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MORTGAGE AND SECURITY AGREEMENT

This MORTGAGE AND SECURITY AGREEMENT, (hereinafter referred to as the "Mortgage") is entered into this 9th day of January, 1992 by EVANSTON REALTY ASSOCIATES, a New York general partnership (hereinafter referred to as "Mortgagor"), whose address for notice hereunder is c/o Ronald D. Haddad, 1576 East 8th Street, Brooklyn, New York 11230, to GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY, a Colorado corporation, whose address for notice hereunder is c/o GWL Properties Inc., 7400 E. Orchard Road, Suite 230, Englewood, Colorado 80111, and the subsequent holder or holders, from time to time, of the Note, as defined in Paragraph 1.1(v) hereinbelow (hereinafter referred to as "Mortgagee").

W I T N E S S E T H :

DEPT-01 RECORDING \$201.00
14444 1800 1275 01/24/92 10:04:00
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COOK COUNTY RECORDER

Article 1
DEFINITIONS

1.1 Definitions: As used herein, the following terms shall have the following meanings:

(a) Assignment of Rents: The Collateral Assignment of Rents and Leases dated of even date hereof by and between Mortgagor and Mortgagee.

(b) B. Dalton Lease: The Lease Agreement entered into by and between Mortgagee, as Landlord, and B. Dalton Bookseller, Inc., as Tenant, with an effective date of October 24, 1991.

(c) Buildings: Any and all buildings, covered garages, utility sheds, workrooms, air conditioning towers, open parking areas and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land (as defined in Paragraph 1.1(p) hereinbelow) or any part thereof, including, without implied limitation, the two-story commercial retail building commonly known as 1701 Sherman Avenue and 707 Church Street, Evanston, Illinois, and all warranties, claims and causes of action inuring to the benefit of Mortgagor with respect thereto.

(d) Contract of Sale: The Purchase and Sale Agreement dated December 26, 1991, as the same may have heretofore been amended, between Mortgagee, as Seller, and Mortgagor, as Purchaser.

(e) Environmental Requirements: All laws, ordinances, requirements and regulations (including consent decrees and administrative orders) applicable to the Mortgaged Property and relating to public health and safety and protection of the environment, including without implied limitation the following and all regulations issued thereunder: (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.

RETURN TO:
J. Michael Wehrman
THEOTITEL
200 N. LaSalle Chicago 60601

BOX 15

Box 15 3016
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§ 9601 et seq.; (ii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6902 et seq.; and (iii) the Illinois Environmental Protection Act, Ill. Rev. Stat. Ch. 111-4, ¶ 1001 et seq.; all as amended from time to time.

(f) Escrowed Sums: The amounts to be paid by Mortgagor to Mortgagee pursuant to Article 10 hereinbelow toward the creation of a fund for the payment of Impositions (as defined in Paragraph 1.1(n) hereinbelow) and insurance premiums for the Mortgaged Property (as defined in Paragraph 1.1(t) hereinbelow).

(g) Event of Default: Any happening or occurrence described in Article 6 hereinbelow.

(h) Fixtures: Mortgagor's interest in all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Buildings or the Land, including but not limited to any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, 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, ranges and ovens, and recreational equipment and facilities of all kinds, and all warranties, claims and causes of action inuring to the benefit of Mortgagor with respect thereto.

(i) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(j) Ground Lease: The Lease dated May 1, 1946 between Barbara Field Boggs, lessor, and Lytton's Evanston Building, Inc., lessee, for a term beginning on May 1, 1946 and ending on April 14, 2028, recorded in Cook County, Illinois on October 16, 1946 as Document No. 13,917,719 and amended by agreements recorded in Cook County, Illinois as Document Nos. 14,739,538, 14,771,678 and 15,217,368, as to the portion of the Land described on Exhibit A attached hereto as Parcel 1, in which the lessor's interest is currently held by The University of Chicago.

(k) Ground Rent: The rental payments due from the lessee to the lessor under the Ground Lease.

(l) Guarantor (individually and/or collectively, as the context may require): The individuals or entities, other than

Mortgagor, which may now or hereafter be personally liable for repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, all or part of the Obligations (as defined in Paragraph 1.1(o) and 1.1(w) hereinbelow respectively). Abraham Haddad, Stephen Haddad, Brian Haddad and Ronald D. Haddad are the Guarantors as of the date of execution hereof.

(m) Guaranty (individually and/or collectively, as the context may require): That or those instruments of Guaranty, if any, now or hereafter in effect, from Guarantor in favor of Mortgagee guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, all or part of the Obligations (as defined in Paragraphs 1.1(o) and 1.1(w) hereinbelow respectively), or both, together with any amendments, renewals or replacements thereof.

(n) Impositions: All real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any assessment, license or agreement maintained for the benefit of the Mortgaged Property, the Ground Rent and other payments due under the Ground Lease, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, 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 Property or the Rents (as defined in Paragraph 1.1(z) hereinbelow) or the ownership, use, occupancy or enjoyment thereof.

(o) Indebtedness: All principal, interest and other amounts, payments, premiums and penalties now or hereafter due under, advanced by Mortgagee pursuant to or secured by the Security Documents (as defined in Paragraph 1.1(aa) hereinbelow), provided that the amount of Indebtedness secured hereby shall not exceed at any one time in the aggregate two times the face amount of the Note (as defined in Paragraph 1.1(v) hereinbelow).

(p) Land: The real estate or interest therein described in Exhibit "A" attached hereto, and all rights, titles, interests, warranties, claims, and causes of action appurtenant thereto and arising therefrom.

(q) Leasehold Estate: The lessee's interest in and to the Ground Lease.

(r) Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property (as defined in Paragraph 1.1(t) hereinbelow), and all other agreements,

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which in any way relate to the use, occupancy or enjoyment of the Mortgaged Property, or any portion thereof, and all claims and causes of action inuring to the benefit of Mortgagor with respect thereto, save and except any and all leases, subleases or other agreements pursuant to which Mortgagor is granted title to, ownership of or a possessory interest in the Land, together with any amendments, extensions, renewals and replacements of any of the foregoing.

(s) Legal Requirements: (i) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor, any Guarantor or the Mortgaged Property (as defined in Paragraph 1.1(t) hereinbelow), including without implied limitation, those applicable to (x) the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, (y) the accessibility of the Mortgaged Property to handicapped persons (including without implied limitation, the Illinois Environmental Barriers Act, Illinois Revised Code Ch. 111 1/2 §§ 3711-3718), and (z) the effect of the Mortgaged Property or its operation on the environment, including without implied limitation, the Environmental Requirements, and (ii) Mortgagor's or any Guarantor's presently or subsequently effective organizational documents, as amended from time to time, whether they be bylaws and articles of incorporation, or agreement of partnership, limited partnership, joint venture, trust or other form of business association.

(t) Mortgaged Property: The portion of the Land described on Exhibit A attached hereto as Parcel 2, the Leasehold Estate, Buildings, Fixtures, Personalty, Service Contracts, Leases, Rents, and Escrowed Sums (all as defined in this Paragraph 1.1) together, with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(ii) all betterments, additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(iii) all of Mortgagor's right, title and interest in and to any award, awards, remuneration, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority to the present or any subsequent owner of the Land, Buildings, Fixtures or Personalty, including those for any

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vacation of, or change of grade in, any streets affecting the Land or the Buildings;

(iv) any and all proceeds from the Land, the Leasehold Estate, Buildings, Fixtures, Personalty, Service Contracts and other property described in this Paragraph 1.1(t); and

(v) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all, or where the context permits or requires any portion, of the property described in this Paragraph 1.1(t), and all or, where the context permits or requires any, interest therein and all proceeds therefrom.

(u) Mortgagor: The above defined Mortgagor and any and all subsequent owners of the Mortgaged Property.

(v) Note: The promissory note executed of even date herewith by Mortgagor payable to the order of Mortgagee in the amount of TWO MILLION FORTY THOUSAND DOLLARS (\$2,040,000.00), bearing interest prior to default at a rate of 8.5% per annum, requiring monthly installments of interest only during the first three years of the term thereof and monthly installments of principal and interest based upon a 30-year amortization schedule thereafter, with a balloon payment of all unpaid principal and interest due February 1, 1999, but providing for an extension for an additional five or seven year term in accordance with the terms and conditions thereof, and secured, in part, by this Mortgage and any and all renewals, rearrangements, modifications, reamortizations, enlargements or extensions of such promissory note or of any promissory note or notes given therefor.

(w) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) now or hereafter made or undertaken by Mortgagor, Guarantor or others to Mortgagee or others as set forth in the Security Documents (as defined in Paragraph 1.1(aa) hereinbelow), the Leases, the Contract of Sale or any other documents now or hereafter executed by Mortgagor, Guarantor or others in connection with the loan evidenced by the Note, or in any lease, sublease or other agreement pursuant to which Mortgagor is granted a possessory interest in the Land.

(x) Permitted Encumbrances: The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any) as reflected on Exhibit "B" attached hereto

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and the lien and security interests created by the Security Documents.

(y) Personalty: All of the right, title and interest of Mortgagor in and to all furniture, furnishings, equipment, machinery, appliances, goods, general intangibles, money, accounts, contract rights, inventory and all warranties, claims and causes of action inuring to the benefit of Mortgagor with respect thereto, proceeds (including without implied limitation, all insurance awards, and all proceeds therefrom and settlements) and all other personal property (other than the Fixtures) of any kind or character as defined in and subject to the provisions of the Illinois Uniform Commercial Code--Secured Transactions, now or hereafter located upon, within or about the Land and the Buildings, or owned by Mortgagor and used in connection therewith, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.

(z) Rents: All of the rents, security deposits, revenues, income, proceeds, profits and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property or any portion thereof, and all claims and causes of action inuring to the benefit of Mortgagor with respect thereto.

(aa) Security Documents: The Note, this Mortgage, the Guaranty (if any), the Assignment of Beneficial Interest, the Assignment of Rents, all Financing Statements and any and all other documents now or hereafter executed by Mortgagor, Guarantor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

(bb) Service Contracts: Any and all utility contracts, maintenance agreements, service contracts, insurance policies, fidelity bonds, indemnity bonds, construction contracts, engineers, designers and architects contracts, bonds (performance, payment or otherwise), escrows (for lien claimants, tenant finish or otherwise) and all other agreements executed at any time which in any way relate to the use, operation, maintenance, enjoyment or ownership of the Land, Leasehold Estate, Building, Fixtures, Personalty or other portions of the Mortgaged Property, and all warranties, claims and causes of action inuring to the benefit of Mortgagor with respect thereto, save and except the Leases and any and all agreements pursuant to which Mortgagor is granted title to, ownership of or a possessory interest in the Land.

(cc) Taxes: All real estate and personal property taxes and assessments levied or imposed upon the Mortgaged Property.

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Article 2  
GRANT

2.1 Grant: To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor has GRANTED, MORTGAGED and CONVEYED, and by these presents does GRANT, MORTGAGE and CONVEY, unto Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Mortgagor, but not otherwise; provided, however, that if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged then the liens, security interests, estates and rights granted by the Security Documents shall terminate, otherwise same shall remain in full force and effect.

Article 3  
WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally represents and warrants to Mortgagee as follows:

3.1 Organization and Power: Mortgagor (a) is a partnership, duly organized and validly existing under the laws of the State of New York, and has complied with all conditions prerequisite to its doing business in the State where the Land is situated and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.2 Validity of Loan Instruments: The execution, delivery and performance by Mortgagor of the Security Documents (other than the Guaranty), and the borrowing evidenced by the Note, (a) are within Mortgagor's authority and powers and have been duly authorized by all of Mortgagor's partners and all other requisite partnership action, (b) have received all (if any) requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's or Guarantor's property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents

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constitute the legal, valid and binding obligations of Mortgagor, Guarantor and others obligated under the terms of the Security Documents, in accordance with their respective terms.

3.3 Information: All information, reports, papers and data given to Mortgagee with respect to Mortgagor, Guarantor or others obligated under the terms of the Security Documents are accurate, complete and correct in all material respects and do not omit any fact known to Mortgagor, the inclusion of which in Mortgagor's reasonable opinion would be necessary to prevent the facts contained therein from being materially misleading.

3.4 Title to Mortgaged Property and Lien of this Instrument: Mortgagor has good and indefeasible title to the Leasehold Estate, to Parcel 2 of the Land and to the Buildings and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. This Mortgage constitutes a valid, subsisting, first lien mortgage on the Leasehold Estate, Parcel 2 of the Land, the Buildings and the Fixtures and a valid, subsisting first security interest in and to the Personalty, Service Contracts, Leases, Rents and Escrowed Sums, all in accordance with the terms hereof.

3.5 Taxes and other Payments: Mortgagor and each Guarantor have filed all Federal, state, county, municipal and city income and other tax returns required to have been filed by them and have paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by them, and neither Mortgagor nor Guarantor knows of any basis for any additional assessment in respect of any such taxes. Mortgagor has the right to contest the taxes assessed on the Mortgaged Property only if Mortgagor pays said taxes in full under protest or posts bond or other security with Mortgagee and acceptable to Mortgagee prior to the date that any liens will attach to the Mortgaged Property due to delinquency in payment of said taxes.

3.6 Litigation: Except as disclosed by Mortgagee in or pursuant to the Contract of Sale, there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor, or involving the validity or enforceability of the Mortgage or the priority of the lien and security interest thereof, and no event has occurred (including specifically Mortgagor's execution of the Security Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's or any Guarantor's property other than the lien and security interest created by the Security Documents.



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3.7 Commercial Purpose: The proceeds of the loan evidenced by the Note have been disbursed to or credited to the benefit of Mortgagor, which is a corporation or other business entity as specified in Illinois Revised Statutes Chapter 17, § 6404(1). Said proceeds will be used for a business, commercial, agricultural or industrial enterprise which is carried on for the purpose of investment or profit and not for personal, family or household purposes. Mortgagor acknowledges that the loan evidenced by the Note is specifically exempted under Section 226.3(a) of Regulation Z issued by the Board of Governors of the Federal Reserve System and under Title I (Truth in Lending Act) and Title V (General Provisions) of the Consumer Credit Protection Act, and that no disclosures are required to be given under such regulations and federal laws in connection with such loan.

Article 4  
AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

4.1 Payment and Performance: Mortgagor will pay the Indebtedness, as and when called for in the Security Documents and on or before the due dates thereof, and will perform all of the Obligations, in full, on or before the dates same are to be performed.

4.2 Existence: Mortgagor will preserve and keep in full force and effect its existence, rights, franchises and trade names.

4.3 Compliance with Legal Requirements: Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements whether or not same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4 First Lien Status: Mortgagor will protect the first lien and security interest status of this Mortgage and will not, without the prior written consent of Mortgagee, place, or permit to be placed, or otherwise mortgage, hypothecate or encumber the Mortgaged Property with, any other lien or security interest of any nature whatsoever (statutory, constitutional or contractual) regardless of whether same is allegedly or expressly inferior to the lien and security interest created by this Mortgage, and, if any such lien or security interest is asserted against the Mortgaged Property, Mortgagor will promptly, and at its own cost and expense, pay the underlying claim in full or take such other action so as to cause same to be released.

4.5 Payment of Impositions and Other Payments: Subject to the provisions of Article 10, Mortgagor will duly pay and discharge,

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or cause to be paid and discharged, the Impositions not later than the latest of the due date thereof, or the date any fine, penalty, interest or cost may be added thereto or imposed, or the date any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item); provided, however, that Mortgagor may, if permitted by law and if such installment payment would not create or permit the filing of a lien against the Mortgaged Property, pay the Impositions in installments whether or not interest shall accrue on the unpaid balance of such Impositions. Mortgagor will pay in full all sums owing or claimed for labor, material, supplies, personal property (whether or not forming a Fixture hereunder) and services of every kind and character used, furnished or installed in the Mortgaged Property.

4.6 Repair: Mortgagor will keep the Mortgaged Property in as good condition as the Mortgaged Property was in at the date of execution hereto and will make all repairs, replacements, renewals, additions, betterments, improvements and alterations thereof and thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Mortgagor will also use its reasonable efforts to prevent any act or occurrence which might impair the value or usefulness of the Mortgaged Property for its intended usage as set forth in the Security Documents. In instances where repairs, replacements, renewals, additions, betterments, improvements or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste or destruction thereof, Mortgagor shall proceed to construct same, or cause same to be constructed, notwithstanding anything to the contrary contained in Paragraph 5.2 hereinbelow; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will notify Mortgagee in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

4.7 Insurance: Mortgagor will obtain and maintain insurance upon and relating to the Mortgaged Property insuring against personal injury and death, loss by fire, flood and such other hazards, casualties and contingencies (including business interruption insurance covering loss of Rents for at least a six month period) as are normally and usually covered by "all risk" policies in effect in the State where the Land is located and such other risks as may be specified by Mortgagee, from time to time. The amount of such insurance shall be not less than the greater of the Note amount or 100% of the full replacement cost of the Mortgaged Property. Full replacement cost, as used herein, means the cost of replacing the Mortgaged Property, exclusive of the cost of excavations, foundations, and footings below the lowest basement floor. The amount of such full replacement cost shall be acceptable to Mortgagee. Each policy shall contain a Replacement

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Cost Endorsement. The insurers shall have a Best Insurance Guide rating acceptable to Mortgagee. Each insurance policy issued in connection therewith shall provide by way of endorsements, riders or otherwise that:

(a) proceeds will be payable to Mortgagee as its interest may appear, it being agreed by Mortgagor that such payments shall be applied at the option of Mortgagee, either (i) to the restoration, repair or replacement of the Mortgaged Property or (ii) toward the payment of the Indebtedness;

(b) the coverage of Mortgagee shall not be terminated, reduced or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy, unless such insurer shall have given Mortgagee thirty (30) days prior written notice thereof;

(c) no such insurance policy shall be cancelled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless such insurer shall have first given Mortgagee thirty (30) days prior written notice thereof; and

(d) Mortgagee may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent same.

Mortgagee shall be furnished with a copy of each such initial policy coincident with the execution of this Mortgage, together with a certificate or endorsement showing Mortgagee as loss payee, and a certificate or endorsement with respect to each renewal policy showing Mortgagee as loss payee, not less than thirty (30) days prior to the expiration of the initial or each preceding renewal policy together with (subject to the provisions of Article 10) receipts or other evidence that the premiums thereon have been paid. Mortgagor shall furnish to Mortgagee, on or before one hundred twenty (120) days after the close of each of Mortgagor's fiscal years, a statement certified by a duly authorized officer of Mortgagor of the amounts of insurance maintained in compliance with this Paragraph 4.7, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

**4.8 Application of Proceeds:** If the proceeds of the insurance described in Paragraph 4.7 hereinabove are to be used for restoration, repair or replacement (hereinafter referred to as the "Work") of the Mortgaged Property, such proceeds shall be paid out by Mortgagee from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or materials incident to such restoration, repair or



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replacement or directly to such persons) as the Work progresses, subject to the following conditions:

(a) if the cost of the Work estimated by Mortgagee shall exceed \$25,000.00, prior to the commencement thereof (other than Work to be performed on an emergency basis to protect the Mortgaged Property or prevent interference therewith), (i) an architect or engineer, approved by Mortgagee, shall be retained by Mortgagor (at Mortgagor's expense) and charged with the supervision of the Work and (ii) Mortgagor shall have prepared, submitted to Mortgagee and secured Mortgagee's written approval of (such approval not to be unreasonably withheld) the plans and specifications for such Work;

(b) each request for payment by Mortgagor shall be made on ten (10) days prior written notice to Mortgagee (or the third party disbursement agent, if applicable) and shall be accompanied by a certificate to be made by the architect or engineer supervising the Work (if one is required pursuant to Paragraph 4.8(a) hereinabove), otherwise by an executive officer or a partner of Mortgagor or the beneficiary of Mortgagor, if Mortgagor is a land trustee, stating, among such other matters as may be reasonably required by Mortgagee, that: (i) all of the Work completed has been done in compliance with the approved plans and specifications (if any be required under Paragraph 4.8(a) hereinabove); (ii) the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials); (iii) when added to all sums previously paid out by Mortgagor, the sum requested does not exceed the value of the Work done to the date of such certificate; and (iv) the amount of insurance proceeds remaining in the hands of Mortgagee together with any funds deposited by Mortgagor with Mortgagee will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as the Mortgagee may require an estimate of the cost of such completion);

(c) each request shall be accompanied by waivers of lien satisfactory in form and substance to Mortgagee covering that part for the Work for which payment or reimbursement is being requested and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Mortgagee that there has not been filed with respect to the Mortgaged Property any mechanic's lien or other lien, affidavit or instrument asserting any lien or any lien rights with respect to the Mortgaged Property;

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(d) there has not occurred any Event of Default since the hazard, casualty or contingency giving rise to payment of the insurance proceeds; and

(e) in the case of the request for the final disbursement, such request is accompanied by a copy of any Certificate of Occupancy or other certificate required by any Legal Requirement to render occupancy of the damaged portion of the Mortgaged Property lawful.

If, upon completion of the Work, any portion of the insurance proceeds has not been disbursed to Mortgagor (or one or more of the other aforesaid persons) incident hereto, Mortgagee shall apply such balance toward the payment of the Indebtedness. Nothing herein shall be interpreted to prohibit Mortgagee from (y) withholding (or requiring the third party disbursement agent to withhold) from each disbursement ten percent (10%) (or such greater amount, if permitted or required by any Legal Requirement) of the amount otherwise herein provided to be disbursed, and from continuing to withhold such sum, until the time permitted for perfecting liens against the Mortgaged Property has expired, at which time the amount withheld shall be disbursed to Mortgagor (or to Mortgagor and any person or persons furnishing labor and/or material for the Work or directly to such persons), or (z) applying at any time the whole or any part of such insurance proceeds to the curing of any Event of Default.

**4.9 Restoration Following Casualty:** If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable), shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor will give notice thereof to Mortgagee and, if so instructed by Mortgagee, will promptly, at Mortgagor's sole cost and expense and regardless of whether the insurance proceeds (if any are made available to Mortgagor) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.

**4.10 Performance of Leases:** Mortgagee has agreed to perform the "Landlord's Work" and pay when due the "Construction Payment" required pursuant to the B. Dalton Lease. Except for said obligations, Mortgagor will: (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (b) not voluntarily terminate, cancel or waive its rights or the obligations of any other party under any of the Leases, (c) use all reasonable efforts to maintain each of the Leases in force and effect during the full term thereof, and (d) appear in and defend

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any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party or parties thereto.

4.11 Inspection: Mortgagor will permit Mortgagee and its agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times.

4.12 Indemnity: With respect to any and all claims, costs, actions and proceedings whatsoever, which may be brought or instituted on account of any event or obligation which occurs or accrues on or after the effective date hereof, Mortgagor will defend, at its own cost and expense, indemnify and hold Mortgagee harmless from and against, any action, proceeding, claim, liability or damages arising from, in connection with or in any way affecting or related to the Mortgaged Property, the Security Documents, or any breach, default or noncompliance with any Legal Requirement, Obligation, or any of the Security Documents and all costs and expenses incurred by Mortgagee in protecting its interests hereunder in such an event (including all court costs and attorneys' fees) shall be borne by Mortgagor.

4.13 Books and Records: Mortgagor will maintain full and accurate books of account and other records reflecting the results of its operations (in conjunction with its other operations as well as its operations of the Mortgaged Property), and will furnish, or cause to be furnished to Mortgagee:

(a) on or before ninety (90) days after the end of Mortgagor's fiscal year (i) a complete, executed copy of a report of an examination of Mortgagor's financial affairs prepared by an independent certified public accountant selected by Mortgagor but acceptable to Mortgagee (such acceptance to be evidenced by Mortgagee's prior written acceptance, but which acceptance shall not be unreasonably withheld), such report to include a balance sheet and supporting schedules and a detailed statement of income and expenditures with supporting schedules for Mortgagor's immediately preceding fiscal year together with any and all related notes and such other detail as Mortgagee may reasonably require, and an unqualified opinion from the accountant preparing same that such balance sheet and statement of profit and loss have been prepared in accordance with generally accepted auditing standards and generally accepted accounting principles applied on a consistent basis (except as may be described in such opinion, such exceptions to be reasonably acceptable to Mortgagee) for the period involved and with the statement submitted hereunder for Mortgagor's preceding fiscal year and fairly present Mortgagor's financial condition as of the date thereof and the



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results of its operations for the period covered thereby, (ii) a written statement identifying each of the Leases by the term, the space occupied, the rental or other payment required thereunder and any security paid as to each of the Leases, or in lieu thereof a statement that there have been no changes with respect to the Leases from the prior year, (iii) a certificate by an officer or a partner of Mortgagor certifying that, to the best of his knowledge and as of the date thereof, there does or does not (as the case may be) exist an event which constitutes, or which upon due notice or lapse of time or both would constitute, an Event of Default or, if an Event of Default exists, specifying the nature thereof, the other person or party involved (if any) and the period of time it has existed and identifying, with particularity, any suits or other claims which have been initiated or asserted (or, to the knowledge of the certifying officer or partner, threatened) against Mortgagor or the Mortgaged Property and (iv) an operating statement, in such detail as Mortgagee may reasonably require, which accurately, fairly and separately presents Mortgagor's operations of the Mortgaged Property for the fiscal year then ended; and

(b) within fifteen (15) days after the end of each calendar quarter (i) a statement of income and expenses relating to the Mortgaged Property for such calendar quarter, prepared internally by Mortgagor in a format Mortgagor is then using for such internal reports and specifying the gross revenue for such calendar quarter and the source thereof and certified by an officer or a partner of Mortgagor as to the truth, accuracy and completeness of the information contained therein and (ii) a certificate by such officer or partner containing the information called for in Paragraph 4.13(a)(iii) hereinabove.

Mortgagee shall have the right, at reasonable times and upon reasonable notice, to audit Mortgagor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Mortgagee and Mortgagee's representatives for such purpose on the Mortgaged Property or at such other location as Mortgagee may approve. Such audit shall prior to an Event of Default be conducted at the sole cost and expense of Mortgagee, but subsequent to an Event of Default shall be the sole cost and expense of Mortgagor.

**4.14 Mortgagor Estoppel:** Mortgagor shall, within twenty (20) days of written request from time to time made by Mortgagee, execute any and all estoppel certificates or other certificates of current status, certifying to the best of its knowledge as to the then existing status of the Note and whether there are any claims, defenses or offsets to same, the status of the Leases, the Service Contracts, the Mortgaged Property, compliance with Legal

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Requirements and Obligations, the payment of the Indebtedness and Impositions, and as to any Events of Default hereunder, or events of default by any party to the Security Documents, Leases, or the Service Contracts. Such certificates shall also certify as to such other information relating to the Mortgaged Property and Security Documents as Mortgagee shall reasonably request.

4.15 Mortgagee Statement: If requested by Mortgagor's accountant and reasonably required by such accountant for preparation of financial data or certifications, Mortgagee shall, within twenty (20) days after written request therefor, furnish to such accountant a statement of balances due hereunder and a certification that such statement is true and complete as of the date thereof.

Article 5  
NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations: Mortgagor will not use, maintain, operate or occupy, and will use reasonable efforts not to permit the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancellable any insurance then in force with respect thereto.

5.2 Alterations: Mortgagor will not, intentionally or in a manner which constitutes gross negligence on the part of Mortgagor or Mortgagor's partners, agents or employees, commit or permit any waste of the Mortgaged Property and will not (subject to the provisions of Paragraphs 4.6 and 4.9 hereinabove) without the prior written consent of Mortgagee make or permit to be made any alterations or additions to the Mortgaged Property the cost of which exceeds \$25,000, except for tenant improvements required pursuant to any approved Lease and except as may be provided in the Contract of Sale.

5.3 Replacement of Fixtures and Personalty: Mortgagor will not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except such as may be first approved in writing by Mortgagee.

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5.4. Sale and Additional Encumbrances. (a) Mortgagor hereby expressly agrees that if any one of the following described events occur (hereinafter referred to as a "Transfer") without the prior written consent of Mortgagee, whether by a direct or indirect method, then, any such event shall constitute an Event of Default hereunder (and the notice and cure provisions of Section 6.2 hereof shall not apply), and Mortgagee shall have the right, at its option, to declare the entire amount of the unpaid principal, accrued interest and other accrued and unpaid portions of the Indebtedness to be immediately due and payable, and the liens and security interests evidenced hereby and by the Security Documents shall be subject to foreclosure in any manner provided for herein or provided for by law as Mortgagee may elect:

- (1) Mortgagor shall sell, lease (other than leases made in the ordinary course of operation of a commercial, retail building), exchange, assign, convey, transfer possession of or otherwise dispose of all or any portion of the Mortgaged Property, or any interest therein (such actions being herein collectively referred to as a "Disposition");
- (2) Mortgagor shall grant, create, place or permit to be granted, created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge on, or conditional sale or other title retention agreement with respect to the Mortgaged Property, or any interest therein (herein collectively referred to as a "Mortgage") regardless of whether same are expressly subordinate to the Security Documents, other than the Permitted Encumbrances. Any such Mortgage, however, shall not constitute an Event of Default if such Mortgage is expressly subordinate to the Security Documents and if the net operating income for the Mortgaged Property will equal or exceed 1.2 times the total debt service required on this Indebtedness and on the indebtedness secured by such Mortgage combined;
- (3) Mortgagor shall cease to own the entire actual and beneficial title and interest to the Mortgaged Property, free and clear from all liens, security interests and encumbrances except (i) the lien and security interest evidenced by the Security Documents, and (ii) the Permitted Encumbrances;
- (4) Mortgagor shall dissolve, terminate, liquidate or cease to be a corporation, general partnership or a limited partnership duly organized and validly existing under



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applicable law, if Mortgagor is a corporation, general partnership or a limited partnership;

- (5) Any of the current partners of Mortgagor shall sell, transfer or assign his partnership interest to a person or entity which is not a partner as of the date hereof;
- (6) Any shareholder of Mortgagor, if Mortgagor shall in the future be a corporation, shall sell, assign or transfer his shares in Mortgagor to a person or entity who is not a shareholder as of the date thereof;
- (7) If any transferee who has acquired title to the Mortgaged Property as a result of a Permitted Transfer (as defined below) shall cease to own the entire actual and beneficial title and interest to the fee simple estate to all of the Mortgaged Property, free and clear from all liens, security interests and encumbrances except (i) the lien and security interest evidenced by the Security Documents, and (ii) the Permitted Encumbrances; or
- (8) Mortgagor shall contractually agree to any of the actions described in subparagraphs 1 through 7 inclusive above, unless such agreement is expressly conditioned upon the consent of Mortgagee to the transaction contemplated thereby.

(b) Mortgagee shall not unreasonably withhold consent to any such Transfer unless such Transfer would or might (i) diminish the value of any security for the Indebtedness, (ii) increase the risk of default under this Mortgage, (iii) increase the likelihood of Mortgagee's having to resort to any security for the Indebtedness after an Event of Default or (iv) add or remove the liability of any person or entity for payment or performance of the Indebtedness or any covenant or obligation under the Security Documents. If Mortgagee's consent to a proposed Transfer for which Mortgagee's consent is required is requested, Mortgagee shall have the right (in addition to its absolute right to refuse to consent to any such Transfer) to condition its consent upon satisfaction of any one or more of the following requirements:

- (1) That the interest rate on the Note be increased to a rate acceptable to Mortgagee, but not in excess of the maximum legal rate of interest which may be charged on the Note;
- (2) That a transfer fee in an amount determined by Mortgagee be paid, but not less than one percent (1%) of the then outstanding principal balance of the Indebtedness;
- (3) That a principal amount, if deemed appropriate by Mortgagee, be paid against the Note;

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- (4) That Mortgagor and each proposed transferee execute such assumption agreement and other instruments as Mortgagee shall require; and
- (5) That no statute, rule, decision or governmental regulation, including usury limitations, restricts in any manner Mortgagee's right to make interest, payment or principal adjustments in accordance with the terms of the Note.

(c) Notwithstanding the foregoing, provided no Event of Default exists hereunder which at that time remains uncured, Mortgagor shall consent to the following:

(1) a transfer of a partnership or a shareholder interest from an existing Guarantor to a person who is a member of Ronald D. Haddad's family (a "Family Transferee") provided that, if the transferor is Ronald D. Haddad, said Ronald D. Haddad shall remain obligated on the Guaranty, or if such transferor is a person other than Ronald D. Haddad, the Family Transferee shall assume the liability under the Guaranty of such transferor pursuant to documentation reasonably acceptable to Mortgagee and, in such latter event, said transferor shall be released from his limited recourse obligations arising pursuant to the Guaranty; and

(2) a transfer of the Mortgaged Property one time prior to the release of this Mortgage to a purchaser (an "Approved Transferee") who is determined by Mortgagee to be financially capable of paying and performing the Indebtedness and Obligations according to their terms. Mortgagee's decision will be based upon standards normally used by persons in the business of making loans on real estate in the same or similar circumstances. In such event, Mortgagor and the Guarantors will be released from their limited recourse obligations arising pursuant to Section 7.5 hereof if and to the extent the Approved Transferee (or principal thereof approved by Mortgagee) assumes such obligations by written document reasonably satisfactory to Mortgagee in form and content. The fee for this one transfer shall be one percent (1.0%) of the outstanding balance of the Indebtedness.

(d) Any disposition approved by Mortgagee pursuant to this Section is herein referred to as a "Permitted Transfer."

Article 6  
EVENTS OF DEFAULT

The term "Event of Default", as used herein in the other Security Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

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6.1 Payment of Indebtedness: If Mortgagor shall fail, refuse or neglect to pay, in full, (a) any regularly scheduled installment of principal and/or interest under the Note, (b) the outstanding balance of the Note upon the maturity thereof, or (c) any other portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Security Documents or otherwise, and such failure, refusal or neglect shall remain uncured after the giving of any notice required under the Note and the expiration of any applicable grace and/or cure period.

6.2 Performance of Obligations: If Mortgagor shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations as and when called for and such failure, refusal or neglect shall either be incurable or, if curable, shall remain uncured for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Mortgagor commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within sixty (60) days after such notice. The notice and cure provisions shall not apply to a breach under Paragraph 5.4 hereof.

6.3 False Representation: If any representation or warranty made by Mortgagor, any Guarantor or others in, under or pursuant to the Contract of Sale or the Security Documents shall be false or misleading in any material respect.

6.4 Judgment: If any final judgment for the payment of money in excess of \$100,000.00 shall be rendered against Mortgagor or any Guarantor and the same shall not be discharged within a period of sixty days after such judgment becomes final.

6.5 Voluntary Bankruptcy: If Mortgagor or any Guarantor shall (a) seek, consent to or not contest the appointment of a receiver or trustee for itself or himself or for all or any part of its or his property, (b) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction, (c) make a general assignment for the benefit of its or his creditors or (d) admit in writing its or his inability to pay its or his debts as they mature.

6.6 Involuntary Bankruptcy: If (a) a petition is filed against Mortgagor or any Guarantor seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction or (b)

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a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Mortgagor or any Guarantor, a receiver or trustee for it or him, or for all or any part of its or his property, and such petition, order, judgment or decree shall not be and remain discharged or stayed within a period of ninety (90) days after its entry.

6.7 Tax on Indebtedness or Mortgage: If any law is passed (a) which would impose upon Mortgagee the obligation to pay the whole or any part of the Impositions or (b) changing in any way the laws relating to the taxation of mortgages or debts so as to affect this Mortgage or the Indebtedness; provided, however, that if in the opinion of Mortgagee's counsel it shall be lawful for Mortgagor to pay such Impositions or to reimburse Mortgagee therefor, then no Event of Default shall be deemed to have occurred if a mutually satisfactory reimbursement agreement is executed by Mortgagor and delivered to Mortgagee and such Impositions or reimbursements are thereafter made by Mortgagor within the time specified in Paragraph 4.5 hereinabove.

6.8 Foreclosure of Other Liens: If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Mortgagee's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

## Article 7 DEFAULT AND FORECLOSURE

7.1 Remedies: If an Event of Default shall occur, Mortgagee may, at Mortgagee's election and by or through Mortgagee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration: Declare the then unpaid principal balance and accrued interest on the Note and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable, together with any penalties, premiums and other sums due under the Note as a result of such acceleration.

(b) Entry on Mortgaged Property: Enter upon the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of all or any part of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent thereto, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for

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forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after an Event of Default than would have existed in the absence of such sentence.

(c) Operation of Mortgaged Property: Hold, lease, manage, operate or otherwise use or permit the use of the Mortgaged Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Mortgagee shall deem necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provision of Paragraph 7.8 hereinbelow.

(d) Foreclosure and Sale: Foreclose the lien hereof for the full amount of the Indebtedness or any part thereof secured hereby. In any suit to foreclose the lien hereof, or in the event of any public auction sale, there shall be allowed and included as additional indebtedness in the judgment for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the 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 title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of said Mortgaged Property and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor.

(i) This Mortgage may be foreclosed once against all, or successively against any portion or portions of the Mortgaged Property, as the Mortgagee may elect. This Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or any sale, and may

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be foreclosed successively and in parts, until all of the Mortgaged Property have been foreclosed against and sold.

(ii) Mortgagee may employ counsel for advice or other legal service at Mortgagee's discretion in connection with any dispute as to the obligations of Mortgagor hereunder, or as to the title or interest of Mortgagee to the Mortgaged Property arising pursuant to this Mortgage, or in any litigation to which Mortgagee may be a party which may affect the title to the Mortgaged Property or the validity of the Indebtedness and Obligations hereby secured, and any reasonable attorneys' fees so incurred shall be added to and be a part of the Indebtedness hereby secured. Any costs and expense reasonably incurred in connection with any other dispute or litigation affecting said Indebtedness or Mortgagee's title to the Mortgaged Property, including reasonably estimated amounts to conclude the transaction, shall be added to and be a part of the Indebtedness hereby secured. All such amounts shall be payable by Mortgagor to Mortgagee without formal demand.

(e) Appointment of Receiver: Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, make application to the court in which such complaint is filed to place Mortgagee in possession or appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Mortgagee or such receiver, as the case may be, shall have power to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further time when Mortgagor, except for the intervention of Mortgagee or such receiver, 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 Property during the whole of said period. The court from time to time may authorize the Mortgagee or receiver to apply the net income in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of any Indebtedness or Obligations secured hereby, including without limitation the items described in Paragraph 7.8 hereinbelow.

(f) Other: Exercise any and all other rights, remedies and recourses granted under the Security Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise;

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subject, however, to the provisions of paragraph 9 of the Note which places certain limitations on the recourse which Mortgagee may have against Mortgagor upon the occurrence of an Event of Default.

7.2 Separate Sales: In the event of foreclosure of the lien hereof pursuant to Section 7.1(d) hereinabove, the Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee, in his sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

7.3 Remedies Cumulative, Concurrent and Non-Exclusive: Mortgagee shall have all rights, remedies and recourses granted in the Security Documents and available at law or equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Mortgaged Property, or any portion thereof) and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor, any Guarantor or others obligated under all or any part of the Indebtedness, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse and (d) are intended to be, and shall be, nonexclusive. The foregoing is subject to the provisions of paragraph 9 of the Note which places certain limitations on the recourse which Mortgagee may have against Mortgagor upon the occurrence of an Event of Default.

7.4 No Conditions Precedent to Exercise of Remedies: Neither Mortgagor, any Guarantor nor any other person hereafter obligated for payment of all or any part of the Indebtedness or fulfillment of all or any of the Obligations shall be relieved of such obligation by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor, Guarantor or of any other person so obligated to foreclose the lien of this Mortgage or to enforce any provisions of the other Security Documents, (b) the release, regardless of consideration, of the Mortgaged Property or the addition of any other property to the Mortgaged Property, (c) any agreement or stipulations between any subsequent owner of the Mortgaged Property and Mortgagee extending, renewing, rearranging or in any other way modifying the terms of the Security Documents without first having obtained the consent of, given notice to or paid any consideration to Mortgagor, any Guarantor or such other person, and in such event Mortgagor, Guarantor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement unless expressly released and discharged in writing by Mortgagee or (d)



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by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

7.5 Release of and Resort to Collateral:

(a) Mortgagee may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

(b) This Paragraph 7.5 shall not prejudice the right of Mortgagee as against Mortgagor or any other entity now or hereafter liable under any guaranty, indemnity agreement, bond, space lease, attornment agreement, policy of insurance or other agreement which Mortgagor may have given Mortgagee for compliance with any of the terms, covenants or conditions of the Security Documents.

(c) Mortgagor and any Guarantor shall, jointly and severally, have full personal liability to Mortgagee for (i) all unpaid Taxes levied against or which become due during Mortgagor's ownership of the Mortgaged Property and for which payment has been received from tenants of the Mortgaged Property for payment of same, and all unpaid Ground Rents, provided that liability for such items shall be reduced or eliminated if and to the extent Escrowed Sums are deposited with Mortgagee for payment of same pursuant to Article 10 hereof; (ii) all loss, damage, cost and expense (including, without limitation, reasonable attorneys fees) incurred by Lender as a result of the intentional or grossly negligent waste to any part of the Mortgaged Property; (iii) fraudulent acts of the Mortgagor or Guarantor; (iv) all insurance proceeds and/or condemnation awards with respect to the Mortgaged Property which are received by Mortgagor and applied in contravention of the Mortgage; (v) all hazardous materials, and any loss or damage resulting therefrom, brought (or allowed to be brought) or produced (or allowed to be produced) on the Property by Mortgagor or with the knowledge or constructive knowledge of Mortgagor; (vi) all tenant security deposits; and, (vii) all other Rents that have been paid (or in the normal course of business would have been paid but for Mortgagor's discount or waiver thereof) from and after the date of notice to Mortgagor of any Event of Default, which Event of Default is not subsequently cured, to the extent such Rents are not used to pay operating expenses or capital costs of the Mortgaged Property or the Indebtedness.

(d) Except as otherwise set forth in Paragraph 7.5(b) and (c) above, Mortgagee's recourse against the Mortgagor and the Guarantor

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for the repayment of the Indebtedness and performance of the Obligations shall be limited to the Mortgaged Property. Accordingly, if a breach or default occurs under the Note or the Security Documents (i) no attachment, execution, writ or other process shall be sought, and no judicial proceeding shall be initiated, by or on behalf of Mortgagee against Mortgagor or any Guarantor as a result of such breach or default unless such attachment, execution, writ or judicial proceeding shall be necessary to enforce any of Mortgagee's rights, remedies or recourses (A) pursuant to Paragraphs 7.5(b) and (c) above, or (B) against or with reference to the Mortgaged Property, including, but not limited to any suit to foreclose the lien hereof or created under any of the Security Documents, and (ii) in the event that any suit is brought for the repayment of principal and/or interest due under the Note, whether before or after maturity of the Note, by acceleration, by passage of time or otherwise (except as provided in Paragraph 7.5(b) and (c) above), any judgment obtained in or as a result of such suit shall be enforceable and/or enforced solely against the Mortgaged Property. It is expressly understood and agreed, however, that nothing contained in this Paragraph 7.5 shall in any manner or way constitute or be deemed a release of the debt evidenced by the Note and by the Security Documents or otherwise affect or impair the enforceability of the liens, mortgages, assignments, rights and security interests created by the Security Documents.

7.6 Waiver of Redemption, Notice and Marshalling of Assets: To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default (except as may be provided for in Article 6 hereinabove) or of Mortgagee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Security Documents and (c) any right to a marshalling of assets or a sale in inverse order of alienation. Mortgagor expressly waives any and all rights of redemption from sale under any order, judgment or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, it being the intent of this Paragraph 7.6 that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be waived to the full extent permitted by the provisions of applicable law. Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise

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of every such right, power and remedy as though no such law or laws have been made or enacted.

7.7 Discontinuance of Proceedings: In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Security Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the indebtedness, the Obligations, the Security Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

7.8 Application of Proceeds: The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Mortgaged Property shall be applied by Mortgagee (or the receiver, if one is appointed) as the court in which the complaint to foreclose has been filed may direct or, in the absence of such direction, to the following items of expense, interest and principal in such order of priority as Mortgagee may decide in its sole and absolute discretion:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property, of holding, using, leasing, repairing, improving and selling the same and of foreclosure and litigation with respect thereto, including, without limitation (i) trustees' and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement, (v) costs of insurance premiums, water charges and repairs and (vi) 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 or of the judgment foreclosing this Mortgage (except those to which the Mortgaged Property has been sold subject to and without in any way implying Mortgagee's prior consent to the creation thereof);

(b) to the payment of amounts due upon any judgment entered in any suit foreclosing this Mortgage, including any deficiency judgment in case of a sale and a deficiency;

(c) to the payment of all amounts, other than the principal balance and accrued but unpaid interest which may be due to Mortgagee under this Mortgage or the Security Documents, together with interest thereon as provided therein;

(d) to the payment of all accrued but unpaid interest due on the Note;

(e) to the payment of the principal balance on the Note;

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(f) to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Mortgagee, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property; and

(g) to the owner of the Mortgaged Property.

Article 8  
CONDEMNATION

8.1 General: Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation of the Mortgaged Property, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Mortgagee for disposition pursuant to the terms of this Mortgage. Mortgagor may be the nominal party in such proceedings but Mortgagee shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation. If the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Mortgagor by virtue of its interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto Mortgagee to be held by it, in trust, subject to the lien and security interest of this Mortgage, and disbursed as follows:

(a) if (i) all of the Mortgaged Property is taken, (ii) so much of the Mortgaged Property is taken, or the Mortgaged Property is so diminished in value, that the remainder thereof cannot (in Mortgagee's judgment) continue to be operated profitably for the purpose it was being used immediately prior to such taking or diminution, (iii) an Event of Default shall have occurred or (iv) the Mortgaged Property is partially taken or diminished in value and (in Mortgagee's judgment) need not be rebuilt, restored or repaired in any manner, then in any such event the entirety of the sums so paid to Mortgagee shall be applied by it in the order recited in Paragraph 8.2 hereinbelow; or

(b) if (i) only a portion of the Mortgaged Property is taken and the portion remaining can (in Mortgagee's judgment), with rebuilding, restoration or repair, be profitably operated for the purpose referred to in Paragraph 8.1(a)(ii) hereinabove, (ii) none of the other facts recited in Paragraph 8.1(a) hereinabove exists, (iii) Mortgagor shall deliver to Mortgagee plans and specifications for such rebuilding, restoration or repair acceptable to Mortgagee,

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which acceptance shall be evidenced by Mortgagee's written consent thereto, and (iv) Mortgagor shall thereafter commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications and within three (3) months after the date of the taking or diminution in value and shall otherwise comply with Paragraph 4.8 hereinabove, then such sums shall be paid to Mortgagor to reimburse Mortgagor for money spent in the rebuilding, restoration or repair (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to such rebuilding, restoration or repair or directly to such persons); otherwise same shall be applied by Mortgagee in the order recited in Paragraph 8.2 hereinbelow.

**8.2 Application of Proceeds:** All proceeds received by Mortgagee with respect to a taking or a diminution in value of the Mortgaged Property shall be applied in the following order of priority:

(a) first, to reimburse Mortgagee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of the said proceeds; and

(b) thereafter, the balance, if any, shall be applied in the order of priority recited in Paragraph 7.8(c) through (g) hereinabove; provided, however, that if such proceeds are required under Paragraph 8.1(b) hereinabove to be applied to the rebuilding, restoration or repair of the Mortgaged Property, the provisions of Paragraph 4.8 hereinabove shall determine the conditions precedent for utilizing such proceeds for such purpose.

Article 9

ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

**9.1 Security Interest:** This Mortgage shall be construed as a mortgage on real property. It shall also constitute and serve as an assignment of rents and as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article 2 hereinabove, a first and prior security interest under, the Uniform Commercial Code (being the Illinois Uniform Commercial Code--Secured Transactions, as to property within the scope thereof and situated in the State of Illinois) with respect to the Personalty, Fixtures, Leases, Rents, Service Contracts and Escrowed Sums (collectively the "Collateral"). To this end, Mortgagor has Granted, Bargained, Conveyed, Assigned, Transferred and Set Over, and by these presents does Grant, Bargain, Convey, Assign, Transfer and Set Over, unto Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and Rents, and a first and prior security interest and all of Mortgagor's right, title and interest in, to and under the other Collateral, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

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9.2 Financing Statements: This Mortgage shall be deemed a "Financing Statement" with respect to the Fixtures. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such "Financing Statements" and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect, and preserve Mortgagee's security interest with respect to such Fixtures or in the other Collateral described above in Paragraph 9.1, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

9.3 Uniform Commercial Code Remedies: Mortgagee shall have all the rights, remedies and recourses with respect to the Collateral afforded to it by the aforesaid Uniform Commercial Code (being the Illinois Uniform Commercial Code--Secured Transactions, as to Collateral within the scope thereof and situated in the State of Illinois) in addition to, and not in limitation of, the other rights, remedies and recourses afforded Mortgagee by the Security Documents.

9.4 No Obligation of Mortgagee. The assignment and security interest herein granted shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do same, or to take any action, incur any expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

9.5 Payment of Rents to Mortgagor Until Default: Unless and until an Event of Default occurs, Mortgagor shall be entitled to collect the Rents as and when, but not before, they become due and payable. Mortgagor hereby agrees with Mortgagee that the other parties under the Leases may, upon notice from Mortgagee of the occurrence of an Event of Default, thereafter pay direct to Mortgagee the Rents due and to become due under the Leases and attend all other obligations thereunder direct to Mortgagee without any obligation on their part to determine whether an Event of Default does in fact exist.

Article 10  
ESCROW

10.1 Tax and Insurance Escrow: In order to implement the provisions of Paragraphs 4.5 and 4.7 hereinabove, and subject to the provisions of Paragraph 10.2 below, Mortgagor shall pay to Mortgagee monthly at the same time and place and in the same manner as payments on the Note, and as Escrowed Sums, an amount equal to one-twelfth (1/12th) the sum of (a) the annual Taxes (estimated, wherever necessary) to become due and payable during the year

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following the month for which such payment is made, (b) annual Ground Rent, and (c) the insurance premiums (estimated wherever necessary) for the same year (or for the next year, if insurance premiums have been prepaid for such year) for those insurance policies as are required hereunder. If Mortgagee determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Taxes, Ground Rent and insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice.

(a) The Escrowed Sums may be held by Mortgagee in non-interest-bearing accounts and may be commingled with Mortgagee's other funds. Mortgagor shall pay a one-time tax service set up premium, equal to the base amount of \$26.50, plus eight dollars (\$8.00) per One Hundred Thousand Dollar (\$100,000.00) increment over Four Hundred Thousand Dollars (\$400,000.00) of the face amount of the Note, to set up and service the tax escrow account for the first year. Mortgagee shall hold the Escrowed Sums to be used for taxes in an interest bearing account provided that Mortgagor shall pay an additional charge of \$300.00 annually, payable on each anniversary of the loan.

(b) Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the Escrowed Sums then in its possession to its assignee whereupon the Mortgagee shall then become completely released from all liability with respect thereto. Upon full payment of the Indebtedness or at such earlier time as Mortgagee may elect, the balance of the Escrowed Sums in its possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto.

(c) If no Event of Default shall have occurred and be continuing hereunder, the Escrowed Sums shall, at the option of Mortgagee, be repaid to Mortgagor upon Mortgagor's request, in amounts and at such times as may be required to allow Mortgagor to satisfy Mortgagor's obligations under the Security Documents to pay the Taxes, Ground Rent and the required insurance premiums or be paid directly to the Governmental Authority, insurance company or other payee entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Mortgagee shall have the additional option of crediting the full amount of the Escrowed Sums against the Indebtedness.

(d) Notwithstanding anything to the contrary contained in this Article 10 or elsewhere in this Mortgage, Mortgagee hereby reserves the right to waive (which waiver must be in



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writing) the payment by Mortgagor to Mortgagee of any or all the Escrowed Sums, and, in the event Mortgagee does so waive such payment, it shall be without prejudice to Mortgagee's rights to insist, at any subsequent time or times, that such payments be made in accordance herewith. So long as no Event of Default has occurred hereunder, Mortgagee shall waive the requirement to escrow funds for Ground Rent, provided that Mortgagor shall provide Mortgagee with evidence of payment of such Ground Rent within 15 days after the due dates thereof, and for insurance premiums, provided that Mortgagor complies with the requirements of Section 4.7 with respect to providing evidence of insurance, the renewal thereof and payment of the premiums therefor.

10.2 Exclusions from Tax Escrow Requirement: Pursuant to the Contract of Sale, Mortgagee has agreed to exclude certain Taxes from the escrow requirements of this Article 10.

(a) Mortgagee has agreed to remain obligated to pay when due the real estate taxes accruing on the Mortgaged Property for 1991 (payable in 1992) and accruing for 1992 up to the Closing Date, as defined in the Contract of Sale (payable in 1993), and no funds will be escrowed for payment of same.

(b) The portion of Taxes which the tenant is obligated to pay pursuant to the B. Dalton lease shall be excluded from the tax escrow requirements of this Article 10, and no funds shall be escrowed for such portion of the Taxes. Mortgagor, however, shall remit to Mortgagee the funds received by Mortgagor for payment of Taxes pursuant to the B. Dalton Lease, and Mortgagee will remit such funds to the Cook County Collector for payment of such Taxes together with the funds available from the tax escrow or directly from Mortgagee for payment of same.

(c) Mortgagee will additionally pay the portion of Taxes accruing during the Compensation Period, as described in the Contract of Sale, for which the Tenant would be responsible pursuant to the B. Dalton Lease if the Rent Commencement Date thereunder were the Closing Date, as defined in the Contract of Sale, and no funds will be escrowed for payment of same.

Article 11  
MISCELLANEOUS

11.1 Performance at Mortgagor's Expense: The cost and expense of performing or complying with any and all of the Obligations shall be borne solely by Mortgagor, and no portion of such cost and expense shall be, in any way and to any extent, credited against any installment on or portion of the Indebtedness.

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11.2 Survival of Obligations: Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

11.3 Further Assurances: Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Security Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgaged Property.

11.4 Recording and Filing: Mortgagor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

11.5 No Representation by Mortgagee: By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to the Security Documents, including (but not limited to) any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Mortgagee.

11.6 Notices: All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if mailed by first class United States [or Canadian] mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person or by courier to the intended addressee or by prepaid telegram. Notice so mailed shall be effective upon the expiration of three (3) business days after its deposit. Notice so delivered shall be effective at the time of delivery. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth in the opening recital hereinabove; provided, however that either party shall have the right to change its address for notice hereunder to any other location within the United States [or Canada] by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

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11.7 Mortgagee's Consent: Except as expressly provided herein to the contrary, in any instance hereunder where Mortgagee's prior approval or consent is required to be obtained by Mortgagor, any Guarantor or otherwise, or Mortgagee's judgment is required to be exercised as to any matter, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee, and Mortgagee shall not, for any reason and to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of either the request or Mortgagee's judgment.

11.8 No Waiver: Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions.

11.9 Mortgagee's Right to Perform the Obligations: If Mortgagor shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents then at any time after the expiration of any applicable notice and cure period hereunder (or sooner in the case of an emergency), and without further notice to or demand upon Mortgagor and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of same, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Land and Buildings for such purpose and to take all such actions and expend such sums thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. Mortgagor shall pay or reimburse Mortgagee and indemnify Mortgagee against any and all such expenses and costs, including without implied limitation, the cost and expense of evaluating, monitoring, administering and protecting the Mortgaged Property, and creating, perfecting and realizing upon Mortgagee's security interests in and liens on the Mortgaged Property, including without implied limitation, all appraisal fees, consulting fees, filing fees, taxes, brokerage fees and commissions, fees incident to security interest, lien and other title searches and reports, escrow fees, attorneys' fees and expenses, court costs, auctioneer fees and other expenses incurred in connection with liquidation or sale of the Mortgaged Property. If Mortgagee shall elect to pay any Imposition or other sums due with reference to the Mortgaged Property, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in

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making any payments to protect the security intended to be created by the Security Documents, Mortgagee shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Mortgagor shall pay Mortgagee for any expenses incurred by Mortgagee, and shall indemnify Mortgagee against all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Mortgagee pursuant to the provisions of this Paragraph 11.9 or by reason of any other provision in the Security Documents. All sums paid by Mortgagee pursuant to this Paragraph 11.9, and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, shall bear interest at the lesser of (i) the rate of interest provided in the Note for past due installments of principal and/or interest, or (ii) the maximum nonusurious rate of interest from time to time permitted by applicable law, from the date of such payment or expenditure until repayment thereof. All of the aforementioned sums together with the interest thereon shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Mortgagor to Mortgagee upon demand.

11.10 Covenants Running with the Land: All obligations contained in the Security Documents are intended by the parties to be, and shall be construed, as covenants running with the Mortgaged Property.

11.11 Successors and Assigns: All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

11.12 Severability: The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee to at all times comply with the usury, and all other laws relating to the Security Documents. Reference is here made to the provisions of the Note regarding and limiting collection of interest and compliance with the applicable usury laws, which provisions shall control over any contrary or conflicting provisions in any other Security Document. Reference is also here

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made to the provisions of the Assignment of Rents described in Paragraph 1.1(a) hereof, which provisions shall control to the extent of any conflict between (i) the provisions of such Assignment of Rents and (ii) the conveyance to the Mortgagee in Article 2 hereof, or grant of a security interest in the Leases and Rents in Article 9 hereof or any other provision of this Mortgage. It is the intention of Mortgagee and Mortgagor that Article 2 and Article 9 hereof, to the extent such articles convey in trust or grant a security interest in the Rents and other amounts covered by the Assignment of Rents, shall be effective only if and to the extent the Assignment of Rents is invalid and unenforceable, or the rights of Mortgagee under the Assignment of Rents are reassigned to Mortgagor.

**11.13 Entire Agreement and Modification:** The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

**11.14 Counterparts:** This Mortgage may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

**11.15 Applicable Law and Construction:** The Security Documents shall be governed by and construed according to the laws of the State where the Land is situated. Mortgagor and Mortgagee have each been represented by legal counsel licensed to practice law in the state where the Mortgaged Property is located. Both Mortgagor and Mortgagee are knowledgeable and experienced with respect to transactions of the type evidenced by the Security Documents. It is the intent of Mortgagor and Mortgagee that the Security Documents be construed fairly without bias for or prejudice against either party regardless of which party or which party's counsel may have originated any of such Security Documents.

**11.16 No Partnership:** Nothing contained in the Security Documents is intended to, or shall be construed as, creating to any extent and in any manner whatsoever any partnership, joint venture or association between Mortgagor, any Guarantor, Mortgagee, or in any way make Mortgagee co-principals with Mortgagor or any Guarantor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

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11.17 Subrogation: If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property and disclosed by Mortgagee to Mortgagor at or prior to the date hereof, then, to the extent of such funds so used, the Indebtedness and this Mortgage shall be subrogated to all of the rights, claims, liens, titles and interests heretofore existing against the Mortgaged Property to secure the indebtedness so extinguished, extended or renewed and the former rights, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the obligations.

11.18 Headings: The insertion of Article, Paragraph and Subparagraph entitlements and the underlining of words or phrases herein are used for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text or meaning of such Articles, Paragraphs, Subparagraphs, words or phrases.

11.19 Recourse. The provisions of paragraph 9 of the Note which places certain limitations on the recourse which Mortgagee may have against Mortgagor upon the occurrence of an Event of Default are hereby incorporated herein by reference.

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EXECUTED effective as of the date hereinabove first set forth.

EVANSTON REALTY ASSOCIATES

By: *Ronald D. Haddad*

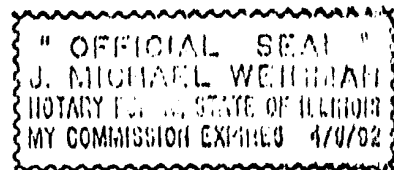
Ronald D. Haddad  
General Partner

THE STATE OF Illinois  
COUNTY OF Cook

This instrument was acknowledged before me on January 9, 1992, by Ronald D. Haddad, as general partner of EVANSTON REALTY ASSOCIATES, a New York general partnership.

*J. Michael Wehrhan*  
Notary Public

My commission expires: 4/8/92



PREPARED BY AND UPON  
RECORDING RETURN TO:

John L. Wahlers, Esq.  
Chaviano, Fischer, Kendle & Wahlers  
221 N. LaSalle Street--Suite 3410  
Chicago, Illinois 60601

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## EXHIBIT "A"

### PARCEL 1:

The South 150 feet of Lots 5 and 6, (as a tract), in Block 16 in the Original Village, now City, of Evanston, excepting from said premises the West 50 feet and also except the East 25 feet of the West 75 feet of the South 50 feet of the North 60 feet of said Lot 6, in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian;

### Also

Right-of-way for ingress and egress in, over and upon the North 10 feet of the East 65 feet in Lot 6 and the South 2 feet of the East 65 feet of Lot 7 in Block 16 in the Original Village, now City of Evanston, in Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, as created by Warranty Deed from Conrad Schmeisser and Anna Schmeisser, his wife, to Henry Hunton, dated June 5, 1915 and recorded June 24, 1915 as Documents 5,660,442;

### PARCEL 2:

The West 50 feet of Lot 5 and the West 50 feet of the South 15 feet of Lot 6 in Block 16 in Evanston, all in Cook County, Illinois;

Easement for passageway over, upon and across the South 5 feet of the North 65 feet of the West 50 feet of Lot 6 in Block 16 of said Original Village, now City, of Evanston.

Permanent Tax Number: 11-18-127-003  
(Affects Parcel 2)

Volume: 57

Permanent Tax Number: 11-18-127-0004  
(Affects Parcel 1)

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## EXHIBIT "B"

### PERMITTED ENCUMBRANCES

1. General real estate taxes for 1991 and subsequent years.

2. Reciprocal easements for foundations and support and for party wall purposes along the dividing line between Parcel 1 and Parcel 2, contained in agreement between Evanston Trust and Savings Bank, as Trustee under Trust No. 120, Barbara Field Boggs and Lytton's Evanston Building, Inc., dated March 20, 1950 and recorded April 6, 1950 as Document No. 14,771,678, and the terms, conditions and covenants therein contained.

3. Covenants, conditions and restrictions contained in a Deed executed by Northwestern University and recorded January 23, 1877 as Document 119,449. Said covenants, conditions and restrictions relate to, among other things, the following: gambling and immoral practices and the manufacture and sale of liquors, etc. upon the premises in question.

A breach or violation of above-noted covenants and conditions will not cause a forfeiture or reversion of title, the right of forfeiture or reversion having been released by Document No. 11,074,885, 10,253,672 and 5,390,594.

4. Covenants, conditions and restrictions contained in a Deed recorded September 5, 1870 as Document 64,778 and re-recorded June 1, 1886 as Document 772067. Said covenants, conditions and restrictions relate to, among other things, the following: the manufacture and sale of intoxicating drinks, gambling, etc.

A breach or violation of the above-noted covenants and conditions will not cause a forfeiture or reversion of title, the right of forfeiture or reversion having been released by Document No. 11,074,886 and 10,253,672.

5. Terms, conditions and provisions affecting the easement described on Exhibit A asset forth in the instrument creating said easement.

6. Rights of the adjoining owners to the concurrent use of said easement.

7. Encroachments above grade level, as disclosed by plan of survey no. 49797 dated December 24, 1991 by James, Schaeffer & Schimming, Inc.

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8. Rights of the following parties in possession under unrecorded leases:

- (a) Pinstripes, Inc. d/b/a Pinstripes Petites
- (b) The Limited Stores, Inc. d/b/a The Limited
- (c) Lane Bryant, Inc.
- (d) B. Dalton Bookseller, Inc.

9. Terms, agreements, provisions, conditions and limitations contained in the ground lease creating the leasehold estate herewith being conveyed.

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