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DEPT-01 RECORDING $53

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COOK COUNTY RECORDER

THIS IS A JUNIOR MORTGAGE

BOULEVARD BANK NATIONAL ASSOCIATION, MORTGAGEE

LA SALLE NATIONAL BANK,
As Trustee Under A Trust Agreement Dated September 15, 1985
and Known as Trust No. 109791
MORTGAGOR

JUNIOR MORTGAGE
SECURING $700,000.00 NOTE
EFFECTIVE AS OF NOVEMBER 27, 1989

MAIL TO

THIS DOCUMENT PREPARED BY AND UPON
RECORDING IS TO BE RETURNED TO

THOMAS P. DUFFY
ARVEY, HODES, COSTELLO & BURMAN
180 NORTH LA SALLE STREET
SUITE 3800
CHICAGO, ILLINOIS 60601

89571822

$3.00 MAIL

wp007/06834-045
11/27/89

JUNIOR MORTGAGE

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THIS IS A JUNIOR MORTGAGE

THIS JUNIOR MORTGAGE is made this 27th day of November, 1989, by LA SALLE NATIONAL BANK, as Trustee under a Trust Agreement dated September 15, 1985, and known as Trust No. 109791 (hereinafter referred to as the "Mortgagor"), having an address of 135 South LaSalle Street, Chicago, Illinois 60690, in favor of BOULEVARD BANK NATIONAL ASSOCIATION, a National Banking Association, having its principal office at 410 North Michigan Avenue, Chicago, Illinois 60611 (hereinafter referred to as the "Mortgagee").

WITNESSETH, Mortgagor hereby mortgages, conveys, transfers and grants a security interest in the Mortgaged Premises (as defined herein) to the Mortgagee as security for (i) the payment of indebtedness in the amount of SEVEN HUNDRED THOUSAND AND NO/100 ($700,000.00) DOLLARS lawful money of the United States, to be paid with interest thereon according to a certain Note (hereinafter defined) bearing even date herewith, and any amendments, modifications, renewals or replacements thereof; (ii) the Indebtedness (hereinafter defined); (iii) any other sums of money secured hereby, as hereinafter provided and (iv) performance of Mortgagor's obligations under the Loan Documents.

And the Mortgagor covenants, represents and warrants with the Mortgagee as follows:

I

DEFINED TERMS

1.1 Definitions. Whenever used in this Mortgage, the following terms, when capitalized, shall have the following respective meanings unless the context shall clearly indicate otherwise:

A. "Beneficiary" shall mean the owner of one hundred percent (100%) of the beneficial interest in and power of direction under Mortgagor.

B. "Default Rate" shall mean the Prime Rate plus four percent (4%) per annum.

C. "Environmental Laws" shall mean any Federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Mortgaged Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and

Recovery Act of 1976 ("RCRA") as amended, 42 U.S.C. Sections 6901 et seq.

D. "Event of Default" shall mean those occurrences described in paragraph 18.1 hereof.

E. "Fixtures" shall mean all materials, supplies, machinery, equipment, fittings, structures, apparatus and other items now or hereafter attached to, installed in or used in connection with, temporarily or permanently, the Mortgaged Premises, including but not limited to any and all partitions, window screens and shades, drapes, rugs and other floor coverings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, freezers, storm shutters and awnings, telephone and other communication systems and equipment, security systems and equipment, master antennas and cable television systems and equipment, whether detached or detachable, and recreational equipment and facilities of all kinds other than those items owned by tenants of the Mortgaged Premises or other parties unrelated to Mortgagor, Beneficiary or Guarantor.

F. "Full Insurable Value" shall mean replacement cost, exclusive of costs of excavation, foundations and footings below the lowest basement floor, or the original principal balance on the Note, whichever is greater.

G. "Guarantor" shall mean Harold Lebovic, his heirs, devisees, legal representatives, successors and assigns.

H. "Hazardous Substance" shall mean and include without limitation: (i) those substances included within the definitions of any more or one of the terms "hazardous substances", "hazardous materials", "toxic substances", and "solid waste" in CERCLA, RCRA, and the Hazardous Materials Corporation Act, as amended, 49 U.S.C. Sections 1801 et seq., and in the regulations promulgated pursuant to said laws or under applicable Illinois law; (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iii) such other substances, materials and wastes which are or become regulated under applicable local, state or Federal Laws, or which are classified as hazardous or toxic under Federal, state or local laws or regulations; and (iv) any material, waste or substance which is (a) petroleum; (b) asbestos; (c) polychlorinated biphenyls; (d) designated as a "Hazardous Substance" pursuant to Section 311 of

the Clean Water Act, 33 U.S.C. §§1251 et seq. (33 U.S.C. §1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (e) flammable explosives; or (f) radioactive materials.

I. "Impositions" shall mean all real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Mortgaged Premises, and all other liens with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Premises or the rents, issues and profits or the ownership, use, occupancy or enjoyment thereof.

J. "Indebtedness" shall mean all obligations of Mortgagor, Beneficiary or Guarantor under this Mortgage and the other Loan Documents and all other obligations of every kind and description of Mortgagor, Beneficiary or Guarantor, in favor of Mortgagee, its successors and assigns, howsoever created, arising or evidenced, whether direct or indirect, primary or secondary, absolute or contingent, joint or several, fixed or otherwise, due or to become due, acquired by discount, howsoever created, evidenced or arising and howsoever acquired by Mortgagee, as well as any and all renewals and extensions thereof, including obligations of payment and performance under any agreements, documents, instruments or writings now or hereafter executed or delivered by Mortgagor, Beneficiary or Guarantor to Mortgagee.

K. "Loan Documents" shall mean those documents referred to in Section 2.1 of the Note.

L. "Loan Rate" shall mean the Prime Rate plus one percent (1%) per annum.

M. "Mortgaged Premises" shall mean all of the Mortgagor's present or future estates in the Property, together with all of the property, rights and interests described on attached Exhibit A.

N. "Mortgagee" shall mean Boulevard Bank National Association, a National Banking Association and its successors and assigns.

O. "Mortgagor" shall mean the owner of the Mortgaged Premises.

P. "Note" means a Note which Mortgagor has executed and delivered to Mortgagee, of even date herewith, in the principal amount of $700,000.00, wherein Mortgagor promises to pay to the order of Mortgagee, Seven Hundred Thousand and no/100 Dollars ($700,000.00) in seventeen (17) equal consecutive monthly

payments in the amount of Nine Thousand Two Hundred and No/100 Dollars ($9,200.00) each commencing on the first day of January, 1990, and thereafter on the first day of each succeeding month through and including May 1, 1991. Interest shall accrue on the Principal Balance of the Note at the Loan Rate (hereinafter defined). Any amount of the aforesaid fixed monthly payment which exceeds accrued interest on the Note shall be applied to reduce the Principal Balance of the Note. If the aforesaid fixed monthly payment is not sufficient to pay accrued interest on the Note, then Mortgagor shall pay the deficiency in such accrued interest on the Note concurrent with Mortgagor paying the aforesaid fixed monthly payment. All of the Principal Balance of the Note and unpaid interest accrued thereon shall become due, if not sooner paid or due by acceleration or otherwise, on May 29, 1991. Notwithstanding the foregoing, after maturity of the Note or the occurrence of an Event of Default, the interest rate shall be increased to the Default Rate until the Note is fully paid or, at the sole option of Mortgagee, until the Event of Default is cured to the satisfaction of Mortgagee and the Loan is reinstated.

Q. "Permitted Encumbrances" shall mean this Mortgage, the Senior Mortgage (hereinafter defined), the Theatre Lease (hereinafter defined) and other matters (if any) as set forth in the Schedule of Permitted Encumbrances attached hereto as Exhibit "B" and incorporated herein, and the lien and security interests created by the Loan Documents.

R. "Personalty" shall mean all of the right, title and interest of Mortgagor in and to all Fixtures, furniture, furnishings, and all other personal property of any kind or character, temporary or permanent, now or hereafter located upon, within or about the Mortgaged Premises which are necessary for the operation of the Mortgaged Premises, (excluding personal property owned by tenants in possession), together with any and all accessions, replacements, substitutions, and additions thereto or therefor and the proceeds thereof.

S. "Prime Rate" shall mean that rate determined from time to time by Mortgagee as its Prime Rate and, in determining interest payable hereon, interest shall be adjusted from time to time as and on the date change is effected in the Prime Rate. The Prime Rate does not purport to be the most favorable rate offered by Mortgagee to its borrowers.

T. "Principal Balance" shall mean the unpaid principal balance of the Note.

U. "Prohibited Transfer" shall mean a transfer as defined in paragraph 9.1 herein.

V. "Property" shall mean the real property located in Chicago, Illinois and legally described on Exhibit "A" which is attached hereto and made a part hereof.

W. "Senior Mortgage" shall mean a First Mortgage and Security Agreement dated November 17, 1989, made by Mortgagor and Beneficiary in favor of Maccabees Life Insurance Company, a Michigan Corporation ("Senior Lender"), which Senior Mortgage was recorded with the Recorder of Deeds for Cook County, Illinois on _____, 1989, as Document No. _____, which secures a Note in the amount of $5,400,000.00.

X. "Theatre Lease" shall mean the Lease dated April 4, 1986, between Mortgagor and Plitt Theatres, Inc., a Delaware Corporation, with respect to the Mortgaged Premises.

Y. "Title Company" shall mean Intercounty Title Insurance Company.

2.1 Payment of Indebtedness. Mortgagor will pay the indebtedness as provided in the Note and will otherwise duly comply with the terms thereof.

3.1 Representations as to the Mortgaged Premises.

Mortgagor represents, warrants and covenants that:

A. Mortgagor is the holder of the fee simple title to the Mortgaged Premises subject only to the Permitted Encumbrances; Mortgagor has full legal power, right and authority to mortgage and convey the Mortgaged Premises; and this Mortgage creates a valid second lien on the Mortgaged Premises subject only to the Senior Mortgage.

B. Mortgagor and Beneficiary will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Mortgaged Premises any Hazardous Substance or allow any other person or entity to do so.

C. Mortgagor and Beneficiary shall keep and maintain the Mortgaged Premises in compliance with, and shall not cause or permit the Mortgaged Premises to be in violation of any Environmental Law or allow any other person or entity to do so.

D. Mortgagor and Beneficiary shall give prompt written notice to Mortgagee of:

(i) any proceeding or inquiry by any governmental authority whether Federal, state or local, with respect to violation of any Environmental Law, the presence of any Hazardous Substance on the

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Mortgaged Premises or the migration thereof from or to other property;

(ii) all claims made or threatened by any third party against Mortgagor, Beneficiary or the Mortgaged Premises relating to any loss or injury resulting from any Hazardous Substance; and

(iii) Mortgagor's or Beneficiary's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Premises that could cause the Mortgaged Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Premises under any Environmental Law.

E. Mortgagee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with violation of any Environmental Law and Mortgagor hereby agrees to pay any attorneys' fees thereby incurred by Mortgagee in connection therewith.

F. Mortgagor and Beneficiary shall protect, indemnify and hold harmless Mortgagee, its directors, officers, administrators, shareholders, employees, agents, contractors, attorneys, successors and assigns from and against any and all loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to violation of any Environmental Law, the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under or about the Mortgaged Premises, including without limitation (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Premises and the preparation and implementation of any closure, remedial or other required plans. This indemnity and covenant shall survive the reconveyance of the lien of this Mortgage or the extinguishment of such lien by foreclosure or action in lieu thereof.

G. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or Federal Law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the current or future presence, or suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, about or within the Mortgaged Premises, or any

portion thereof, Mortgagor and Beneficiary shall have thirty (30) days after written demand for performance thereof by Mortgagee or other party or governmental entity or agency (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), to commence to perform, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer approved in advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor and Beneficiary, including, without limitation, the charges of such contractor and the consulting engineer, and Mortgagee's reasonable attorneys' fees and costs incurred in connection with the monitoring or review of such Remedial Work. In the event Mortgagor and Beneficiary shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof incurred in connection therewith shall become immediately due and payable with interest thereon at the Default Rate until paid, and such amounts shall be secured by this Mortgage.

H. Without Mortgagee's prior written consent, which shall not be unreasonably withheld, Mortgagor nor Beneficiary shall take any remedial action in response to the presence of any Hazardous Substance on, under, or about the Mortgaged Premises, nor enter into any settlement agreement, consent, decree or other compromise in respect to any Hazardous Substance claims. Said consent may be withheld, without limitation, if Mortgagee, in its reasonable judgment, determines that said remedial action, settlement, consent or compromise might impair the value of Mortgagee's security hereunder; provided, however, that Mortgagee's prior consent shall not be necessary in the event that the presence of Hazardous Substance in, on, under or about the Mortgaged Premises either poses an immediate threat to the health, safety, or welfare of any individual or is of such nature that an immediate remedial response is necessary, and it is not possible to obtain Mortgagee's consent before taking such action, provided that in such event Mortgagor and Beneficiary shall notify Mortgagee as soon as practicable of any action so taken. Mortgagee agrees not to withhold its consent, when such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction; or (ii) Mortgagor and Beneficiary establish to the reasonable satisfaction of Mortgagee that there is no reasonable alternative to such remedial action that would result in materially less impairment of Mortgagee's security hereunder.

I. Mortgagor is an Illinois land trust duly formed, validly existing and in good standing under the laws of the State of Illinois.

J. The execution and delivery of the Loan Documents and the performance by Mortgagor of its obligations thereunder have been duly authorized by all necessary action and will not violate any provision of law;

K. Except for the consent required under the Senior Mortgage, which Mortgagor has obtained, the execution and delivery of the Loan Documents and the performance by the Mortgagor of its obligations thereunder do not require any consent under and will not result in a breach of or default under any resolution, indenture, note, contract, agreement or other instrument to which the Mortgagor is a party or is otherwise subject or bound, and does not contravene any provision of applicable law or regulation, or any order, decree, writ or injunction or Mortgagor's organizational documents;

L. To the best of Mortgagor's knowledge, the use and occupancy of the Mortgaged Premises will not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including without limitation zoning, building, environmental, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction;

M. All utility and municipal services required for the occupancy and operation of the Mortgaged Premises, including, but not limited to, water supply, storm and sanitary sewage disposal systems, gas, electric and telephone facilities are presently installed at the Mortgaged Premises, and written permission has been obtained from the applicable utility companies, Federal, State and local regulatory authorities or municipalities to connect the Mortgaged Premises into each of said services;

N. To the best of Mortgagor's knowledge, all governmental permits and licenses required by applicable law to occupy and operate the Mortgaged Premises have been issued and are in full force;

O. The storm and sanitary sewage disposal system, water system and all mechanical systems of the Mortgaged Premises do comply with all applicable environmental, pollution control and ecological laws, ordinances, rules and regulations, and the applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Mortgaged Premises have issued their permits for the operation of those systems;

P. Except as set forth in the title commitment issued by the Title Company with respect to the Mortgaged Premises, there is not an encroachment upon any building line, set back line, sideyard line, or any recorded or visible easement (or other easement of which Mortgagor is aware or have reason to believe may exist) which exists with respect to the Mortgaged Premises;

Q. Except as additional security for the Senior Mortgage, no financing statement (other than any which may have been filed in favor of Mortgagee) covering the Mortgaged Premises is on file in any public office or is presently in the possession of any third party;

R. Mortgagor is and will be the lawful owner of all of the Mortgaged Premises, free of any and all liens and claims (except the Senior Mortgage loan documents) whatsoever, other than the security interest hereunder;

S. All information furnished to Mortgagee concerning the Mortgaged Premises and financial affairs of Mortgagor, Beneficiary or Guarantor and all other written information heretofore or hereafter furnished by Mortgagor, Beneficiary or Guarantor to Mortgagee, is and will be true and correct;

T. All financial statements delivered to Mortgagee are true and correct, and fairly present the financial condition of Mortgagor, Beneficiary and Guarantor. Mortgagor, Beneficiary and Guarantor do not have any contingent liabilities not disclosed by said financial statements, and at the present time there are no unrealized or anticipated losses from any commitments or obligations of Mortgagor;

U. There are no actions, suits or proceedings pending or threatened, before or by any court, regulatory or governmental agency, or public board or body, against or affecting the Mortgaged Premises or Mortgagor;

V. Mortgagor has not received any notice of, nor have any knowledge of any intention to initiate any actions, suits or proceedings pending or threatened by any regulatory or governmental agency or public board or body to acquire the Mortgaged Premises by eminent domain or condemnation proceedings.

W. There are no leases or other use or occupancy agreements affecting the Mortgaged Premises except those leases and agreements, if any, previously disclosed in writing to the Mortgagee;

X. All representations, covenants and warranties contained in the Loan Documents, to the extent not inconsistent herewith, are hereby incorporated herein by reference;

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Y. All representations, covenants and warranties contained herein and in the other Loan Documents are true and correct as of the date hereof. Each time Mortgagee disburses the proceeds of the Loan, such disbursement shall be deemed to be a recertification of the representations, covenants and warranties contained herein or in the other Loan Documents. All representations, covenants, and warranties contained herein and in the other Loan Documents shall be deemed to have been relied on by Mortgagee notwithstanding any investigation made by Mortgagee or on its behalf; and

Z. Mortgagor shall protect, defend, indemnify and hold Mortgagee harmless from and against all loss, cost, liability and expense, including without limitation, attorneys' fees incurred or suffered by Mortgagee as a result of any claim for a broker's or finder's fee asserted against Mortgagee by any person or entity claiming to have been employed by Mortgagor or anyone claiming by, through or under Mortgagor in connection with the transaction herein contemplated.

AA. Mortgagor shall at any time or from time to time, upon the written request of Mortgagee, execute, and, if required, record (and pay all fees, taxes or other expenses relating thereto) all such further documents and do all such other acts and things as Mortgagee may request to effectuate the transaction herein contemplated.

BB. Mortgagor will make all payments required to be made and perform all obligations required to be performed under the Senior Mortgage.

4.1 <u>Imposition.</u> Mortgagor shall, subject to the provisions of this Mortgage, pay all Impositions prior to delinquency and in default thereof the Mortgagee may, at its option, pay the same. Any sums paid by Mortgagee on account of Impositions shall bear interest at the Default Rate.

5.1 <u>Maintenance of Mortgaged Premises; Changes and Alterations.</u>

A. Mortgagor shall maintain or cause to be maintained the Mortgaged Premises in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Mortgagor shall refrain from and shall not permit the commission of waste in or about the Mortgaged Premises and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Mortgaged Premises without the prior written consent of the Mortgagee, except as hereinafter otherwise provided.

B. Mortgagor may, in its discretion and without the prior written consent of the Mortgagee, any time and from time to time, remove and dispose of any Personalty, now or hereafter constituting part of the Mortgaged Premises which becomes inefficient, obsolete, worn out, unfit for use or no longer useful in the operation of the Mortgaged Premises or the business conducted thereon, if any, provided the Mortgagor promptly replaces such Personalty with equal or better replacements (if still reasonably necessary or desirable for the operation of the Mortgaged Premises), with title to such replacements subject only to the Permitted Encumbrances.

6.1. Insurance.

A. Mortgagor shall maintain the following insurance coverage with respect to the Mortgaged Premises:

(i) Insurance against loss of or damage to the Mortgaged Premises by fire and such other risks, including but not limited to risks insured against under extended coverage policies with all risk and difference in conditions endorsements and additional optional perils and vandalism coverage, in each case in amounts at all times sufficient to prevent the Mortgagor from becoming a co-insurer under the terms of applicable policies and, in any event, in amounts not less than the greater of (a) the principal balance remaining outstanding from time to time on the Note, and (b) one hundred percent (100%) of the Full Insurable Value of the Mortgaged Premises, as determined from time to time;

(ii) Comprehensive general liability insurance against any and all claims (including all costs and expenses of defending the same) for bodily injury or death and for property damage occurring upon, in or about the Mortgaged Premises and the adjoining streets or passageways in amounts not less than the respective amounts which the Mortgagee shall from time to time reasonably require, having regard to the circumstances and usual practice at the time of prudent owners of comparable properties in the area in which the Mortgaged Premises are located, but in no event in an amount less than ONE MILLION AND NO/100 ($1,000,000.00) DOLLARS relative to the Mortgaged Premises;

(iii) Flood insurance if the Mortgaged Premises are located in a flood hazard area.

(iv) Rental or business interruption insurance in amounts sufficient to pay, for a period of at least six (6) months, all amounts required to be paid by Mortgagor pursuant to the Note and other Loan Documents;

(v) Such other insurance as is customarily purchased in the area for similar types of business, in such amounts and against such insurable risks as from time to time may reasonably be required by the Mortgagee.

The foregoing insurance may be carried under blanket policies.

B. Any insurance purchased by Mortgagor relating to the Mortgaged Premises, whether or not required under this Mortgage, shall be for the benefit of the Mortgagee and the Mortgagor, as their interests may appear, and shall be subject to the provisions of this Mortgage.

C. If the Mortgagor fails to keep the Mortgaged Premises insured in accordance with the requirements of the Loan Documents, the Mortgagee shall have the right, at its option, upon five (5) days notice to Mortgagor, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall bear interest at the Default Rate from the date of payment.

D. All policies of insurance required by the Loan Documents shall be in forms and with companies reasonably satisfactory to the Mortgagee, with standard mortgage clauses attached to or incorporated in all policies in favor of the Mortgagee or Mortgagee shall be named as additional loss payee where appropriate, including a provision requiring that coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Subject to the provisions of the Senior Mortgage and the Theatre Lease, such insurance may be provided for under a blanket policy or policies and may provide that any loss or damage to the Mortgaged Premises not exceeding TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS shall be adjusted by and paid to the Mortgagor and any such loss exceeding TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS shall be adjusted by the Mortgagor and the Mortgagee and paid to the Mortgagee and held by Mortgagee in a non-interest bearing escrow account. All such insurance proceeds shall be applied in accordance with Paragraph 7.1 below, and any amounts not so applied shall be paid to the Mortgagor.

E. The Mortgagor shall deliver to the Mortgagee the originals of all insurance policies or certificates of coverage under blanket policies, including renewal or replacement policies, and in the case of insurance about to expire shall

deliver renewal or replacement policies as to the issuance thereof or certificates in the case of blanket policies not less than thirty (30) days prior to their respective dates of expiration.

F. Notwithstanding any damage, loss or casualty to the Mortgaged Premises and in any event, the Mortgagor shall continue to pay the principal and interest on the Note.

7.1 Damage or Destruction.

A. In case of any damage to or destruction of the Mortgaged Premises or any part thereof from any cause whatsoever, other than a Taking (as defined in Paragraph 15.1), the Mortgagor shall promptly give written notice thereof to the Mortgagee, unless such damage or destruction involved less than TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS. In any event, but subject to the provision of Paragraph 7.1A hereof, Mortgagor shall restore, repair, replace, or rebuild the same or cause the same to be restored, repaired, replaced or rebuilt to substantially the same value, condition and character as existed immediately prior to such damage or destruction or with such changes, alterations and additions as may be made at the Mortgagor's election pursuant to Paragraph 5.1. Such restoration, repair, replacement or rebuilding (herein collectively called "Restoration") shall be commenced promptly and completed with diligence by the Mortgagor, subject only to delays beyond the control of the Mortgagor.

B. Subject to Paragraph 7.1 hereof and the provisions of the Senior Mortgage and Theatre Lease, all net insurance proceeds received by the Mortgagee pursuant to Paragraph 7.1 shall be made available to the Mortgagor for the Restoration required hereby in the event of damage or destruction on account of which such insurance proceeds are paid. If at any time the net insurance proceeds which are payable to the Mortgagor in accordance with the terms of this Mortgage shall be insufficient to pay the entire cost of the Restoration, the Mortgagor shall immediately deposit the deficiency with Mortgagee. In such an event, Mortgagee shall make all payments from Mortgagor's own funds to the contractor making such Restoration until the amount of said deficiency has been satisfied; thereafter, Mortgagee shall make subsequent payments from the insurance proceeds to Mortgagor or to the contractor, whichever is appropriate. All payments hereunder shall be make only upon a certificate or certificates of a supervising architect appointed by the Mortgagor and reasonably satisfactory to the Mortgagee that payments, to the extent approved by such supervising architect, are due to such contractor for the Restoration, that the Mortgaged Premises are free of all liens of record for work labor or materials, and that the work conforms to the legal requirements therefor.

C. Upon completion of the Restoration, the excess net insurance proceeds, if any, shall be paid to the Mortgagor.

D. Subject to the provisions of the Theatre Lease, if an Event of Default shall occur, or if in Mortgagee's reasonable estimation the Restoration shall not be completed prior to the maturity of the Note (including any extension of the maturity of the Note, if Mortgagor has effectively elected to extend the maturity of the Note), then, upon thirty (30) days' notice from Mortgagee to Mortgagor, all insurance proceeds received by the Mortgagee may be retained by the Mortgagee and applied in payment of the mortgage indebtedness and to any excess repaid to or for the account of Mortgagor.

8.1 Indemnification. Mortgagor agrees to indemnify and hold the Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or the other Loan Documents or as a result of: (i) ownership of the Mortgaged Premises or any interest therein or receipt of any rent or other sum therefrom; (ii) 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; (iii) any use, non-use 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; (iv) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; (v) the performance of any labor or services or the furnishing of any materials or other property with respect to the Mortgaged Premises or any part thereof or (vi) Mortgagee being the holder of the Note or Mortgagee under the Mortgage or the exercise of any of Mortgagee's rights under the Loan Documents except such claim arising out of Mortgagee's negligence or willful misconduct. Any amounts payable to the Mortgagee under this Paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

9.1 Prohibited Transfer; Due on Sale. Mortgagor shall not create, effect, contract for, agree to, consent to, suffer, or permit any conveyance, sale, lease, assignment, transfer, grant of security interest, or other encumbrance or alienation of any interest in the following properties, rights or interests without the prior written consent of Mortgagee ("Prohibited Transfer"):

A. the Mortgaged Premises or any part thereof or interest therein, excepting only sales or other dispositions of Personalty pursuant to paragraph 5.1 herein;

B. all or any portion of the beneficial interest or power of direction in or to any trust which holds title to the Mortgaged Premises;

C. any shares of stock of a corporate Mortgagor, a corporation which is a beneficiary of Mortgagor, a corporation which is a general partner in Mortgagor, if Mortgagor is a partnership, a corporation which is a general partner in a partnership that is a beneficiary of Mortgagor, or a corporation which is the owner of any of the stock of any corporation described in this subparagraph (other than the shares of stock of a corporate trustee or a corporation whose stock is publicly traded on national securities exchange or on the National Association of Securities Dealer's Automated Quotation System);

D. any general or limited partner's interest in Mortgagor or any partnership which is a beneficiary of Mortgagor, except for transfers of partnership interests to family members or trusts established for family members;

in each case whether any such Prohibited Transfer is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 9.1 shall not apply (i) to this Mortgage, and (ii) to the lien of current taxes and assessments not in default.

10.1 <u>Priority of Lien; After-Acquired Property</u>.

A. Subject to the Permitted Contests granted under Paragraph 28.1, Mortgagor will keep and maintain the Mortgaged Premises free from all liens for moneys due and payable to persons supplying labor for and providing materials used in the construction, modification, repair or replacement of the Mortgaged Premises.

B. In no event shall Mortgagor do or permit to be done, or permit to do or permit the omission of any act or thing the doing or omission of which would impair the lien of this Mortgage. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction or agreement affecting or changing the uses which may be made of the Mortgaged Premises or any part thereof without the express written consent of the Mortgagee. It is the desire of the parties (unless a contrary interest is manifested by Mortgagee in a duly recorded document) that the lien of this Mortgage shall not merge in fee simple title to the Mortgaged Premises regardless if Mortgagee shall acquire

any additional or other interests in or to the Mortgaged Premises or ownership thereof.

C. All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security of this Mortgage. Nevertheless, Mortgagor will do such further acts and execute, acknowledge and deliver such further conveyances, mortgages, loan documents, financing statements and assurances as Mortgagee shall reasonably require for accomplishing the purpose of this Mortgage.

11.1 Mechanics' Liens and Contest Thereof. Mortgagor will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Mortgaged Premises or any funds due any contractor and will immediately discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof.

12.1 Settlement of Mechanics' Lien Claims. If Mortgagor shall fail promptly either (1) to discharge, or (2) to contest claims asserted in the manner provided in Paragraph 28.1 or having commenced to contest the same, shall fail to prosecute such contest with diligence, or upon adverse conclusion of any such contest, to cause any judgment or decree to be satisfied and lien to be released, then and in any such event Mortgagee may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, may in its sole discretion effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Company and any amount so expended by Mortgagee, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute additional indebtedness secured hereby which shall bear interest at the Default Rate until paid. In settling, compromising or discharging any claims for lien, Mortgagee shall not be required to inquire into the validity or amount of any such claim.

13.1 Proceedings. If any proceedings are filed or are threatened to be filed seeking to (a) enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Mortgaged Premises or any portion thereof; (b) adversely affect the validity or priority of the liens and security interest granted Mortgagee hereby; or (c) materially adversely affect the financial condition of Mortgagor, Beneficiary or Guarantor, then Mortgagor will notify Mortgagee of such proceedings and within five (5) business days following Mortgagor's, Beneficiary's or Guarantor's notice of such proceedings, and Mortgagor will cause such proceedings to be

contested in good faith, and in the event of any adverse finding or decision, prosecute all allowable appeals therefrom. Mortgagor will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

14.1 Restrictive Covenants/Recording. Mortgagor will comply with all restrictive covenants affecting the Mortgaged Premises. Mortgagor will not record or permit to be recorded any document, instrument, agreement or other writing against the Mortgaged Premises without the prior written consent of Mortgagee.

15.1 Condemnation.

A. The term **"Taking"** as used herein shall mean a taking of all or part of the Mortgaged Premises under the power of condemnation of eminent domain. Promptly upon the receipt by Mortgagor of notice of the institution of any proceeding for the Taking of the Mortgaged Premises or any part thereof, Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, at its option, appear in any such proceeding. Mortgagor will promptly give to Mortgagee copies of all notices, pleadings, awards, determinations and other papers received by Mortgagor in any such proceeding. Mortgagor shall not adjust or compromise any claim for award or other proceeds of Taking without having first given at least thirty (30) days' written notice to Mortgagee of the proposed basis of adjustment or compromise and without first having received the written consent thereto of Mortgagee. Any award of other proceeds of Taking, after allowance for expenses incurred in connection therewith, are herein referred to as **"Condemnation Proceeds"**.

B. In the event of Taking of all or substantially all of the Mortgaged Premises, or Taking of less than all or substantially all of the Mortgaged Premises and the Mortgaged Premises are not susceptible to restoration, the Condemnation Proceeds shall be paid to Mortgagee and applied to payment of the mortgage indebtedness, subject to the provisions of the Senior Mortgage and the Theatre Lease.

C. Subject to subparagraph 15.1D below, in the event of a Taking of less than all or substantially all of the Mortgaged Premises which leaves the Mortgaged Premises susceptible and suitable to restoration, the Condemnation Proceeds shall be applied as follows: (i) If the Condemnation Proceeds shall amount to TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS or less, such amount shall be paid to Mortgagor for application by Mortgagor to the repair or restoration to the extent practicable for any damage to the Mortgaged Premises resulting from the Taking, and (ii) if the

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Condemnation Proceeds shall amount to more than TWENTY-FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS such amount shall be paid to Mortgagee and held by Mortgagee in a non-interest bearing escrow account, and shall be applied to reimburse the Mortgagor for such repair or restoration in conformity with and subject to the conditions specified in Paragraph 7.1 hereof relating to damage or destruction. In either of the foregoing events Mortgagor, whether or not the Condemnation Proceeds which are applicable thereto shall be sufficient for the purpose, shall promptly repair or restore the Mortgaged Premises as nearly as practicable to substantially the same value, condition and character as existed immediately prior to the Taking, with such changes and alterations as may be made at Mortgagor's election in conformity with Paragraph 5.1 hereof and as may be required by such taking.

D. If an Event of Default shall occur, or if in Mortgagee's reasonable estimation Restoration of the Mortgaged Premises shall not be completed prior to the maturity of the Note, any Condemnation Proceeds shall be retained by Mortgagee and, at its option, applied in payment of the mortgage indebtedness.

16.1 Right to Inspect. Mortgagee, its agents and representatives, may at all reasonable times make such inspections of the Mortgaged Premises as Mortgagee may deem necessary or desirable.

17.1 Books and Records, Financial Statements.

A. Mortgagor shall maintain or caused to be maintained books of account and records relating to the Mortgaged Premises and operation thereof, which books of account and records shall, at all reasonable times, be open to the inspection of Mortgagee and its accountants and other duly authorized representatives of Mortgagee. Mortgagor shall enter in such books of account and records on a timely and consistent basis full, true and correct entries in accordance with generally accepted accounting principles, consistently applied, of all dealings and transactions relative to the Mortgaged Premises.

B. As soon as practicable after the end of each fiscal year of Mortgagor, and in any event not less than ninety (90) days after the end of each fiscal year, the Mortgagor shall submit and deliver to Mortgagee financial information on said Mortgagor. Financial information, as used herein, shall mean a balance sheet, statement of income and expenses, statement of change in financial position, and tax returns, both consolidated and consolidating, plus a budget for the next year. In addition, the Mortgagor is required to submit quarterly operating statements for the Mortgaged Premises, including a rent roll.

For purposes of this paragraph, Mortgagor shall also mean beneficiary of Mortgagor.

18.1 Events of Default. If the occurrence of any one or more of the following events ("Events of Default") shall occur, to wit:

A. failure to make payment on or before five (5) days after the date any payment of principal or interest under the Note is due;

B. subject to Paragraph 28.1 herein, if Mortgagor fails to make prompt payment of any Impositions;

C. failure to perform or observe within thirty (30) days after written notice from Mortgagee to Mortgagor any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage, provided that if such failure is not susceptible to cure within said thirty (30) day period, Mortgagor shall not be deemed to be in default if Mortgagor commences such cure within said thirty (30) day period and diligently pursues the same to completion;

D. the occurrence of an "Event of Default" (as defined in the other Loan Documents) under any of the other Loan Documents;

E. the occurrence of an event of default or an event which with the passage of time or giving of notice would constitute an event of default under the Senior Mortgage (as hereinafter defined);

F. failure to make payment after the date any payment of any Indebtedness is due, after expiration of applicable grace periods;

G. the occurrence of a Prohibited Transfer;

H. if Mortgagor shall make a further assignment of the rents, issues or profits of the Mortgaged Premises, or any part thereof, without the prior written consent of Mortgagee;

I. any representation, warranty or other information made or furnished to Mortgagee by Mortgagor, Beneficiary, Guarantor or any other party shall prove to have been false or incorrect in any material respect;

J. if Mortgagor, Beneficiary or Guarantor shall make a general assignment for the benefit of creditors, or shall state in writing or by public announcement their inability to pay their debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt, or insolvent, or shall file a

petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against them in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor, Beneficiary or Guarantor or any material portion of their assets;

K. if, within ninety (90) days after the commencement of any proceeding against Mortgagor, Beneficiary or Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment of any trustee, receiver or liquidator of Mortgagor, Beneficiary or Guarantor or any material portion of their assets, such appointment shall not have been vacated;

L. entry against Mortgagor, Beneficiary or Guarantor of any judgment which in the reasonable exercise of Mortgagee's judgment may materially affect Mortgagor's, Beneficiary's or Guarantor's ability to repay the indebtedness secured by this Mortgage;

M. death, judicially adjudicated incompetency, or indictment for commission of a felony of Guarantor;

N. the making of any levy, seizure, or attachment upon the Mortgaged Premises;

O. if in the reasonable exercise of its judgment, Mortgagee deems itself insecure, and, within thirty (30) days after written notice by Mortgagee to Mortgagor of such insecurity, Mortgagor has failed to make Mortgagee secure in the reasonable exercise of Mortgagee's judgment.

P. failure to fully comply with the requirements of any governmental agency or authority within sixty (60) days after notice of such requirements, if, in the reasonable exercise of Mortgagee's judgment such failure to comply will materially affect Mortgagor's ability to repay the indebtedness secured by this Mortgage;

Q. any material adverse change in the Mortgagor's, Beneficiary's or Guarantor's financial condition;

R. the existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Mortgagor, Beneficiary or Guarantor, which in any material way affects the obligations of Mortgagor to Mortgagee as evidenced by the Loan Documents;

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S. if Mortgagor, Beneficiary or Guarantor is enjoined, restrained or in any way prevented by court order from performing any of their obligations under this Mortgage or under the other Loan Documents;

T. dissolution, merger or consolidation of Mortgagor or Beneficiary or sale, transfer, lease or other disposition of substantially all of the assets of Mortgagor, Beneficiary or Guarantor;

U. if Mortgagor is in default or has breached under any of the terms, provisions or conditions of the Senior Mortgage, after expiration of applicable grace periods;

then, at any time thereafter, at the sole option of the Mortgagee without further notice to Mortgagor, the Principal Balance and any other sums secured coming due and payable hereunder of the Note shall become immediately due and payable. After any such Event of Default, Mortgagee may institute, or cause to be instituted, proceedings for the realization of its rights under this Mortgage or the other Loan Documents.

19.1 Rights, Powers and Remedies of Mortgagee.

A. If an Event of Default shall occur, Mortgagee may, at its election and to the extent permitted by law.

(i) Exercise any and all of Mortgagee's available remedies against Mortgagor, whether at law or in equity, including without limitation, the right to foreclose the lien of this Mortgage or any remedy available to Mortgagee under the other Loan Documents;

(ii) Make application for the appointment of a receiver for the Mortgaged Premises whether such receivership be incident to a proposed sale of the Mortgaged Premises or otherwise, and Mortgagor hereby consents to the appointment of such receiver and agrees not to oppose any such appointment. Further, Mortgagor agrees that Mortgagee shall be appointed the receiver without bond or surety of the Mortgaged Premises at Mortgagee's option.

B. Mortgagee may, without order of Court or notice to or demand upon Mortgagor, take possession of the Mortgaged Premises. Should Court proceedings be instituted, Mortgagor hereby consents to the entry of an order by agreement to effect and carry out the provisions of this subparagraph. While in possession of the Mortgaged Premises, Mortgagee shall also have the following powers:

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(i) To collect the rents and manage, lease, alter and repair the Mortgaged Premises, cancel or modify existing leases, obtain insurance and, in general, to the extent permitted by applicable law, have all powers and rights customarily incident to absolute ownership; and

(ii) To pay out of the rents so collected the management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

C. Mortgagee may remain in possession of the Mortgaged Premises, in the event of a foreclosure, until the foreclosure sale and thereafter until the later of (i) delivery and recording of the deed which was issued pursuant to the foreclosure sale to the successful bidder at the foreclosure sale or (ii) expiration of all of Mortgagor's right, title and interest in the Mortgaged Premises including termination of all appeals from the order entered in the proceeding to foreclose this Mortgage. Mortgagee shall incur no liability for, and Mortgagor shall not assert any claim or recoupment as a result of any action taken while Mortgagee is in possession of the Mortgaged Premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists an Event of Default.

D. In order to facilitate Mortgagee's exercise of the rights, powers and remedies granted herein or under the other Loan Documents effective after the occurrence of an Event of Default and while the Event of Default is continuing, Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney to act in its name and stead for the purpose of effectuating any rights, powers or remedies granted to Mortgagee under the Loan Documents and to execute and deliver all documents and instruments as Mortgagee shall deem necessary and appropriate to effectuate such rights, powers and remedies. Notwithstanding the foregoing, if requested by Mortgagee or any purchaser from Mortgagee, Mortgagor shall ratify and confirm such actions by executing and delivering to Mortgagee or such purchaser all appropriate documents and instruments as may be designated in such request. Further, Mortgagor agrees that Mortgagee may be a purchaser of the Mortgaged Premises or any part thereof or any interest therein at any foreclosure sale, and may apply upon the purchase price the indebtedness secured hereby.

E. The proceeds of any sale of the Mortgaged Premises or part thereof or any interest therein and all amounts received by Mortgagee by reason of any holding, operation or management of the Mortgaged Premises or any part thereof, together with any

other moneys at the time held by Mortgagee, shall be applied in the following order to the extent that funds are so available:

(i) First, to the payment of the costs and expenses of foreclosing this Mortgage and taking possession of the Mortgaged Premises and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (a) trustees' and receivers' fees, (b) court costs, (c) reasonable attorneys' and accountants' fees, (d) costs of advertisements, (e) all other costs and expenses incurred by Mortgagee in connection with Mortgagee exercising Mortgagee's rights hereunder, including without limitation, title commitments and policies, appraiser's fees and expenses of documentary and expert evidence and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale, and (f) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Mortgage (without in any way implying Mortgagee's prior consent to the creation thereof). All of the foregoing costs and expenses shall be secured by the lien of this Mortgage, shall be immediately due and payable, shall bear interest at the Default Rate from the date of disbursement by Mortgagee of such funds until paid in full and may be estimated by Mortgagee and may be expended after the entry of the foreclosure judgment.

(ii) Second, to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents together with interest thereon as provided therein;

(iii) Third, to the payment of all accrued but unpaid interest due on the Note;

(iv) Fourth, to the payment of Principal Balance of the Note;

(v) Fifth, to the extent funds are available therefor out of the sale proceeds or the rents and, to the extent known by Mortgagee to Mortgagor or any other party entitled thereto.

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20.1 Right of Mortgagee to Make Advances to Cure Mortgagor's Defaults. In the event that Mortgagor shall fail to perform any of Mortgagor's obligations, covenants, promises or agreements contained herein or in the other Loan Documents, Mortgagee may (but shall not be required to) after five (5) days notice to Mortgagor, unless such notice could result in damage or loss in value to Mortgagee's security under the Loan Documents perform any of such covenants, obligations, promises and agreements, and any amounts expended by Mortgagee in so doing shall constitute additional Indebtedness hereunder and under the other Loan Documents, shall be immediately due and payable and shall bear interest at the Default Rate.

21.1 Change in Tax Laws. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Mortgaged Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Mortgaged Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by the mortgages or the interest of Mortgagee in the Mortgaged Premises, or the manner of collection of taxes, so as to effect this Mortgage, the indebtedness hereby secured or Mortgagee, then, and in such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee thereof on demand and any amounts paid thereon by Mortgagee shall bear interest at the Default Rate, unless Mortgagee determines, in Mortgagee's sole and exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the indebtedness hereby secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor.

22.1 Waivers. To the extent permitted under applicable law,

A. Mortgagor hereby waives all rights of redemption and/or equity or redemption which exist by statute or common law for sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person, beneficiary or any other entity of Mortgagor who may acquire any interest in or title to the Mortgaged Premises subsequent to the date hereof.

B. Mortgagor hereby waives the benefit of all appraisement, valuation, stay, or extension laws now or hereafter in force and all rights of marshalling in the event of any sale

hereunder of the Mortgaged Premises or any part thereof or any interest therein.

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

23.1 Remedies are Cumulative. Each right, power and remedy of Mortgagee now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for in the Loan Documents, and the exercise of any right, power or remedy shall not preclude the simultaneous or later exercise of any other right, power or remedy.

24.1 Compromise of Action. Any action, suit or proceeding brought by Mortgagee pursuant to the Loan Documents, or otherwise, and any claim made by Mortgagee under the Loan Documents, or otherwise, may be compromised, withdrawn or otherwise settled by Mortgagee without any notice to or approval of Mortgagor, except as otherwise provided in this Mortgage.

25.1 No Waiver. No delay or failure by Mortgagee to insist upon the strict performance of any term hereof or of the Note or of any of the other Loan Documents or to exercise any right, power or remedy provided for herein or therein as a consequence of an Event of Default hereunder or thereunder, and no acceptance of any payment of the principal, interest or premium if any, on the Note during the continuance of any such Event of Default, shall constitute a waiver of any such term, such Event of Default or such right, power or remedy. The exercise by Mortgagee of any right, power or remedy conferred upon it by this or any other Loan Document or by law or equity shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any Event of Default hereunder shall affect or alter this Mortgage, which shall continue in full force and effect with respect to other then existing or subsequent Events of Default.

26.1 Further Assurances. The Mortgagor, at its expense, will execute, acknowledge and deliver such instruments and take such actions as Mortgagee from time to time may reasonably request to carry out the intent and purpose of this Mortgage and the other Loan Documents.

27.1 Defeasance. If the Mortgagor shall pay in full the principal and interest due under the Note and other Loan Documents in accordance with the terms thereof, and Mortgagee shall have no further obligations to disburse the proceeds of the Note, then Mortgagee, upon written request and at the expense of Mortgagor, shall execute and deliver to Mortgagor such instruments

as shall be required to evidence of record the satisfaction of this Mortgage and the lien hereof.

28.1 Permitted Contests.

A. Mortgagor may contest, at its own expense, by appropriate legal actions or proceedings conducted in good faith and with all due diligence, the amount, validity or enforceability in whole or in part of any Imposition or lien thereof or the validity of any instrument of record affecting the Mortgaged Premises or any part thereof, provided that:

(i) Such legal actions or proceedings are promptly commenced after Mortgagor receives notice of the lien or charge; and

(ii) Mortgagor's legal counsel forwards to Mortgagee and Mortgagee's legal counsel, on a quarterly basis, detailed status reports describing the nature of the action or proceeding; the progress of such action or proceeding to date; describing pleadings filed and any settlement negotiations; evaluating the likelihood of an unfavorable outcome and estimating the amount or range of possible loss; and

(iii) No adverse judgment, decree or other final adjudication be entered or rendered against Mortgagor; and

(iv) Mortgagor sets aside on its books adequate reserves; and

(v) Neither Mortgagor nor Mortgagee would be in any danger of any additional civil or criminal liability for failure to comply therewith; and

(vi) The Title Company issues its endorsement insuring against the claim or lien in a manner satisfactory to Mortgagee.

B. In the event that such legal actions or proceedings are not diligently concluded or resolved after Mortgagor received notice of the lien or charge, then, at the sole option of Mortgagee, Mortgagee shall have those rights set forth in Paragraphs 18.1 and 19.1 herein.

29.1 Amendment. This Mortgage cannot be amended, modified or terminated orally, but may only be amended, modified or terminated pursuant to written agreement between Mortgagor and Mortgagee.

they appear and shall not limit or otherwise affect the meanings thereof.

I. If any provision in this Mortgage is held by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision of this Mortgage to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest possible extent that it is legal, valid and enforceable that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void, voidable or unenforceable provision was not contained therein, and that the rights, obligations and interest of the Mortgagor and the holder hereof under the remainder of this Mortgage shall continue in full force and effect.

J. If any action or proceeding shall be instituted to recover possession of the Mortgaged Premises or any part thereof or to accomplish any other purpose which would materially affect this Mortgage or the Mortgaged Premises, Mortgagor will immediately, upon service of notice thereof, deliver to Mortgagee a true copy of each petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers however designated, served in any such action or proceeding.

K. Regardless of their form, all words shall be deemed singular or plural and shall have such gender as required by the text. Whenever applicable, the term "mortgage" shall also mean "trust deed" or "deed of trust". If there is more than one Mortgagor of this Mortgage, the liability of the undersigned shall be joint and several.

L. Mortgagor waives any right, if any, it now or in the future may have to remove any claim or dispute arising herefrom to the Courts of the United States of America.

M. This Mortgage and the Loan Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Venue for all disputes and claims shall, at the sole election of Mortgagee, be in the Circuit Court of Cook County, Illinois.

N. This Mortgage is subordinate to a First Mortgage and Security Agreement dated November 17, 1989, made by Mortgagor and Beneficiary in favor of Senior Lender, which Senior Mortgage was recorded in the Office of the Recorder of Deeds for Cook County, Illinois on NOV 30 1989, 1989, as Document No. 89571820.

O. This Mortgage is executed by the undersigned, not personally but as Trustee as aforesaid in the exercise of the

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power and authority conferred upon and vested in it as such Trustee, and is payable out of the property specifically described in this Mortgage securing the payment of the Note, by the enforcement of the provisions contained in this Mortgage or in the other Loan Documents. No personal liability shall be asserted or be enforceable against the Mortgagor, because or in respect of the Note or the making, issue or transfer thereof, all such liability, if any, being expressly waived by Mortgagee hereof, but nothing herein contained shall modify or discharge the personal liability expressly assumed by the beneficiary of Mortgagor or any guarantor hereof and each original and successive holder of the Note accepts the same upon the express condition that no duty shall rest upon the undersigned to sequester the rents, issues and profits arising from the property described in this Mortgage, or the proceeds arising from the sale or other disposition thereof.

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

LA SALLE NATIONAL BANK, As Trustee
Under A Trust Agreement Dated
September 15, 1985, And Known As
Trust No. 109791 and not personally

By _____
Its: ASSISTANT VICE PRESIDENT

By Lisa E. Haas
Its: ASSISTANT SECRETARY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Corinne Bek personally known to me to be the ASSISTANT VICE PRESIDENT of LA SALLE NATIONAL BANK, not personally, but as Trustee under a Trust Agreement dated September 15, 1985, and known as Trust No. 109791 and [illegible] E. HAAS, personally known to me to be the ASSISTANT SECRETARY of said association and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such ASSISTANT VICE PRESIDENT and ASSISTANT SECRETARY they signed and delivered the said instrument as ASSISTANT VICE PRESIDENT and ASSISTANT SECRETARY of said association, and caused the corporate seal of said association to be affixed thereto, pursuant to authority, given by the Board of Directors of said association as their free and voluntary act, and as the free and voluntary act and deed of said association for the uses and purposes therein set forth.

Given under my hand and official seal this 28 day of November, 1989.

Harriet Deniszewicz
Notary Public

My Commission Expires:

"OFFICIAL SEAL"
Harriet Deniszewicz
Notary Public, State of Illinois
My Commission Expires Dec. 30, 1992

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EXHIBIT "A"

LEGAL DESCRIPTION

CONTINUED

together with (i) any and all buildings and structures and improvements, and any and all additions, alterations, betterments or appurtenances thereto now or at any time hereafter situated, placed or constructed upon the property ("Property") legally described above or any part thereof, and all rights, titles and interest appurtenant thereto, together with all right, title and interest of Mortgagor in and to all Personalty (as defined in this Mortgage) and all goodwill, trademarks, tradenames, option rights, purchase contracts and agreements, books and records and general intangibles of Mortgagor relating to the Property and Mortgaged Premises and all accounts, accounts receivable, contract rights, chooses in action, instruments, chattel paper and other rights of the Mortgagor for payment of money relating to the Property and Mortgaged Premises and any other intangible property of Mortgagor related to the Property and Mortgaged Premises, including without limitation any and all rights of Mortgagor in, to or with respect to any and all accounts maintained with Mortgagee or any other party in which are held funds relating to the Impositions (as defined in this Mortgage), insurance premiums, or tenants' security deposits with respect to the Property and Mortgaged Premises and all of Mortgagor's right, title and interest in and to all of the rents, issues, revenues, royalties, income, avails, proceeds, profits and other benefits paid or payable by parties under any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant occupancy, a possessory interest in and to, or the right to use the Property and Mortgaged Premises or any part thereof or interest therein, and all rights, privileges, authority and benefits of Mortgagor or the landlord under such leases (but under no circumstances any liabilities, obligations or responsibilities thereunder) or otherwise generated by or derived

from the Property and Mortgaged Premises and Mortgagor's rights to any and all documents, instruments, contracts or agreements pertaining to the ownership, use, occupancy, possession, development, design, construction, financing, operation, alteration, repair, marketing, sale, lease or enjoyment of the Property and Mortgaged Premises, including without limitation any contracts for labor or materials, purchase orders, service contracts, maintenance agreements, management contracts, lease agency agreements, sales agency agreements, marketing contracts, loan or financing commitments, and payment, performance or surety bonds, and all rights, privileges, authority and benefits thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder); (ii) any and all rights, privileges, authority and benefits under any option, articles of agreement for deed, installment contract or other contract or agreement pursuant to which Mortgagor is granted any possessory, legal, equitable, beneficial or other interest in the Property and Mortgaged Premises; (iii) any and all rights privileges, tenements, hereditaments, rights of way, rights of access, riparian rights, mineral rights, homestead rights, licenses, easements, appendages and appurtenances in any way appertaining to the Mortgaged Premises or the Property, and all right, title and interest of Mortgagor in and to any streets, ways, alleys, waterways, strips or gores of land adjoining the Property or any part thereof; (iv) any and all betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests in the Property and Mortgaged Premises and all reversions and remainders therein; and (v) any and all of Mortgagor's right, title and interest in and to any judgment, award, remuneration, settlement, compensation, recovery or proceeds heretofore made or hereafter to be made by any governmental authority or insurance company to the present or any subsequent owner of the Property and Mortgaged Premises, including those for any condemnation of or casualty to the Property and Mortgaged Premises, or for any vacation of, or change of grade in, any streets serving or affecting the Property and Mortgaged Premises.

EXHIBIT A
Legal Description

THAT PART OF LOT 1 IN ANTHONY'S SUBDIVISION OF PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: BEGINNING ON THE EASTERLY LINE, 173.11 FEET NORTH OF THE SOUTHEAST CORNER; THENCE 93°23'24" FROM SAID CORNER WESTERLY 63.28 FEET; THENCE 224°48'38" NORTHWESTERLY FROM THE LAST DESCRIBED COURSE 79.91 FEET, TO THE EASTERLY RIGHT-OF-WAY LINE OF MC CORMICK ROAD, BEING THE WESTERLY LINE OF SAID LOT 1, CONTAINING 0.647 ACRES, MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT "A" LEGAL DESCRIPTION

PARCEL 2

NON EXCLUSIVE EASEMENT AND LICENSE FOR THE BENEFIT OF AND APPURTENANT TO PARCEL 1 FOR RIGHTS OF INGRESS AND EGRESS AND LICENSE AGREEMENT DATED MAY 20, 1987 AND RECORDED MARCH 8, 1988 AS DOCUMENT 88099082 THROUGH, OVER AND UPON THE SHOPPING CENTER PARCEL, RESTAURANT PARCEL AND THE MSD PARCELS AS DESCRIBED THEREIN.

B

EXHIBIT B
Permitted Exceptions

1. GENERAL REAL ESTATE TAXES FOR THE YEAR 1989. TAX NUMBER 13-02-220-030, VOLUME 318.

2. EASEMENT RECORDED AS DOCUMENT NUMBER 23331957 FOR ELECTRICAL FACILITIES AND THE MAINTENANCE THEREOF.

3. ~~NON EXCLUSIVE LICENSE AGREEMENT FOR PARKING AND INGRESS AND EGRESS RECORDED JANUARY 7, 1986, AS DOCUMENT NUMBERS 86-007157 AND 86-007158.~~

4. EASEMENT AND LICENSE AGREEMENT DATED MAY 20, 1987 AND RECORDED MARCH 8, 1988 AS DOCUMENT NUMBER 88-099082 FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS.

5. LEASEHOLD INTEREST OF PLITT THEATRES, INC. UNDER UNRECORDED LEASE DATED JULY 10, 1986, AMENDED ON APRIL 4, 1988.

6. EASEMENT IN FAVOR OF COMMONWEALTH EDISON COMPANY, ITS SUCCESSORS AND ASSIGNS, FOR ELECTRIC UTILITIES, TOGETHER WITH THE RIGHT OF ACCESS THERETO, AS CREATED BY GRANT RECORDED OCTOBER 26, 1988 AS DOCUMENT 88494363.

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30.1 Tax and Insurance Escrow.

A. In addition to the rights, powers and remedies granted Mortgagee under Paragraph 19.1, at Mortgagee's written election after the occurrence of an Event of Default, and provided there are no monthly impounds for real estate taxes and insurance under the Senior Mortgage, Mortgagor shall be required to (i) pay Mortgagee monthly, in addition to each monthly payment required under the Note, an amount equal to 1/12th of the annual amount reasonably estimated by Mortgagee to be sufficient to enable Mortgagee to pay all Impositions, (ii) pay Mortgagee monthly 1/12th of the annual insurance premiums necessary to maintain the insurance policies required pursuant to Paragraph 6.1A hereto, (iii) pay Mortgagee the amount of all Impositions accrued but not due as of the date that this Paragraph becomes operative, and (iv) pay Mortgagee such sums as may be necessary, from time to time, to make up any deficiency in the amount required to fully pay all annual Impositions and insurance premiums.

B. It is expressly understood that all amounts set forth in this Paragraph 30.1 shall be held by Mortgagee in an escrow account which does not bear interest.

31.1 Notices. Any notice, demand, requests or other communication desired to be given or required pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

Mortgagor: LaSalle National Bank, As Trustee Under
Trust No. 109791
c/o Devon-McCormick Associates Limited
Partnership II
7337 North Lincoln Avenue
Lincolnwood, Illinois 60646

Copy to: Rosenthal and Schanfield
55 East Monroe Street
Suite 4620
Chicago, Illinois 60603
Attn: Steven H. Blumenthal

Mortgagee: Boulevard Bank National Association
410 North Michigan Avenue
Chicago, Illinois 60611
Attn: Real Estate Department

Copy to: Arvey, Hodes, Costello & Burman
180 North LaSalle Street
Chicago, Illinois 60601
Attention: Thomas P. Duffy

Any such notice, demand, request or other communication shall be deemed given when personally delivered and if mailed three days after deposit in the mail.

32.1 Expense of Enforcement. When the indebtedness hereby secured shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable 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 the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature in this paragraph mentioned shall bear interest at the Default Rate, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendants, by reason of this Mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not actually commenced.

33.1 Cross-Default Clause. Any default by Mortgagor in the performance or observance of any covenant, promise, condition or agreement hereof shall be deemed an Event of Default under each of the Loan Documents, entitling Mortgagee to exercise all or any remedies available to Mortgagee under the terms of any or all Loan Documents, an any default or Event of Default under any other Loan Document shall be deemed a default hereunder, entitling Mortgagee to exercise any or all remedies provided for herein. Failure by Mortgagee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Mortgagee, and the waiver by Mortgagee of any default by Mortgagor hereunder shall not constitute a continuing waiver or a waiver of any other default or of the same default on any future occasion.

34.1 Incorporation by Reference. The terms of the Loan Documents are incorporated herein and made a part hereof by reference.

35.1 Disclaimer by Mortgagee. Mortgagee shall not be liable to any party for services performed or obligations due in connection with this Loan. Mortgagee shall not be liable for any debts or claims accruing in favor of any parties against Mortgagor or against the Mortgaged Premises. The Mortgagor is not and shall not be an agent of Mortgagee for any purposes, and Mortgagee is not a venture partner with Mortgagor in any manner whatsoever. Approvals granted by Mortgagee for any matters covered under this Mortgage shall be narrowly construed to cover only the parties and facts identified in any written approval or if not in writing such approvals shall be solely for the benefit of Mortgagee.

36.1 Mortgagee Not a Joint Venturer. Notwithstanding anything to the contrary herein contained, Mortgagee, by making the Loan or by any action taken pursuant thereto, shall not be deemed a partner or joint venturer with Mortgagor or Guarantor, and Mortgagor and Guarantor hereby agree to indemnify and hold Mortgagee harmless from any and all damages resulting from such a construction of the parties and their relationship. This Agreement is made for the sole benefit of Mortgagor, Guarantor and Mortgagee, and no other person shall be deemed to have any privity of contract hereunder, nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person, have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

37.1 Total Indebtedness Secured. The total amount of the Indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total Indebtedness secured at any one time shall not exceed Ten Million and No/100 Dollars ($10,000,000.00).

38.1 Miscellaneous.

A. Upon request, Mortgagor or Mortgagee shall confirm in writing to Mortgagee, or its designee, the amount then due hereunder and under the Note.

B. It is agreed that any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Mortgage or the Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, or otherwise, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage.

C. It is specifically understood and agreed that all funds which are advanced by Mortgagee under this Mortgage or the Loan Documents or in the exercise of Mortgagee's judgment that the same are necessary or desirable to complete, operate, maintain or market the Mortgaged Premises or to protect Mortgagee's security under the Loan Documents shall because of economic necessity and compulsion be deemed advanced by Mortgagee under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished and shall be added to the indebtedness evidenced by the Note and shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof.

D. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder or pursuant to any agreement executed by Mortgagor in connection with this Mortgage be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any mortgage, lien, charge or encumbrance upon the Mortgaged Premises or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding mortgage liens, charges and indebtedness, however remote, regardless of whether said mortgages, liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

E. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Note be renewed, modified or replaced, or if any security for the Note be released, Mortgagor and any other parties now or hereafter liable for payment of such indebtedness in whole or in part or any parties interested in the Mortgaged Premises shall be held to consent and take subject to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and the Loan Documents and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Mortgagee.

F. The Loan proceeds are to be used, along with Mortgagor's other funds, to retire the existing second mortgage and other costs approved by Mortgagee.

G. This Mortgage shall be binding upon Mortgagor and its successors and assigns, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns.

H. The various headings used in this Mortgage as headings for sections or otherwise are for convenience only and shall not be used in interpreting the text of the section in which