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MORTGAGE

THIS MORTGAGE is made as of the 17TH day of September, 1993, by BENDERSON DEVELOPMENT COMPANY, INC., a New York corporation ("Mortgagor"), to and for the benefit of LASALLE NATIONAL BANK, a national banking association ("Mortgagee"):

RECITALS:

A. Mortgagee has agreed to loan to Mortgagor and Ronald Benderson, Randall Benderson and David H. Baldauf, as Trustees under a Trust Agreement dated October 14, 1985, and known as The Benderson #5-1 Trust (the "Trust") the principal amount of \$7,750,000 (the "Loan"). The Loan shall be evidenced by a certain Mortgage Note of even date herewith (the "Note") made by Mortgagor and the Trust payable to Mortgagee. 85

B. A condition precedent to Mortgagee's extension of the Loan to Mortgagor and the Trust is the execution and delivery by Mortgagor of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), together with the other property described in the following paragraph (the "Real Estate and property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note or any of the other Loan Documents (as defined in the Note) and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Mortgagee which are evidenced or secured by

This instrument was prepared by
and, after recording, return to:

Greenberger Krauss & Tenenbaum,
Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Martin I. Behn, Esq.

Permanent Real Estate
Tax Index Nos.:

27134020071

Common Address:

159th St. & Harlem Ave.
Chicago, Illinois

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otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which is owned by Mortgagor. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to also be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as secured party (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title.

Mortgagor represents and covenants that (a) Mortgagor is the holder of the fee simple title to the Real Estate, free and clear of all liens and encumbrances, except those liens and encumbrances described on Exhibit B attached hereto (the

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"Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

Mortgagor shall: (a) promptly repair, restore or reconstruct (or cause the repair, restoration or reconstruction of) any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Mortgagor shall, within fifteen days after the filing thereof, (i) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) not suffer or permit any change in the general nature of the occupancy of the Premises without the prior written consent of Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms of the Note and the other Loan Documents; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note and in the other Loan Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

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3. Payment of Taxes and Assessments.

Mortgagor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Mortgagor, shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

4. Tax Deposits.

Mortgagor covenants to deposit with Mortgagee on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Premises, as reasonably determined by Mortgagee. If requested by Mortgagee, Mortgagor shall also deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full such installment of annual taxes and assessments, as estimated by Mortgagee. Such deposits are to be held in an interest bearing money market account (provided that Mortgagee makes no representations regarding the amount of the interest to be paid with respect to such account) and are to be used for the payment of taxes and assessments on the Premises next due and payable when they become due. Mortgagee may, at its option, pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year, the excess shall be applied toward subsequent deposits.

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Said deposits need not be kept separate and apart from any other funds of Mortgagee.

5. Mortgagee's Interest In and Use of Deposits.

Upon the occurrence and continuance of an Event of Default, Mortgagee may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof toward any of the indebtedness secured hereby in such order and manner as Mortgagee may elect. When such indebtedness has been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, prior to the occurrence of an Event of Default, shall have requested Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. Insurance.

(a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (i) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in clause (i) above payable at the rate per month and for the period specified from time to time by Mortgagee; (iii) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and/or sprinkler system, respectively; (iv) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (v) such other insurance as Mortgagee may from time to time require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. Mortgagor shall be the named insured under such policies and Mortgagee shall be identified as an additional insured party. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with

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deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver certificates evidencing policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver certificates evidencing renewal policies not less than five days prior to their respective dates of expiration. Copies of all such policies shall be delivered to Mortgagee upon written request.

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

(c) In the event of loss, Mortgagor shall give immediate notice thereof to Mortgagee, who shall have the right to make proof of loss jointly with Mortgagor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee (rather than to Mortgagor and Mortgagee jointly). Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds so received after the payment of all of Mortgagee's expenses, either (i) on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event Mortgagee permits the application of such insurance proceeds to the cost of restoration and repair of the Premises, and such restoration and repair has been performed in a manner reasonably satisfactory to Mortgagee, any surplus which may remain out of said insurance proceeds after payment of such costs shall be returned to Mortgagor; provided, however, that if an Event of Default or an event that with the passage of time, the giving of notice, or both would constitute an Event of Default then exists, such surplus shall be applied on account of the

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unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Mortgagee, from time to time, Mortgagor shall furnish Mortgagee, without cost to Mortgagee, evidence of the replacement value of the Premises. Notwithstanding anything in this subparagraph (c) to the contrary, if the lease dated June 7, 1991, between Mortgagor and Waban Inc. (the "Home Base Lease") is in full force and effect and no default exists thereunder and the Demised Premises (as defined in the Home Base Lease) is being operated for business as a Home Base store, then the proceeds of any casualty affecting the Demised Premises shall be applied in the manner set forth in the Home Base Lease. No Prepayment Premium (as defined in the Note) shall be applicable to any prepayment of the Loan made by Lender with insurance proceeds received by Lender in accordance with the terms of this Paragraph.

7. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking Mortgagee may declare the whole of the balance of the indebtedness hereby secured to be due and payable. Notwithstanding anything in this Paragraph 7 to the contrary, if the Home Base Lease is in full force and effect and no default exists thereunder and the Demised Premises (as defined in the Home Base Lease) is being operated for business as a Home Base store, then the proceeds of any condemnation affecting the Demised Premises shall be applied in the manner set forth in the Home Base Lease. No Prepayment Premium shall be applicable to any prepayment of the Loan made by Lender with condemnation proceeds received by Lender in accordance with the terms of this Paragraph.

8. Stamp Tax.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the

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other Loan Documents, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

9. Lease Assignment.

Mortgagor acknowledges that, concurrently herewith, Mortgagor is delivering to Mortgagee, as additional security for the repayment of the Loan, an Assignment of Rents and Leases (the "Assignment") pursuant to which Mortgagor has collaterally assigned to Mortgagee interests in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment.

10. Effect of Extensions of Time.

If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

11. Effect of Changes in Laws Regarding Taxation.

If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Mortgagee of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Mortgagor, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the reasonable opinion of counsel for Mortgagee it is unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by

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law, then Mortgagee may declare all of the indebtedness secured hereby to be immediately due and payable.

12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.

If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and

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indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Mortgagee's Reliance on Tax Bills and Claims for Liens.

Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. Event of Default; Acceleration.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor or the Trust fails to pay on or before the fifth day following the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note, this Mortgage or any of the other Loan Documents;

(b) Mortgagor or the Trust fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor or the Trust under the Note, this Mortgage or any of the other Loan Documents; provided, however, that Mortgagor and the Trust shall have a period of thirty days after written notice of such failure of performance or observance to cure the same if and only if the continued operation or safety of the Premises is not then impaired, threatened or jeopardized;

(c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee by Mortgagor, the Trust or any guarantor of the Note;

(d) Mortgagor, the Trust or any guarantor of the Note files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of

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Mortgagor or the Trust or of all or any substantial part of the property of Mortgagor, the Trust or any guarantor of the Note or any of the Premises;

(e) The commencement of any involuntary petition in bankruptcy against Mortgagor, the Trust or any guarantor of the Note or the institution against Mortgagor, the Trust or any guarantor of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor, the Trust or any guarantor of the Note which shall remain undismissed or undischarged for a period of sixty days; or

(f) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 25 of this Mortgage;

(g) The occurrence of a default under the Home Base Lease or the Ground Lease (as defined in Paragraph 25 below) that remains uncured after the expiration of any applicable cure periods or the breach of any of the covenants set forth in Paragraph 25 below; or

(h) The occurrence of the death or legal incompetency of any guarantor of the Loan; provided, however, that such occurrence shall not constitute an Event of Default if within thirty days after such occurrence (i) a substitute guarantor satisfactory to Mortgagee in its reasonable discretion assumes the obligations to Mortgagee of the deceased or legally incompetent guarantor or (ii) in the event of the death of a guarantor, the estate of such guarantor acknowledges, assumes and accepts in writing such guarantor's obligations to Mortgagee.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

15. Foreclosure; Expense of Litigation.

(a) When all or any part of the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an

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alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or

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proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein or in the other Loan Documents; third, to all principal and interest remaining unpaid on the Note; and fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

17. Appointment of Receiver.

Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor or Beneficiary at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the

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lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

18. Mortgagee's Right of Possession in Case of Default.

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

(a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, subject to the obligations of Mortgagee under any subordination, non-disturbance and attornment agreement with the tenant under such lease;

(b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make any repairs, decorating renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee reasonably deems are necessary;

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(e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

19. Application of Income Received by Mortgagee.

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

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

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

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

20. Rights Cumulative.

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

21. Mortgagee's Right of Inspection.

Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times and upon reasonable prior notice, and access thereto shall be permitted for that purpose.

22. Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Subject to the rights of the tenant under the Home Base Lease, prior to the payment or application of any insurance proceeds or a condemnation or eminent domain award (or any portion thereof) to the repair or restoration of the improvements upon the Premises to the extent permitted in Paragraphs 6 and 7 above, Mortgagee (and Mortgagee's consulting architect, the cost of which shall be paid by Mortgagor) shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred; and

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted in Paragraphs 6 and 7 above, there shall have been delivered to Mortgagee (and Mortgagee's consulting architect) the following:

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(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

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

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 22, or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

23. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness

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secured hereby, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

24. Notices.

Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: LaSalle National Bank
120 South LaSalle Street
Chicago, Illinois 60603
Attn: Mr. Matthew Napoli

With copy to: Greenberger Krauss & Tenenbaum, Chtd.
180 North LaSalle Street, Suite 2700
Chicago, Illinois 60601
Attn: David Glickstein, Esq.

To Mortgagor: Benderson Development Company, Inc.
570 Delaware Avenue
Buffalo, New York 14202
Attn: Mr. Randall Benderson

With copy to: The Benderson 85-1 Trust
570 Delaware Avenue
Buffalo, New York 14202
Attn: Mr. David H. Baldauf, Trustee

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

25. Leases.

Mortgagor hereby covenants and agrees that at all times prior to the repayment in full of the obligations secured by this Mortgage (i) the Home Base Lease and the Lease dated March 25, 1990, between Mortgagor, as lessor, and the Trust, as lessee (the "Ground Lease") shall remain in full force and effect and (ii) the Demised Premises (as defined in the Home Base Lease) shall

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remain operated for business as a Home Base store or for any other use reasonably permitted by Mortgagee in writing.

26. Waiver of Rights.

Mortgagor hereby covenants and agrees that Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any claims based on allegations that Mortgagee has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

27. Transfer of Premises: Further Encumbrance.

(a) Neither all nor any portion of (i) the Premises or (ii) any interest in Mortgagor or (iii) any interest of Mortgagor in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Mortgagee, which consent may be given or withheld in Mortgagee's sole and absolute discretion, and may be conditioned in any manner that Mortgagee desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees; provided, however, that the Premises and/or the beneficial interests in the Trust may be sold or otherwise transferred to (i) Nathan Benderson, (ii) any present or future lineal descendent of Nathan Benderson or of such lineal descendent (such descendents being hereinafter referred to collectively as the "Benderson Descendents"), (iii) any other trust, provided all of the beneficiaries or remaindermen thereof are Benderson Descendents, or (iv) any corporation or other entity controlled by the Benderson Descendents (collectively, the "Permitted Transfers") without the prior written consent of Mortgagee, if and only if Mortgagor delivers to Mortgagee prior written notice of any such Permitted Transfer and all other reasonably requested information regarding the same, together with the transferee's written acknowledgment of Mortgagee's security interest in any transferred property or interest, and no assumption fees shall be imposed by Mortgagee in the event of any such Permitted Transfer. As used in clause (iv) of the preceding sentence, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of

the management and policies of a corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents.

(b) Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon a continuing or subsequent Event of Default under this Paragraph 27. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Mortgagor agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation, that such restraint is a reasonable one.

28. Expenses Relating to Note and Mortgage.

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

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(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall be payable on demand and shall bear interest from the tenth day following the date of such demand until paid at the Default Rate.

29. Financial Statements.

Mortgagor hereby represents that the financial statements for Mortgagor and the Premises previously submitted to Mortgagee are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Mortgagor or the Premises from the dates of said financial statements until the date hereof. Mortgagor hereby covenants that Mortgagee shall be furnished the following financial information: (i) the Premises's income and expense statements for each six month period ending June 30 and December 31, (ii) the Trust's annual financial statements prepared in accordance with generally accepted accounting principles ("GAAP") by a certified public accountant approved by Mortgagee, which approval shall not be unreasonably withheld, (iii) annual audited financial statements for Mortgagor prepared in accordance with GAAP by Brock, Schechter & Polakoff or any other certified public accountant approved by Mortgagee, which approval shall not be unreasonably withheld, (iv) annual Valuation Statements and Valuation Models for all of the real estate in which the Trust has an interest, (v) annual Summary Valuation Models for all of the real estate in which Mortgagor and its affiliates have an interest. Such statements shall also include a calculation of Operating Cash Flow and Debt Service (as such terms are defined in Paragraph 39 below) for the quarter to which they apply and

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shall be certified by Mortgagor. All of the aforementioned financial statements shall be in form and scope substantially similar to the form and scope of the financial statements for the Premises, the Trust and Mortgagor previously delivered to Mortgagee. The statements described in clause (i) above shall be delivered to Mortgagee within 90 days after the end of the period to which they apply and the remaining statements described above shall be delivered to Mortgagee within 120 days after the end of the period to which they apply. Mortgagor shall respond in writing to reasonable inquiries made by Mortgagee regarding the aforementioned financial information, which response shall include, upon request, adequate supporting documentation and calculations.

30. Statement of Indebtedness.

Mortgagor, within seven days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

31. Further Instruments.

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

32. Additional Indebtedness Secured.

All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

33. Indemnity.

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless

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from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become due and payable upon demand and with interest at the Default Rate from and after the tenth day following such demand until paid.

34. Waiver of Rights of Redemption and Reinstatement.

Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law.

35. Subordination of Property Manager's Lien.

Any property management agreement for the Premises entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, Mortgagor shall cause the property manager to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager to the lien of this Mortgage.

36. Fixture Filing.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Mortgagee. For purposes of the foregoing, Mortgagee is the secured party and Mortgagor is the debtor and the collateral

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covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

37. Compliance with Environmental Laws; Indemnity.

In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("Agency") having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Mortgagee and its agents and representatives shall have access to the Premises and to the books and records of Mortgagor and any occupant of the Premises claiming by, through or under Mortgagor for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Mortgagor and all occupants of the Premises claiming under Mortgagor shall provide to Mortgagee copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Mortgagor or an occupant claiming by, through or under Mortgagor or otherwise present on the Premises.

38. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 17 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver

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shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 15-1510 or 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 12, 15 or 28 of this Mortgage, shall be added to the indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

39. Debt Service Ratio.

(a) During any sixth month period ending on June 30 or December 31 (a "Period"), Mortgagor shall not permit the ratio of Operating Cash Flow (as defined below) during such Period to Debt Service (as defined below) during such Period to be less than 1:1.

(b) As used herein, "Operating Cash Flow" during any Period shall mean all rental income (including minimum rent, additional rent, escalation and pass through payments) actually received in such Period arising from the ownership and operation of the Premises (excluding tenant security deposits and rent paid during such Period by any tenant for more than three months of rental obligations) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such Period in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, (iv) debt service payable on the Loan, and (v) principal and interest payments on other loans and loan fees. In determining Operating Cash Flow, (A) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income and (B) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums (regardless of whether the same shall have been paid or have become due and payable during such Period) multiplied by one-half.

(c) As used herein, "Debt Service" for any Period shall equal the sum of all principal and interest payments on the Loan and any other indebtedness of Mortgagor that are due and payable during such Period.

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(d) Operating Cash Flow and Debt Service shall be calculated by Mortgagee based on the financial information provided to Mortgagee by Mortgagor and independently verified by Mortgagee and the calculations so verified shall be final and binding upon Mortgagor and Mortgagee.

40. Miscellaneous.

(a) Successors and Assigns.

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions; Governing Law.

In the event one or more of the provisions contained in this Mortgage or the Note or in any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) Municipal and Zoning Requirements.

Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Mortgagor impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants.

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Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate.

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) Mortgagee in Possession.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(g) Relationship of Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(h) Time of the Essence.

Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

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(i) No Merger.

It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Maximum Indebtedness.

Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$20,000,000.

(k) JURISDICTION AND VENUE.

MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(l) WAIVER OF RIGHT TO JURY TRIAL.

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MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(m) Exculpation.

Notwithstanding any provision hereof, but subject in all respects to the provisions of the Limited Guaranty of even date herewith (the "Guaranty") made by Ronald Benderson, Randall Benderson and Nathan Benderson (jointly, the "Guarantors") and joined by the Mortgagor, and the Environmental Indemnity Agreement of even date herewith (the "Indemnity Agreement") made by Borrower and the Guarantors, (a) Mortgagor and the Trust shall not be personally liable for the payment of the Loan or their respective obligations under this Mortgage by reason of any default in the payment or performance of the obligations of Mortgagor or the Trust under this Mortgage (unless such default arises from (i) fraud by Mortgagor, the Trust or any Guarantor with respect to the Loan and (ii) a breach of the transfer and encumbrance restrictions contained in Section 27 above, in which event Mortgagor and the Trust shall have unlimited personal liability for the payment of such obligations), and (b) except as otherwise set forth to the contrary in the Guaranty, the aggregate personal liability of Mortgagor for the payment of the Loan shall equal \$2,000,000 minus any amounts paid by the Guarantors under the Guaranty (other than the Additional Liabilities (as defined in the Guaranty)); provided, however, that the foregoing exculpation shall not impair or otherwise affect any of Mortgagee's rights or remedies against any collateral now or hereafter pledged to Mortgagee as security for the obligations of Borrower, or against any other person or entity liable for the obligations of Borrower.

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

BENDERSON DEVELOPMENT COMPANY,
INC. a New York corporation

By: 
Title: J.P.

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JOINDER

The undersigned, as lessee under the Ground Lease, hereby joins this Mortgage for the purpose of mortgaging, granting, assigning, remising, warranting and conveying to Mortgages the interest of the undersigned in the Premises (including, without limitation, any improvements now or hereafter constructed on the Real Estate) as additional security for the repayment of the Loan and the performance of the other obligations of Mortgagor and the undersigned under the Loan Documents. The undersigned also acknowledges, consents to and agrees to abide by all representations, warranties and covenants set forth in the Mortgage relating to the Premises.

RONALD BENDERSON, RANDALL BENDERSON
AND DAVID H. BALDAUF AS TRUSTEES
UNDER A TRUST AGREEMENT DATED
OCTOBER 14, 1985, AND KNOWN AS THE
BENDERSON 85-1 TRUST

By:



Ronald Benderson, as Trustee

By:



Randall Benderson, as Trustee

By:



David H. Baldauf, as Trustee

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STATE OF New York)
)
COUNTY OF Erie) SS.

I, Eric L. Reoon, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Randall Benderson, the Vice President of Benderson Development Company, Inc., a New York corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such corporation, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of September, 1993.

Eric L. Reoon
NOTARY PUBLIC

(SEAL)

STATE OF New York)
)
COUNTY OF Erie) SS.

ERIC L. RECOON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8/12/1996

I, Eric L. Reoon, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **RONALD BENDERSON, RANDALL BENDERSON and DAVID H. BALDAUF**, the Trustees of The Benderson 85-1 Trust, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trustees, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 17th day of September, 1993.

Eric L. Reoon
NOTARY PUBLIC

(SEAL)

My commission expires: _____

ERIC L. RECOON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 8/12/1996

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EXHIBIT A

Legal Description of Premises

THE SOUTH 665.00 FEET OF THE WEST 882.00 FEET OF THE EAST 952.00 FEET OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE SOUTH 150.00 FEET OF THE EAST 220.00 FEET OF SAID SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 13, EXCEPT LAND DEDICATED FOR HIGHWAY OR STREET PURPOSES, ALL IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

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EXHIBIT B

Permitted Exceptions

1. General real estate taxes for the year 1993 and each year thereafter not yet due and payable.
2. Exceptions D, H, I and K contained on Schedule B of Chicago Title Insurance Company Commitment Order No. 1401 007447725 dated July 21, 1993.
3. Such other exceptions as are permitted by Mortgages in writing.

Property of Cook County Clerk's Office

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