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ASSISTANT  
SECRETARY'S CERTIFICATE  
OF  
ARCHIBALD CANDY CORPORATION

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THE UNDERSIGNED Herbert B. Max, Assistant Secretary of Archibald Candy Corporation (the "Borrower"), pursuant to the Note Purchase Agreement, dated as of October 20, 1991 (the "Purchase Agreement"), among the Borrower, Fannie May Holdings, Inc. and the Purchaser, does hereby certify as follows (capitalized terms used herein shall have the meanings ascribed thereto in the Purchase Agreement):

1. There has not been any amendment to or modification of the Borrower's Articles of Incorporation since October 21, 1991.
2. Except as contemplated by the Transactions, no proceeding for merger, consolidation, liquidation, reorganization or dissolution of the Borrower or the sale of all or substantially all of its assets is pending or contemplated.
3. The copy of the By-laws of the Borrower, attached hereto as Exhibit A, is true and complete and such By-laws are in full force and effect as of the date hereof and have been in full force and effect since October 20, 1991 without modification or amendment.
4. Attached hereto as Exhibit B are true and correct copies of all resolutions adopted by the Board of Directors of the Borrower relating to the Merger and Related Documents and the Assumption Agreement, which resolutions have not been amended or rescinded and are in full force.
5. The form of Merger Agreement, attached hereto as Exhibit C, is substantially in the form approved by or pursuant to authorization by the Board of Directors of the Borrower.
6. The form of Assumption Agreement, attached hereto as Exhibit D, is substantially in the form approved by or pursuant to authorization by the Board of Directors of the Borrower.
7. The form of each of the Security Documents, attached hereto collectively as Exhibit E, is substantially in the form approved by or pursuant to authorization by the Board of Directors of the Borrower.

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8. The form of Intercreditor Agreement, attached hereto as Exhibit F, is substantially in the form approved by or pursuant to authorization by the Board of Directors of the Borrower.
9. The following persons are on the date hereof duly qualified and acting officers of the Borrower, duly elected or appointed to the offices set forth beside their respective names and signatures, and each such person who, as an officer of the Borrower, signed the Purchase Agreement, the Notes, any of the Related Documents or any other document delivered prior hereto or on the date hereof in connection with such agreements and documents and the transactions contemplated therein was, at the respective times of such signing and delivery and is now duly elected or appointed, qualified and acting as such officer, and the signatures of such persons appearing on such documents are their genuine signatures:

<u>NAME</u>	<u>OFFICE</u>	<u>SIGNATURE</u>
<u>Adam E. Max</u>	<u>Vice President</u>	<u><i>Adam E. Max</i></u>
<u>Herbert B. Max</u>	<u>Assistant Secretary</u>	<u><i>H. Max</i></u>

IN WITNESS WHEREOF, I have signed my name this 30 day of October, 1991.

SWORN TO BEFORE THIS 30<sup>TH</sup> DAY OF OCTOBER, 1991

*Rockwell Tenney*  
**ROCKWELL TENNEY**  
 Notary Public, State of New York  
 No. 4827415  
 Qualified in New York County  
 Term Expires December 31, 1992

ARCHIBALD CANDY CORPORATION

By: *H. Max*  
 Herbert B. Max,  
 Assistant Secretary

I, Adam E. Max, Vice President of the Borrower, hereby certify that Herbert B. Max is on the date hereof the duly elected, qualified and acting Assistant Secretary of the Borrower, and that the signature set forth above is his true and correct signature.

Dated: October 30, 1991.

SWORN TO BEFORE ME THIS 30<sup>TH</sup> DAY OF OCTOBER, 1991

*Rockwell Tenney*  
**ROCKWELL TENNEY**  
 Notary Public, State of New York  
 No. 4827415  
 Qualified in New York County  
 Term Expires December 31, 1992

ARCHIBALD CANDY CORPORATION

By: *Adam E. Max*  
 Adam E. Max,  
 Vice President

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**WHEREAS**, the Company is the legal and beneficial owner of 100% of the outstanding shares of common stock of each of the following corporations:

Fannie May Candy Shops, Inc. (an Illinois corporation)  
Fannie May Candy Shops, Inc. (an Indiana corporation)  
Fannie May Candy Shops, Inc. (a Michigan corporation)  
Fannie May Candy Shops, Inc. (a Minnesota corporation)  
Fannie May Candy Shops, Inc. (a Pennsylvania corporation)  
Fannie May Candy Shops, Inc. (a Wisconsin corporation)  
Chicago Fannie May Candy Company (an Illinois corporation)  
Realistic Reproductions, Inc. (an Illinois corporation)  
(each a "Merger Subsidiary" and collectively, the "Merger Subsidiaries")

**WHEREAS**, such common stock owned by the Company of each Merger Subsidiary is the only issued and outstanding class of stock of such Merger subsidiary;

**WHEREAS**, the Company desires that each Merger Subsidiary be merged (collectively, the "Merger") into the Company pursuant to the Business Corporation Act of the State of Illinois and the applicable corporate statutes of the jurisdiction of incorporation of such Merger Subsidiary;

**NOW, THEREFORE, BE IT:**

**RESOLVED**, that each Merger Subsidiary be merged into the Company with the Company as the surviving corporation (the "Surviving Corporation") and that pursuant to the Merger, the Corporation shall assume all obligations and liabilities of each Merger Subsidiary;

**RESOLVED**, that upon the proposed Merger becoming effective, (i) with respect to each Merger Subsidiary, each outstanding share of common stock held of record by the Company as the sole stockholder of such Merger Subsidiary shall, by virtue of such Merger and without any action on the part of the holder thereof, be cancelled and retired and cease to exist, and shall not be converted

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into the stock of the Surviving Corporation or the right to receive cash, shares or other securities or obligations or any other consideration and (ii) with respect to the Company, each share of common stock and preferred stock of the Company outstanding at the effective time of such Merger shall remain issued and outstanding as one validly issued, fully paid and non-assessable share of common stock and preferred stock, respectively, of the Surviving Corporation;

**RESOLVED**, that the Plan of Merger attached hereto as Exhibit A shall be the Plan of Merger for the Merger and that the form, terms and provisions of the Plan of Merger are hereby adopted, authorized and approved in all respects;

**RESOLVED**, that the form, terms and provisions of the Articles of Merger (or the Certificate of Merger, as the case may be) to be filed in the state of incorporation of each Merger Subsidiary and in the State of Illinois for the Merger be, and they hereby are, authorized and approved and that each officer of the Company be, and each of them hereby is, authorized, empowered and directed to execute each of such Articles of Merger (or Certificate of Merger, as the case may be) in the name and on behalf of the Company and under its corporate seal or otherwise, in, or substantially in, such forms with such changes therein and modifications thereto as the officer executing the same may approve, his execution thereof to be conclusive evidence of the Company's approval of such changes, and the Secretary or any Assistant Secretary of the Company is hereby authorized to attest to each of such Articles of Merger (or Certificate of Merger, as the case may be) (if required thereby), and each officer of the Company is hereby authorized, empowered and directed to cause the relevant Articles of Merger to be filed with the Secretary of State of the State of Illinois and the relevant Articles of Merger (or Certificate of Merger, as the case may be)

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with the Secretary of State or the Department of State (as the case may be) of the state of incorporation of each Merger Subsidiary, and a certified copy of such Articles of Merger (or Certificate of Merger, as the case may be) to be recorded in any jurisdiction required by applicable law;

**RESOLVED**, that the Company qualify to do business in each jurisdiction in which a Merger Subsidiary is incorporated and in which a Merger Subsidiary is qualified to do business;

**RESOLVED**, that in each such jurisdiction in which the Company qualifies to do business, the Company shall do business under the name of Fannie May Candy Shops; and that the Company file appropriate fictitious name, assumed name, trade name or other application in such jurisdictions in order to do business under the name of Fannie May Candy Shops;

**RESOLVED**, that the proper officers of the Company be, and each of them hereby is, authorized and directed to take all such further action and to execute and deliver all such instruments, certificates and documents, in the name and on behalf of the Company and under its corporate seal or otherwise, and to pay all such expenses and taxes, as in their judgment shall be necessary, proper or advisable pursuant to the Plan of Merger and each of the Articles of Merger (or Certificate of Merger, as the case may be), or in order to effect the Merger or to carry out fully the intent and to accomplish the purposes of all of the foregoing resolutions, and each of them.

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## MERGER OF FMCAN ACQUISITION CORP. INTO THE COMPANY

RESOLVED, that FMCAN ACQUISITION CORP., a shareholder of the Company ("Acquisition Co.") be merged (the "Merger") into the Company, with the Company as the surviving corporation (the "Surviving Company") and that pursuant to the Merger, the Company shall assume all rights, obligations and liabilities of Acquisition Co.;

RESOLVED, that on the effective date of Merger:

(a) Each of the 1,886.3128922 common shares of the Company outstanding on the effective date of the Merger and owned by Fannie May Holdings, Inc., a Delaware corporation ("Holdings"), shall continue to be outstanding and owned by Holdings after the effective date of the Merger;

(b) The 291,830 preferred shares of the Company outstanding on the effective date of the Merger and owned by Holdings, by virtue of the Merger and without any action on the part of the holder thereof, shall be converted into 682 shares of Common Stock of the Company;

(c) Each of the 17,313.6871078 common shares of the Company outstanding on the effective date of the Merger and owned by Acquisition Co. shall be cancelled and shall revert to the status of authorized but unissued shares, and no shares of capital stock shall be issued with respect thereto;

(d) The common shares of Acquisition Co. outstanding on the effective date of the Merger shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and exchanged for the 1,641.6871078 common shares of the Company which became authorized but unissued shares pursuant to the Merger;

RESOLVED, that (i) the Agreement and Plan of Merger attached hereto as Exhibit A shall be the Plan of Merger for the Merger, and that the Agreement and Plan of Merger and the form, terms and provisions thereof, are hereby adopted, authorized and approved in all respects, and the form, terms and provisions of such agreement be, and they hereby are, adopted, authorized and approved and that each officer of the Company be, and each of them hereby is, authorized,

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empowered and directed to execute such agreement in the name and on behalf of the Company and under its corporate seal or otherwise, in, or substantially in, such forms with such changes therein and modifications thereto as the officer executing the same may approve, his execution thereof to be conclusive evidence of the Company's approval of such change;

RESOLVED, that the form, terms and provisions of the Articles of Merger relating to the Merger be, and they hereby are, authorized and approved and that each officer of the Company be, and each of them hereby is, authorized, empowered and directed to execute the Articles of Merger in the name and on behalf of the Company and under its corporate seal or otherwise, in, or substantially in, such forms with such changes therein and modifications thereto as the officer executing the same may approve, his execution thereof to be conclusive evidence of the Company's approval of such changes, and the Secretary or any Assistant Secretary of the Company is hereby authorized to attest to the Articles of Merger (if required thereby), and each officer of the Company is hereby authorized, empowered and directed to cause the Articles of Merger to be filed with the Secretary of State of the State of Illinois, and a certified copy of the Articles of Merger to be recorded in any jurisdiction required by applicable law;

## ASSUMPTION OF OBLIGATIONS TO JACKSON NATIONAL LIFE INSURANCE COMPANY AND FIRST NATIONAL BANK OF CHICAGO

RESOLVED, that the Company enter into (i) an Assumption Agreement with Jackson National Life Insurance Company ("Jackson") pursuant to which it will assume all obligations of Acquisition Co. under the Note Purchase Agreement (the "Note Purchase Agreement") among the Company, Holdings, and Jackson pursuant to which Acquisition Co. has issued 10.25% Senior Secured Notes Due 1999 (the "Senior Note") in the aggregate principal amount of \$30,000,000 held by Jackson, and (ii) an Assumption Agreement with The First National Bank of Chicago ("First Chicago") pursuant to which it will assume all obligations of Acquisition Co. under the Credit Agreement among the Company, Holdings and First Chicago relating to a revolving credit loan from First Chicago with a maximum commitment of \$10,000,000; and that in connection therewith, the Company execute and deliver

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the Security Documents (as defined in the Note Purchase Agreement) (including, but not limited to, mortgages, deeds of trust and trust deeds in favor of the Collateral Trustees (as defined in the Note Purchase Agreement)) and that the form, terms and provisions of each of such agreements be, and they hereby are, authorized and approved in all respects; and that any officer of the Company be, and they each hereby are, authorized, empowered and directed to execute such agreements, in the name and on behalf of the Company, and under the corporate seal of the Company or otherwise, in, or substantially in, such form and with such changes therein and modifications thereto as the officer executing such agreements may approve, his execution and delivery thereof to be conclusive evidence of the Company's approval of such changes on behalf of the Company;

## ASSUMPTION OF OBLIGATION RELATING TO SUBORDINATED NOTES

RESOLVED, that the Company enter into a Confirmation and Assumption Agreement pursuant to which it will acknowledge the assumption of all obligations of Acquisition Co. under (i) a Securities Purchase Agreement (the "Securities Purchase Agreement") among the Company, Holdings and the purchasers listed in Schedule 1 to the Securities Purchase Agreement (collectively, the "Subordinated Noteholders") and (ii) the 14% Subordinated Notes Due 2000 (the "Subordinated Notes") in the aggregate principal amount of \$35,000,000 issued by Acquisition Co. to the Subordinated Noteholders; and that the form, terms and provisions of such agreement and instrument, be and they hereby are, authorized and approved in all respects; and that any officer of the Company be, and they each hereby are, authorized, empowered and directed to execute such agreement and instrument, in the name and on behalf of the Company, and under the corporate seal of the Company or otherwise, in, or substantially in, such form and with such changes therein and modifications thereto as the officer executing such agreement may approve, his execution and delivery thereof to be conclusive evidence of the Company's approval of such changes on behalf of the Company;

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## AMENDMENT TO ARTICLES OF INCORPORATION

RESOLVED, that effective immediately after the Merger, the Articles of Incorporation of the Company shall be amended and restated in their entirety ("Amended and Restated Articles") as permitted under the Illinois Business Corporation Act;

RESOLVED, that the Amended and Restated Articles of Incorporation, in the form attached hereto as Exhibit B, of the Company be submitted to the sole shareholder of the Company for written consent without a meeting pursuant to Section 7.10 of the Illinois Business Corporation Act, and that such amendment shall be effective only after approval thereof by the holder of all of the outstanding shares of Common Stock of the Company;

RESOLVED, that the proper officers of the Company be, and they hereby are, authorized and directed to execute and file with the Secretary of State of the State of Illinois the Amended and Restated Articles of Incorporation of the Company, substantially in the form attached hereto as Exhibit B, after the Amended and Restated Articles have been approved by the sole shareholder of the Company;

## BY-LAWS

RESOLVED, that effective immediately after the Merger, the by-laws of the Company shall be amended and adopted in the form attached hereto as Exhibit C;

## MISCELLANEOUS

RESOLVED, that each of the officers of the Company be, and they each hereby are, authorized and directed to take all such further action and to execute and deliver all such agreements, instruments, documents, certificates, powers of attorney, and financing statements in the name and on behalf of the Company, and under the corporate seal of the Company or otherwise, and to pay all such expenses as in their judgment shall be necessary, proper or advisable pursuant to or in connection with any of the above-referenced agreements, documents or instruments or in order to carry out fully the intent and to accomplish the purposes of all of the foregoing resolutions, and each of them.

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Form **BCA-10.30** ARTICLES OF AMENDMENT

(Rev. Jan. 1991)

File #

George H. Ryan  
Secretary of State  
Department of Business Services  
Springfield, IL 62756  
Telephone (217) 782-6961

**SUBMIT IN DUPLICATE**

This space for use by  
Secretary of State

Date

Franchise Tax \$

Filing Fee \$

Penalty \$

Approved:

Remit payment in check or money  
order, payable to "Secretary of State."

1. CORPORATE NAME: ARCHIBALD CANDY CORPORATION

(Note 1)

2. MANNER OF ADOPTION: and restatement

The following amendment of the Articles of Incorporation was adopted on October

19 91 in the manner indicated below. ("X" one box only)

By a majority of the incorporators, provided no directors were named in the articles of incorporation and no directors have been elected; or by a majority of the board of directors, in accordance with Section 10.10, the corporation having issued no shares as of the time of adoption of this amendment;

(Note 2)

By a majority of the board of directors, in accordance with Section 10.15, shares having been issued by shareholder action not being required for the adoption of the amendment;

(Note 3)

By the shareholders, in accordance with Section 10.20, a resolution of the board of directors having been duly adopted and submitted to the shareholders. At a meeting of shareholders, not less than the minimum number of votes required by statute and by the articles of incorporation were voted in favor of the amendment;

(Note 4)

By the shareholders, in accordance with Sections 10.20 and 7.10, a resolution of the board of directors having been duly adopted and submitted to the shareholders. A consent in writing has been signed by shareholders having not less than the minimum number of votes required by statute and by the articles of incorporation. Shareholders who have not consented in writing have been given notice in accordance with Section 7.10;

(Note 4)

By the shareholders, in accordance with Sections 10.20 and 7.10, a resolution of the board of directors having been duly adopted and submitted to the shareholders. A consent in writing has been signed by all the shareholders entitled to vote on this amendment.

(Note 4)

(INSERT AMENDMENT)

(Any article being amended is required to be set forth in its entirety.) (Suggested language for an amendment to change the corporate name is RESOLVED, that the Articles of Incorporation be amended to read as follows:)

N/A

(NEW NAME)

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**Resolution**

See Attachment

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3. The manner in which any exchange, reclassification or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for or effected by this amendment, is as follows: *(If not applicable, insert "No change")*

No change

4. (a) The manner in which said amendment effects a change in the amount of paid-in capital (Paid-in capital replaces the terms Stated Capital and Paid-in Surplus and is equal to the total of these accounts) is as follows: *(If not applicable, insert "No change")*

No change

- (b) The amount of paid-in capital (Paid-in Capital replaces the terms Stated Capital and Paid-in Surplus and is equal to the total of these accounts) as changed by this amendment is as follows: *(If not applicable, insert "No change")*

No change

	Before Amendment	After Amendment
Paid-in Capital	\$ _____	\$ _____

(Complete either item 5 or 6 below)

5. The undersigned corporation has caused this statement to be signed by its duly authorized officers, each of whom affirms, under penalties of perjury, that the facts stated herein are true.

Dated \_\_\_\_\_, 19 91 ARCHIBALD CANDY CORPORATION  
*(Exact Name of Corporation)*

attested by \_\_\_\_\_ by \_\_\_\_\_  
*(Signature of Secretary or Assistant Secretary) (Signature of President or Vice President)*

\_\_\_\_\_  
*(Type or Print Name and Title) (Type or Print Name and Title)*

6. If amendment is authorized by the incorporators, the incorporators must sign below.

OR

If amendment is authorized by the directors and there are no officers, then a majority of the directors or such directors as may be designated by the board, must sign below.

The undersigned affirms, under the penalties of perjury, that the facts stated herein are true.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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ARCHIBALD CANDY CORPORATION

ATTACHMENT TO  
AMENDED AND RESTATED ARTICLES OF INCORPORATION

The text of the Amended and Restated Articles of Incorporation is as follows:

RESTATED ARTICLE 1. The name of the corporation is ARCHIBALD CANDY CORPORATION.

RESTATED ARTICLE 2. The purpose or purposes for which the corporation is organized are:

- (a) to manufacture, produce, buy, sell and deal in, at wholesale, candies and confectionery, confectionery novelties and confectionery supplies, and the ingredients and by-products thereof, to manufacture and produce, buy, sell and deal in, at wholesale, any and all equipment used in or appertaining to the manufacture and production of candies and confectionery, confectionery novelties and supplies, and the ingredients and by-products thereof; and
- (b) to engage in any lawful act or activity for which a corporation may be incorporated under the Illinois Business Corporation Act of 1983, as amended.

RESTATED ARTICLE 3. The duration of the corporation is perpetual.

AMENDED AND RESTATED ARTICLE 4. The total number of shares which the corporation shall have authority to issue is Twenty-Five Thousand (25,000) shares of common stock with a par value of \$0.01 per share. Cumulative voting is eliminated. The provisions of the Illinois Business Corporation Act of 1983, as amended, that require for approval of corporate action a two-thirds vote of the shareholders are hereby superseded and there shall be required in lieu thereof a majority of the outstanding shares entitled to vote on the matter and a majority of the outstanding shares of each class of shares entitled to vote as a class on the matter.

The corporation was incorporated on May 31, 1922 under the name Archibald Candy Corporation.

The address of the registered office and the name of the registered agent on the date of filing the restated articles are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The number of shares issued on the date of filing this Amended and Restated Articles of Incorporation is 19,200 common shares, par value \$0.01 per share, and the amount of paid-in capital as of such date is \$ \_\_\_\_\_.

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER dated as of October \_\_, 1991, by and between **FMCAN ACQUISITION CORP.** ("FMCAN") and **ARCHIBALD CANDY CORPORATION** ("Archibald"), both Illinois corporations (FMCAN and Archibald are hereinafter sometimes referred to individually as a "Constituent Corporation" or collectively as the "Constituent Corporations").

### Recitals

A. FMCAN is a corporation organized and existing under the laws of the State of Illinois, having been incorporated on October 23, 1991.

B. Archibald is a corporation organized and existing under the laws of the State of Illinois, having been incorporated on May 31, 1922.

C. The authorized capital stock of FMCAN consists of 100 common shares, par value \$1.00 per share, all of which are issued and outstanding and owned by Fannie May Holdings, Inc., a Delaware corporation ("Holdings").

D. The authorized capital stock of Archibald consists of 25,000 common shares, par value \$.01 per share, and 300,000 preferred shares, par value \$10.00 per share, of which 291,830 preferred shares are issued and outstanding and owned by Holdings and of which 19,200 common shares are issued and outstanding, of which 1,886.3128922 are owned by Holdings and 17,313.6871078 are owned by FMCAN.

E. FMCAN desires to merge with and into Archibald, and Archibald desires that FMCAN merge with and into it, upon the terms and conditions set forth herein and in accordance with the Business Corporation Act of the State of Illinois.

F. The respective Boards of Directors of FMCAN and Archibald deem the merger of FMCAN into Archibald (the "Merger") desirable and in the best interests of the corporations and their respective shareholders. The respective Boards of

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Directors of FMCAN and Archibald by resolutions duly adopted have approved this Merger Agreement and directed that it be submitted to their respective shareholders.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, covenants and conditions herein contained, and in accordance with the Business Corporation Act of the State of Illinois, the parties agree as follows:

## ARTICLE I

### Merger

1. On the Effective Date of the Merger, as hereinafter defined, FMCAN shall be merged with and into Archibald, which shall be the surviving corporation ("Surviving Corporation"), and Archibald on such date shall merge FMCAN with and into itself. On the Effective Date of the Merger, the separate existence of FMCAN shall cease and the existence of Archibald as the Surviving Corporation shall continue in effect unimpaired by the merger, with all the rights, privileges, immunities and powers, and subject to all the duties and liabilities, of a corporation organized under the Business Corporation Act of the State of Illinois. As used herein, "Effective Date" means the date on which this Agreement and Plan of Merger becomes effective as provided in the Business Corporation Act of the State of Illinois.

2. On the Effective Date of the Merger:

(a) Archibald, as the Surviving Corporation, shall possess all the rights, privileges, immunities and franchises of a public as well as of a private nature, of each of the Constituent Corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of, or belonging to, or due to each of the Constituent Corporations, shall be deemed to be transferred to

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and vested in the Surviving Corporation without further act or deed, and the title to any real estate or any interest therein vested in any of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger.

(b) The Surviving Corporation shall be responsible and liable for all the liabilities and obligations of each of the Constituent Corporations; and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place and neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations shall be impaired by the Merger.

(c) The assets and liabilities of the Constituent Corporations shall be recorded on the books of the Surviving Corporation in the amounts at which they are stated on the books of the respective Constituent Corporations on the Effective Date, subject to such adjustments as may be required to effect comparability of accounting policies and practices.

(d) The name of the Surviving Corporation is Archibald Candy Corporation.

3. If at any time after the Effective Date of the Merger the Surviving Corporation shall consider or be advised that any further assignment or assurances or any other things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, the title to any property or right of FMCAN acquired or to be acquired by reason of, or as a result of, the Merger, the proper officers of Surviving Corporation are fully authorized in the name of FMCAN or otherwise to take all such action and to execute and deliver all such proper deeds, assignments and assurances necessary or desirable to vest, perfect or confirm title to such property or rights in the Surviving Corporation.



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## ARTICLE II

### Articles of Incorporation, By Laws, Board of Directors and Officers of the Surviving Corporation

1. The Articles of Incorporation of Archibald in effect on the Effective Date shall be the Articles of Incorporation of the Surviving Corporation in effect on the Effective Date, except that said Articles of Incorporation are hereby amended (a) to include as a purpose for which the Surviving Corporation is organized "To engage in any lawful act or activity for which a corporation may be incorporated under the Illinois Business Corporation Act of 1983, as amended", (b) to delete the authorized shares of preferred stock and to provide that the number of shares the corporation is authorized to issue is 25,000 common shares, par value \$.01 per share, and (c) to eliminate cumulative voting. From and after the Effective Date of the Merger, said Articles of Incorporation, as the same may be amended from time to time as provided by law, separate and apart from this Agreement and Plan of Merger, shall be the Articles of Incorporation of the Surviving Corporation.

2. The By-Laws of Archibald in effect on the Effective Date shall be the By-Laws of the Surviving Corporation, and they shall thereafter continue to be its By-Laws until duly altered, amended or repealed as provided by law or such By-Laws.

3. The officers and directors of FMCAN on the Effective Date shall be the officers and directors of the Surviving Corporation for their respective terms of office and until their successors have been duly elected and qualified.

## ARTICLE III

Manner of Conversion of Shares

On the Effective Date of the Merger:

(a) Each of the 1,886.3128922 common shares of Archibald outstanding on the Effective Date of the Merger and owned by Holdings shall continue to be outstanding and owned by Holdings after the Effective Date of the Merger.

(b) The 291,830 preferred shares of Archibald outstanding on the Effective Date of the Merger and owned by Holdings, by virtue of the Merger and without any action on the part of the holder thereof, shall be converted into 682 shares of common shares of Archibald.

(c) Each of the 17,313.6871078 common shares of Archibald outstanding on the Effective Date of the Merger and owned by FMCAN shall be cancelled and shall revert to the status of authorized but unissued shares, and no shares of capital stock shall be issued with respect thereto.

(d) The common shares of FMCAN outstanding on the Effective Date of the Merger shall, by virtue of the Merger and without any action of the part of the holder thereof, be converted into and exchanged for the 1,641.6871078 common shares of Archibald which became authorized but unissued shares pursuant to the Merger.

(e) Holdings, as the holder of the certificate which prior to the Effective Date of the Merger represented all the outstanding shares of capital stock of FMCAN, shall upon surrender of such certificate to the Surviving Corporation, be entitled to receive in exchange therefor a certificate for the 1,641.6871078 common shares of Archibald. Until so surrendered, such certificate representing the outstanding shares of capital stock of FMCAN shall be deemed for all purposes to evidence ownership of said 1,641.6871078 common shares of Archibald.

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## ARTICLE IV

### Termination

This Agreement may be terminated and abandoned at any time before the Effective Date by the respective Boards of Directors of the Constituent Corporations.

## ARTICLE V

### Miscellaneous

1. This Merger Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

2. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

3. The parties hereto each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances, and to take all such further action, including, without limitation, the execution and filing of such instruments in the State of Illinois as shall be necessary or desirable to carry out this Agreement and to consummate and effect the Merger contemplated hereby.

IN WITNESS WHEREOF, the Constituent Corporations, pursuant to the approval and authority duly given by resolution adopted by their respective Boards of Directors, have caused this Agreement and Plan of Merger to be executed and

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## ASSUMPTION AGREEMENT

THIS ASSUMPTION AGREEMENT ("Agreement"), dated this 30th day of October, 1991, is made by Archibald Candy Corporation, an Illinois corporation (the "Surviving Corporation").

### W I T N E S S E T H:

WHEREAS, pursuant to the Note Purchase Agreement, dated as of October 30, 1991 (the "Purchase Agreement"), by and among FMCA Acquisition Corp., an Illinois corporation (the "Borrower"), Fannie May Holdings, Inc., a Delaware corporation, and the Purchaser listed on Schedule I attached thereto (the "Purchaser"), the Borrower has issued its 10.25% Senior Secured Notes Due 1999 in the aggregate principal amount of \$30,000,000 (the "Notes") to the Purchaser, having the rights, qualifications, limitations and restrictions set forth in the Purchase Agreement;

WHEREAS, prior to or concurrently with the issuance of the Notes, the Borrower has consummated the purchase of all of the issued and outstanding capital stock of the Surviving Corporation;

WHEREAS, the Surviving Corporation and the Borrower have entered into an Agreement and Plan of Merger, dated as of October 30, 1991 (the "Merger Agreement"), which agreement provides, among other things, for the merger on the date hereof of the Borrower with and into the Surviving Corporation (the "Merger"); and

WHEREAS, the Surviving Corporation desires to assume the obligations of the Borrower under the Purchase Agreement and the Notes, as set forth below, in order to induce the Purchaser to consent to the Merger.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Surviving Corporation hereby agrees with the Purchaser as hereinafter set forth:

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1. Assumption of Obligations. The Surviving Corporation assumes and agrees to perform any and all covenants, agreements and obligations of the Borrower under or in connection with the Purchase Agreement and the Notes. From and after the date hereof, the term "Borrower", as used in the Purchase Agreement will be deemed to refer to Archibald Candy Corporation and its successors and assigns.

2. Representations and Warranties. The Surviving Corporation represents and warrants that each of the representations and warranties made by the Borrower in Section 5 of the Purchase Agreement is true and correct as of the date hereof both before and after giving effect to the Merger and is true and correct on the date hereof with respect to the Surviving Corporation.

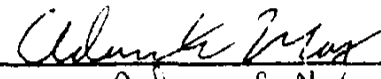
3. Governing Law; Severability. THIS AGREEMENT AND THE OBLIGATIONS OF THE SURVIVING CORPORATION HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE INTERNAL LAWS AND DECISIONS (AS OPPOSED TO CONFLICTS OF LAW PROVISIONS) OF THE STATE OF NEW YORK. WHEREVER POSSIBLE, EACH PROVISION OF THIS AGREEMENT SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS AGREEMENT SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISION OF THIS AGREEMENT.

4. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered by its proper and duly authorized officer as of the day and year first above written.

ARCHIBALD CANDY CORPORATION

By

  
Name: Adam E. Max  
Title: V.P.

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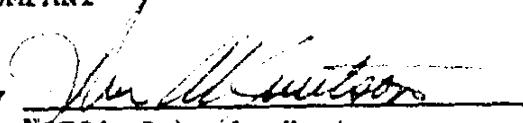


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Receipt of the foregoing Assumption Agreement is hereby acknowledged on and as of the date set forth above.

JACKSON NATIONAL LIFE INSURANCE  
COMPANY

By



Name: John A. Knutson

Title: Sr. Vice President & CFO

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EXHIBIT 1

Form of Notes

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SENIOR SECURED NOTE

FMCAN ACQUISITION CORP.

10.25% Senior Secured Note

Due 1999

No. R-1

\$30,000,000

October 30, 1991

FMCAN ACQUISITION CORP., an Illinois corporation (the "Borrower"), for value received, hereby promises to pay to Jackson National Life Insurance Company or registered assignee on the Thirty-first day of October, 1999 the principal amount of THIRTY MILLION DOLLARS (\$30,000,000) and to pay interest (calculated for actual days elapsed on the basis of a 360-day year) on the principal amount from time to time remaining unpaid hereon at the rate of 10.25% per annum from the date hereof until maturity, payable in cash quarterly on the last day of January, April, July and October in each year commencing January 31, 1992, and at maturity. The Borrower further agrees to pay on demand interest (so computed) at the rate of 12.25% per annum upon the occurrence and during the continuance of any Event of Default, on the principal balance thereof from time to time outstanding. Payments of principal, prepayment charges (if any) hereof and interest hereon are payable in accordance with Section 4 and Schedule I of the Note Purchase Agreement referred to below.

This Senior Secured Note is one of the 10.25% Senior Secured Notes Due 1999 of the Borrower in the aggregate principal amount of \$30,000,000 issued or to be issued under and pursuant to the terms and provisions of that certain Note Purchase Agreement (the "Purchase Agreement"), dated as of October 30, 1991, entered into by the Borrower and Fannie May Holdings, Inc., a Delaware corporation of which Borrower is a direct wholly-owned subsidiary ("Holdings"), with the original Purchaser therein referred to, and this Senior Secured Note and the holder hereof are entitled equally and ratably with the holders of all other Senior Secured Notes outstanding under the Purchase Agreement to all the benefits provided for thereby or referred to therein, to which Purchase Agreement reference is hereby made for a statement thereof. Capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Purchase Agreement.

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This Senior Secured Note is guaranteed by Holdings pursuant to the Holdings Guarantee, dated October 30, 1991, executed by Holdings pursuant to Section 7.15 of the Purchase Agreement and is to be guaranteed by each Subsidiary of the Borrower (other than Non-Material Subsidiaries) pursuant to Subsidiary Guarantees, in accordance with Sections 7.15 and 11.17 of the Purchase Agreement.

This Senior Secured Note and the Indebtedness evidenced hereby are and shall at all times be and remain secured, to the extent and in the manner set forth in the Security Documents.

This Senior Secured Note and the other Senior Secured Notes outstanding under the Purchase Agreement may be declared due prior to their expressed maturity dates, and certain prepayment charges are required to be paid thereon, all in the events, on the terms and in the manner and amounts provided in the Purchase Agreement.

The Senior Secured Notes are not subject to prepayment or redemption at the option of the Borrower prior to their expressed maturity dates, except on the terms and conditions and in the amounts set forth in the Purchase Agreement.

This Senior Secured Note is registered on the books of the Borrower and is transferable only by surrender thereof at the principal office of the Borrower duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of this Senior Secured Note or its attorney duly authorized in writing. Payment of or on account of principal, premium, if any, and interest on this Senior Secured Note shall be made only to or upon the order in writing of the registered holder.

**THIS SENIOR SECURED NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES OF SUCH STATE).**

FMCAN ACQUISITION CORP.

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

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EXHIBIT 2

Form of Revolving Notes

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## NOTE

\$10,000,000

October \_\_, 1991

FMCAN ACQUISITION CORP., a Delaware corporation (the "Borrower"), promises to pay to the order of THE FIRST NATIONAL BANK OF CHICAGO (the "Lender") the lesser of the principal sum of Ten Million Dollars or the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to Article II of the Credit Agreement (as the same may be amended or modified, the "Agreement") hereinafter referred to, in immediately available funds at the main office of The First National Bank of Chicago in Chicago, Illinois, as Agent, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Agreement. The Borrower shall pay the principal of and accrued and unpaid interest on the Loans in full on the Facility Termination Date and shall make mandatory payments as are required to be made under the terms of Section 2.6 of the Agreement.

The Lender shall, and is hereby authorized to, record on the schedule attached hereto, or to otherwise record in accordance with its usual practice, the date and amount of each Loan and the date and amount of each principal payment hereunder.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Credit Agreement, dated as of October \_\_, 1991, among the Borrower, Fannie May Holdings, Inc., The First National Bank of Chicago, individually and as Agent, and the lenders named therein, including the Lender, to which Agreement, as it may be amended or modified from time to time, reference is hereby made for a statement of the terms and conditions which govern this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated and under which this Note is secured. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement.

FMCAN ACQUISITION CORP.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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SCHEDULE OF LOANS AND PAYMENTS OF PRINCIPAL  
TO

**UNOFFICIAL COPY**

NOTE OF EMCAN ACQUISITION CORP.  
DATED OCTOBER   , 1991

<u>Date</u>	<u>Principal Amount of Loan</u>	<u>Maturity of Interest Period</u>	<u>Principal Amount Paid</u>	<u>Unpaid Balance</u>
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## SCHEDULE A

### Description of Land

SHOP NO. 277

LOTS 7, 8 AND 9 (EXCEPT THE WEST 8 1/2 FEET OF LOT 9) IN BLOCK 13 IN BUSSE AND WILLIE'S RESUBDIVISION IN MOUNT PROSPECT OF THE WEST 1/2 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Index No.: 08-12-108-010  
08-12-108-011  
08-12-108-012

Common Address: 14 E Northwest Hwy., Mt. Prospect, Illinois

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Shop No. 277

MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES,  
FIXTURE FILING AND FINANCING STATEMENT

DATED AS OF October 30, 1991

ARCHIBALD CANDY CORPORATION,  
as Mortgagor

In Favor Of

WILMINGTON TRUST COMPANY  
and WILLIAM J. WADE, as Trustees  
as Mortgagee

*DI 7319 418*  
*Notes I.D.*  
*Resolution attached*

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THIS INSTRUMENT WAS PREPARED BY AND RECORDED COUNTERPARTS  
SHOULD BE RETURNED TO: GREGORY A. THORPE, ESQ. SONNENSCHN  
NATH & ROSENTHAL, 8000 SEARS TOWER, CHICAGO, ILLINOIS 60606

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MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES,  
FIXTURE FILING AND FINANCING STATEMENT

9

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FIXTURE FILING AND FINANCING STATEMENT ("Mortgage") is made as of this 30<sup>th</sup> day of October, by ARCHIBALD CANDY CORPORATION, a corporation organized and existing under the laws of the State of Illinois, successor in interest by merger to FANNIE MAY CANDY SHOPS, INC., an Illinois corporation, having a principal office address at 1137 West Jackson Boulevard, Chicago, Illinois 60607, and its successors and assigns ("Mortgagor"), in favor of WILMINGTON TRUST COMPANY, a Delaware banking corporation and WILLIAM J. WADE, each having a principal office address at Rodney Square North, Wilmington, Delaware 19890 Attention: Corporate Trust Administration, as security trustees (together with their respective successors and assigns, "Mortgagee") under a certain Collateral Trust Agreement dated of even date herewith among Fannie May Holdings, Inc., a Delaware Corporation ("Holdings"), Mortgagor and Mortgagee. The Collateral Trust Agreement, as presently constituted and as it may be amended from time to time after the date hereof is referred to in this Mortgage as the "Trust Agreement".

W I T N E S S E T H:

WHEREAS, FMCAN Acquisition Corp., an Illinois corporation ("Acquisition") and Holdings, entered into a Note Purchase Agreement with Jackson National Life Insurance Company ("Purchaser") dated of even date herewith (as presently constituted and as same may be amended from time to time after the date hereof, collectively referred to as the "Note Purchase Agreement"). Acquisition has been merged with and into Mortgagor ("Merger") and Mortgagor has assumed all of the obligations of Acquisition under the Note Purchase Agreement pursuant to an Assumption Agreement dated of even date herewith. Pursuant to the Note Purchase Agreement, Acquisition has issued to the Purchaser certain promissory notes dated of even date herewith, in the aggregate original principal amount of Thirty Million Dollars (\$30,000,000), in the form attached hereto as Exhibit 1, incorporated herein and made a part hereof (said promissory notes, as presently constituted and as they may be amended, extended, renewed or consolidated from time to time after the date hereof, together with any and all promissory notes that may be exchanged or given in substitution therefor after the date hereof, being collectively referred to

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in this Mortgage as the "Notes") (the Purchaser and any other holder or holders of any of the Notes being collectively referred to in this Mortgage as the "Noteholders"); and

WHEREAS, the indebtedness evidenced by the Notes bears interest and is payable as provided in the Notes and the Note Purchase Agreement (the terms and provisions of the Notes and the Note Purchase Agreement being incorporated herein by reference and made a part of this Mortgage to the same extent as though set forth in full herein), with final maturity on October 31, 1999, if not sooner paid; and

WHEREAS, Acquisition entered into a Credit Agreement dated of even date herewith with the lenders ("Lenders") named therein and The First National Bank of Chicago ("FNBC") in its individual capacity as a lender and as agent (as presently constituted and as same may be amended from time to time after the date hereof, collectively referred to as the "Credit Agreement"), and Mortgagor has assumed all of the obligations of Acquisition thereunder pursuant to an Assumption Agreement of even date herewith. Pursuant to the Credit Agreement, Lenders have agreed to make a revolving loan to Acquisition (and subsequent to the Merger, Mortgagor) in the maximum amount of Ten Million Dollars (\$10,000,000), to be evidenced by notes made by Acquisition (and subsequent to the Merger, Mortgagor) of even date, in that amount, in the form attached hereto as Exhibit 2, incorporated herein and made a part hereof (said notes, as presently constituted and as same may be amended, extended, renewed or consolidated from time to time after the date hereof, together with any and all promissory notes that may be exchanged or given in substitution therefor after the date hereof, being collectively referred to as the "Revolving Notes"); and

WHEREAS, the indebtedness evidenced by the Revolving Notes bears interest and is payable as provided in the Revolving Notes and the Credit Agreement (the terms and provisions of the Revolving Notes and the Credit Agreement being incorporated herein by reference and made a part of this Mortgage to the same extent as though set forth in full herein), with final maturity on October 30, 1996, if not sooner paid; and

WHEREAS, to induce (i) the Noteholders to acquire the Notes and (ii) Lenders to enter into the Credit Agreement, Mortgagor has agreed to execute and deliver this Mortgage to Mortgagee, as security trustee for the benefit of the Noteholders and Lenders pursuant to the Trust Agreement (the terms and provisions of the Trust Agreement being incorporated herein by reference and made a part of this Mortgage to the same extent as though set forth in full herein), to secure payment of the indebtedness from time to time evidenced by the Notes, the

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Revolving Notes and any and all other sums required to be paid by Mortgagor from time to time pursuant to the Notes, the Note Purchase Agreement, the Credit Agreement, the Revolving Notes, the Trust Agreement, this Mortgage or any of the other Financing Documents (as hereinafter defined), and also to secure the keeping, performance and observance of, and compliance with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Mortgagor pursuant to the Notes, the Note Purchase Agreement, the Credit Agreement, the Revolving Notes, the Trust Agreement, this Mortgage or any of the other Financing Documents; and

WHEREAS, in connection with the aforesaid agreements of Mortgagor, Mortgagor also has agreed to provide certain other security to Mortgagee, as such security trustee, to secure payment of the aforesaid indebtedness and other sums and the keeping, performance and observance of, and compliance with, the aforesaid covenants, agreements, conditions and provisions, which other security includes, without limitation, certain security interests in personal property of Mortgagor and certain additional mortgages or deeds of trust of real property of Mortgagor (said additional mortgages or deeds of trust, as presently constituted and as they may be amended, extended, renewed, consolidated, spread or otherwise modified from time to time after the date hereof, being collectively referred to in this Mortgage as the "Additional Mortgages"), which real property is identified in Schedule 5.10 to the Note Purchase Agreement;

WHEREAS, the Noteholders and Lenders have agreed in a certain Intercreditor Agreement among them dated of even date herewith that the obligations of Mortgagor to them pursuant to their respective loan documents shall be secured, pari passu, by this Mortgage and the Additional Mortgages and the other Financing Documents in accordance with the terms of the Intercreditor Agreement.

NOW, THEREFORE, to secure payment of the aforesaid indebtedness and other sums and the keeping, performance and observance of, and compliance with, the aforesaid covenants, agreements, conditions and provisions, and for and in consideration of the sum of Ten Dollars (\$10) paid to Mortgagor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant, confirm and grant a security interest to Mortgagee, its successors and assigns, in and to the following:

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## THE PROPERTY

(A) The land described in Schedule A attached hereto, incorporated herein and made a part hereof (the "Land"), and all trees, shrubbery, crops and other plantings now or hereafter grown on the Land;

(B) TOGETHER WITH (1) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (collectively, the "Buildings"), (2) all right, title and interest of Mortgagor, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now owned or hereafter acquired), in and to all building materials, supplies and other property now or hereafter stored at or delivered to the Land or any other location for installation in or on the Land or any of the Buildings, and all fixtures, fittings, machinery, appliances, equipment, apparatus, furnishings and personal property of every nature whatsoever now or hereafter located in or on, or attached to, and used or intended to be used in connection with the Land, any of the Buildings or any business or other operations now or hereafter conducted in or on the Land or any of the Buildings or in connection with any construction or other work now or hereafter conducted in or on the Land or any of the Buildings, (all of the property described in this clause (2), being collectively referred to in this Mortgage as the "Equipment") (the Buildings and the Equipment being collectively referred to in this Mortgage as the "Improvements"), (3) any and all oil, gas and other minerals now or hereafter produced from or allocated to the Land and any and all products now or hereafter processed or obtained from any such oil, gas or other minerals, and (4) any and all plans, specifications, drawings, books, records and similar items now or hereafter relating to the Land or the Improvements, the operation thereof, any rights thereto or any interest therein;

(C) TOGETHER WITH all proceeds, products, extensions, additions, improvements, betterments, renewals, substitutions, replacements, accessions, accretions and relictions of and to all or any part of the property described in paragraphs (A) and (B) hereof or any other property encumbered by this Mortgage;

(D) TOGETHER WITH all right, title and interest of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to (1) all streets, roads and public places (whether open or proposed) now or hereafter adjoining or otherwise providing access to the Land, (2) the land lying in the bed of such streets, roads and public places, and (3) all other sidewalks, alleys, ways, passages, vaults, water courses, strips and gores of land now or hereafter adjoining or used or intended to be used in

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connection with all or any part of the property described in paragraphs (A), (B) and (C) hereof;

(E) TOGETHER WITH all easements, rights-of-way and rights of use or passage (whether public or private), estates, interests, benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, riparian, littoral, sewer, water, air, oil, gas, mineral and subsurface rights), privileges, claims, franchises, licenses, profits, rents, royalties, tenements, hereditaments, reversions, remainders and appurtenances of every nature whatsoever in any way now or hereafter belonging, relating or appertaining to all or any part of the property described in paragraphs (A), (B), (C) and (D) hereof;

(F) TOGETHER WITH (1) any and all judgments, settlements, claims, awards, insurance proceeds and other proceeds and compensation, and any interest thereon (collectively, "Compensation"), now or hereafter made or payable in connection with (a) any casualty or other damage to all or any part of the property described in paragraphs (A), (B), (C), (D) and (E) hereof, (b) any condemnation proceedings affecting any such property or any rights thereto or any interest therein, (c) any damage to or taking of any such property or any rights thereto or any interest therein arising from or otherwise relating to any exercise of the power of eminent domain (including, without limitation, any and all Compensation for change of grade of streets or any other injury to or decrease in the value of any such property), or (d) any conveyance in lieu of or under threat of any such taking, (2) any and all proceeds of any sale, assignment or other disposition of any such property or any rights thereto or any interest therein, (3) any and all proceeds of any other conversion (whether voluntary or involuntary) of any such property or any rights thereto or any interest therein into cash or any liquidated claim, (4) any and all refunds and rebates of or with respect to any insurance premium, any Imposition (as such term is hereinafter defined) or any other charge for utilities relating to any such property (including, without limitation, any and all refunds and rebates of or with respect to any deposit or prepayment relating to any such insurance premium, Imposition or charge), and any and all interest thereon, whether now or hereafter payable or accruing, and (5) any and all accounts, accounts receivable, option rights, contract rights, general intangibles, permits, licenses, approvals, bonuses, actions and rights in action now or hereafter arising from or relating to any such property or any business or other operations conducted in or on any such property by or on behalf of or for the benefit of Mortgagor (including, without limitation, all rights of Mortgagor in and to insurance proceeds, all rights of Mortgagor in and to unearned or prepaid insurance premiums, Impositions or other

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charges for utilities, and any deposits with respect thereto and any interest thereon, and all rights of Mortgagor in and to any and all contracts and bonds relating to operation, maintenance, construction, renovation, restoration, repair, management or security of any such property);

(G) TOGETHER WITH all rents of and from all or any part of the property described in paragraphs (A), (B), (C), (D) and (E) hereof whether now or hereafter payable or accruing (including, without limitation, any and all money and other consideration paid or payable from time to time by any and all tenants, licensees, occupants or other users of any such property), and all rights of Mortgagor or any other person to collect and receive the same; provided, however, that permission is hereby given to Mortgagor, so long as no Event of Default (as hereinafter defined) shall have occurred, to collect and use such rents as, but not before, they become due and payable, which permission shall terminate immediately, without the necessity of any action by Mortgagee, upon the occurrence of any Event of Default;

(H) TOGETHER WITH (1) all right, title and interest of Mortgagor (whether as seller, purchaser or otherwise) in and to any and all agreements now or hereafter relating to any purchase and sale or other transfer of all or any part of the property described in paragraphs (A), (B), (C), (D), (E), (F) and (G) hereof (whether or not such purchase and sale or other transfer shall be completed), together with any and all down payments, earnest money deposits and other security (whether monetary or otherwise) paid or payable or deposited or to be deposited in connection with any such agreement, and (2) all right, title and interest of Mortgagor (whether as lessor, lessee or otherwise) in and to any and all leases, subleases, use, occupancy and similar agreements (including, without limitation, oil, gas and mining leases) now or hereafter relating to all or any part of the property described in paragraphs (A), (B), (C), (D) and (E) hereof (each being referred to in this paragraph as a "lease"), together with any and all guaranties and security of, for or otherwise relating to any such lease (including, without limitation, any and all cash, security deposits, advance rentals, deposits and payments of a similar nature under any such lease or under any other arrangement entered into in connection with any such lease, any and all interest thereon, and any and all right, title and interest of Mortgagor in and to property of any tenant or other person, whether such right, title and interest shall have arisen under applicable law or under any such lease or other arrangement) and together with all rent and other consideration (whether monetary or otherwise) now or hereafter payable or accruing under or in connection with any such lease (including, without limitation, any and all cancellation or termination

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payments and any and all damages payable in connection with any default), subject, however, to the conditional permission given to Mortgagor to collect and use the rents, royalties, issues, profits, revenues, income and other benefits arising under any such lease as provided above;

(I) TOGETHER WITH any and all right, title and interest of Mortgagor in all reciprocal easement agreements, operating agreements and any other agreements affecting the Land and Improvements; and

(J) TOGETHER WITH any and all further or greater estate, right, title, interest, claim and demand of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to any of the property described in the foregoing paragraphs or any rights or interests appurtenant thereto.

All of the property described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) above, and each item of property therein described, is collectively referred to in this Mortgage as the "Property."

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns, to its and their own proper use and benefit forever, upon and subject to the terms and conditions set forth in this Mortgage;

PROVIDED, HOWEVER, that if all of the Indebtedness (as hereinafter defined) shall be fully, finally and indefeasibly paid at the times, in the amounts and in the manner specified in the Financing Documents, all without any deduction or credit for any impositions or other charges or expenses paid or payable by or on behalf of Mortgagor, and if Mortgagor shall keep, perform, observe and comply with, or shall cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions of the Financing Documents, then this Mortgage and the rights and interests hereby granted and assigned to Mortgagee shall be null and void and of no further force and effect and shall be released of record upon the written request and at the expense of Mortgagor, but otherwise shall remain in full force and effect.

Mortgagor warrants, represents, covenants and agrees to and with Mortgagee, the Noteholders and Lenders as follows:

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## ARTICLE I.

### COVENANTS OF MORTGAGOR

Section 1.01. Payment of Indebtedness; Performance of Obligations. Mortgagor shall keep, perform, observe and comply with, or shall cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Mortgagor from time to time pursuant to the Notes, the Revolving Notes, the Note Purchase Agreement, the Credit Agreement, the Trust Agreement, this Mortgage, the Additional Mortgages or any other document or instrument now or hereafter evidencing or securing all or any part of the indebtedness from time to time evidenced by the Notes and Revolving Notes and/or otherwise governing the responsibilities of Mortgagor in connection with such indebtedness or in connection with the Property or any other security for such indebtedness (the Notes, the Note Purchase Agreement, the Credit Agreement, the Revolving Notes, the Trust Agreement, this Mortgage, the Additional Mortgages and all such other documents and instruments being collectively referred to in this Mortgage as the "Financing Documents"). Without limiting the generality of the immediately preceding sentence, Mortgagor shall pay or cause to be paid (a) to the Noteholders, when due, the indebtedness evidenced by the Notes, all parts of such indebtedness (whether consisting of principal, interest, premiums, prepayment premiums, the Prepayment Charge and Additional Amount [as those terms are defined in the Note Purchase Agreement], fees, charges or any other sums whatsoever), (b) to Lenders, when due, the indebtedness evidenced by the Revolving Notes or Credit Agreement, all parts of such indebtedness (whether consisting of principal, interest, premiums, prepayment premiums, fees, charges or any other sums whatsoever), (c) to the Lenders any amounts owing by Borrower under any Rate Hedging Obligations (as that term is defined in the Credit Agreement), and (d) all other sums required to be paid by Mortgagor from time to time pursuant to any of the Financing Documents, and Mortgagor shall pay and satisfy, or cause to be paid and satisfied, all other debts, obligations and liabilities from time to time secured by this Mortgage (all such indebtedness, sums, debts, obligations and liabilities being collectively referred to in this Mortgage as the "Indebtedness"). Mortgagor acknowledges and agrees that all security of any kind pursuant to the Financing Documents is security for the Indebtedness without allocation of any part or portion thereof to any portion of the Indebtedness other than the whole thereof.

Section 1.02. Incorporation of Documents. Mortgagor covenants and agrees that the loans secured hereby are to

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provide part of the financing for the acquisition of Mortgagor, as more fully set forth in the Note Purchase Agreement and Credit Agreement, and that the proceeds of the loans are to be disbursed in accordance with the provisions contained in the Note Purchase Agreement and Credit Agreement. All advances and indebtedness arising and accruing under the Note Purchase Agreement and Credit Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the aggregate face amount of any notes evidencing such indebtedness, shall be secured hereby to the same extent as though said Note Purchase Agreement and Credit Agreement were fully incorporated in this Mortgage. In the event of any conflict or inconsistency between the terms of this Mortgage and the Note Purchase Agreement or Credit Agreement, the terms and provisions of the Note Purchase Agreement and Credit Agreement shall in each instance govern and control. Notwithstanding the foregoing, no greater obligation of Mortgagor under this Mortgage than under the Note Purchase Agreement or Credit Agreement shall be considered a conflict or inconsistency between them, Mortgagor each instance being bound by such greater obligation. Each and every term and provision of the Financing Documents including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of all parties thereto, shall be considered as if a part of this Mortgage, and payment, fulfillment and performance thereof is secured hereby, and, in accordance with the Financing Documents, any default under any of the Financing Documents, which default continues beyond the applicable notice and cure period, if any, under such Financing Documents shall constitute an Event of Default (as hereinafter defined) under this Mortgage entitling Mortgagee to all the remedies provided in this Mortgage, under the Financing Documents, and by law.

Section 1.03. General Representations, Covenants and Warranties. Mortgagor fully warrants and will forever defend the title to the Property and the validity as a first priority lien and security interest, enforceability and priority of the lien and security interest created hereby against the claims of all persons whomsoever claiming or who may claim the same or any part thereof, subject to the matters described in Schedule B of a mortgagee's title insurance policy with respect to the Property accepted by Mortgagee on the date of delivery of this Mortgage ("Permitted Exceptions"). Mortgagor further warrants, represents and covenants that: (a) subject only to the Permitted Exceptions, Mortgagor is seized of an indefeasible estate in fee simple in and to the Land, the Buildings and all other parts of the Property constituting real property; (b) subject only to the Permitted Exceptions, Mortgagor has good, absolute and marketable title to the Equipment and all other parts of the Property constituting

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personal property; (c) Mortgagor has good right, full power and lawful authority, without the joinder or consent of any person, to mortgage, pledge, assign and grant a security interest in the Property pursuant to and as provided in this Mortgage, and Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Property in accordance with this Mortgage; (d) the Property is free and clear of any and all liens, security interests, charges, encumbrances and claims of other persons, of any kind whatsoever, other than the Permitted Exceptions; (e) Mortgagor will maintain and preserve the lien of this Mortgage until the Indebtedness shall have been fully, finally and indefeasibly paid; (f) all costs incurred and which have become due and payable prior to the date hereof in connection with any construction of, in or on any improvements or in connection with the purchase of any Equipment have been paid; (g) the Land has frontage on, and direct access for ingress from and egress to, physically open, public and dedicated street(s); and (h) electric, gas, sewer, water and telephone facilities and any and all other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the Property satisfactorily until the Indebtedness shall have been fully, finally and indefeasibly paid, and any easements legally required to assure the continuation of such utility service to the Property have been obtained and duly recorded.

## Section 1.04. Status of Property.

Mortgagor represents and warrants:

(a) The Property is not located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law.

(b) Mortgagor has all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business thereon and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in full compliance with all applicable federal, state and local laws, ordinances, building codes, rules and regulations pertaining to zoning, parking, construction, building, land use and environmental matters.

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(d) All public roads and streets necessary to serve the Property for the use thereof have been completed, are serviceable and have been dedicated to and formally accepted by the appropriate governmental entities.

(e) The Property is free from damage caused by fire or other casualty.

(f) There are no agreements, contracts or lease provisions, written or oral, providing any tenant of the Property or any other third party the option to purchase all or any part of the Property.

(g) Mortgagor and its agents have not entered into any leases or other arrangements for occupancy of space within the Property other than those leases furnished to Mortgagee.

(h) The Property is taxed separately without regard to any other property and for all purposes the Property may be mortgaged, conveyed, and otherwise dealt with as an independent parcel.

Section 1.05. Recordation of Mortgage and Financing Statements. Mortgagor will execute, acknowledge and deliver any financing statements and other instruments in addition or supplemental hereto, including, without limitation, contracts, licenses and permits affecting the Property, which may be requested by Mortgagee from time to time in order to perfect and maintain the validity and effectiveness of this Mortgage and the lien and security thereof to Mortgagee and in such manner and places and within such times as may be necessary or appropriate to accomplish such purposes and to preserve and protect the rights and remedies of Mortgagee. Mortgagor will furnish satisfactory evidence of every such recording, filing and registration to Mortgagee. Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact (and such appointment is coupled with an interest and is irrevocable) to file, with Mortgagor's signature, or without Mortgagor's signature in the state and county where the Property is located and any other jurisdiction in which such filing may lawfully and effectively be made without Mortgagor's signature, any and all Uniform Commercial Code financing and continuation statements which Mortgagee may deem necessary or appropriate to file with respect to this Mortgage.

Section 1.06. Taxes, Assessments and Other Charges. Subject to its rights to contest certain taxes under the Note Purchase Agreement or Credit Agreement, Mortgagor shall pay, before the same become delinquent, all taxes (including, without limitation, any registration or recording taxes incurred in connection with this Mortgage), insurance premiums,

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assessments, dues, fines, impositions, and public charges, general and special, ordinary and extraordinary, of every character (including penalties and interest), all charges made by utility companies, public or private, for services furnished or used in connection with the Property, all common area utility and maintenance charges, and all other impositions attributable to the Property ("Impositions").

Section 1.07. Defense of Title and Litigation. If the lien or security interest created by this Mortgage, or the validity, enforceability or priority thereof or of this Mortgage, or if title or any of the rights of Mortgagor or Mortgagee in or to the Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Mortgagor or Mortgagee with respect thereto, Mortgagor will promptly notify Mortgagee thereof and will diligently endeavor to cure any defect which may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and, subject to Mortgagee's approval, the compromise, release or discharge of any and all adverse claims. Mortgagee (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper for the defense of any such action or proceeding or the protection of the lien, security interest, validity, enforceability or priority of this Mortgage or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests. Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including attorneys' fees and disbursements) incurred by it in connection with the foregoing matters. All such costs and expenses of Mortgagee, until reimbursed by Mortgagor, shall be part of the Indebtedness and shall be deemed to be secured by this Mortgage.

Section 1.08. Zoning and Title Matters. Mortgagor will not, without the prior written consent of Mortgagee, (a) initiate or support any zoning reclassification of the Property, seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances, (b) modify, amend or supplement any of the Permitted Exceptions, (c) impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality, or (d) permit or suffer the

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Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement by prescription.

## Section 1.09. Insurance.

(a) Mortgagor shall keep or cause to be kept such casualty and liability insurance on the Property as required under the Note Purchase Agreement and Credit Agreement, in amounts and against insurable hazards as set forth therein. Notwithstanding anything to the contrary contained in the Note Purchase Agreement or Credit Agreement, such insurance shall be maintained in effect so long as any of the Indebtedness is outstanding, or for so long as Mortgagor has obligations to Mortgagee under the Trust Agreement, Note Purchase Agreement or Credit Agreement.

(b) Should Mortgagor fail to effect, maintain or renew any insurance provided for in this Section 1.09, the Note Purchase Agreement or Credit Agreement, or to pay the premium therefor, or to deliver to Mortgagee proper evidence thereof, Mortgagee, at its sole option and without any obligation, may procure such insurance, and any sums expended by it to procure any such insurance shall be secured by this Mortgage and shall be repaid by Mortgagor together with any late charge within five (5) days after receipt of bills therefor from Mortgagee.

(c) Mortgagor shall not obtain or carry separate insurance concurrent in form or contributing in the event of loss with that required under the Note Purchase Agreement or Credit Agreement unless Mortgagee is included therein as an insured and named in a mortgagee endorsement, with loss payable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is obtained and shall deliver the policy or policies or certificates evidencing the same to Mortgagee.

Section 1.10. Adjustment of Losses with Insurance and Application of Proceeds of Insurance. In case of loss, Mortgagee is at all times authorized to collect and receipt for any insurance money. Any insurance proceeds paid either to Mortgagor or Mortgagee pursuant to the policies required by the Note Purchase Agreement or Credit Agreement shall be delivered to and held by Mortgagee to be distributed in accordance with the Trust Agreement.

Section 1.11. Stamp Tax. If, by the laws of the United States of America, or of any state or principal subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of any Note or Revolving Notes, or recording of this Mortgage or additions to or consolidations

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of this Mortgage, whether at the original recording hereof or subsequent recordings, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of any Note or Revolving Notes or recording of this Mortgage.

Section 1.12. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the state in which the Property is located or any political subdivision thereof deducting from the value of land for the purpose of taxation 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 deeds of trust or similar instruments, or the Mortgagee's interest in the Property, or the manner of collection of taxes, so as to adversely affect this Mortgage or the Indebtedness secured hereby or the then holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor.

Section 1.13. Changes to Mortgage or Related Loan Documents. If the payment of the Indebtedness secured by this Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or whose consent to this Mortgage was obtained, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Property or any interest therein, shall take said lien subject to the rights of Mortgagee, Noteholders or Lenders to amend, modify, and supplement, restate and consolidate this Mortgage, or the Financing Documents and to vary the rate of interest and the method of computing the same, and to increase the principal amount thereof, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Property be sold, conveyed, or encumbered unless permitted by the Financing Documents.

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## Section 1.14. Eminent Domain.

(a) In the event that title to, or the temporary use of, the Property or any part thereof shall be taken pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of the Property or any part thereof during the pendency of, or as a result of a threat of, such proceedings ("Eminent Domain"), the Mortgagor shall be obligated to continue to make the payments specified in the Financing Documents.

(b) The compensation for Eminent Domain shall be applied in accordance with Section 4.4 of the Trust Agreement.

## Section 1.15. Mortgagee's Performance of Defaulted Acts; Subrogation.

(a) In case Mortgagor fails to make any payment or perform any of its covenants and agreements contained herein or in any other Financing Documents, Mortgagee may, but need not, make such payment or perform such act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture or contest any tax or assessment, including without limitation the payment of principal, premium and/or interest on the Indebtedness, whether at maturity, upon acceleration or otherwise. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the Property and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at (i) the rate provided in the Note Purchase Agreement as applicable during the continuance of an Event of Default if such amounts are advanced by the Noteholders ("Note Purchase Agreement Default Rate") or (ii) the rate provided in the Credit Agreement as applicable during the continuance of a Default ("Credit Agreement Default Rate") if such amounts are advanced by the Lenders. Inaction of Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of Mortgagor.

In the event Mortgagee shall elect, pursuant to this Section 1.15, to undertake to perform Mortgagor's obligations for restoration or rebuilding as required of Mortgagor by this Mortgage or any other Financing Documents, Mortgagee shall not

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be required to restore or rebuild the Buildings to any greater extent than will be covered by available proceeds or estimated proceeds of insurance or condemnation award. An estimate of available proceeds may be made if at such time as Mortgagee is prepared to arrange for plans, solicit bids, let a contract, or otherwise proceed with restoration, the loss may not have been adjusted with insurers or the court may not have finally determined the amount of a condemnation award. If Mortgagee shall have expended any amount for restoration or rebuilding in excess of the actual or estimated proceeds of insurance or condemnation award for the purpose of such repair or replacement, the amount of such excess ("Excess Restoration Cost") so expended by Mortgagee shall constitute additional indebtedness hereunder and shall be secured by the lien hereof.

All advances, disbursements and expenditures (collectively "advances") made by Mortgagee before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate (as such term is defined below), are hereinafter referred to as "Protective Advances":

- (i) advances pursuant to this Section 1.15;
- (ii) Excess Restoration Costs;
- (iii) advances in accordance with the terms of this Mortgage or the other Financing Documents to: (i) protect, preserve or restore the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in subsection (b)(5) of Section 15-1302 of the Illinois Mortgage Foreclosure Law, as amended from time to time ("Act");
- (iv) payments of (i) when due installments of real estate taxes and other Impositions; (ii) other obligations authorized by this Mortgage or the other Financing Documents; or (iii) with court approval any other amounts in connection with other liens, encumbrances or incumbrances reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section of this Mortgage and in Section 15-1505 of the Act;
- (v) attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d)(2) and 15-1510 of the Act and in connection with any other litigation or administrative proceeding to which the Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any such

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suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Property;

(vi) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vii) payment by Mortgagee of Impositions as required of Mortgagee by this Mortgage;

(viii) expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Act; and

(ix) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the owner thereof; (ii) if any of the Property consists of an interest in a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining of insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 15-1704 of the Act; (iv) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Property; (v) shared or common expense assessments payable to any association or corporation in which the owner of the premises is a member in any way affecting the Property; and (vi) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver.

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This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded, pursuant to Subsection (b)(5) of Section 15-1302 of the Act.

The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, be included in:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(iv) determination of the application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (e) of Section 15-1508 and (b)(2) of Section 15-1511 of the Act.

(b) Should any amount paid out, advanced or incurred hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Mortgagee and any person designated by Mortgagee shall have the right, and is hereby granted the right, to enter upon the Property for the foregoing purposes.

Section 1.16. Maintenance of Mortgagor's Interest.  
Pursuant to Section 11 of the Note Purchase Agreement and Section 6.1 of the Credit Agreement (incorporating Section 11 of the Note Purchase Agreement by reference), Mortgagor has agreed not to transfer, pledge, encumber, suffer to exist any Lien, or assign all or any interest in the Property.

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## Section 1.17. Assignment of Rents.

(a) The assignment set forth in paragraph (G) of the section of this Mortgage entitled "The Property" shall, to the extent permitted by law, constitute an absolute and present assignment of the rents, royalties, issues, profits, revenues, income and other benefits described in said paragraph, subject, however, to the conditional permission given to Mortgagor to collect and use the same as provided in said paragraph. Neither the existence nor the exercise of such conditional permission shall subordinate such assignment to any subsequent assignment by Mortgagor, and all such subsequent assignments shall be subject to the rights of Mortgagee under this Mortgage. The assignment set forth in paragraph (G) shall be fully operative without any further action by Mortgagor or Mortgagee. Mortgagee is hereby irrevocably authorized and empowered, at its option, to demand, collect, receive and enforce payment of any and all such rents, royalties, issues, profits, revenues, income and other benefits at any time during the continuance of any Event of Default (as hereinafter defined), and to give receipts, releases and satisfactions therefor, whether or not Mortgagee shall have taken, or at any time shall take, possession of the Land, the Buildings or any other part of the Property. Mortgagee is hereby irrevocably authorized to notify all tenants, licensees, invitees, guests, customers, occupants and other users of all or any part of the Property of Mortgagee's rights under this Section and under paragraph (G).

(b) Mortgagor hereby grants to Mortgagee the right, at Mortgagee's option at any time during the continuance of any Event of Default, to take all actions with respect to any and all such rents, royalties, issues, profits, revenues, income and other benefits as are contemplated by Section 2.03 of this Mortgage. Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor, at Mortgagee's option, to demand, collect, receive and enforce payment of any and all such rents, royalties, issues, profits, revenues, income and other benefits after the occurrence of any Event of Default, to give receipts, releases and satisfactions therefor and to apply such collections in the manner provided in Section 2.03, which appointment shall be deemed to be coupled with an interest. Such assignment, grant and appointment shall continue in effect until the Indebtedness shall have been paid in full. Mortgagor hereby irrevocably consents to the entry upon and taking possession of the Property by Mortgagee pursuant to such grant and appointment, whether or not foreclosure proceeding shall have been commenced. Neither the exercise by Mortgagee of any rights under this Section or the aforesaid paragraph (G), nor the application of any such rents, royalties, issues, profits,

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revenues, income or other benefits to the Indebtedness, shall cure or waive any Event of Default or any notice of any Event of Default or invalidate any such notice or any act done pursuant to this Mortgage or pursuant to any such notice.

(c) Upon request by Mortgagee, Mortgagor shall assign to Mortgagee, as additional security for the Indebtedness, by a written document approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter affecting all or any part of the Property, together with any and all guaranties and security of, for or otherwise relating to such leases and all rent and other money payable or accruing under or in connection with such leases, subject to the conditional permission given to Mortgagor to collect and use the rents, royalties, issues, profits, revenues, income and other benefits arising under such leases as provided above.

Section 1.15. Security Agreement and Financing Statements.

(a) Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the state in which the Property is located with respect to (1) any property included in the definition herein of the word "Property," which property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of the applicable section of the Code) and (2) any fixture which constitutes a part of the Property, and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof; (ii) that a security interest in and to the Property is hereby granted to Mortgagee and that, upon recordation in the real estate records of the proper office this instrument shall constitute a "fixture filing" within the meaning of the applicable section of the Code; and (iii) that all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee; all to secure payment of the Indebtedness.

(b) If any Event of Default occurs hereunder, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and any portions of the Property which are not real property in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if Mortgagee shall elect to proceed with respect to any portions of the Property which are not real property separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and ten (10) days' notice of the sale shall be reasonable notice. The reasonable

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expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses incurred by Mortgagee.

Section 1.19. After Acquired Property. To the extent permitted by law, the lien of this Mortgage shall attach automatically, without the necessity of any action by Mortgagor or any other person, to all right, title and interest of Mortgagor in and to any and all after-acquired property of the character or type described in the section of this Mortgage entitled "The Property". Mortgagor shall promptly execute and deliver to Mortgagee such documents and instruments as may be requested by Mortgagee to confirm and perfect such lien. Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to execute all such documents and instruments on behalf of Mortgagor, which appointment shall be deemed to be coupled with an interest.

## ARTICLE II.

### DEFAULTS AND REMEDIES

Section 2.01. Event of Default. As used in this Mortgage, the term "Event of Default" shall mean and refer to the occurrence of any one or more of the following events:

(a) any Event of Default, Default or Actionable Default under and as defined in the Notes, Note Purchase Agreement, the Revolving Notes, the Credit Agreement, the Trust Agreement, any of the Additional Mortgages or any other Financing Document; or

(b) failure by Mortgagor to duly keep, perform, observe or comply with, or to cause to be duly kept, performed, observed or complied with, any covenant, agreement, condition or other provision required to be kept, performed, observed or complied with by or on behalf of Mortgagor pursuant to this Mortgage (other than any covenant, agreement, condition or other provision that is the subject of a separate Event of Default pursuant to this Section); provided, however, that such failure shall not be an Event of Default unless and until written notice of such failure shall have been given to Mortgagor and such failure shall not have been cured before expiration of the period of 30 days following the giving of such notice; or

(c) discovery of any material breach or material inaccuracy of any warranty or representation of Mortgagor set forth in this Mortgage; or

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(d) any other cause for accelerating the maturity of the Indebtedness, or for declaring the Indebtedness to be immediately due and payable, pursuant to this Mortgage or any of the other Financing Documents; or

(e) the lien of this Mortgage shall cease to be a valid and perfected first priority lien, subject only to the Permitted Exceptions.

Section 2.02. Mortgagee's Power of Enforcement. At any time during the continuance of any Event of Default and following the giving of a Notice of Actionable Default (as that term is defined in the Trust Agreement) and during such time as such Notice of Actionable Default has not been withdrawn pursuant to the terms and provisions of the Trust Agreement, Mortgagee may proceed by any appropriate judicial or non-judicial action or proceeding to (a) enforce payment of all or any part of the Indebtedness in accordance with the Financing Documents, (b) declare the entire balance of any or all of the Indebtedness to be immediately due and payable without presentment, demand, protest or notice of any kind (all of which are hereby expressly waived by Mortgagor), (c) enforce performance of any term of this Mortgage or any of the other Financing Documents, (d) enforce any other rights of Mortgagee with respect to the Indebtedness, the Property or any other security for the Indebtedness, (e) foreclose this Mortgage and pursue all remedies afforded to a mortgagee under and pursuant to the Act, (f) to the extent permitted by law, pursue the partial foreclosure of this Mortgage for any part of the Indebtedness then due and payable, subject to the continuing encumbrance of this Mortgage as security for the balance of the Indebtedness not then due, (g) advance sums, in an amount to be determined by Mortgagee in its sole discretion, to satisfy any or all of Mortgagor's obligations under the Financing Documents, or (h) pursue any other rights, powers and remedies available to Mortgagee, at law or in equity, in connection with the Indebtedness, the Property or any other security for the Indebtedness. Mortgagee may pursue any or all such actions or proceedings, at Mortgagee's option, separately or concurrently and in such order as Mortgagee may desire, either with or without entry or taking possession and whether or not all or any part of the Indebtedness shall have been declared to be immediately due and payable or shall otherwise be due. Mortgagee may pursue any and all such actions or proceedings without prejudice to Mortgagee's right thereafter to foreclose this Mortgage and without prejudice to any right of Mortgagee, the Noteholders or the Lenders thereafter to proceed by any other action or proceeding to enforce any or all rights, powers and remedies of Mortgagee, the Noteholders or the Lenders with respect to the Indebtedness, the Property or any other security for the Indebtedness, whether or not the basis for any such

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subsequent action or proceeding shall be an Event of Default existing at the time such earlier action or proceeding was commenced.

## Section 2.03. Mortgagee's Right To Enter and Take Possession.

(a) At any time during the continuance of any Event of Default, whether or not foreclosure proceedings shall have been instituted, Mortgagee, to the extent permitted by law, may enter and take possession of all or any part of the Property, may exclude Mortgagor and its officers, employees, agents, contractors, attorneys and other representatives therefrom and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor and of any manager of the Property. Upon request by Mortgagee at any time during the continuance of any Event of Default, Mortgagor shall peaceably and quietly vacate, surrender and deliver possession of the Property (or any part of the Property that may be designated by Mortgagee) to Mortgagee. If Mortgagor shall not vacate, surrender and deliver possession of the Property (or such part of the Property) to Mortgagee as provided above, then, without limiting any other right to enter and take possession of the Property (or such part of the Property), Mortgagee may resort to any and all legal and equitable remedies required to evict and dispossess Mortgagor therefrom (including, without limitation, one or more summary proceedings or actions for forcible entry and detainer, trespass to try title or restitution), and Mortgagee may obtain a judgment, order or decree of any court of competent jurisdiction conferring on Mortgagee the right to immediate possession and requiring Mortgagor to immediately vacate, surrender and deliver possession of the Property (or such part of the Property) to Mortgagee. Mortgagor hereby specifically and irrevocably consents to the entry of any such judgment, order or decree. Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all costs, expenses and liabilities (including, without limitation, attorneys' fees) incurred by Mortgagee, by any of the Noteholders or by any of the Lenders in connection with any such failure to vacate, surrender and deliver possession or in connection with any such judgment, order or decree or the exercise of any such remedies, together with interest thereon at the Note Purchase Agreement Default Rate or Credit Agreement Default Rate, as applicable, from the date incurred by Mortgagee, by any of the Noteholders or by any of the Lenders until the date so paid to, or as directed by, Mortgagee.

(b) After any such entry into possession, Mortgagee, acting in Mortgagor's name or otherwise, may hold, store, use, operate, manage and control the Property (or any part of the

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Property which then is in the possession of Mortgagee) and may conduct the business and operations thereof. In doing so, Mortgagee may, but shall not be obligated to:

(i) carry out any and all necessary and desirable maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements of or to the Property (or such part of the Property);

(ii) purchase or otherwise acquire and install in or on the Property (or such part of the Property) additional fixtures, personal property and other property of the type encumbered by this Mortgage;

(iii) insure the Property or keep the Property insured;

(iv) manage, operate and exercise all rights and powers of Mortgagor with respect to the Property (or such part of the Property) and the management and operation thereof (including, without limitation, the right to enter into leases, to cancel, enforce or modify leases, to evict tenants by summary proceedings or otherwise and to take other appropriate steps to enforce leases);

(v) enter into agreements with others to exercise the rights and powers of Mortgagee under this Mortgage; and

(vi) collect and receive all rents, royalties, issues, profits, revenues, income and other benefits of and from the Property (or such part of the Property) and any business or other operations conducted therein or thereon by or on behalf of or for the benefit of Mortgagor (including those past due as well as those accruing thereafter), and apply the money so received in accordance with the provisions of the Trust Agreement.

(c) In the event of any such entry into possession, Mortgagee shall be liable to account only for rents, royalties, issues, profits, revenues, income and benefits actually received by Mortgagee while in possession of the Property. In the event of any foreclosure, Mortgagee may remain in possession of all or any part of the Property until the foreclosure sale and thereafter during any period of redemption. In the absence of any foreclosure, Mortgagee may remain in possession of all or any part of the Property as long as there exists an Event of Default. The same right of taking possession shall exist during the continuance of any subsequent Event of Default. Neither Mortgagee, any of the Noteholders nor any of the Lenders shall be obligated, by virtue of this Section or by virtue of any actions contemplated by this

Mortgage or by any of the other Financing Documents, to perform or discharge any obligation, duty or liability of Mortgagor under any lease or other agreement relating to all or any part of the Property or under any law, ordinance, rule, regulation, order, judgment, injunction or decree relating to all or any part of the Property. Neither Mortgagee, any of the Noteholders nor any of the Lenders shall incur any liability for, nor shall Mortgagor assert any claim or set off as a result of, any acts or omissions of Mortgagee, any Noteholders or any Lenders or of Mortgagee's, or any Noteholder's or any Lender's officers, employees, agents, contractors, attorneys or other representatives, while in possession of all or any part of the Property (except for damages directly caused by Mortgagee's, or any Noteholder's or any Lender's own gross negligence or intentional wrongful acts). Mortgagor hereby expressly and irrevocably waives, releases, discharges and relinquishes all such liabilities, claims and rights of set off.

(d) Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, all costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) incurred by Mortgagee, by any of the Noteholders or by any of the Lenders in connection with the holding, storage, use, operation, management, control, maintenance, repair, alteration or improvement of all or any part of the Property (except to the extent such costs, expenses and liabilities shall have been paid out of collections from the Property as provided above), together with interest thereon at the Note Purchase Agreement Default Rate or Credit Agreement Default Rate, as applicable, from the date incurred by Mortgagee, by any of the Noteholders or by any of the Lenders until the date so paid to, or as directed by, Mortgagee.

(e) Without limiting the generality of the foregoing provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act.

#### Section 2.04. Appointment of Receiver.

(a) Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Property whenever Mortgagee, when entitled to possession, so requests pursuant to Section 15-1702(a) of the Act. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Property after entry of

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a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the following powers: (i) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (ii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the Indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance; and (ii) the deficiency in case of a sale and deficiency.

(b) Upon request by Mortgagee, Mortgagor shall pay to Mortgagee, or to any other person that Mortgagee may designate, or to any such receiver, all costs, expenses and liabilities (including, without limitation, attorneys' fees, receivers' fees, agents' compensation and the fees of any manager retained by such receiver) incurred by Mortgagee, by any of the Noteholders, by any of the Lenders or by such receiver in connection with the appointment of such receiver and the exercise of the rights and powers of such receiver, except to the extent such costs, expenses and liabilities shall have been paid out of collections from the Property as provided in the immediately preceding Section, together with interest thereon at the Note Purchase Agreement Default Rate or Credit Agreement Default Rate, as applicable, from the date incurred by Mortgagee, by any of the Noteholders, by any of the Lenders or by such receiver until the date so paid to, or as directed by, Mortgagee or to such receiver.

Section 2.05. Waiver of Certain Rights. Mortgagor agrees, to the extent permitted by law, that neither Mortgagor nor any person at any time claiming through or under Mortgagor shall set up, claim or seek to take advantage of any law now or hereafter in force pertaining to the rights of sureties or

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providing for any appraisal, valuation, stay, notice of election to accelerate maturity or to declare the Indebtedness due, extension, redemption, moratorium, homestead or exemption from execution or sale, in order to prevent or hinder the foreclosure of this Mortgage during the continuance of any Event of Default, the final and absolute sale of all or any part of the Property or the final and absolute putting into possession thereof, immediately after any such sale, of the purchaser or purchasers at such sale or the enforcement of any other rights or remedies of Mortgagee, any of the Noteholders or any of the Lenders under this Mortgage or under any of the other Financing Documents. MORTGAGOR, FOR ITSELF AND FOR ANY AND ALL PERSONS WHO MAY AT ANY TIME CLAIM THROUGH OR UNDER MORTGAGOR OR WHO HEREAFTER MAY OTHERWISE ACQUIRE ANY INTEREST IN OR TITLE TO ALL OR ANY PART OF THE PROPERTY OR ANY OTHER SECURITY FOR THE INDEBTEDNESS, HEREBY IRREVOCABLY WAIVES AND RELEASES, TO THE EXTENT PERMITTED BY LAW, ALL BENEFIT OF ANY AND ALL SUCH LAWS, ANY AND ALL RIGHTS OF REDEMPTION AND ALL RIGHTS OF REDEMPTION PURSUANT TO SECTION 15-1601(b) OF THE ACT, AND ANY AND ALL RIGHT TO HAVE THE ASSETS CONSTITUTING THE PROPERTY OR ANY OTHER SECURITY FOR THE INDEBTEDNESS MARSHALLED UPON ANY FORECLOSURE OR OTHER ENFORCEMENT OF THIS MORTGAGE. Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Property in part or as an entirety. Mortgagor acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate or defined in Section 15-1219 of the Act. Neither Mortgagee, any of the Noteholders nor any of the Lenders shall be required to accept the Property, any part or parts thereof or any other security for the Indebtedness in satisfaction of all or any part of the Indebtedness. Neither Mortgagee, any of the Noteholders nor any of the Lenders shall be required to accept any apportionment of the Indebtedness to or among any part or parts of the Property or any other security for the Indebtedness. If any law now in force of which Mortgagor might take advantage despite this Section shall be repealed or shall cease to be in force after the date hereof, then such law shall not thereafter be deemed to preclude the application of this Section.

Section 2.06. Leases. Any foreclosure of this Mortgage and any other transfer of all or any, part of the Property in extinguishment of all or any part of the Indebtedness may, at Mortgagee's option, be subject to any or all leases of all or any part of the Property and the rights of tenants under such leases. No failure to make any such tenant a defendant in any foreclosure proceedings or to foreclose or otherwise terminate any such lease and the rights of any such tenant in connection with any such foreclosure or transfer shall be, or be asserted to be, a defense or hindrance to any such foreclosure or transfer or to any proceedings seeking collection of all or any

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part of the Indebtedness (including, without limitation, any deficiency remaining unpaid after completion of any such foreclosure or transfer).

Section 2.07. Suits To Protect Property. Mortgagee is hereby irrevocably authorized, at Mortgagee's option, to initiate and maintain any and all suits and proceedings that Mortgagee may deem advisable, at Mortgagor's expense (a) to prevent any impairment of the Property or of the security of this Mortgage by any unlawful acts or omissions, (b) to prevent the occurrence or continuance of any violation of this Mortgage or of any of the other Financing Documents, (c) to foreclose this Mortgage, (d) to preserve and protect Mortgagee's interest in the Property, and (e) to restrain the enforcement of, or compliance with, any law, ordinance, rule, regulation, order, judgment, injunction or decree that may be unconstitutional or otherwise invalid, if such enforcement or compliance might (in Mortgagee's judgment) impair the Property or the security of this Mortgage or be prejudicial to the interests of Mortgagee, the Noteholders or the Lenders.

Section 2.08. Application of Money by Mortgagee. Any money collected or received by Mortgagee in connection with the pursuit of any rights, powers or remedies after the occurrence of any Event of Default shall be applied, to the extent permitted by law, in accordance with the terms of the Trust Agreement.

Section 2.09. No Waiver.

(a) No delay or omission of Mortgagee, any of the Noteholders or any of the Lenders to insist upon strict performance of any obligation of Mortgagor under or in connection with this Mortgage or any of the other Financing Documents or to exercise any right, power or remedy available after the occurrence of any Event of Default shall waive, exhaust or impair any such obligation or any such right, power or remedy, nor shall any such delay or omission be construed to be a waiver of, or acquiescence in or to, any such Event of Default. Notwithstanding any such delay or omission, Mortgagee thereafter shall have the right, from time to time and as often as may be deemed advisable by Mortgagee, to insist upon and enforce strict performance of any and all obligations of Mortgagor under or in connection with this Mortgage or any of the other Financing Documents. Each and every right, power and remedy available to Mortgagee after the occurrence of any Event of Default may be exercised from time to time and as often as may be deemed advisable by Mortgagee.

(b) No waiver of any Event of Default shall extend to or affect any subsequent Event of Default or any other Event of

Default then existing, nor shall any such waiver impair any rights, powers or remedies available to Mortgagee after the occurrence of any Event of Default. After the occurrence of any Event of Default (whether or not the Indebtedness or any part thereof shall have been declared to be immediately due and payable), Mortgagee, each of the Noteholders and each of the Lenders may accept payments of amounts owing in respect of the Indebtedness, and no such acceptance shall waive any such Event of Default or result in any deceleration of maturity or in any Indebtedness which shall have been declared to be due and payable no longer being due and payable, unless Mortgagee expressly and specifically agrees in writing to any such waiver or deceleration or that such Indebtedness is no longer due and payable.

Section 2.10. Remedies Cumulative. No right, power or remedy now or hereafter available to Mortgagee, any of the Noteholders, any of the Lenders or any receiver pursuant to any of the Financing Documents or pursuant to any law or judicial decision, is or shall be exclusive of any other right, power or remedy, and each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to each and every other right, power and remedy now or hereafter available pursuant to any of the Financing Documents or pursuant to any law or judicial decision. Notwithstanding anything to the contrary set forth in this Mortgage or in any of the other Financing Documents, no act of Mortgagee shall be construed as an election to proceed under any one provision of this Mortgage or of any applicable statute or other law to the exclusion of any other such provision, statute or other law.

Section 2.11. Discontinuance of Proceedings. If Mortgagee, any of the Noteholders or any of the Lenders shall exercise any right, power or remedy available pursuant to this Mortgage or any of the other Financing Documents or pursuant to any law or judicial decision, and if such exercise and any related proceedings shall be discontinued or abandoned for any reason, or if any such proceedings shall result in a final determination adverse to Mortgagee, to such Noteholders or to such Lenders, then, to the extent permitted by law, Mortgagee, Mortgagee, such Noteholders and such Lenders thereafter shall be restored to their respective former positions and to their respective rights, powers and remedies under the Financing Documents or otherwise relating to the Indebtedness, the Property or any other security for the Indebtedness, and all rights, powers and remedies of Mortgagee, such Noteholders and such Lenders shall continue to be available as if no such exercise and no such proceedings had occurred.

Section 2.12. Additional Security. If Mortgagee, any of the Noteholders, any of the Lenders or any trustee or other

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fiduciary of Mortgagee, any of the Noteholders, or any of the Lenders at any time holds additional security for, or any guaranty of, all or any part of the Indebtedness (including, without limitation, the Additional Mortgages), then Mortgagee, such Noteholders, such Lenders or such trustee or fiduciary may foreclose such security or otherwise enforce its rights, powers and remedies with respect to, and realize upon, such security or such guaranty (as the case may be), either before or concurrently with or after a foreclosure or other enforcement of this Mortgage or of any of the other Financing Documents, without being deemed to have waived any rights, benefits, liens or security interests evidenced by or arising under or in connection with this Mortgage or any of the other Financing Documents and without being deemed to have made an election thereby or to have accepted the benefits of such guaranty or such additional security (or the proceeds thereof) in full settlement of the Indebtedness and of its rights with respect thereto. No judgment, order or decree with respect to any of the Notes or any of the Revolving Notes or with respect to any such guaranty or security, whether rendered in the State where the Land is located or elsewhere, shall in any manner affect the security of this Mortgage, and any deficiency or other debt represented by any such judgment, order or decree shall, to the extent permitted by law, be secured by this Mortgage to the same extent that the Indebtedness shall have been secured by this Mortgage prior to the rendering of such judgment, order or decree. Mortgagor, for itself and for any and all persons who may at any time claim through or under Mortgagor or who hereafter may otherwise acquire any interest in or title to all or any part of the Property or any other security for the Indebtedness, hereby irrevocably waives and releases, to the extent permitted by law, all benefit of any and all laws that would limit or prohibit the effectiveness of anything set forth in this Section.

ARTICLE III.

MISCELLANEOUS

Section 3.01. Use of Certain Terms. Each reference in this Mortgage to Mortgagor, Mortgagee, any of the Noteholders, or any of the Lenders shall be deemed also to include the successors and assigns of such person. Each reference in this Mortgage to any gender shall be deemed also to include any other gender, and the use in this Mortgage of the singular shall be deemed also to include the plural and vice versa, unless the context requires otherwise. As used in this Mortgage, the term "person" shall mean and refer to any and all individuals, sole proprietorships, partnerships, joint

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ventures, associations, trusts, estates, business trusts, corporations (non-profit or otherwise), financial institutions, governments (and agencies, instrumentalities and political subdivisions thereof), and other entities and organizations. Each reference in this Mortgage to the fees or other compensation of any agents, contractors, attorneys or other representatives of Mortgagee shall be deemed also to include expenses and disbursements, as well as fees of paraprofessionals and similar personnel (such as paralegals and legal assistants).

Section 3.02. Headings. The headings of the Articles, Sections, paragraphs and other subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part of this Mortgage and shall not limit, expand or otherwise affect any of the terms of this Mortgage.

Section 3.03. Notices. All notices, reports, demands, requests and other communications authorized or required under this Mortgage to be given to Mortgagor or Mortgagee shall be given in the manner and to the addresses specified in the Trust Agreement for the giving of notices.

Section 3.04. Binding Effect. All covenants, agreements conditions and other provisions of this Mortgage shall run with the Land and shall bind and inure to the benefit of Mortgagor, Mortgagee, the Noteholders, the lenders and their respective successors and assigns, whether so expressed or not. If there is more than one Mortgagor at any time, all undertakings of Mortgagor under this Mortgage shall be deemed to be joint and several.

Section 3.05. Provisions Subject to Applicable Laws; Invalid Provisions To Affect No Others. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, illegal or unenforceable. In the event that any of the covenants, agreements, conditions or other provisions of this Mortgage shall be deemed invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining covenants, agreements, conditions and other provisions of this Mortgage shall in no way be affected, prejudiced or disturbed thereby.

Section 3.06. Changes. Neither this Mortgage nor any covenant, agreement, condition or other provision of this Mortgage may be changed, waived, released, discharged, withdrawn, revoked or terminated orally, or by any action or inaction. In order to be effective and enforceable, any such

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change, waiver, release, discharge, withdrawal, revocation or termination must be evidenced by a written document or instrument signed by the party against which enforcement of such change, waiver, release, discharge, withdrawal, revocation or termination is sought, and then shall be effective and enforceable only to the extent specifically provided in such document or instrument. Any agreement hereafter made by Mortgagor, Mortgagee, any of the Noteholders or any of the Lenders relating to this Mortgage or to any of the other Financing Documents shall be superior to the rights of the holder, owner or beneficiary of any intervening lien or encumbrance. Neither the modification of this Mortgage or any of the other Financing Documents nor the release of any part of the Property from the lien of this Mortgage shall impair the priority of such lien.

Section 3.07. Waiver of Conditions. All conditions to any agreement or obligation of Mortgagee under this Mortgage or under any of the other Financing Documents (including, without limitation, any agreement or obligation to make any Compensation or other funds available to Mortgagor) are solely for the benefit of Mortgagee, the Noteholders and the Lenders. Any or all such conditions may be waived or relaxed at any time or times by Mortgagee. No such waiver or relaxation in any particular instance shall affect Mortgagee's discretion in dealing with any such condition in any other instance.

Section 3.08. No Benefit to Third Parties. Each covenant, agreement, condition and other provision of this Mortgage and of the other Financing Documents is and at all times shall be deemed to be for the exclusive benefit of Mortgagor, Mortgagee, the Noteholders and the Lenders. Nothing set forth in this Mortgage or in any of the other Financing Documents shall be deemed to be for the benefit of any other person (including, without limitation, the holder, owner or beneficiary of any other lien or interest in or on all or any part of the Property or the owner of any interest in Mortgagor).

Section 3.09. Exercise Of Discretion. Each and every decision, determination, estimate, request, consent or similar matter to be made or given by Mortgagee from time to time pursuant to or in connection with this Mortgage shall be within Mortgagee's sole, absolute and unlimited discretion, except to the extent expressly and specifically provided to the contrary in this Mortgage or in any of the other Financing Documents.

Section 3.10. Representatives of Mortgagee. All rights, powers and remedies of Mortgagee under this Mortgage may be exercised by Mortgagee itself or by its officers, employees, agents, contractors, attorneys or other representatives.

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Section 3.11. Governing Law. The grant of this Mortgage, the creation of Mortgagee's rights and interests hereunder, the publication and perfection of the lien, security interest and other rights and interests granted or otherwise arising hereunder and the exercise of Mortgagee's rights, powers and remedies relating to the Property (whether specifically provided in this Mortgage or provided by applicable law) shall be governed by and construed in accordance with the internal laws of the State in which the Land is located, without regard to principles of conflicts of law. Otherwise, to the extent permitted by applicable law, this Mortgage and the other Financing Documents (including, without limitation, terms relating to usury considerations and terms relating to Mortgagor's liability for any deficiency following any foreclosure of this Mortgage or any other transfer of all or any part of the Property in extinguishment of any part of the Indebtedness) shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws.

Section 3.12. Receipt of Copy Acknowledged. Each of Mortgagor and Mortgagee hereby acknowledges that it has received an accurate and complete copy of this instrument as executed by Mortgagor.

Section 3.13. Intentionally Omitted.

Section 3.14. Maximum Amount Secured. This Mortgage is given not only to secure the Indebtedness, but also to secure any other amount or amounts that may be obligatory advances or made at the option of Mortgagee, Noteholders or Lenders, and any additional disbursements as may be made by Mortgagee, Noteholders or Lenders, in accordance with the terms of this Mortgage and the Financing Documents, including the Credit Agreement. As provided in the Financing Documents, this Mortgage shall secure any and all additional or further monies which may be obligatory advances or made at the option of Mortgagee, Noteholders or Lenders, after the effective date hereof, but any and all future advances secured by this Mortgage shall be made not more than 20 years after the effective date hereof. The total amount of Indebtedness secured hereby may decrease or increase from time to time but shall not exceed the principal sum of Eighty Million Dollars (\$80,000,000). Except as otherwise provided in the Financing Documents, nothing herein contained shall be deemed an obligation on the part of the Mortgagee, Noteholders or Lenders, to make any future advances.

Section 3.15. Revolving Credit. The Indebtedness evidenced by the Revolving Notes ("Revolving Loan") which is repaid by Mortgagor may be reborrowed pursuant to and in

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accordance with the Credit Agreement. Pursuant to Section 1302(b)(3) of the Act, notwithstanding any such repayment of the Revolving Loan, all moneys advanced or applied under the Credit Agreement shall have priority from the date this Mortgage is recorded.

Section 3.16. Interest Rate Agreement. Mortgagor has entered into, or may in the future enter into, agreements for Rate Hedging Obligations ("Interest Rate Agreement") with FNBC or any other Lender, pursuant to which Mortgagor will be required to make certain payments to Mortgagee, FNBC or such other Lender as provided in such Interest Rate Agreement. Mortgagor agrees that payments due under any Interest Rate Agreement shall constitute an obligatory advance of loan proceeds secured hereby, whether or not the total indebtedness exceeds the face amount of the Revolving Notes as provided in the Interest Rate Agreement.

Section 3.17. Waiver of Jury Trial; Submission to Jurisdiction; Waiver of Service and Venue. Mortgagor reaffirms and incorporates herein the provisions of the Note Purchase Agreement and Credit Agreement (a) waiving jury trial and service of process and (b) submitting to jurisdiction and venue.

Section 3.18. Substitution of Security Trustees. Pursuant to the terms of the Trust Agreement, the Noteholders and the Lenders may remove and replace Mortgagee as security trustees thereunder.

## ARTICLE IV

### ADDITIONAL MORTGAGES

Mortgagor acknowledges and agrees that the indebtedness secured hereby is secured by the Property and various other collateral, without limitation, including at the time of execution of this Mortgage, the Property described in the Additional Mortgages which have been filed in other jurisdictions and States. Mortgagor specifically acknowledges and agrees that none of those properties, in and of itself, if foreclosed upon would be sufficient to satisfy the outstanding amount of the Indebtedness. Accordingly, Mortgagor acknowledges that it is in Mortgagor's contemplation that the various Additional Mortgages and the other collateral pledged to secure the Indebtedness may be pursued by Mortgagee in separate proceedings in the various States and counties where such collateral may be located and additionally that Mortgagor and other parties liable for payment of the Indebtedness will remain liable for any deficiency judgments in addition to any amounts Mortgagee may realize on sales of other properties or any other collateral given as security for the Indebtedness.

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Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage or any of the Additional Mortgages in any separate proceeding, that the notes evidencing the Indebtedness shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding. It is the further intent and understanding of the parties that Mortgagee, following an Event of Default, may pursue all of its collateral with the Notes and Revolving Notes remaining outstanding and in full force and effect notwithstanding any judgment of foreclosure or any other judgment which Mortgagee may obtain.

Mortgagee shall be entitled to enforce payment and performance of the Indebtedness and to exercise all rights and powers under this Mortgage or under any Financing Document or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Indebtedness may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise, including, but not limited to the Additional Mortgages. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to power of sale, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may be in its absolute discretion determine. No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Financing Documents to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

Mortgagor acknowledges and agrees that the Property and the property encumbered by the Additional Mortgages are located in one or more States and therefor Mortgagor waives and relinquishes any and all rights it may have, whether at law or equity, to require Mortgagee to proceed to enforce or exercise any rights, powers and remedies it may have under the Financing Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction.

Furthermore, Mortgagor acknowledges and agrees that Mortgagee shall be allowed to enforce payment and performance

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of the Indebtedness and to exercise all rights and powers provided under this Mortgage, the other Financing Documents, or any of them, or under any provision of law, by one or more proceedings, whether contemporaneous, consecutive or both in any one or more States in which the security is located. Neither the acceptance of this Mortgage, or of any other Financing Document, nor its enforcement in one State, whether by Court action, power of sale, or otherwise, shall prejudice or in any way limit or preclude enforcement of the Financing Documents, or any of them, through one or more additional proceedings, in that State or in any other State.

Mortgagor further agrees that any particular proceeding, including without limitation, foreclosure through court action (in a state or federal court) or power of sale, may be brought and prosecuted in the local or federal courts of any one or more States as to all or any part of the Property or the property encumbered by the Additional Mortgages, wherever located, without regard to the fact that any one or more prior or contemporaneous proceedings have been situated elsewhere with respect to the same or any other part of the Property and the property encumbered by the Additional Mortgages.

Mortgagee may resort to any other security held by Mortgagee for the payment of the Indebtedness in such order and manner as Mortgagee may elect.

Notwithstanding anything contained herein to the contrary, Mortgagee shall be under no duty to Mortgagor or others, including, without limitation, the holder of any junior, senior or subordinate mortgage on the Property or any part thereof or on any other security held by Mortgagee, to exercise or exhaust all or any of the rights, powers and remedies available to Mortgagee.

## ARTICLE V.

### TRUSTEE'S DUTY OF CARE

Mortgagee shall not be liable for any acts, omissions, errors of judgment or mistakes of fact or law including, without limitation, acts, omissions, errors or mistakes with respect to the Property, except for those arising out of or in connection with Mortgagee's gross negligence or willful misconduct, or failure to use reasonable care with respect to the safe custody of any moneys or securities in Mortgagee's possession. Without limiting the generality of the foregoing, Mortgagee shall be under no obligation to take any steps necessary to preserve rights in the Property against any other parties but may do so at its option, but all expenses incurred

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in connection therewith shall be for the sole account of Mortgagor, and shall be added to the Indebtedness secured hereby.

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

ARCHIBALD CANDY CORPORATION, an Illinois corporation

By:

Adam E. Max

Title:

J.P.

ADAM E. MAX

1756R(1)

Property of Cook County Clerk's Office

4008-12-1



# UNOFFICIAL COPY

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STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK ) ss.

I, ROCKWELL TENNEY, a Notary Public in and for the said County and State aforesaid, DO HEREBY CERTIFY, that ADAM E. MAX, the VICE PRESIDENT of Archibald Candy Corporation, an ILLINOIS corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VICE-PRESIDENT appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his(her) own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30<sup>TH</sup> day of OCTOBER, 1991.

Rockwell Tenney  
Notary Public

ROCKWELL TENNEY  
Notary Public, State of New York  
No. 4827415  
Qualified in New York County  
Term Expires December 31, 1992

Notary of Cook County Clerk's Office

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*SM*

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IN 008424

4008424  
REGISTRAR OF TITLES  
CAROL MOSELEY GRAU  
NOV - 5 AM 11:00

Submitter by  
Address  
Promise  
Deliver certificate

Adch 4008424

Deed to  
Address  
Notified

C. J. MURRELLI

CHICAGO TITLE

19-416