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. COOK COUNTY RECORDER

## CONSTRUCTION MORTGAGE

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THIS CONSTRUCTION MORTGAGE (hereinafter referred to as the "Mortgage") is made as of the 5th day of June, 1997, by HARRY SEIGLE and MARK SEIGLE, jointly and severally (hereinafter referred to as "Mortgagor"), whose address is set forth below, in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter referred to as "Mortgagee"), whose address is set forth below.

### Article I

#### TERMS OF THE INDEBTEDNESS

1.1 Certain Terms of Indebtedness: The following is a summary of certain terms of the Indebtedness (as hereinafter defined) secured by this Mortgage. A true and correct copy of the Note referred to below is attached hereto as Exhibit C and is hereby incorporated herein by reference and should be referred to for a complete recital of all terms and conditions thereof:

(a) Note: That certain Construction Mortgage Note (the "Note") of even date herewith made by Mortgagor payable to the order of Mortgagee in the maximum principal amount of Eleven Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00).

(b) Construction Loan: The borrowing evidenced by the Note is to be used by Mortgagor for developing the Mortgaged Property (hereinafter defined), refinancing existing debt and constructing the Project (hereinafter defined) thereon (the "Construction Loan").

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(c) Interest Rate and Payments: During the term of the Loan, interest shall accrue under the Note at the "Prime Rate" described in the Note, unless and to the extent Mortgagor elects to cause interest to accrue at the "LIBOR Based Rate", all as more particularly described in the Note. Installments of interest and of principal outstanding under the Note shall be due and payable in the amounts, at the times and otherwise as provided in the Note.

(d) Maturity Date: All of the unpaid principal balance outstanding under the Note and all unpaid interest accrued thereon shall become due and payable, if not sooner paid or if not sooner due by acceleration, notice of prepayment, or otherwise, on July 1, 1999 (hereinafter referred to as the "Initial Maturity Date"), subject, however, to extension to July 1, 2001 (the "First Extended Maturity Date") and to further extension to July 1, 2003 (the "Second Extended Maturity Date"), in each case subject to Mortgagor's timely exercise of the Extension Option(s) and Mortgagor's further satisfaction of the Extension Conditions set forth in the Note and Loan Agreement (as used herein, the term "Maturity Date" shall mean whichever of the Initial Maturity Date, the First Extended Maturity Date, or the Second Extended Maturity Date is applicable under the circumstances).

(e) Prepayment. The Indebtedness may be prepaid in full or in part, but only as provided in the Note. Any payment in full of the Notes shall include, in addition to the unpaid principal balance outstanding, all interest accrued thereon, and any other sums which are secured by the Mortgage and other Loan Documents (as hereinafter defined), including, but not limited to, any expenses incurred by Mortgagee in connection with this Loan or in connection with any prior Event of Default (as hereinafter defined) under the Note, Loan Agreement, this Mortgage or the other Loan Documents.

(f) Definition of the Indebtedness: The term "Indebtedness" shall mean the principal amount of, interest payable on, and all fees, amounts, payments, premiums, liabilities and monetary liabilities and obligations due or required to be paid by Mortgagor under the Note, the Loan Agreement, this Mortgage or the other Loan Documents, or under any future advance note, or under any and all amendments, modifications, restatements, replacements, consolidations, substitutions, renewals, extensions and increases to the Note and other Loan Documents, whether heretofore or hereafter existing, and whether direct or indirect, absolute or contingent.

(h) Construction Mortgage: The Note which is secured by this Mortgage evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor for the purpose of financing costs in connection with the Mortgaged Property (as hereinafter defined) including costs of refinancing existing debt and construction of the improvements to be located on the Mortgaged Property. All disbursements shall be made in accordance with the terms and provisions of the Loan Agreement, as the same from time to time may be amended, supplemented or modified and the terms and conditions of which are hereby incorporated herein by reference. Mortgagor hereby covenants and agrees to perform and fulfill or cause to be performed and fulfilled, all the terms, covenants and conditions of the Loan Agreement, and the occurrence of an Event of Default under the Loan Agreement

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shall constitute an Event of Default under this Mortgage. A true copy of the Loan Agreement may be reviewed at the offices of Mortgagee during its regular business hours or may be obtained from Mortgagee, in either case upon reasonable advance request.

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

## Article 2

### DEFINITIONS

2.1. Definitions: The following terms shall have the following meanings (any other capitalized term used herein that is not expressly defined in this Article shall have the meaning defined elsewhere in this Mortgage):

(a) Awards: All awards and payments heretofore or hereafter made by any municipal, state or federal agency or authority to Mortgagor, including any awards or payments for any taking of the Mortgaged Property (as hereinafter defined) as a result of the exercise of the right of condemnation or eminent domain and any and all proceeds and payments heretofore or hereafter made by any insurance company as a result of any casualty or other event in connection with the Mortgaged Property.

(b) Buildings: The building(s) currently existing on the Real Estate (as hereinafter defined) and any and all buildings, structures and improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Real Estate or any part thereof.

(c) Commitment: That certain Commitment Letter dated March 28, 1997, from Mortgagee to Mortgagor and accepted by Mortgagor on April 16, 1997.

(d) Contracts: Any and all contracts, documents or agreements pertaining to the ownership, use, occupancy, development, design, construction, financing, operation, management, alteration, repair, marketing, sale, lease or enjoyment of the Mortgaged Property, including, without limitation any contracts for labor or materials, purchase orders, service contracts, and all rights, privileges, authority and benefits thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

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(e) Default Rate: The lesser of: (i) the interest rate of Four Percent (4%) per annum in excess of the Prime Rate of interest applicable at any time, or (ii) the highest rate allowed to be charged or collected under applicable law.

(f) Event of Default: The occurrences defined in Article 8 of this Mortgage.

(g) Fixtures: All fixtures, as defined in and subject to the Uniform Commercial Code, located on the Real Estate including, without limitation, all systems, fittings, structures, equipment, apparatus, fixtures and other improvements and items now or hereafter temporarily or permanently attached to, installed in or used in connection with any of the Buildings or the Real Estate, including but not limited to any and all partitions, hardware, motors, engines, boilers, furnaces, pipes, plumbing, conduit, sprinkler systems, fire extinguishing equipment, elevator equipment, telephone and other communications equipment, security equipment, master antennas and cable television equipment, water tanks, heating, ventilating, air conditioning and refrigeration equipment, laundry facilities, and incinerating, gas and electric machinery and equipment.

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

(k) Impositions: All (i) general and special real estate and personal property taxes and other land taxes and assessments, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor in connection with the Mortgaged Property.

(l) Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests (written or oral) now or hereafter in force, covering or affecting the Mortgaged Property, or any part thereof or interest therein, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder). The term "Leases" includes, specifically, but without limitation, the Crate & Barrel Lease, The Container Store Lease, and the Seigle's, Inc. Lease, all as defined in the Loan Agreement.

(m) Legal Requirements: The terms, covenants, conditions and restrictions now or hereafter existing to which Mortgagor may be bound or to which the Mortgaged Property is subject under any and all present and future statutes, laws, rulings, opinions, rules, regulations, codes, permits, certificates, approvals, ordinances, judicial decisions or orders of any Governmental Authority in any way applicable to Mortgagor or the Mortgaged Property, and the ownership, use, occupancy, possession, development, design, construction, financing, operation, maintenance, alteration, repair, marketing, sale, lease or enjoyment thereof, including without limitation any related to zoning, building, utility

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service, sewer service, fire safety, land and water use, subdivision control, condominium property, environmental protection, occupational health and safety or flood hazard.

(n) Loan Agreement: That certain Construction Loan Agreement of even date herewith between Mortgagor and Mortgagee.

(o) Loan Documents: The Loan Agreement, this Mortgage, the Note, Security Agreement, the Assignment of Leases, Rents and Profits, the Environmental Indemnity Agreement made by Mortgagor, all of even date herewith, the Commitment, and any and all other documents now or hereafter evidencing or securing the payment of the Indebtedness or the observance or performance of the Obligations and any and all amendments, modifications, restatements, replacements, substitutions, renewals, extensions and increases thereto whether heretofore or hereafter entered into in connection with the Indebtedness.

(p) Maturity Date: The Initial Maturity Date, the First Extended Maturity Date or the Second Extended Maturity Date, whichever is applicable under the circumstances.

(q) Mortgaged Property: The Real Estate, Buildings, Fixtures, Leases, Contracts, Rents, Awards and Personalty together with:

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

(ii) any and all betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests thereof and all reversions and remainders therein; and

(iii) 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.

(r) Mortgagee: American National Bank and Trust Company of Chicago, and its successors and assigns and the holders, from time to time, of the Note.

(s) Mortgagee's Address: 33 North LaSalle Street, Chicago, Illinois 60690, Attention: Peter C. Malecek, First Vice President.

(t) Mortgagor: Harry Seigle and Mark Seigle, jointly and severally.

(u) Mortgagor's Address: c/o Seigle's Home and Building Centers, 1331 Davis Road, Elgin, Illinois 60123

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(v) Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than the obligation to repay the Indebtedness) of Mortgagor to Mortgagee under or as set forth in this Mortgage.

(w) Permitted Exceptions: The encumbrances and title exceptions specifically described in Exhibit B attached hereto and made a part hereof.

(x) Personalty: All right, title and interest of Mortgagor in and to all furniture, furnishings, equipment, machinery, goods, inventory and all other tangible personal property and any intangibles of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code now or hereafter located upon, within or about the Real Estate and Buildings, or used or useful in connection therewith, together with all existing or future accessories, replacements and substitutions thereto or therefor and the proceeds therefrom, including, but not limited to: (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants or purchasers of the Real Estate or the Buildings; (ii) all building materials and equipment intended to be incorporated in the improvements now or hereafter to be constructed on the Real Estate, whether or not yet incorporated in such improvements; (iii) all machinery, apparatus, systems, equipment or articles used in supplying heating, gas, electricity, ventilation, air-conditioning, water, light, power, refrigeration, fire protection, elevator service, telephone and other communication service, master antennas and cable television service, waste removal and all fire sprinklers, smoke detectors, alarm systems, security systems, electronic monitoring equipment and devices; (iv) all window or structural cleaning and maintenance equipment; (v) all indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers, cabinets, wall safes and other furnishings; (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (vii) all lamps, chandeliers and other lighting fixtures; (viii) all recreational equipment and materials; (ix) all office furniture, equipment and supplies; (x) all kitchen equipment and appliances, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units; (xi) all laundry equipment, including washers and dryers; (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of interior and exterior portions of the Real Estate; and (xiii) all other maintenance supplies and inventories; provided the enumeration of any specific articles of personalty set forth above shall in no way exclude or be held to exclude any items or property not specifically enumerated, and any of the foregoing items that do not constitute personal property but constitute fixtures under applicable law shall be included in the definition of the term "Fixtures" as used herein.

(y) Project: The development of the Real Estate into a shopping center containing three (3) retail buildings containing approximately 77,000 square feet of retail area in the aggregate and appurtenant parking facilities. The Project is more completely described in the Loan Agreement.

(z) Real Estate: The real estate, legal title to which is owned in fee simple by Mortgagor and legally described on Exhibit A attached hereto and made a part hereof.

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(aa) Rents: All of the rents, revenues, income, profits, deposits and other benefits payable under the Leases and/or otherwise arising from or out of the Mortgaged Property or out of the ownership, use, enjoyment or disposition of all or any portion of the Mortgaged Property or part thereof or interest therein.

## Article 3

### GRANT

3.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations and the covenants and agreements of Mortgagor under the Loan Agreement and the other Loan Documents, Mortgagor by these presents hereby Grants, Bargains, Sells, Assigns, Mortgages and Conveys unto Mortgagee the Mortgaged Property, subject to, but only to, the Permitted Exceptions, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever and Mortgagor by executing and delivering this Mortgage, does hereby warrant that Mortgagor is well and lawfully seized of good and indefeasible fee simple absolute title to the Mortgaged Property, free and clear of all mortgages, liens, charges, security interests and encumbrances whatsoever, except only the Permitted Exceptions, and does hereby bind itself, its successors and assigns to warrant and forever defend fee simple absolute title to the Mortgaged Property unto the Mortgagee, and the quiet and peaceful enjoyment and possession thereof, against every person whomsoever claiming the same or any part thereof or interest therein.

3.2 Condition of Grant. The condition of these presents is such that if Mortgagor shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations in accordance with this Mortgage and the other Loan Documents, then this Mortgage and the other Loan Documents and the estates and rights granted by them shall promptly be released and terminated by Mortgagee.

## Article 4

### ASSIGNMENT OF LEASES

4.1 Assignment of Rents, Leases and Profits: To further secure the full and timely payment of Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor hereby sells, assigns and transfers unto Mortgagee all of the Leases and the Rents now due and which may hereafter become due under or by virtue of any of the Leases which may have been heretofore or may be hereafter made or agreed to by Mortgagor or the agents of Mortgagor or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute and present transfer and assignment of all such Leases, Rents and all avails thereunder, to Mortgagee; provided, however, the acceptance by Mortgagee of the foregoing assignment, with all of the rights, powers, privileges and authority so created, shall

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not, prior to lawful entry upon and taking possession of the Mortgaged Property by Mortgagee, be deemed or construed to constitute Mortgagee a "Mortgagee in Possession," nor thereafter or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding related to the Leases or to the Mortgaged Property, to take any actions thereunder, to expend any money, incur any expenses, or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Mortgagor by any lessee thereunder. Reference is hereby made to that certain Assignment of Leases, Rents and Profits, of even date herewith, executed by Mortgagor to Mortgagee (the "Assignment of Leases, Rents and Profits"), which sets forth in more detail the terms and conditions of said assignment, including, without limitation, the rights, remedies, powers and authority vested in Mortgagee by virtue of said assignment, and the license to Mortgagor to collect Rents prior to an Event of Default which terms, conditions, rights, remedies, powers and authority are herein incorporated by this reference.

## Article 5

### SECURITY AGREEMENT

5.1 Security Interest: This Mortgage shall be construed as a mortgage on real property and it shall also constitute and serve 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 paragraph 3.2 hereinabove, a security interest under the Uniform Commercial Code with respect to the Personalty, Fixtures, Leases and Rents. To this end Mortgagor does Grant, Bargain, Convey, Assign, Transfer and Set Over unto Mortgagee a security interest in and to any and all of Mortgagor's right, title and interest in, to and under the Personalty, Fixtures, Leases and Rents (hereinafter referred to as the "Collateral") to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Reference is hereby made to that certain Security Agreement of even date herewith between Mortgagor and Mortgagee (the "Security Agreement"), which sets forth in more detail the terms and conditions of said Security Agreement and the rights, remedies, powers and authority vested in Mortgagee by virtue of said Security Agreement, which terms, conditions, rights, remedies, powers and authority are herein incorporated by reference.

5.2 Financing Statement: This Mortgage is intended to be a financing statement within the purview of the Uniform Commercial Code with respect to the Personalty and Fixtures. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are as set forth herein. This Mortgage is to be filed for record in the real estate records of the county where the Real Estate is located. The Mortgagor is the record owner of the Real Estate. Notwithstanding the foregoing, Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form, scope and substance satisfactory to Mortgagee, any renewals or extensions of said Security Agreement or Financing Statements and such additional Security Agreements or Financing Statements and such further assurances as Mortgagee may, from time to time, consider necessary to create, perfect and preserve Mortgagee's security interest herein granted and Mortgagee may cause such statements

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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.

## Article 6

### REPRESENTATIONS AND WARRANTIES

Mortgagor hereby represents and warrants to Mortgagee as of the date hereof and as of all dates hereafter that:

6.1 Authority, etc. Mortgagor (a) has the right and authority to own its properties and to carry on their businesses as now being conducted; and (b) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to them.

6.2 Validity of Loan Documents. (a) The execution, delivery and performance by Mortgagor of the Loan Documents, and the borrowing evidenced by the Note: (i) is within the powers of Mortgagor; (ii) have been duly authorized by all requisite legal action required of Mortgagor; (iii) has received all necessary governmental approvals; (iv) will not violate any of the Legal Requirements; and (b) the Note and the Loan Documents, when executed and delivered by Mortgagor will constitute the legal, valid and binding obligations of Mortgagor in accordance with their respective terms.

6.3 Permits and Approvals. All permits, certificates, approvals and licenses required for or in connection with the ownership, use, occupancy or enjoyment of the Mortgaged Property or in connection with the organization, existence and conduct of the businesses of Mortgagor have been duly and validly issued (or will have been issued prior to the point same are required by law) and are and shall at all times hereafter be in full force and effect.

6.4 Zoning. To the knowledge of Mortgagor, the Mortgaged Property is duly and validly zoned as to permit the construction of the Project and use, occupancy and operation of the Mortgaged Property as contemplated thereby and such zoning is final and unconditional and in full force and effect, and no attacks are pending or threatened with respect thereto. Upon completion of the Project, the Mortgaged Property will comply with the requirements, standards and limitations set forth in the applicable zoning ordinance and other applicable ordinances in all particulars, including, but not limited to, bulk, density, height, character, dimension, location and parking restrictions or provisions.

6.5 Utilities. All utility services necessary and sufficient for the full use, occupancy and operation of the Mortgaged Property are available to and currently servicing the Mortgaged Property without the necessity of any off-site improvements or further connection costs.

6.6 Access. All streets and highways necessary for access to and full use, occupancy and operation of the Mortgaged Property have been completed and are open and available to the Mortgaged Property without further condition or cost to Mortgagor.

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6.7 Condition of Mortgaged Property. To Mortgagor's knowledge, the Buildings, when completed, will be in high quality physical order, repair and condition, are structurally sound and wind and water tight, and all plumbing, electrical, heating, ventilation, air conditioning, elevator and other mechanical systems and equipment are in good operating order, repair and condition.

6.8 Financial and Other Information. To Mortgagor's knowledge, neither this Mortgage nor any other document or statement furnished to Mortgagee by Mortgagor or any Guarantor contains or will contain any untrue statement of fact or omits or will omit to state a fact material to the submitted document or to the Mortgaged Property.

6.9 Brokerage Commissions and Other Fees. No brokerage fees or commissions or other fees are payable to third parties in connection with the loan to be disbursed by Mortgagee hereunder.

6.10 Taxes. Mortgagor has filed all federal, state, county and municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and, except as disclosed to Mortgagee in writing, Mortgagor does not know of any basis for additional assessment in respect of such taxes.

6.11 Litigation. There is not now pending against or affecting Mortgagor or any Guarantor or the Mortgaged Property nor, to the knowledge of Mortgagor, is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would materially and adversely impair or affect Mortgagor's ability to repay the Loan.

6.12 Survival of Representations and Warranties. Each and all of the representations and warranties contained herein shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein, and shall continue in full force and effect until the Obligations and the Indebtedness shall have been satisfied and paid in full.

## Article 7

### COVENANTS

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby unconditionally covenants and agrees as follows:

7.1 Payment and Performance. Mortgagor shall pay or cause to be paid the Indebtedness, as and when all or any payment thereunder is due under the Note, the Loan Agreement, this Mortgage or the Loan Documents, and shall perform or cause to be performed all of the Obligations in full on or before the dates the Obligations or any part thereof are required to be performed.

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7.2 Compliance with Laws. Mortgagor will promptly and faithfully comply with all present and future laws, ordinances, rules, regulations and requirements of every Governmental Authority and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use, occupancy, possession, operation, maintenance, alteration, repair, reconstruction or disposition of the Mortgaged Property, or any part thereof or interest therein.

7.3 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid not later than the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof.

7.4 Repair. Mortgagor will keep the Mortgaged Property in high quality and condition and make all repairs and replacements thereof and additions and improvements thereto as are necessary or appropriate under sound management practices and will prevent any act or thing which might impair or diminish the value or usefulness of the Mortgaged Property. Mortgagor covenants and agrees to establish and maintain such cash reserves and segregated accounts for deferred maintenance or improvements as are necessary or appropriate under sound management practices or in Mortgagee's judgment.

7.5 Management, Leasing and Operation. Mortgagor shall provide competent and responsible management for the Mortgaged Property, with individuals devoting such time and attention as is necessary and appropriate to develop and maintain the Mortgaged Property as high quality buildings. Mortgagor shall as necessary employ management and leasing agents approved by Mortgagee and the terms and conditions of any management, leasing or other commission agreement or any change or replacement of any such agent or agreement shall, at Mortgagee's option, be subject to approval by Mortgagee.

7.6 Insurance. Mortgagor shall procure for, deliver to and maintain for the benefit of Mortgagee during the term of this Mortgage, all insurance reasonably required by Mortgagee including, without limitation, (a) during any period of construction on the Mortgaged Property, a so-called Builder's Risk-All-Risk fire and casualty insurance (completed value form) and, after completion of the Project a policy or policies insuring the Mortgaged Property against loss or damage by fire, explosion, windstorm, hail, tornado, all other perils insured against under "extended coverage" or "all risk" policies and such other hazards and such other or additional coverage as from time to time may be reasonably required by Mortgagee for One Hundred Percent (100%) of the full insurable value of the Mortgaged Property (other than the Crate and Barrel Building [as defined in the Loan Agreement] so long as casualty insurance for such building is supplied by the tenant thereof), including a replacement cost coverage endorsement without deduction for depreciation; (b) comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Mortgaged Property and affording protection in an amount not less than \$5,000,000 for any one occurrence and not less than \$500,000 for property damage, with such risks insured and with such waiver of subrogation clauses and an other terms as may be required by Mortgagee; (c) Worker's Compensation insurance in required statutory amounts and (d) Rent Insurance or Business Interruption Insurance in an amount

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sufficient to cover loss of rents from the Mortgaged Property for a period of at least twelve (12) months. Mortgagor shall deliver to Mortgagee the policies evidencing such insurance or duly signed certificates thereof (binders are unacceptable) and any additional insurance which shall be taken out upon the Mortgaged Property and receipts evidencing the payment of all premiums, and evidence of renewals of all such policies of insurance shall be delivered to Mortgagee at least thirty (30) days before any such insurance shall expire together with receipts evidencing the payment for such renewals. Notwithstanding anything herein to the contrary, all policies required of Mortgagor by Mortgagee shall be written in amounts and with companies and in form and content reasonably satisfactory to Mortgagee; shall be payable to the Mortgagee as its interest may appear pursuant to a standard non-contributory mortgagee clause attached thereto which shall be in all respects satisfactory to Mortgagee; shall provide for at least thirty (30) days' written notice to the Mortgagee prior to cancellation of such policies or any material change in the risk or coverages insured; shall provide that loss payments will be payable directly to Mortgagee alone; shall be maintained throughout the term of this Mortgage without cost to Mortgagee; and shall contain such provisions as Mortgagee reasonably deems necessary or desirable to protect its interest. Mortgagee shall have the right and option, but shall not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by insurer to prevent the same. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Indebtedness, all right, title and interest of Mortgagor in and to such policies then in force concerning the Mortgaged Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or the Mortgagee in the event of such transfer. If a blanket policy is issued, a certified copy of said policy shall be furnished, together with a certificate indicating that Mortgagee is the insured under said policy in the proper designated amount.

7.7 Adjustment of Losses with Insurer and Application of Proceeds of Insurance. Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies pertaining to the Mortgaged Property. From and after an Event of Default, Mortgagee is hereby authorized and empowered, at its option, to make or file proofs of loss or damage and to adjust or compromise any loss, and to collect and receive the proceeds from any such policies; prior to an Event of Default, any losses in excess of \$25,000 shall be adjusted jointly by Mortgagor and Mortgagee. However, Mortgagee shall not be held responsible for any failure to collect any insurance proceeds regardless of the cause of failure. In the event the Mortgaged Property or any part thereof covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, then Mortgagee shall have the right, at its option, after deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, to apply the net insurance proceeds in payment (without premium or penalty) of the Indebtedness (whether then matured or to mature in the future), either in whole or in part (in such order as Mortgagee shall deem proper), or to require the Mortgaged Property so destroyed or damaged to be repaired or replaced by the use of such proceeds. If Mortgagee does elect to apply such insurance proceeds in payment or reduction of the Indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee shall have the right and option to declare the entire balance of the Indebtedness remaining unpaid to be immediately due and payable, without liability of Mortgagor for any prepayment fee or penalty. Notwithstanding the above, provided that at the time of any casualty there exists no Event of

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Default hereunder, Mortgagor shall have the right (and obligation) to apply such proceeds to the repair and restoration of the Mortgaged Premises if the following conditions are met: (a) the casualty does not permit any tenant, by virtue of its Lease, to terminate its Lease or, if such Lease does permit termination, the tenant has executed a written waiver of such termination right (and any tenants affected by such casualty shall have provided written reaffirmations of their Leases); (b) no abatement of rent is in effect under any Lease as a result of such casualty or, during any period of reconstruction, loss of rents insurance, in amounts reasonably satisfactory to Mortgagee, is in effect so as to cover such abated rents during the entire period of restoration; and (c) the amount of insurance award is sufficient to pay the entire cost of reconstruction or restoration, in Mortgagee's estimation, or Mortgagor shall have deposited sufficient additional monies with Mortgagee, all as required by Section 7.8 below.

7.8 Application of Insurance Proceeds to Repair. In the event that Mortgagee elects to apply the proceeds of such insurance to repair or replacement of the Mortgaged Property, any such proceeds held by the Mortgagee for repairs or replacements shall be held by Mortgagee or, if Mortgagee elects, in its sole discretion, with a title insurance company or escrow agent designated by Mortgagee, upon such terms and conditions as Mortgagee may specify, without payment or allowance of interest thereon, and shall be paid out from time to time to Mortgagor (or, at the option of Mortgagee, jointly to Mortgagor and the persons furnishing labor and/or material incident to such restoration, repair or replacement or directly to such persons as the work progresses), upon such terms and conditions as Mortgagee may specify. As a condition precedent to the initial disbursement Mortgagor shall be required to simultaneously deposit with Mortgagee the amount, if any, which, when added to the net available insurance proceeds, is necessary and sufficient in Mortgagee's reasonable judgment to complete such repairs, rebuilding or other purposes as required by Mortgagee. 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 thereto, Mortgagee may, at Mortgagee's option, disburse such balance to Mortgagor or apply such balance toward the payment of the Indebtedness without prepayment fee or penalty. In the event of an Event of Default hereunder, Mortgagee shall have the right, at its option, to apply the whole or any part of such insurance proceeds toward any of the Indebtedness, in such order and manner as Mortgagee may elect.

7.9 Condemnation Proceeds. All Awards shall be paid to Mortgagee and, after deducting from said Awards all of its expenses in the collection and administration of said sums, Mortgagee shall have the right, at its option, to apply the net proceeds in payment (without premium or penalty) of the Indebtedness (whether then matured or to mature in the future), either in whole or in part (in such order as Mortgagee shall deem proper), or to require the Mortgaged Properties so affected by such condemnation to be repaired or restored by the use of such proceeds in the same manner as provided in paragraphs 7.7 and 7.8. Further, provided no Event of Default exists hereunder at the time of the taking, Mortgagor shall have the right and obligation to apply any awards to the repair and restoration of the Mortgaged Premises if the conditions set forth in clauses (a), (b) and (c) of Paragraph 7.7 above are met. If Mortgagee does elect to apply such proceeds in payment or reduction of the Indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, Mortgagee shall have the right and option to declare the entire balance of the Indebtedness remaining unpaid to be immediately due and payable,

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without liability of Mortgagor for any prepayment fee or penalty. Mortgagee shall be entitled to all Awards, and is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in Mortgagor's name any such proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. Mortgagor hereby assigns and transfers to Mortgagee all Awards and the claims, rights and proceedings in connection therewith. Mortgagor agrees to execute such further assignments of all Awards and claims, rights and proceedings in connection therewith as Mortgagee may request. Mortgagee shall not be held responsible for any failure to collect any amount in connection with any such proceeding regardless of the cause of failure.

7.10 Performance of Agreements. Mortgagor will duly and punctually perform all covenants and agreements under any agreements to which it is respectively a party with respect to the Mortgaged Property or any part thereof.

7.11 Inspection. Mortgagor will permit Mortgagee or its representatives, at all reasonable times, to inspect the Mortgaged Property.

7.12 Hold Harmless. Mortgagor hereby agrees to protect, defend, indemnify and hold Mortgagee harmless of and from any liability, loss, cost, demand, action, proceeding or claim affecting the Mortgaged Property, or the value of the Note or the Loan Documents, and Mortgagor shall pay any and all costs and expenses incurred by Mortgagee as a result thereof, including any attorney's fees, upon demand, excluding any liability, loss, cost, demand, action, proceeding or claim arising out of the gross negligence or willful misconduct of Mortgagee.

7.13 Intentionally Deleted.

7.14 Environmental Compliance. The Mortgagor shall comply or enforce compliance with any and all Federal, State, or local legislation, rules and regulations relating to environmental protection including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and any such other legislation, rules and regulations as are in, or may come into, effect and apply to Mortgagor the transactions contemplated hereby or the Mortgaged Property or any occupancy users thereof, whether as lessees, tenants, licensees, or otherwise.

7.15 Deposits For Real Estate Taxes and Other Impositions. As required by the terms of the Loan Agreement, during any Extension Periods from and after a default by Mortgagor hereunder or under any other Loan Document, at Mortgagee's option and upon written notice to Mortgagor, Mortgagor shall be required to establish with Mortgagee an escrow account for the payment of real estate taxes and other Impositions as the same become due, and to make an initial deposit therein of the amount determined thereunder. During the Extension Period(s), if any, Mortgagor shall pay to Mortgagee, on each of the due dates of installments of principal and/or interest as set forth in the Note, an amount equal to one-twelfth (1/12) of Mortgagee's estimate of the next annual Impositions. Mortgagor shall also pay to Mortgagee such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund prior to the due dates

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of the next installment of such Impositions for payment of such Impositions together with, at all times, a reserve equal to two (2) monthly deposits. Provided no event has occurred which with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, amounts held by Mortgagee pursuant to this Paragraph shall be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Loan Documents to pay Impositions. Upon an Event of Default under this Mortgage, or an event which with the passage of time or the giving of notice would constitute an Event of Default hereunder, Mortgagee may, at its option, without being required so to do, apply any deposits on hand to any of the Indebtedness, in such order and manner as Mortgagee may elect. All deposits are hereby pledged as additional security for the Indebtedness, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided and shall not be subject to the direction or control of Mortgagor. At any time subsequent to the occurrence of an Event of Default (whether or not the same is subsequently cured), Mortgagee shall have the right and option, upon written notice to Mortgagor, to require Mortgagor to make like deposits to provide a similar fund for the payment of premiums on the insurance policies herein required as the same become due.

7.16 Lien Status. Mortgagor shall protect the lien and security interest of this Mortgage and the Loan Documents and shall not place, or permit to be placed, or otherwise mortgage, pledge, hypothecate or encumber the Mortgaged Property with, any other lien, attachment, levy, or security interest of any nature whatsoever (whether mechanics, judgment, tax, statutory, contractual or other) regardless of whether same is allegedly or expressly subordinate and inferior to the liens and security interest created by this Mortgage and the Loan Documents, except for the Permitted Exceptions and if any such lien or security interest is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its own cost and expense, pay the underlying claim in full, or appear in and defend any action or claim, or take such other action so as to cause same to be released within thirty (30) days of when asserted, made or filed.

7.17 Restrictions on Transfer and Financing. For the purpose of protecting Mortgagee's security and keeping the Mortgaged Property free from subordinate financing liens, Mortgagor agrees that any sale, conveyance, further encumbrance or other transfer of title to the Mortgaged Property, or any interest therein (whether voluntarily or by operation of law), without the Mortgagee's prior written consent, which consent shall be in Mortgagee's sole discretion, shall be an Event of Default hereunder.

For the purpose of this paragraph 7.17 and without limiting the generality of the foregoing, the occurrence at any time of any of the following events, without Mortgagee's prior written consent, shall be deemed to be an unpermitted transfer of title to the Mortgaged Property and therefore an Event of Default hereunder:

- (i) any sale, conveyance, assignment, or other transfer of, or the mortgage, pledge or grant of a security interest in, all or any part of the legal and/or equitable title to the Mortgaged Property; or

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(ii) if Mortgagor is a corporation, partnership, limited liability or trust, any sale, conveyance, assignment, or other transfer of, or the mortgage, pledge or the grant of a security interest in, any ownership interest in Mortgagor;

Notwithstanding the foregoing, however, Lender agrees that, upon prior notice to Mortgagee, Mortgagor may transfer title to the Mortgaged Property, subject to this Mortgage, to an entity owned or controlled by Harry Seigle and Mark Seigle provided that (a) prior to such transfer construction of the Project has been completed lien free and otherwise in accordance with the Loan Agreement, and (b) Harry Seigle and Mark Seigle remain personally and jointly and severally liable for all obligations hereunder and under the Note and other Loan Documents to the full extent as would be the case had the transfer of title not occurred; and (c) prior to such transfer, Harry Seigle, Mark Seigle and the transferee entity shall have executed and delivered such documentation as Lender may reasonably require in order to evidence the foregoing agreements.

Any such sale, transfer, assignment, conveyance, lease, lien, pledge, mortgage, hypothecation or any other encumbrance or alienation or contract or agreement to do any of the foregoing shall be null and void and of no force or effect, but the attempted making thereof shall, at the option of Mortgagee, constitute an Event of Default hereunder. Any consent by the Mortgagee, or any waiver of an Event of Default under this paragraph 7.17 shall not constitute a consent to, or waiver of any right, remedy, or power of the Mortgagee upon a subsequent Event of Default under this paragraph 7.17.

**7.18 Existence.** If Mortgagor is a corporation, partnership, limited liability or trust, Mortgagor will preserve and keep in full force and effect its legal existence, rights, franchises and trade names.

**7.19 Use Restrictions.** Mortgagor shall not use, maintain, operate or occupy, or give permission for the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which would: (a) be dangerous unless safeguarded as required by law; (b) constitute a public or private nuisance; (c) make void, voidable or cancelable, or increase the premium of, any insurance then in force with respect thereto; or (d) alter the current use and occupancy of the Mortgaged Property. Mortgagor will not operate the Mortgaged Property, or permit the same to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Mortgaged Property, or any part thereof, as tenant stockholders or otherwise.

**7.20 Alterations.** Except for construction of the Project (as defined in the Loan Agreement), Mortgagor shall not, without the prior written consent of Mortgagee, make or permit to be made any additions or material alterations to the Mortgaged Property. Notwithstanding the foregoing, 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; provided, however, that in instances where such emergency measures are to be taken, Mortgagor shall promptly notify Mortgagee of the commencement of same and the measures to be taken which shall be subject to Mortgagee's approval.

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7.21 Replacement of Fixtures and Personality. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personality to be removed at any time from the Real Estate or Buildings, except to the extent permitted under the Security Agreement.

7.22 Restoration Following Any Casualty. If any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor shall give notice thereof to Mortgagee and shall promptly, at Mortgagor's sole cost and expense and regardless of whether any insurance proceeds or condemnation award, or any portion thereof, shall be sufficient or shall be made available by Mortgagee for such purpose, commence and continue diligently to complete the restoration, repair, replacement and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction.

7.23 Tax on the Indebtedness. In the event of the enactment, after the date of this Mortgage, of any law of the State of Illinois deducting from the value of the Mortgaged Property for the purpose of taxation the amount of any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (a) it may be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to accelerate the Maturity Date of all of the Indebtedness secured hereby, whereupon the Indebtedness become due and payable within sixty (60) days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any portion of Mortgagee's federal or state income tax.

## Article 8

### EVENTS OF DEFAULT

The term "Event of Default" shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following, without notice to Mortgagor and without any grace period unless otherwise expressly set forth herein.

8.1. Payment of Indebtedness. If Mortgagor shall fail, refuse or neglect to pay in full any installment or payment under the Note, whether of principal, interest or any other amount, as and when the same shall become due and payable under the Note; provided, however, that if such payment is made within five (5) days after the date such payment is due such failure shall not constitute an Event of Default, provided further such five (5) day grace period shall only be

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available to Mortgagor three (3) times in any twelve (12) consecutive month period; or if Mortgagor shall fail, refuse or neglect to pay in full the entire amount owing under the Note on the applicable Maturity Date, or by acceleration, notice of prepayment or otherwise.

8.2. Performance of Obligations. If Mortgagor shall fail, refuse or neglect to perform and discharge fully any of the terms, covenants or conditions as and when required under this Mortgage and such failure, refusal or neglect shall either be uncurable or, if curable, shall remain uncured (a) for a period of fifteen (15) days after written notice of default in payment on any applicable payment date, in the case of monetary defaults (other than monetary defaults under the Note referred to in Section 8.1 above for which no cure or grace period is applicable), or (b) for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor in the case of any non-monetary defaults, provided, however, if the nature of the non-monetary default is such that it is not reasonably susceptible of being cured within such thirty (30) day period and Mortgagor, within such period, commences to cure such default and diligently and without interruption prosecutes such cure to completion, then such cure period shall be extended to a date not more than sixty (60) days following the giving of such notice.

8.3 Event of Default Under the Other Loan Documents. If any "Event of Default" (as defined in the particular Loan Document) shall occur under the provisions of the Note, Loan Agreement or any other Loan Document.

8.4 Foreclosure of Other Liens. If the holder of a junior or senior mortgage or other lien on the Mortgaged Property (without hereby implying Mortgagee's consent to any such junior or senior mortgage or other lien) declares a matured default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

8.5 Damage or Destruction. If the Mortgaged Property or any material part thereof is demolished, destroyed or damaged by any cause whatsoever and the loss is not adequately covered by insurance actually collected and Mortgagor fails to deposit with Mortgagee the deficiency upon written request.

8.6 False Representation. If any representation or warranty made by Mortgagor or any Guarantor under or pursuant to the Loan Documents shall be false or misleading in any material respect on or at any time after the date when made or if any material inaccuracy shall exist in any of the financial statements, operating information or other information furnished to Mortgagee in connection with the Loan Documents.

8.7 Failure to Obtain Mortgagee's Consent to Transfer or Financing. If Mortgagor shall make any unpermitted transfer or financing in violation of Paragraphs 7.17 hereof.

8.8 Liens. If any liens (mechanics, judgment or otherwise) are recorded, filed or otherwise asserted against title to the Mortgaged Property or any part thereof and the same are not released or insured over or bonded against to the satisfaction of Lender within sixty (60) days of when recorded, filed or otherwise asserted.

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## Article 9

### DEFAULT AND FORECLOSURE

9.1 Remedies. If an Event of Default shall occur, Mortgagee may, at its option, exercise one or more or all of the following remedies either successively or concurrently:

9.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

9.1.2 Receiver. Apply at any time to a court having jurisdiction for the appointment of a receiver of the Mortgaged Property; and such appointment shall be made by the court as a matter of strict right to Mortgagee and without reference to the adequacy or inadequacy of the security or value of the Mortgaged Property, or to the solvency or insolvency of Mortgagor, and Mortgagor does hereby irrevocably consent to such appointment.

9.1.3 Entry on Mortgaged Property. Enter upon the Mortgaged Property, without force or with such force as is permitted by law, and without notice or process or with such notice or process as is required by law, unless such notice or process is waiveable, in which case Mortgagor hereby waives such notice and process, and take exclusive possession thereof and of all books, records and accounts relating thereto.

9.1.4 Power of Sale. To the fullest extent permitted and pursuant to the procedures provided by applicable law, exercise such power of sale as may be provided by applicable law, and sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of same, to the highest bidder at public auction. Such sales shall be made in accordance with the Legal Requirements therefor for the state in which the Mortgaged Property is located, including, to the extent there relevant, the Uniform Commercial Code there in effect. Nothing contained in this Paragraph 9.1.4 shall be construed to limit in any way Mortgagee's rights to sell the Mortgaged Property by private sale if, and to the extent that, such private sale is permitted under the laws of the state where the Mortgaged Property is located or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering same.

9.1.5 Full or Partial Foreclosure. Pursuant to the procedures provided by applicable law, institute and prosecute foreclosure proceedings with respect to the Mortgaged Property; or, if Mortgagee so elects, institute foreclosure procedures only with respect to a portion of the Indebtedness or to a portion of the Mortgaged Property (such partial proceeding being hereinafter referred to as a partial foreclosure). Mortgagor agrees that sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the remainder of the secured Indebtedness, but as to such remainder this Mortgage and the lien thereof 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 therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial

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foreclosure and to accelerate the entire secured Indebtedness by reason of any 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 remainder of the secured Indebtedness, it being the purpose hereof to provide for a partial foreclosure sale of the secured Indebtedness without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the secured Indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

9.1.6 Other. Exercise any other remedy specifically granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

9.2 Right and Authority of Receiver or Mortgagee in the Event of Default. Power of Attorney. Upon the occurrence of an Event of Default hereunder and entry upon the Mortgaged Property pursuant to Paragraph 9.1.3 hereof or appointment of a receiver pursuant to Paragraph 9.1.2 hereof, and under such terms and conditions as may be deemed prudent and reasonable, in the Mortgagee's or receiver's opinion under the circumstances, all at Mortgagor's expense, Mortgagee or said receiver, as the case may be, may do or permit any one or more of the following, successively or concurrently: (a) enter upon and take possession and control of the Mortgaged Property; (b) take and maintain possession of all documents, books, records, papers and accounts related to the Mortgaged Property; (c) exclude Mortgagor, its agents and employees, wholly from the Mortgaged Property; (d) manage and operate the Mortgaged Property; (e) preserve and maintain the Mortgaged Property; (f) make repairs and alterations to the Mortgaged Property; (g) complete any construction or repair of the improvements on the Mortgaged Property with such changes, additions or modifications to the plans and specifications or intended disposition and use of the improvements under construction on the Mortgaged Property as Mortgagee may deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Mortgagee's sole judgment, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to the lease or sale of the Mortgaged Property, under such other terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents or other employees, agents, independent contractors or professionals, as Mortgagee may in its discretion deem appropriate or desirable, to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Mortgagor as attorney-in-fact and agent of Mortgagor, or in its own name as Mortgagee or receiver, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Mortgagee or receiver may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents from the Mortgaged Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents, payments, income or proceeds in the name of Mortgagor or Mortgagee; (o) maintain actions in forcible detainer and actions in distress for rent; (p) compromise or give acquittance for rents, payments, income or proceeds that may become due; (q) delegate or assign

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any and all rights and powers given to Mortgagee by this Mortgage; and/or (r) do any acts which Mortgagee or receiver in its discretion deems appropriate or desirable to protect the security hereof and/or use such measures, legal or equitable, as it may in its discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee or other third-party who has heretofore dealt or may hereafter deal with Mortgagor or Mortgagee, at the request of Mortgagee, to pay all amounts owing under any Lease or other agreement to the Mortgagee without proof of the default relied upon. Any such lessee or third-party is hereby irrevocably authorized to rely upon and comply with any request, notice or demand by the Mortgagee for the payment to the Mortgagee of any Rents or other sums which may be or thereafter become due under its Lease or other agreement, or for the performance of any undertakings under any such Lease or other agreement, and shall have no right or duty to inquire as to whether any default under this Mortgage or any of the other Loan Documents has actually occurred or is then existing, and Mortgagor hereby constitutes and appoints Mortgagee, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution in the Mortgaged Property, in Mortgagor's name and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities successively and concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable.

9.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided herein and in the Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

9.4 Waiver of Redemption, Notice, Marshaling, etc. To the extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any sale pursuant to any statute, order, decree or judgment of any court, on its own behalf, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property or any portion thereof. Mortgagor further agrees, to the extent permitted by law, that if a default occurs hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any homestead exemption, appraisalment, valuation, stay, extension, moratorium or other laws now or hereafter in force, in order to prevent or hinder enforcement or foreclosure of this Mortgage, or absolute sale of the property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives and releases to the full extent that it may lawfully so do the benefit of such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.

9.5 Application of Proceeds. The proceeds of any sale or all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in such order as Mortgagee may at its option elect, for the following purposes:

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- (a) to the payment of all of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, payment of reasonable attorneys' fees and fees of a receiver;
- (b) to the payment of accrued and unpaid interest due on the Notes; and
- (c) to the payment of the balance of the Indebtedness.

9.6 No Conditions Precedent to Exercise of Remedies: Mortgagor shall not be relieved of any Obligation by reason of: (a) the failure of Mortgagee to comply with any request of Mortgagor to foreclose the lien of this Mortgage or to enforce any provision of the other Loan Documents; (b) the release, regardless of consideration, of the Mortgaged Property or any portion thereof or the addition of any other property to the Mortgaged Property; (c) any agreement or stipulation extending, renewing, rearranging or in any other way modifying the terms of the Loan Documents without first having obtained the consent of, given notice to or paid any consideration to Mortgagor and in such event Mortgagor 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) by any other act or occurrence save and except the complete payment of the Indebtedness and the complete fulfillment of all of the Obligations.

9.7 Indemnity. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor, and to the extent provided by law and except for Mortgagee's willful misconduct or gross negligence, Mortgagor shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss, cost, expense or damage which it may or might incur in the exercise of its rights, remedies, powers and authority hereunder, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations, undertakings or liabilities. Should Mortgagee incur any such liability, loss, cost or damage of or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand, with interest accruing at the Default Rate.

9.8 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan 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 Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

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## Article 10

### MISCELLANEOUS

10.1 Future Advances. This Mortgage is given to secure payment of the Note, whether the entire amount thereof shall have been advanced to the Mortgagor at the date hereof, or at a later date, and to secure the payment and performance of all other liabilities and obligations of Mortgagor under the Note or the Loan Documents, and any other amount or amounts that may be added to the Indebtedness under the terms of this Mortgage, all of which Indebtedness being equally secured with and having the same priority as any amounts advanced at the date hereof. It is agreed that any future advances made by Mortgagee to or for the benefit of Mortgagor from time to time under this Mortgage or the Loan Documents shall be deemed to be obligatory, and the amount of any such advances and all interest accruing thereon, shall be equally secured by this Mortgage and have the same priority as all amounts, if any, advanced as of the date hereof and be subject to all of the terms and provisions of this Mortgage. The total amount of indebtedness that may be so secured may increase or decrease from time to time, but the total unpaid balance so secured at any one time, plus interest thereon, plus any disbursements made for the payment of taxes, levies, insurance or other liens, charges or encumbrances on the Mortgaged Property, plus interest on such disbursements at the Default Rate, shall not exceed Five Hundred Percent (500%) of the face amount of the Note.

10.2 Further Assurances. Mortgagor, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents.

10.3 Recording and Filing. Mortgagor will cause the Loan Documents and all supplements thereto at all times to be recorded and filed in such manner and in such places as Mortgagee shall request, and will pay any recording and filing taxes, fees and other charges.

10.4 Notice. All notices, demands, requests and other communications required under the Loan Documents shall be in writing and shall be deemed to have been properly given if delivered by personal or messenger delivery, by overnight courier service or if sent by first class U.S. mail, postage prepaid, return receipt requested, addressed to the party for whom it is intended at the Mortgagor's Address or the Mortgagee's Address, as the case may be, and if to Mortgagor, with a copy to Mayer, Brown & Platt, 190 South LaSalle Street, Chicago, Illinois 60603, Attention: Alvin Katz, Esq., and if to Mortgagee, with copy to Ungaretti & Harris, 3500 Three First National Plaza, Chicago, Illinois 60602, Attention: Kris E. Curran, Esq. Notice so sent shall be effective (a) one (1) business day after deposit with an overnight messenger service, (b) two (2) days after deposit in the U.S. mail, if mailed as provided above, and (c) upon delivery to the appropriate address, if made by personal delivery or prepaid messenger, in each case, a notice so sent shall be effective whether or not receipt thereof by any of those means is acknowledged or is refused by the addressee or any person at such address. Any party may designate a change of address by written notice to the other.

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10.5 Mortgagee's Right to Perform the Obligations. If Mortgagor fails to make any payment or perform any act required by the Note, the Loan Agreement or the other Loan Documents Mortgagee, without any obligation so to do and without waiving any other right, remedy or recourse, may make such payment or perform such act at the expense of Mortgagor. All sums so paid by Mortgagee and all costs incurred in connection therewith, together with interest thereon at the Default Rate from the date of payment, shall constitute part of the Indebtedness secured by this Mortgage and the Loan Documents and shall be paid by Mortgagor to Mortgagee on demand or, upon failure to pay on demand, shall be included in any judgment of foreclosure.

10.6 Modification. The Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

10.7 No Waiver. All options and rights of election herein provided for the benefit of Mortgagee are continuing, and the failure to exercise any such option or right of election upon a particular default or breach or upon any subsequent default or breach shall not be construed as waiving the right to exercise such option or election at any later date. No exercise of the rights and powers herein granted and no delay or omission in the exercise of such rights and powers shall be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time and from time to time.

10.8 Subrogation. If the proceeds of the Note are utilized in whole or in part to pay off any existing lien against the Mortgaged Property or any portion thereof, Mortgagee shall be subrogated to any and all rights of the holder of any such lien, whether or not it is assigned to Mortgagee, and said liens are hereby renewed, extended and carried forward in full force and effect for the benefit of Mortgagee.

10.9 Mortgagee's Costs and Expenses. Mortgagor further expressly covenants and agrees to pay Mortgagee all costs and expenses of every kind paid or incurred by Mortgagee in any way in connection with the Note, this Mortgage or other Loan Documents and the protection of the Mortgaged Property or the maintenance of the lien of this Mortgage and the security interests under the other Loan Documents, or otherwise in connection with the determination and exercise by Mortgagee of any of its rights or remedies under the Loan Documents upon the occurrence of any Event of Default hereunder, including any and all expenditures for documentary evidence, title insurance, minutes of foreclosure, or any abstract or opinion of title to the Mortgaged Property, and all similar fees, costs, charges and expenses, and including all reasonable attorneys' fees and stenographer's fees, paid or incurred by Mortgagee in any suit or legal proceeding, or in preparation or in anticipation of declaring a default or event of default or in preparation or in anticipation of such suit or proceeding, regardless of whether such suit or proceeding is actually instituted, including without limitation, any bankruptcy or insolvency proceeding, probate proceeding, or other proceeding in which Mortgagee may in its discretion intervene in order to protect its security, or appeal from any of the foregoing, or otherwise paid or incurred by Mortgagee in obtaining legal advice regarding its rights and remedies under the Loan Documents or in determining whether to declare a default or event of default hereunder. All such fees, costs, charges and expenses shall

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constitute so much additional indebtedness evidenced by the Notes and secured by this Mortgage, regardless of whether the same may cause the Indebtedness secured hereby to exceed the face amount of the Notes, and shall be immediately due and payable when incurred, with interest accruing thereon at the Default Rate, and shall be allowed in any decree of foreclosure hereof. No proceeding to foreclose this Mortgage, whether a decree of foreclosure shall have been entered therein or not, shall be dismissed, nor shall a release of this Mortgage be given until all such expenses, charges and costs of Mortgagee shall have been paid in full.

10.10 Usury. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee to at all times comply with applicable law now or hereafter governing the interest payable on the Notes or the Loan. If the applicable law is ever revised, repealed, or judicially interpreted so as to render usurious any amount called for under the Note (or under any other instrument evidencing or relating to any of the secured indebtedness), or contracted for, charged, taken, reserved or received with respect to the Loan, or if the Mortgagee's acceleration of the Notes or any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee be credited on the principal balance of the Notes (or, if the Notes have been paid in full, refunded to Mortgagor), and the provisions of the Notes and this Mortgage and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

10.11 Successors and Assigns; Covenants Running with the Land. The terms, provisions, covenants and conditions hereof and of the Loan Documents shall be binding upon Mortgagor and any other Affiliated Person, their respective heirs, devisees, representatives, successors and assigns, and shall inure to the benefit of the Mortgagee and its respective successors, substitutes and assigns, and shall constitute covenants running with the land. This subparagraph 10.11 shall in no way be construed to imply any consent by Mortgagee to any unpermitted transfers set forth herein.

10.12 Conflict of Terms. The terms, provisions, covenants and conditions of the Mortgage shall be construed in such a manner as to be consistent with the terms and any other instruments executed in connection with or as security for the Note, provided however, in the event of conflict between the terms of this Mortgage and the terms of the other Loan Documents, the terms of this Mortgage shall control.

10.13 Applicable Law. The rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Illinois, except to the extent that Federal law must preempt the applicability of state usury or other laws.

10.14 Business Loan. Mortgagor acknowledges and agrees that (a) the Note, this Mortgage, and the other Loan Documents have been negotiated, executed and delivered in the State of Illinois; (b) the proceeds of the Notes will be used for a "business purpose" as specified in 815 ILCS 205/4(1)(c)(1992), and that accordingly, the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph; and (c) the Indebtedness and the

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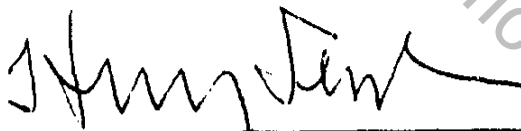
Obligations secured hereby are an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. §§1601, et seq.

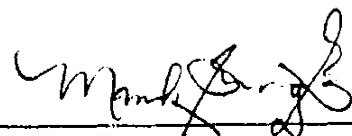
10.15 No Joint Venture; No Third Party Beneficiary. In no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the Indebtedness or otherwise. No other person shall be deemed to have any right or priority under this Mortgage to any extent or for any purpose whatsoever, nor shall any other person have any claim or right of action with respect to the Mortgaged Property or proceeds of the Indebtedness or be deemed a third-party beneficiary under this Mortgage or under the Loan Documents.

10.16 Severability: The Loan 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 Loan 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 herein 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 Loan Documents.

10.17 Release Upon Payment and Discharge of Mortgagor's Obligations: If Mortgagor shall fully pay all principal and interest on the Notes and all other Indebtedness evidenced and secured hereby and perform and comply with all of the Obligations to be performed and complied with by Mortgagor, then this Mortgage shall be satisfied, and Mortgagee shall promptly thereupon release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all Indebtedness secured hereby and, if allowed by law, upon payment to Mortgagee of a reasonable fee for the preparation of such release.

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

  
\_\_\_\_\_  
HARRY SEIGLE

  
\_\_\_\_\_  
MARK SEIGLE

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## MORTGAGOR'S ACKNOWLEDGMENT

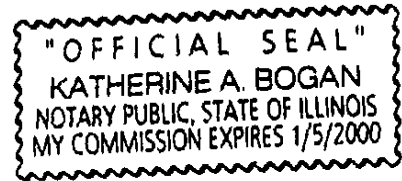
STATE OF ILLINOIS)

COUNTY OF COOK )

I, KATHERINE A. BOGAN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that HARRY SEIGLE and MARK SEIGLE, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 5<sup>th</sup> day of June, 1997.

Katherine A. Bogan  
Notary Public



My Commission expires:

1-5, ~~19~~ 2000

This instrument was prepared by and after recording should be mailed to:

Kris E. Curran, Esq.  
Ungaretti & Harris  
3500 Three First National Plaza  
Chicago, Illinois 60602



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## EXHIBIT A

### Legal Description

#### PARCEL 1:

THAT PART OF LOT 91 IN BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OR THE MOST EASTERLY CORNER OF SAID LOT 91 RUNNING THENCE WEST ALONG THE SOUTH LINE THEREOF 52 FEET 6 3/4 INCHES MORE OR LESS TO A POINT WHICH IS 26 FEET 2 INCHES EAST OF THE SOUTHWEST CORNER OF SAID LOT 91; THENCE NORTHERLY ON A STRAIGHT LINE 53 FEET 10 3/4 INCHES MORE OR LESS TO A POINT IN THE NORTHEASTERLY LINE OF SAID LOT 91 WHICH IS 25 FEET 3 1/2 INCHES MEASURED AT RIGHT ANGLES EAST OF WEST LINE THEREOF; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE 76 FEET 1 1/2 INCHES, MORE OR LESS TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

#### PARCEL 2:

LOT 44 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOTS 42, 43 AND 45 IN WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

LOTS 8, 9, 10 AND 11 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 5:

THAT PART OF LOTS 6 AND 7, TAKEN AS A TRACT, IN WINSTON'S SUBDIVISION OF LOT (OR BLOCK) 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE NORTH ON THE EAST LINE OF SAID LOT 7, A DISTANCE OF 73 FEET 11 INCHES; THENCE WEST 24 FEET 1/4 INCH TO A POINT 73 FEET 11-1/8 INCHES NORTH OF THE SOUTH LINE OF SAID TRACT; THENCE SOUTH 73 FEET 11-1/8 INCHES TO A POINT ON THE SOUTH LINE OF SAID TRACT 24 FEET 1 INCH WEST OF THE PLACE OF BEGINNING; THENCE EAST OF

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SOUTH LINE OF SAID TRACT 24 FEET 1 INCH TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL 6:

LOTS 12, 13, 14, 15, 16, 17 AND THE WEST 1/2 OF LOT 18 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 7:

THE EAST 1/2 OF LOT 18 AND ALL OF LOTS 19, 20, 21, 22, 23, 24 AND 25 AND THE WEST 3 FEET OF LOT 26 ALL IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 8:

LOTS 1, 2, 3, 4, 5, AND 6 IN THE RESUBDIVISION OF LOTS 28, 29 AND 30 IN WINSTON'S SUBDIVISION OF BLOCK 7 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO, IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 9:

LOT 26 (EXCEPT THE WEST 3 FEET THEREOF), ALL OF LOTS 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 AND 41, LOT 107 (EXCEPT THE WEST 1 FOOT THEREOF), LOTS 108, 109, 110, 111, 112 AND 113 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

## PARCEL 10:

ALL OF THE NORTH-SOUTH, THE EAST-WEST, AND THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEYS TOGETHER WITH A TRIANGULAR ALLEY AREA ADJOINING SAID 16 FOOT PUBLIC ALLEYS LYING NORTH OF THE NORTH LINE OF LOTS 16 TO 25, BOTH INCLUSIVE; LYING NORTHEASTERLY OF THE NORTHWESTERLY LINE OF LOTS 25, 26 AND 27, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF LOTS 31 TO 41, BOTH INCLUSIVE; LYING WEST OF THE WEST LINE OF LOT 41, LYING EAST OF THE EAST LINE OF LOT 113; LYING SOUTH OF THE SOUTH LINE OF LOTS 107 TO 113, BOTH INCLUSIVE, LYING EAST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF THE WEST 19.5 FEET OF LOT 107; LYING SOUTH OF A LINE DRAWN FROM THE NORTHWEST CORNER OF SAID LOT 41 TO THE NORTHEAST CORNER OF SAID LOT 113,

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ALL IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 32, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF LOT 2 IN RESUBDIVISION OF LOTS 28, 29 AND 30 IN WINSTON'S SUBDIVISION OF BLOCK 7 AFOREMENTIONED; LYING NORTHWESTERLY OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE SOUTH AND SOUTHWESTERLY LINES OF LOT 2 IN RESUBDIVISION OF LOTS 28, 29 AND 30 IN WINSTON'S SUBDIVISION AFORESAID TO THE EAST CORNER OF LOT 27 IN F. H. WINSTON'S SUBDIVISION OF BLOCK 7 AFORESAID, SAID PUBLIC ALLEYS, PART OF PUBLIC ALLEY AND THE TRIANGULAR ALLEY AREA ADJOINING THE 16 FOOT PUBLIC ALLEYS TO BE VACATED, BEING FURTHER DESCRIBED AS THE REMAINING NORTH-SOUTH 16 FOOT PUBLIC ALLEY, THE EAST-WEST 16 FOOT PUBLIC ALLEY AND THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY TOGETHER WITH A TRIANGULAR ALLEY AREA ADJOINING THE SAID 16 FOOT PUBLIC ALLEYS TO BE VACATED, ALL LYING EAST OF A LINE 375.50 FEET, MORE OR LESS, EAST OF AND PARALLEL WITH THE EAST LINE OF N. SHEFFIELD AVENUE, AS COLORED IN RED AND INDICATED BY THE WORDS "TO BE VACATED" ON THE DRAWING HERETO ATTACHED, WHICH DRAWING FOR GREATER CERTAINTY, IS HEREBY MADE A PART OF THIS ORDINANCE, BE AND THE SAME ARE HEREBY VACATED AND CLOSED, IN AS MUCH AS THE SAME ARE NO LONGER REQUIRED FOR PUBLIC USE AND THE PUBLIC INTEREST WILL BE SUBSERVED BY SUCH VACATIONS.

Common Address: Northwest corner of North Avenue and Clybourn Avenue, Chicago, Illinois

PIN: 14-32-424-049-0000;  
14-32-424-063-0000;  
14-32-424-060-0000;  
14-32-424-025-0000;  
14-32-424-026-0000;  
14-32-424-027-0000;  
14-32-424-056-0000;  
14-32-423-047-0000;  
14-32-423-049-0000;  
14-32-423-050-0000;  
14-32-423-052-0000;  
14-32-423-048-0000;

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## EXHIBIT B

### Permitted Exceptions

1. General real estate taxes for 1996 and 1997.
2. The fact that overhead lines are located within Parcel 9 (Lot 107), and that sewer lines and catch basins are located within said Parcel 9, Lots 21, 25 and Lots 31 thru 39 inclusive as disclosed by ALTA survey dated March 20, 1996 by John D. McTigue as Order No. 96-428.
3. Relative to the vacation of the 16 foot public alley, rights of the public or quasi-public utilities, if any, in said vacated (street/alley) for maintenance therein of poles, conduits, sewers, etc.

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EXHIBIT C

## CONSTRUCTION MORTGAGE NOTE

\$11,500,000.00

Chicago, Illinois  
June 5, 1997

FOR VALUE RECEIVED, THE UNDERSIGNED, HARRY SEIGLE and MARK SEIGLE, jointly and severally, (herein referred to collectively as "Maker"), promises to pay to the order of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Payee"), at its office in Chicago, Illinois or at such other place or places as Payee may from time to time designate in writing, the principal sum of Eleven Million Five Hundred Thousand and 00/100 Dollars (\$11,500,000.00), or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid as set forth below.

This Construction Mortgage Note ("Note") is issued pursuant to that certain Construction Loan Agreement dated of even date herewith between Maker and Payee (the "Loan Agreement"). The Loan Agreement, to which reference is hereby made, sets forth certain terms and provisions, including those under which amounts shall be disbursed hereunder and under which this Note may or must be paid prior to its due date or may have its due date accelerated. Payment upon this Note is secured by a certain Construction Mortgage of even date herewith ("Mortgage") executed by Maker in favor of Payee, which pertains to and encumbers certain real estate situated in Chicago, Cook County, Illinois and legally described on Exhibit A thereto (the "Real Estate"), and is further secured by certain other "Loan Documents", as defined in the Loan Agreement and Mortgage. Terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

Except as otherwise provided below, interest on this Note shall be at a variable rate equal to the Prime Rate (as defined below) from time to time in effect while this Note is outstanding. As used herein, the term "Prime Rate" at any time shall mean the rate of interest then most recently announced by Payee as its "Prime Rate." Changes in the rate of interest to be charged hereunder based on the Prime Rate shall take effect immediately upon the announcement of any change in the Prime Rate. A certificate made by an officer of Payee stating the Prime Rate in effect on any given date shall be conclusive evidence of the Prime Rate in effect on such date. If Payee ceases to use the term "Prime Rate" in setting a base rate of interest for commercial loans to creditworthy corporate customers, then the Prime Rate herein shall be determined by reference to the rate used by Payee as a base rate of interest for commercial loans as the same shall be designated by Payee or, alternatively, in Payee's discretion, by reference to the "Prime Rate" of such other bank as Payee shall designate. Maker acknowledges that the Prime Rate announced by Payee or any base rate used in lieu thereof is not necessarily the lowest rate charged for secured or unsecured loans

Provided no Event of Default (as defined below) has occurred, the Maker shall have the option from time to time to have the interest rate on the entire unpaid balance of this Note which would otherwise bear interest at the Prime Rate, or any portion of such unpaid principal balance

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(herein a "tranche") of not less than \$500,000, changed from the Prime Rate to the LIBOR Based Rate (as defined below), all on and subject to the terms and conditions hereinafter provided.

Interest on this Note shall be payable in arrears on the first day of each month commencing with the month following the month in which the first disbursement of principal hereunder occurs. All of the unpaid principal of and accrued and unpaid interest on this Note shall be due and payable on July 1, 1999 (the "Initial Maturity Date"), subject to Maker's ability to extend such date as hereinafter set forth. Interest shall be computed on the basis of a 360 day year and the actual number of days elapsed. Except as may otherwise be provided in the Loan Agreement, all payments on account of the indebtedness evidenced by this Note shall be applied first to interest on the unpaid principal balance and the remainder to principal. All payments on this Note are to be made to Payee at 33 North LaSalle Street, Chicago, Illinois, or at such other place as the legal holder of this Note may from time to time in writing direct. All payments of this Note shall be made in lawful money of the United States of America which shall be legal tender for the payment of public and private debts at the time of payment.

Notwithstanding any other provision of this Note, upon an Event of Default all outstanding principal and accrued and unpaid interest shall thereafter bear interest at the per annum rate (the "Default Rate") equal to the Prime Rate plus four percent (4%). For purposes of this Note, an "Event of Default" shall mean: (i) Maker's failure to pay any installment of principal or interest hereunder on the due date thereof, provided, however, that if such payment is made within five (5) days after the date such payment is due, such failure shall not constitute an Event of Default, provided further such five (5) day grace period shall only be available three (3) times in any twelve (12) consecutive month period; and (ii) an Event of Default (as defined in the Loan Agreement).

For the purposes of determining the LIBOR Based Rate and calculating interest hereunder, the following terms shall have the following meanings notwithstanding any other definition in the Loan Agreement or the other Loan Documents:

(i) "Business Day" means any day on which the Payee is open for business in Chicago, Illinois, and on which commercial Banks in the City of London, England are open for dealings in dollar deposits in the London Interbank Market.

(ii) "Election Notice" means a written notice to Payee from Maker stating the Investment Period on which the LIBOR Based Rate shall be fixed or calculated. The notice shall state the specific date on which the Investment Period commences and the date on which it ends using 30-day months. The notice shall further state the amount of outstanding principal of this Note to which the LIBOR Based Rate is to apply (which shall be either the entire unpaid principal balance of this Note, or any portion of such unpaid principal balance of not less than \$500,000 or any integral multiple thereof). The notice shall be deemed delivered upon the actual receipt by Peter C. Malecek or any other Payee officer designated by the Payee as an administrator of this Note if sent by facsimile or, if personally delivered, upon receipt of such notice by the Payee addressed to Mr. Malecek or such other designated officer of Payee. Each Election Notice delivered by

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Maker and the length of each Investment Period designated therein shall be irrevocable unless otherwise agreed to in writing by Payee.

(iii) "Investment Period" shall mean a period or term selected by the Maker on which the LIBOR Based Rate shall be fixed or calculated. That period or term shall be either one, two, three, six, nine or twelve months, provided that dollar deposits are available to Payee for approximately each of the aforesaid terms or periods in the London Interbank Market. Each Investment Period shall be selected so that no Investment Period shall extend beyond the maturity date of this Note (as the same may have been extended in accordance with the terms hereof prior to the Election Notice in question). No Investment Period shall commence other than on a Business Day. If any Investment Period shall end on a day which is not a Business Day, such Investment Period shall be extended to the next succeeding Business Day, unless such next succeeding Business Day would fall in the next calendar month, in which event such Investment Period shall end on the next preceding Business Day.

(iv) "LIBOR Rate" means a rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the rate per annum at which dollar deposits in U.S. dollars are offered in immediately available funds in the London Interbank Market to Payee at approximately 11 00 a.m. London time one Business Day prior to the commencement of an Investment Period in an amount approximately equal to the amount of principal balance selected in the Election Notice and with maturities comparable to the selected Investment Period. Each determination of the LIBOR Rate shall be made by Payee and shall be conclusive and binding upon the Maker unless clearly erroneous.

(v) "LIBOR Based Rate" means the per annum rate of interest equal to the LIBOR Rate plus one hundred seventy five (175) basis points.

Maker shall give Payee an Election Notice of any election not later than 1:00 p.m. Chicago time on the third Business Day prior to the commencement of an Investment Period. By the end of the first Business Day prior to the commencement of the Investment Period, Payee shall determine the LIBOR Based Rate and inform Maker of the LIBOR Based Rate as so determined. Such LIBOR Based Rate shall be applicable during the Investment Period specified by Maker in the Election Notice as to the amount of principal specified therein. In the event that Maker has not given Payee such an Election Notice with respect to any tranche for which the then current Investment Period is expiring Maker shall be deemed to have elected such tranche to bear interest at the Prime Rate upon expiration of current Investment Period.

In the event and on each occasion that on the first Business Day prior to the commencement of an Investment Period Payee reasonably determines (which determination shall be conclusive upon Maker) that dollar deposits in an amount approximately equal to the amount requested in the Election Notice are not generally available in the London Interbank Market, or that dollar deposits with comparable maturities to the selected Investment Period are not generally available in the London Interbank Market, or reasonable means do not exist for ascertaining the LIBOR Based Rate, or a LIBOR Based Rate would be in excess of the

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maximum interest rate which Maker may pay by law, or any specified Investment Period would extend beyond the maturity date of this Note (as the same may have been extended in accordance with the terms hereof), or if any change in any law or regulation or in the reasonable interpretation thereof by any governmental authority having jurisdiction over Payee or Maker and being charged with the administration or interpretation thereof shall make it unlawful or impossible as a practical matter for Payee to maintain a LIBOR Based Rate with respect to this Note or to fund the same in the London Interbank Market or to give effect to its obligations as contemplated hereby, then Payee shall so inform Maker and the interest rate applicable to this Note shall be the Prime Rate until the condition which gave rise to the use of the Prime Rate no longer exists, in which event Payee shall give Maker prompt notice thereof.

Notwithstanding anything herein to the contrary, Maker may not deliver more than two Election Notices having Investment Periods which run concurrently or overlap on any given Business Day; it being expressly acknowledged and agreed that at no time shall more than two (2) tranches bearing interest at the LIBOR Based Rate be outstanding. The maximum amount that the second Election Notice may designate as being subject to the LIBOR Based Rate is the outstanding principal amount due under the Note less the amount designated in the first Election Notice. With respect to any portion of outstanding principal not covered by an Election Notice, interest shall accrue hereunder on such amounts at the Prime Rate. It is expressly acknowledged and agreed that Payee is under no obligation to notify Maker of the expiration of any Investment Period.

To the extent that this Note bears interest at a LIBOR Based Rate, it shall be conclusively deemed to have been funded by or on behalf of Payee from dollar deposits in the London Interbank Market. Further, in addition to interest and other costs required to be paid by the Maker hereunder, with respect to any portion of this Note bearing interest at a LIBOR Based Rate, Maker shall pay or reimburse Payee for any loss of investment yield and for any and all breakage fees and other expenses actually incurred by Payee in connection with the reinvestment or reemployment of any principal of such portion of this Note, as a result of (i) a voluntary payment or prepayment of such principal during an Investment Period in accordance with the terms hereof or in accordance with the terms of the Loan Agreement, or (ii) an acceleration and mandatory repayment of such principal during an Investment Period by reason of an Event of Default in the payment of principal or interest when due in accordance with the terms of this Note or by reason of any Event of Default under the terms of the Loan Agreement. Any amount or amounts payable by Maker shall be paid by Maker to Payee within 10 days of receipt from Payee of a written demand for payment accompanied by a certificate setting forth the amount or amounts due and a calculation of and the basis for the determination from time to time of such amount or amounts, which statement shall be conclusive and binding upon Maker unless clearly erroneous. Failure on the part of Payee to demand payment of such amount with respect to any Investment Period shall not constitute a waiver of Payee's right to such amount, or a waiver of Payee's rights to demand such amounts with respect to any other subsequent or prior Investment Period. However, Payee shall not be entitled to demand payment for any such amount more than six (6) months after the date on which any such losses or costs were incurred.

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The outstanding principal portion of this Note may be prepaid at any time, in whole, or in part, without premium or penalty, provided that any such prepayment shall be accompanied by payment of all accrued and unpaid interest on this Note to the date of the prepayment. In addition, with respect to any portion of this Note then bearing interest at the LIBOR Based Rate, the Maker shall pay any additional costs calculated as set forth above, within the time period set forth therein. No amount prepaid may be borrowed again.

Notwithstanding the Initial Maturity Date hereinabove set forth, Maker shall have two (2) successive options (each an "Extension Option") to extend the term the Loan by a period of twenty-four (24) months (each an "Extension Period") ending, respectively, on July 1, 2001 (the "First Extended Maturity Date") and, if applicable, July 1, 2003 (the "Second Extended Maturity Date"), subject, in each case, to the satisfaction of the following conditions precedent (collectively, the "Extension Conditions"):

(1) each Extension Option shall be exercisable only by written notice ("Extension Notice") of exercise given by Maker to Payee not less than sixty (60) nor more than one hundred eighty (180) days prior to the Initial Maturity Date or the First Extended Maturity Date, as applicable;

(2) concurrently with the giving of the Extension Notice, Maker shall pay to Payee an extension fee in the amount equal to one-eighth of one percent (0.125%) of the then outstanding and unpaid principal balance of the Loan;

(3) as of the day prior to the first day of the applicable Extension Period, there shall exist no uncured Event of Default or no event which, with the giving of notice or the passing of time, or both, would constitute an Event of Default hereunder or under any other Loan Document; provided, however, if an uncured default exists as of the day prior to the first day of the applicable Extension Period for which any cure or grace period has not expired, this condition shall be deemed satisfied if such default is subsequently cured within the applicable cure or grace period;

(4) as of the day prior to the first day of the applicable Extension Period, construction of the entire Project shall have been completed and the Crate & Barrel Lease, the Container Store Lease and the Seigle's, Inc. Lease shall all be in full force and effect and no tenant under any of such leases shall be in default of any of its obligations under its respective lease after any applicable notice and/or cure period provided in such lease; and

(5) as of the day prior to the first day of the applicable Extension Period, the outstanding principal balance of the Loan shall not exceed seventy five percent (75%) of the then "as-is" market value of the Project as of such date as determined by an update of the Appraisal (or a new appraisal comparable thereto) which shall have been prepared at Maker's expense and delivered to Payee not less than thirty (30) days prior to the commencement of the applicable Extension Period.

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Provided the Extension Notice is timely given and all of the Extension Conditions are satisfied as to any applicable Extension Option, during the first Extension Period or second Extension Period, as applicable, there shall be payable and Maker shall pay to Payee on the first (1st) day of each calendar month during such Extension Period(s), both (a) interest on the outstanding principal balance of the Loan at the Prime Rate or the LIBOR Based Rate, as applicable, plus (b) installments of principal (the "Principal Amortization Amount") equal to the principal portion of the level amortization payment that would be due on each such date under a loan having a principal balance equal to the principal balance of the Loan as of the first (1st) day of the first Extension Period hereunder at the fixed per annum rate equal to Eight and One-Half Percent (8.5%) and a twenty (20) year amortization schedule commencing on the first day of the first Extension Period hereunder. In the event the Extension Option(s) are timely exercised and all applicable Extension Conditions satisfied, the entire outstanding and unpaid principal balance of the Loan, plus all unpaid interest accrued thereon, shall be due and payable, if not sooner paid or if not sooner due by acceleration, notice of prepayment, or otherwise, on the First Extended Maturity Date or the Second Extended Maturity Date, as applicable. In the event Maker shall either fail to timely exercise any Extension Option or, having exercised such option, shall have failed to satisfy any of the Extension Conditions applicable thereto as of the time required hereby, then such exercise shall be ineffective to extend the term hereof and the entire principal balance, together with all accrued and unpaid interest thereon any and all other amounts due hereunder or under the other Loan Documents shall be due and payable on the Initial Maturity Date or the First Extended Maturity Date, as applicable.

Any check, draft or similar item of payment by or for the account of Maker delivered to Payee on account of this Note shall be applied by Payee on account of this Note when collected.

It is agreed by Maker that the proceeds of this Note will be used for the purposes specified in subparagraph 1 (c) contained in Section 205/4 of Chapter 815 of the Illinois Compiled Statutes (1992), and that the indebtedness evidenced by this Note constitutes a "business loan" within the meaning of that Section.

It is agreed that at the election of the holder or holders hereof, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall become at once due and payable at the place of payment aforesaid in case of an Event of Default.

The acceptance by Payee of any payment made hereunder after the time such payment becomes due and payable will not establish a custom, or waive any rights of Payee to enforce prompt payment hereof. Maker hereby waives demand, presentment for payment, notice of dishonor and protest and does hereby waive notice of, and consent to, any and all extensions of this Note, the release of all or any part of the security for the payment hereof or the release of any party liable for the obligations hereunder. Any such extension or release may be made at any time and from time to time without giving notice to Maker and without discharging any liability of Maker. Maker hereby waives any and all notice of whatever kind or nature and waives the exhaustion of legal remedies hereon.

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Maker agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all reasonable expenses incurred in collecting or attempting to collect on this Note, including without limitation all reasonable attorney's fees and costs, as well as all amounts due to Payee pursuant to the Loan Agreement.

If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or circumstances will not be affected thereby and the provisions of this Note shall be severable in any such instance.

The provisions of this paragraph shall govern and control over any irreconcilably inconsistent provision contained in this Note or in any other document evidencing or securing the indebtedness evidenced hereby. Payee shall never be entitled to receive, collect, or apply as interest hereon (for purposes of this paragraph, the word "interest" shall be deemed to include any sums treated as interest under applicable law governing matters of usury and unlawful interest), any amount in excess of the Highest Lawful Rate (hereinafter defined) and, in the event Payee ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be deemed a partial prepayment of principal and shall be treated hereunder as such and applied when so paid; and, if the principal of this Note is paid in full, any remaining excess shall forthwith be paid to Maker. In determining whether or not the interest paid or payable exceeds the Highest Lawful Rate, Maker and Payee shall, to the maximum extent permitted under applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) spread the total amount of Interest throughout the entire contemplated term of this Note, provided, that if this Note is paid and performed in full prior to the end of the full contemplated term hereof, and if the interest received for the actual period of existence hereof exceeds the Highest Lawful Rate, Payee shall refund to Maker the amount of such excess or credit the amount of such excess against the principal of this Note, and, in such event, Payee shall not be subject to any penalties provided by any laws for contracting for, charging or receiving interest in excess of the Highest Lawful Rate. "Highest Lawful Rate" shall mean the maximum rate of interest which Payee is allowed to contract for, charge, take, reserve or receive under applicable law after taking into account, to the extent required by applicable law, any and all relevant payments or charges hereunder.

Time is of the essence of this Note and of each and every provision hereof.

Maker and Payee, and their respective legal counsel, have participated in the drafting of this Note, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Note.

This Note shall be governed and controlled by the laws of the State of Illinois without regard to its conflict-of-law rules.

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To induce Payee to accept this Note, Maker, irrevocably, agrees that, subject to Payee's sole and absolute election, all actions or proceedings in any way, manner or respect, arising out of or from or related to this Note, shall be litigated in courts having situs within the City of Chicago, State of Illinois. Maker hereby consents and submits to the jurisdiction of any local, state or federal court located within said city and state. Maker hereby waives any right Maker may have to transfer or change the venue of any litigation brought against Maker by Payee in accordance with this paragraph.

**Maker and Payee hereby irrevocably waive the right to trial by jury with respect to any action in which Maker and Payee are parties.**

This Note and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

Payment of the Loan, including all principal, interest and other amounts due or to become due or payable to Payee under this Note or under any of the other Loan Documents are and shall remain the joint and several personal liabilities of each individual comprising Maker, and Payee shall have recourse to each such individual comprising Maker and all their respective assets for payment of all such amounts, provided, however, Payee has agreed that the personal liability of Maker for the payment of a portion of the aggregate of the principal amount hereunder and of the interest accrued thereon (but not the personal liability of Maker for payment of other amounts due or to become due or payable hereunder or under any other Loan Document, which personal liability shall not be limited in any way) shall, subject to the terms, conditions, and qualifications set forth below, be limited as follows:

- (a) from and after the date, if any, that the Base Project Requirements (defined below) have been satisfied, and provided that upon such date no Event of Default exists under this Note or any other Loan Document, Maker's joint and several personal liability for the payment of the principal and interest due hereunder shall be limited to the obligation to pay the aggregate amount of Three Million Dollars (\$3,000,000.00) with respect to the principal and interest due and payable hereunder; and
- (b) With respect to the limitation described in clause (a) above, it is acknowledged and agreed by Maker that in the event of an Event of Default and acceleration of the Loan indebtedness (or in the event of a failure to repay the Loan in full upon maturity), the personal liability of Maker for any monetary judgment on the Loan indebtedness shall be limited to an amount equal to the aggregate of (i) that portion of any such money judgment attributable to costs, charges and all amounts (other than principal and interest) found to be due and owing under the Loan Documents, plus (ii) the lesser (A) Three Million Dollars (\$3,000,000) or (B) the amount of all principal outstanding plus all accrued and unpaid interest found to be due and payable under this Note. Maker further acknowledges and agrees that

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proceeds of any foreclosure sale of the Premises or from any other realization of the collateral securing the Loan (including, without limitation, any acceptance by Payee of a deed-in-lieu of foreclosure for an agreed upon amount) shall be first applied by Payee to pay that portion (if any) of the principal and interest hereunder for which Maker is not personally liable, and further that Payee is under no obligation to Maker to foreclose the Mortgage or to accept a deed in lieu thereof as a result of the agreements contained in this paragraph.

- (c) It is expressly acknowledged that the limitations set forth in clauses (a) and (b) hereof shall in no way affect the existence of the indebtedness evidenced hereby, the lien of the Mortgage and the other Loan Documents or the ability of Lender to foreclose that lien or pursue other remedies available under the Loan Documents, at law or in equity.
- (d) As used in clause (a) above, "Base Project Requirements" means the completion of construction of the Project (as defined in the Loan Agreement), (including, without limitation, the completion of construction of the Crate & Barrel Building) all lien-free and otherwise in conformance with the requirements of the Loan Agreement and (b) Crate & Barrel, CSI and Seigle's, Inc., the tenants of the Project, have all taken occupancy of their leased premises and have all commenced payment of rent under their respective Leases.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date and year first above written.

\_\_\_\_\_  
HARRY SEIGLE

\_\_\_\_\_  
MARK SEIGLE

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