notwithstanding the occurrence or existence of any Event of Default: (a) release anyone primarily or secondarily liable on any of the indebtedness and obligations secured hereby; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the Mortgaged Premises; (d) take or release other or additional security for the indebtedness and obligations secured hereby; (e) consent to the granting of any easement; (f) join in any extension or subordination agreement; (g) agree in writing with the Mortgagor to modify the rate of interest or period of amortization of the Note or change the time or the amount of payment(s) thereunder; and (h) waive or fail to exercise any right, power or remedy granted by law or herein or in the Note, the Covenant or any of the Other Loan Documents.

B. Any actions taken by the Mortgagee pursuant to the terms of this Paragraph 12 shall not impair or affect: (a) the obligation of the Mortgagor or the Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the indebtedness and obligations secured hereby, or any part thereof; and (c) the lien and security interest of this Mortgage or the priority thereof against the Mortgaged Premises.

C. The Mortgagor shall pay to the Mortgagee a reasonable service charge and such title insurance premiums and reasonable attorneys' fee as may be incurred by the Mortgagee for any action described in this Paragraph 12 taken at the request of the Mortgagor.

13. Filing and Recording Charges and Taxes. The Mortgagor will pay all filing, registration, recording, search and information fees, and all expenses incidental to the execution and acknowledgment of this Mortgage, the Note and all the Other Loan Documents and all Federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all the Other Loan Documents.

## 14. Stamp Tax; Effect of Changes in Laws Regarding Taxation.

A. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor or the Mortgaged Premises, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor covenants and agrees to pay such tax in the manner required by any such laws. The Mortgagor further covenants to reimburse the Mortgagee for any sums which the Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

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B. In the event of the enactment, after this date, of any law of the State of Illinois deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the real estate taxes or assessments or like charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the real estate taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Mortgaged Premises, or the manner of collection of real estate taxes, so as to affect this Mortgage or the indebtedness and obligations secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor unless unlawful.

15. Events of Default. The Mortgagor hereby covenants and agrees that the occurrence or existence of any one of the following events or conditions shall constitute an Event of Default under this Mortgage (herein referred to singularly as "Event of Default" and collectively as "Events of Default"):

(a) The Mortgagor shall, regardless of cause or reason, fail to make any payment on account of the Credit and Interest thereon, or any part thereof, as and when due, in accordance with the terms of the Note;

(b) The Mortgagor shall, regardless of cause or reason, fail to make any payment under the Covenant as and when due in accordance with the terms of the Covenant;

(c) The Mortgagor shall, regardless of cause or reason, fail to make payment, as and when due, of any other indebtedness, sums, charges and obligations evidenced or secured by the Note, this Mortgage and the Other Loan Documents, and such failure shall continue uncorrected for a period of ten (10) days after notice thereof to the Mortgagor or such longer period provided for in such Note or Other Loan Documents;

(d) Any representation or warranty made by the Mortgagor in the Note, this Mortgage or any of the Other Loan Documents, or in any other agreement, instrument, certificate or statement contemplated hereby or thereby, or made or delivered pursuant hereto or thereto or in connection herewith or therewith, shall be breached or violated, or prove to be false, misleading or inaccurate, in any material respect;

(e) Any attachment, seizure or levy shall be made upon the Mortgaged Premises, in whole or in part;

(f) Except to the extent permitted under Paragraph 28 hereof, any security interest, lien or charge against the Mortgaged Premises, or any part thereof, whether prior to or superior to the lien and security interest hereby created in favor of the Mortgagee, shall accrue and the Mortgagor shall, regardless of cause or reason, fail to discharge the same within thirty (30) days after the date of such accrual;

(g) The Mortgagor shall default under any other instrument or document, which with the consent of the Mortgagee, is hereafter secured by, or creates, a lien or encumbrance against the Mortgaged Premises;

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(h) Any sale, conveyance, assignment, transfer, encumbrance or disposition is made in contravention of the provisions of Paragraph 26 hereof;

(i) The Mortgagor shall, regardless of cause or reason, fail to perform, keep and observe any other covenant, agreement, condition, or provision contained in this Mortgage and such failure shall continue uncorrected for a period of thirty (30) days after written notice thereof to the Mortgagor specifying such failure and requiring the same to be corrected;

(j) An event of default (as such term is therein defined or used) shall occur or exist under, pursuant to or in connection with the Note, the Covenant or any of the Other Loan Documents and not be cured or corrected within any applicable grace or curative period permitted thereunder.

16. Remedies. Upon the occurrence or existence of any of the Events of Default, then at the option of the Mortgagee and without further demand or notice of any kind whatsoever to the Mortgagor (demand and notice as to any Event of Default being hereby expressly waived by the Mortgagor, for itself and for and on behalf of all other obligors and related parties, except for such notices as may be provided in Paragraph 15 hereof), the Mortgagee shall, to the fullest extent permitted by law, be entitled to:

(a) collect interest on the balance of the Credit then unpaid under the Note at the Default Rate, from the date of any such Event of Default, until all Events of Default hereunder have been remedied or cured, which interest shall be due and payable upon the demand of the Mortgagee, and if no demand is made, then on the first (1st) day of each and every calendar month;

(b) declare and make immediately due and payable the entire balance of the Credit then unpaid hereunder, all accrued and unpaid interest thereon and all other indebtedness and obligations secured hereby;

(c) foreclose, at law or in equity, the lien of this Mortgage as against all or any part of the Mortgaged Premises, and to have the same sold under order or decree of a court of competent jurisdiction;

(d) enter upon and take possession of the Mortgaged Premises, or any part thereof, by summary proceedings, ejectment or other lawful process, and expel and remove the Mortgagor and all other persons and any and all property therefrom, and hold, operate and manage the Mortgaged Premises, complete any and all construction, repair, restoration and rebuilding then in process, borrow monies for such purposes, and collect and receive all earnings, income, rents, issues and proceeds accruing with respect thereto, and lease the Mortgaged Premises, or any part thereof, and after deducting all reasonable attorneys' fees and expenses, all repayments of borrowed monies and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Premises, apply the remaining net income on the indebtedness and obligations secured hereby (whether or not due and in any order

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of priority, as the Mortgagee may elect), or on any deficiency decree or order entered in any foreclosure proceeding, all without liability to the Mortgagee;

(e) appropriate and apply on the indebtedness and obligations secured hereby (whether or not due and in any order of priority, as the Mortgagee may, in its sole discretion, elect), any and all accounts, reserves and monies held in the possession of the Mortgagee for the benefit or account of the obligors and related parties, or any of them; and/or

(f) exercise any and all other rights, powers and remedies provided in this Mortgage, the Note, the Covenant, and the Other Loan Documents, and such other rights, powers and remedies as may be provided at law or in equity.

## 17. Foreclosure; Expense of Litigation.

A. When the indebtedness and obligations secured hereby, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for the indebtedness and obligations secured hereby, or part thereof, so due. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness and obligations secured hereby in the order or judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraiser's 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 said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as the Mortgagee may deem necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Mortgaged Premises. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Mortgaged Premises and the maintenance of the lien and security interest of this Mortgage, including the fees of any attorneys employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, the Other Loan Documents or the Mortgaged Premises, including probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

B. At all times, the Mortgagee shall have the right, but not the obligation to appear in and defend any suit, action or proceeding that might in any way in the sole judgment of the Mortgagee affect the value of the Mortgaged Premises, the priority of this Mortgage or the rights, powers and interests of the Mortgagee hereunder or under the Note, or any of the Other Loan Documents. In addition to and not in derogation, limitation or modification of any and all other rights, powers and remedies of the Mortgagee hereunder, the Mortgagor shall, at all times (if the Mortgagee is named in any such suit, action or proceeding affecting the Mortgaged Premises), indemnify,

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hold harmless and reimburse the Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the Default Rate, and such interest shall be secured hereby and shall be due and payable on demand.

18. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in Paragraph 17 hereof; second, all other items which may under the terms hereof constitute indebtedness and obligations secured hereby additional to that evidenced by the Note, with interest thereon as herein provided; third, the balance of the Credit then unpaid and all accrued and unpaid interest thereon under the Note, such sums to be applied first to principal or interest as determined by the Mortgagee in its sole discretion; and fourth, any overplus to any party or parties entitled thereto as their rights may appear.

19. Appointment of Receiver or Mortgagee-in-Possession. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Mortgaged Premises either before or after foreclosure sale, without notice or the requirement of bond (notice and bond being hereby waived) and without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as mortgagee-in-possession. Such receiver or the mortgagee-in-possession shall have power to collect the rents, issues and profits of the Mortgaged Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when the Mortgagor, except for the intervention of such receiver or mortgagee-in-possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises (including the completion of any construction, repair or restoration) during the whole of said period. The court from time to time may authorize the receiver or mortgagee-in-possession to apply the net income in its hands in payment in whole or in part of: (a) the indebtedness and obligations secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien and security interest hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

20. Rights Cumulative. Each right, power and remedy conferred upon the Mortgagee by this Mortgage, the Note and the Other Loan Documents is in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and upon the occurrence or existence of any Event of Default, each and every such right, power and remedy herein or therein set forth or otherwise so existing may be exercised singly,

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successively or cumulatively, at any time, and from time to time as often and in such order as may be deemed expedient by the 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, or discontinuance by, the 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.

21. Mortgagee's Performance of Defaulted Acts. In addition to and not in derogation, limitation or modification of any other rights, powers and remedies available to the Mortgagee under this Mortgage or otherwise, if the Mortgagor shall default in the payment, performance or observance of any covenant, agreement, condition or obligation by the Mortgagor to be paid, performed or observed under this Mortgage, then the Mortgagee may, but need not and shall not be deemed obligated to, make any payment or perform any act herein required of the Mortgagor in any form and manner the Mortgagee deems expedient, 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 Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Mortgaged Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees and expenses, and any other monies advanced by the Mortgagee in regard to any tax referred to in subparagraphs 14A or 14B or to protect the Mortgaged Premises or the lien and security interest hereof, shall be so much additional indebtedness and obligations secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor.

22. Release Upon Payment and Discharge of the Mortgagor's Obligations. The Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon full and final payment and discharge of the Credit except as otherwise provided herein.

23. Waiver of Defense. No action for the enforcement of the lien and security interests created by this Mortgage or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

24. Waiver of Statutory Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien and security interest of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. The Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment



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of foreclosure of the lien of this Mortgage on behalf of the Mortgagor and each and every person acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage.

25. Due on Sale or Further Encumbrance Clause. The Mortgagor agrees that any consummated sale, conveyance, assignment, transfer or other disposition of all or any part of the Mortgaged Premises without the prior written consent of the Mortgagee, which will not be unreasonably withheld, shall be deemed to be an unpermitted transfer and therefore an Event of Default hereunder.

26. Release of Mortgage Upon Payment. The Mortgagee agrees that they shall release this Mortgage at any time upon the Mortgagor's aggregate payment to the Mortgagee of the amount of \$150,000.00 under this Mortgage (whether in the form of insurance proceeds, condemnation proceeds, sale proceeds, other payments or any combination of the foregoing). All such payments shall be applied in reduction of the Credit.

27. Other Loan Documents, Loan and Incorporation of Documents.

A. It is acknowledged and agreed that the Credit and all other indebtedness and obligations secured hereby are, in addition to this Mortgage, secured by certain security documents and instruments set forth on Exhibit C attached to and made a part of this Mortgage, which security documents and instruments, together with all extensions and renewals of the Note or extensions of the obligations under the Covenant and all other documents and instruments heretofore, now or hereafter given to evidence, secure or guarantee the payment of, or made in connection with the negotiation, origination and extension of, given to perfect or continue the lien or security interest thereby created to secure, the indebtedness and obligations secured hereby, are herein collectively referred to as the "Other Loan Documents".

B. The Mortgagor covenants and agrees that all the terms, covenants, conditions, representations, warranties, obligations and provisions of the Note, the Covenant, and all the Other Loan Documents are, by this reference, adopted and incorporated into this Mortgage to the same full extent and with the same binding force and effect as if all such terms, covenants, conditions, representations, warranties, obligations and provisions were herein stated in full, and that the Mortgagor will perform, keep and observe, or cause to be performed, kept and observed, all the terms, covenants, conditions, representations, warranties, obligations and provisions of the Note, the Covenant, and all the Other Loan Documents, it being the express intent that each of this Mortgage, the Note, the Covenant and all the Other Loan Documents complement and supplement the others to the extent necessary or required to protect, preserve and confirm the rights, powers and remedies of the Mortgagee in respect of the indebtedness and obligations secured hereby.

C. The Mortgagor hereby agrees that the Mortgaged Premises constitute equal security with all of the security and collateral set forth in this Mortgage, the Note, the Covenant, and all the Other Loan Documents, for the payment of the indebtedness and obligations secured hereby, and none of the Mortgaged Premises or paid security and collateral shall be deemed to have preference or priority over the other, and upon the occurrence or existence of an Event of Default, the Mortgagee may realize upon, and enforce its rights,

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powers and remedies against, the Mortgaged Premises or said security and collateral, in whole or in part or parts, at such time or times and in such order as the Mortgagee may, in its sole discretion, elect.

28. Right to Contest. Anything in subparagraph 3(c), 3(d), 3(e) or Paragraph 5, or Paragraph 15(f) of this Mortgage to the contrary notwithstanding, the Mortgagor may, in good faith and with due diligence, contest the validity or amount of any Lien or any Taxes or other contestable matter and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall have the effect of preventing the sale or forfeiture of the Mortgaged Premises, or any part thereof or interest therein, to satisfy such Lien or such Taxes, (ii) within ten (10) days after the Mortgagor has been notified of the assertion of such Lien or levy of such Taxes, the Mortgagor shall have notified the Mortgagee in writing of the Mortgagor's intent to contest such Lien or such Taxes; and (iii) the Mortgagor shall have deposited, at the election of the Mortgagor, (a) with a title insurance company qualified to transact business in the State of Illinois or other escrowee reasonably acceptable to the Mortgagee ("title insurer") a sum of money sufficient, in the judgment of the title insurer, to pay in full such Lien or such Taxes, and all interest and penalties that might become due thereon, in order to induce the title insurer to insure the Mortgagee against loss or damage on account of such Lien or such Taxes or (b) with the Mortgagee at such place as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the offices of the Mortgagee herein designated, a sum of money or other security sufficient, in the reasonable judgment of the Mortgagee, to pay in full such Lien or such Taxes and all interest and penalties which might become due thereon, and thereafter, shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest and penalties whenever, in the reasonable judgment of the Mortgagee, such increase is necessary to protect the Mortgagee. If the Mortgagor shall fail to prosecute such contest with due diligence, in the reasonable judgment of the Mortgagee, or shall fail to pay the amount of the Lien or the Taxes, plus any interest or penalty thereon finally determined to be due, upon the conclusion of such contest, or shall fail to maintain sufficient funds on deposit as hereinabove provided, then in addition to and not in derogation of any other rights, powers or remedies available to the Mortgagee, the Mortgagee may, at its option, but shall not be obligated to, apply the money so deposited to the payment of or on account of such Lien or such Taxes, or that part thereof then unpaid, together with all interest and penalties thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien or such Taxes, together with all interest and penalties thereon, then the Mortgagor shall forthwith, upon demand, deposit with the Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. The Mortgagee shall, if requested by the Mortgagor, upon the final disposition of such contest, apply the money so deposited with the Mortgagee in full payment of such Lien or such Taxes, or that part thereof then unpaid, together with all interest and penalties thereon (provided that an Event of Default or an incipient event then has not occurred or is existing) when so requested in writing by the Mortgagor and when furnished by the Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to the Mortgagee of the amount of payment to be made, and any surplus of monies remaining after such application shall be remitted to or at the direction of the Mortgagor.

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29. Miscellaneous. It is further understood and agreed by the Mortgagor that:

A. Notices. All notices, demands or other communications required or desired to be given hereunder shall be in writing signed by the Mortgagor or the Mortgagee, or their respective authorized agents or attorneys, as the case may be, and shall be deemed to have been properly given if served in person or if mailed by United States registered or certified mail, full postage prepaid, return receipt requested, addressed as follows:

If to the Mortgagor: Giordano's Enterprises, Inc.  
f/k/a Giordan, Inc.  
Attn: President  
308 West Randolph  
Chicago, Illinois 60606

With a copy to: Jonathan L. Mills  
Gottlieb and Schwartz  
200 East Randolph Drive  
Suite 6900  
Chicago, Illinois 60601

If to the Mortgagee: Efren Boglio  
4221 West 91st Place  
Oak Lawn, Illinois 60453

With a copy to: Edward J. Louniak  
Burke, Wilson & McIlvaine  
303 East Wacker Drive  
Suite 1000  
Chicago, Illinois 60601

or to such other address in the United States of America as may from time to time be designated by the party to be addressed by notice to the other in the manner hereinabove provided. Any such notice, demand or other communication mailed as provided in this subparagraph shall be deemed to have been given and received on the second (2nd) business day next following the date of mailing by United States registered or certified mail of such notice, demand or other communication.

B. Binding Nature. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on Page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Mortgaged Premises and all persons claiming under or through the Mortgagor, but the privileges and benefits herein accruing to the Mortgagor shall extend and inure only to such grantees, successors and assigns of the Mortgagor and owners of the Mortgaged Premises as may be permitted pursuant to Paragraph 25 hereof, and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the indebtedness and obligations secured hereby, or any part thereof, whether or not such persons shall have executed the Note, the Covenant or this Mortgage.

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C. Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof, and the holder or holders, from time to time, of the Note and the Covenant. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of the Mortgagee hereunder thereafter to be performed, provided that any monies then held by the seller of the Note in which the Mortgagor has an interest are paid to the purchaser of the Note, provided that Mortgagee has actual notice of the identity and address of such assignee.

D. Severability and Applicable Law. In the event that one or more of the provisions contained in this Mortgage, the Note, the Covenant, or any of the Other Loan Documents shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of the document containing such invalid, illegal or unenforceable provision(s) or any of the other documents evidencing, securing or relating to the indebtedness and obligations secured hereby and the document containing such invalid, illegal or unenforceable provision(s) shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein or therein. The validity and interpretation of this Mortgage, the Note, the Covenant and the Other Loan Documents are intended to be, and shall be, construed in accordance with and governed by the laws of the State of Illinois.

E. Governmental Compliance. The Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien and security interest of this Mortgage to include the Mortgaged Premises or any part thereof in fulfillment of any governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Premises to be so used. Similarly, no lands or improvements comprising the Mortgaged Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. The Mortgagor shall not by act or omission impair the integrity of the Mortgaged Premises as a single zoning lot or tax parcel separate and apart from all other premises. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

F. Estoppel Certificate. The Mortgagor agrees to furnish, from time to time, within ten (10) days after mailing of a written request by the Mortgagee, a signed statement setting forth the amount of the indebtedness and obligations secured hereby and whether or not any default, offset or defense then is alleged to exist against the indebtedness and obligations secured hereby and, if so, specifying the nature thereof and such other information in respect of the indebtedness and obligations secured hereby and the Mortgaged Premises, this Mortgage, the Note, the Covenant and the Other Loan Documents as may be reasonably requested by the Mortgagee. If requested by the Mortgagor, in connection with any permitted transfer, the Mortgagee agrees to furnish within thirty (30) days after the receipt by the Mortgagee of written request therefor from the Mortgagor a signed statement setting forth the amount of the then unpaid indebtedness and obligations secured hereby and whether or not any default, offset or defense then is alleged to exist against



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the indebtedness and obligations secured hereby and, if so, specifying the nature thereof and such other information in respect of the indebtedness and obligations secured hereby and the Mortgaged Premises, this Mortgage, the Note, the Covenant and the Other Loan Documents as may be reasonably requested by the Mortgagor.

G. Non-Joiner of Tenant. After an Event of Default, the Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Premises. The failure to join any tenant or tenants of the Mortgaged Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the indebtedness and obligations secured hereby, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

H. Use of Other Remedies. The Mortgagee shall have the right from time to time to enforce any legal or equitable remedy against the Mortgagor and to sue for any sums, whether interest, damages for failure to pay the indebtedness and obligations secured hereby or any part thereof, taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the indebtedness and obligations secured hereby, interest thereon or any other sums included in, or evidenced and/or secured by the Note, the Covenant, this Mortgage and the Other Loan Documents shall be due and without prejudice to the right of the Mortgagee thereafter to enforce an appropriate right or remedy against the Mortgagor existing at the time such earlier action was commenced.

I. Sale of Mortgaged Premises in Whole or in Part. In case of any sale under or pursuant to this Mortgage, by virtue of judicial proceedings or otherwise, the Mortgaged Premises may be sold in one parcel and as an entirety or in such parcels, manner or order as the Mortgagee, in its sole discretion, may elect.

J. Additional Assurances. The Mortgagor agrees that upon the request of the Mortgagee from time to time, the Mortgagor will execute, acknowledge and deliver all such additional instruments and documents, and further assurances of title, and will do or cause to be done all such further or additional acts or things as may be reasonably necessary or required to effectuate fully the intent and purpose of this Mortgage and to preserve, perfect, protect and secure the indebtedness and obligations secured hereby.

K. Amendments. No change, amendment, modification, cancellation or discharge of this Mortgage, or any part hereof, or of the indebtedness and obligations secured hereby shall be valid unless the same shall be in writing and signed by the party to be bound thereby.

L. Recitals. The recitals to this Mortgage are hereby incorporated into and made a part of this Mortgage, and shall be deemed covenants and representations binding upon the Mortgagor.

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M. Mortgagee Consent. Whenever the consent or approval of the Mortgagee is required under this Mortgage, such consent or approval shall not be unreasonably withheld or delayed. Whenever a consent or approval is required of the Mortgagee under this Mortgage, the Mortgagee shall be deemed to have provided such consent or approval to the Mortgagor if the Mortgagee has failed to respond to a written request for such consent or approval from the Mortgagor within thirty (30) days from the Mortgagee's receipt of such written request.

N. Covenants Running With Land. All the covenants hereof shall run with the land but shall terminate upon release of this Mortgage.

O. Paragraph Headings. The paragraph and subparagraph headings of this Mortgage are for convenience only and are not intended to alter, limit or enlarge in any way the scope or meaning of the language hereof.

P. Continuing Force of Representations and Covenants. The representations and covenants made by the Mortgagor under this Mortgage are, and shall be deemed to be, of continuing force and effect until all indebtedness and obligations secured hereby have been fully paid, discharged and performed.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument as of the day and year first above written.

THE MORTGAGOR:

AMERICAN NATIONAL BANK AND TRUST COMPANY  
OF CHICAGO, as Trustee under Trust  
Agreement dated December 19, 1988  
and known as Trust No. 107225-02

By: \_\_\_\_\_

RECORDED  
CLERK'S OFFICE  
COOK COUNTY, ILLINOIS

1988 DEC 30 PM 12:46

THIS INSTRUMENT WAS PREPARED BY  
AND SHOULD BE RETURNED AFTER  
RECORDING TO:

Edward J. Lesniak  
BURKE, WILSON & McILVAINE  
303 East Wacker Drive  
Suite 1000  
Chicago, Illinois 60601  
(312) 861-1300

Box 333

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STATE OF ILLINOIS )  
                          ) SS:  
COUNTY OF C O O K )

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, \_\_\_\_\_ President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a federal banking association, and \_\_\_\_\_, \_\_\_\_\_ Secretary of said association, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ President and \_\_\_\_\_ Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said association, as Trustee, for the uses and purposes therein set forth; and the said \_\_\_\_\_ Secretary then and there acknowledged that said \_\_\_\_\_ Secretary, as custodian of the corporate seal of said association, caused the corporate seal of said association to be affixed to said instrument as said \_\_\_\_\_ Secretary's own free and voluntary act and as the free and voluntary act of said association, as Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 1988.

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

My Commission Expires:  
\_\_\_\_\_

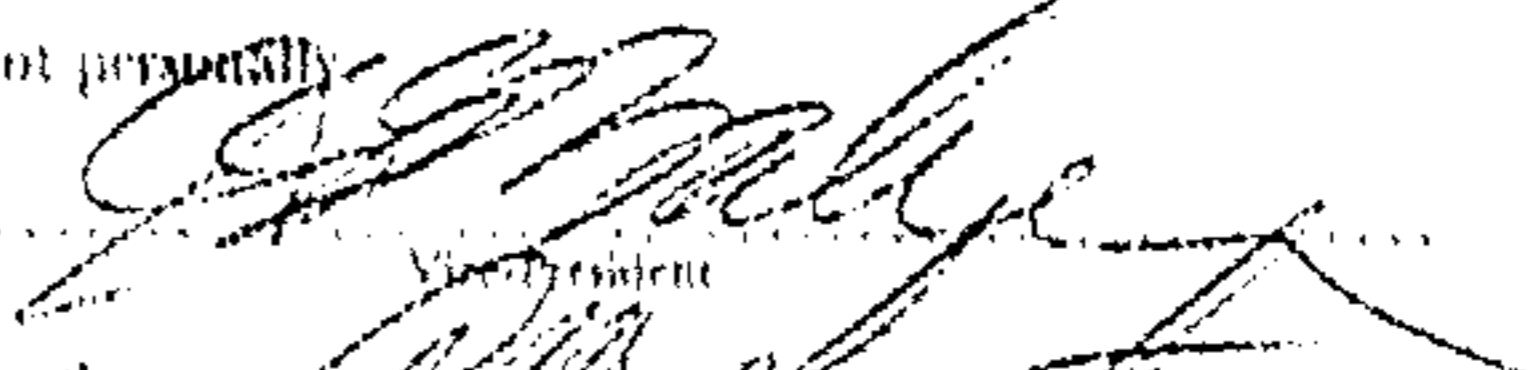
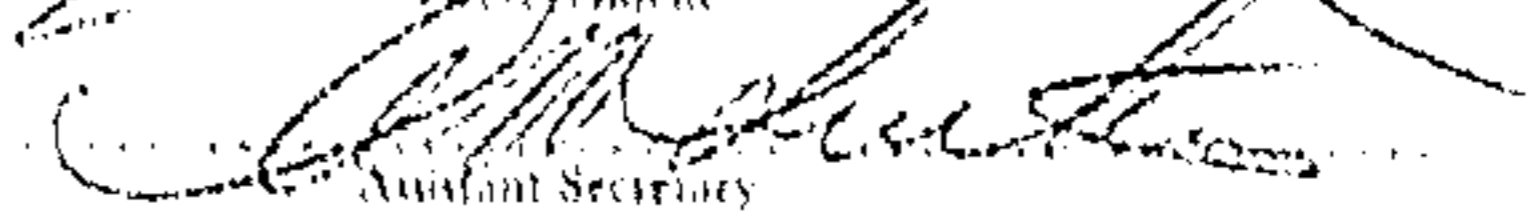
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THE FIRST NATIONAL BANK OF CHICAGO

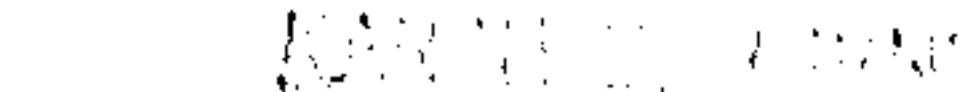
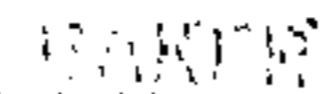
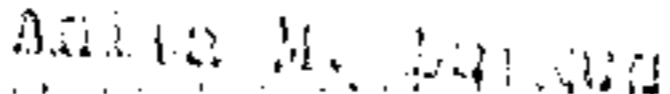
This Mortgage is executed by the American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said American National Bank and Trust Company of Chicago, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said note contained shall be construed as creating any liability on the said First Party or on said American National Bank and Trust Company of Chicago personally to pay the said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the First Party and its successors and said American National Bank and Trust Company of Chicago personally are concerned, the legal holder or holders of said note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor, if any.

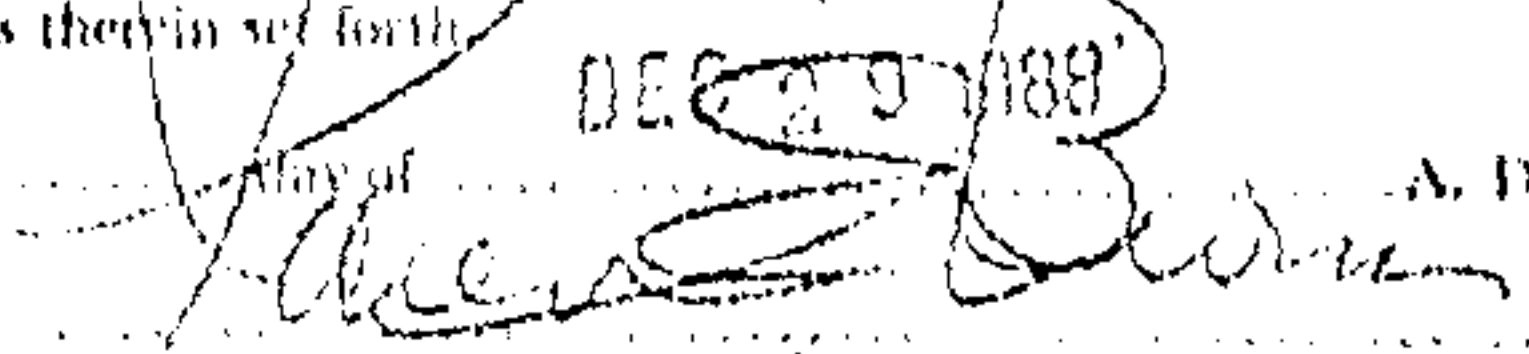

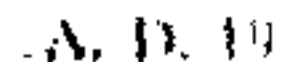
IN WITNESS WHEREOF, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice-Presidents, or Assistant Vice-Presidents, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
As Trustee as aforesaid and not personally

By  Vice President  
ATTEST  Assistant Secretary

STATE OF ILLINOIS  
COUNTY OF COOK

I,  a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that  Vice-President of the AMERICAN NATIONAL BANK AND TRUST COMPANY of Chicago, and  Assistant Secretary of said Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice-President, and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said Company, did affix the said seal to the said instrument as his own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this  day of  A. D. 19 

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## EXHIBIT A

### LEGAL DESCRIPTION

Lots 14, 15 and 16 in Block 2 in Hosmer and Mackeys Subdivision of Blocks 1 to 6 both inclusive and 12 to 16 both inclusive in Freers Subdivision of the West Half of the North West Quarter of Section 2, Township 39 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois.

Also

Lot 17 in Block 2 in Hosmer and Mackey's Subdivision of Blocks 1 to 6 and 12 to 16 both inclusive, in the Subdivision of the West Half of the North West Quarter of Section 2, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index # 16-02-108-009  
16-02-108-110  
16-02-108-111  
16-02-108-112

ADDRES: 1425 N. PULASKI, CHICAGO, IL

Cook County Clerk's Office

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## EXHIBIT B

### PERMITTED EXCEPTIONS

General Taxes for the year 1988 and any and all exceptions stated in that certain Title Insurance Policy (ALTA Form B) issued by Chicago Title Insurance Company in favor of the Mortgagee, identified as Policy Number 71-88-603, relating to the Mortgaged Premises, as and when issued.

Property of Cook County Clerk's Office

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## EXHIBIT C

### OTHER LOAN DOCUMENTS

1. Assignment of Leases, Rents and Security Deposits dated December 22, 1988 made by the Mortgagor and Giordano's Enterprises, Inc. in favor of the Mortgagee.
2. Security Agreement dated December 22, 1988 made by Giordano's Enterprises, Inc., an Illinois corporation, in favor of the Mortgagee granting a security interest in certain Assets.
3. Security Agreement dated December 22, 1988 made by Giordano's Enterprises, Inc., an Illinois corporation, and Giordano's International Franchise Systems, Inc. ("GIF") in favor of the Mortgagee on certain assets of GIF.
4. Limited Guaranty dated December 22, 1988 made by John Apostolou in favor of the Mortgagee.
5. Collateral Assignment of Leases dated December 22, 1988 made by Giordano's Enterprises, Inc., an Illinois corporation in favor of the Mortgagee for the leases of the following properties: 3214 West 63rd Street, Chicago; 747 North Ash Street, Chicago; 5159 South Pulaski Road, Chicago; 201 Plainfield Road, Willowbrook; 815 West Van Buren, Chicago; and 1840 North Clark Street, Chicago; 820 East Rand Road, Mt. Prospect; and 21-23 South LaGrange Road, LaGrange.
6. Trademark Collateral Assignment and Security Agreement dated December 22, 1988 made by Giordano's Enterprises, Inc., an Illinois corporation in favor of the Mortgagee.
7. UCC Financing Statements in respect of the Assignment of Leases, Rents and Security Deposits and both Security Agreements.

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