

Prepared by: Richard D. Rudder, Esq.  
Brown & Wood  
One World Trade Center  
New York, New York 10048

51

(North Carolina)

THIS INDENTURE IS A MORTGAGE, DEED OF TRUST AND SECURITY AGREEMENT OF BOTH REAL AND PERSONAL PROPERTY, INCLUDING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE DESCRIBED HEREIN. THIS INDENTURE CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS. THIS INDENTURE IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES OR DEEDS OF TRUST OF REAL PROPERTY ARE LOCATED. THIS INDENTURE SHOULD ALSO BE APPROPRIATELY INDEXED AS A FINANCING STATEMENT UNDER THE UNIFORM COMMERCIAL CODE. THIS INDENTURE SECURES OBLIGATIONS CONTAINING PROVISIONS FOR MODIFICATIONS IN THE TERMS OF THE SECURED OBLIGATIONS.

COLLATERAL IS OR INCLUDES FIXTURES

SECOND PRIORITY

INDENTURE OF MORTGAGE, DEED OF TRUST AND SECURITY AGREEMENT

dated as of

February 15, 1990

BETWEEN

THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION and LESE AMATO,  
acting not individually, except as otherwise provided herein,  
but solely as trustees for the trust created hereunder,

As Indenture Trustees,

and

The Fidelity Company  
as Deed of Trust Trustee,

AND

S & A PROPERTIES CORP.,

As Mortgagor

Address of Mortgagor:

12404 Park Central Drive  
Dallas, Texas 75251

Address of Indenture  
Trustees:

One Constitution Plaza  
Hartford, Connecticut 06115

Address of Deed of  
Trust Trustee:

P.O. Drawer 84  
Winston-Salem, NC 27102  
Attn: Dennis W. McNames

BOOK 1688P2192

Address of Mortgagor:

12404 Park Central Drive  
Dallas, Texas 75251

Address of Indenture  
Trustees:

One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust  
Department

Address of Deed of Trust  
Trustee:

P.O. Box Drawer 84  
Winston-Salem, NC 27102  
Attention: Dennis W. McNames

BOOK 1688 P. 2193

## TABLE OF CONTENTS

|                        | <u>Page</u> |
|------------------------|-------------|
| Parties .....          | 1           |
| Recitals .....         | 1           |
| Granting Clauses ..... | 2           |

### ARTICLE ONE

#### Definitions and Other Provisions of General Application

|              |                                 |   |
|--------------|---------------------------------|---|
| Section 101. | Definitions .....               | 5 |
|              | Act.....                        | 5 |
|              | Additional Rent.....            | 5 |
|              | Affiliate.....                  | 5 |
|              | Agent.....                      | 5 |
|              | Alterations.....                | 5 |
|              | Alternative Rate.....           | 5 |
|              | Anniversary Date.....           | 6 |
|              | Applicable Margin.....          | 6 |
|              | Applicable Rate.....            | 6 |
|              | Appraisals.....                 | 6 |
|              | Assignment.....                 | 6 |
|              | Authorized Agent.....           | 6 |
|              | Available Funds.....            | 6 |
|              | Base Sales Price.....           | 6 |
|              | Basic Rent.....                 | 6 |
|              | Board of Directors.....         | 6 |
|              | Board Resolution.....           | 6 |
|              | Business Day.....               | 6 |
|              | Co-Indenture Trustee.....       | 6 |
|              | Collection Account.....         | 6 |
|              | Commission.....                 | 7 |
|              | Corporate Trust Office.....     | 7 |
|              | Credit Agreement.....           | 7 |
|              | Deed of Trust Trustee.....      | 7 |
|              | Defaulted Interest.....         | 7 |
|              | Default Rate.....               | 7 |
|              | Diversity Requirements.....     | 7 |
|              | Eligible Investments.....       | 7 |
|              | Estate.....                     | 8 |
|              | EuroBusiness Day.....           | 8 |
|              | Event of Default.....           | 8 |
|              | Excess Land.....                | 8 |
|              | Final Sinking Fund Payment..... | 8 |
|              | Fixtures.....                   | 8 |
|              | Grant.....                      | 9 |
|              | Hazardous Materials.....        | 9 |
|              | Holder or Noteholder.....       | 9 |

Table Of Contents  
Continued

|                                                    | <u>Page</u> |
|----------------------------------------------------|-------------|
| Impositions.....                                   | 9           |
| Improvements.....                                  | 10          |
| Indenture.....                                     | 10          |
| Indenture Trustee.....                             | 10          |
| Indenture Trustees.....                            | 10          |
| Independent.....                                   | 10          |
| Installment Payment.....                           | 10          |
| Insurance Requirements.....                        | 10          |
| Interest Payment Date.....                         | 11          |
| Interest Period.....                               | 11          |
| Land.....                                          | 11          |
| Lease.....                                         | 11          |
| Legal Requirements.....                            | 11          |
| Lessee.....                                        | 11          |
| LIBOR.....                                         | 11          |
| Loan to Value Ratio.....                           | 11          |
| Maturity.....                                      | 12          |
| Mortgagor Request and Mortgagor Order...           | 12          |
| Note Reserve Fund.....                             | 12          |
| Notes.....                                         | 12          |
| Obligor.....                                       | 12          |
| Office of the Co-Indenture Trustee.....            | 12          |
| Officers' Certificate.....                         | 12          |
| Operating Cash Flow.....                           | 12          |
| Operative Documents.....                           | 12          |
| Opinion of Counsel.....                            | 12          |
| Outstanding .....                                  | 13          |
| Parking Leases.....                                | 13          |
| Paying Agent.....                                  | 13          |
| Permitted Encumbrances.....                        | 13          |
| Person.....                                        | 14          |
| Pledge Agreement.....                              | 14          |
| Predecessor Note.....                              | 14          |
| Prime Rate.....                                    | 14          |
| Properties; Property.....                          | 15          |
| Pro Rata Share.....                                | 15          |
| Redemption Date.....                               | 15          |
| Redemption Notice.....                             | 15          |
| Redemption Price.....                              | 15          |
| Reference Bank.....                                | 15          |
| Register.....                                      | 15          |
| Registrar.....                                     | 15          |
| Regular Record Date.....                           | 15          |
| Reserve Fund.....                                  | 15          |
| Responsible Officer.....                           | 16          |
| Second Priority Limited Recourse<br>Guarantor..... | 16          |

Table Of Contents  
Continued

|                                                       | <u>Page</u> |
|-------------------------------------------------------|-------------|
| Second Priority Limited Resource                      |             |
| Guaranty.....                                         | 16          |
| Security Agreements.....                              | 16          |
| Senior Guarantor.....                                 | 16          |
| Senior Subordinated Guaranty.....                     | 16          |
| Series A Indenture.....                               | 16          |
| Series A Noteholders.....                             | 17          |
| Series A Notes.....                                   | 17          |
| Series A Trustees.....                                | 17          |
| Series B Noteholders.....                             | 17          |
| Series B Notes.....                                   | 17          |
| Series B-1 Notes.....                                 | 17          |
| Series B-2 Notes.....                                 | 17          |
| Series B Subordinated Guarantor.....                  | 17          |
| Series B Subordinated Guaranty.....                   | 17          |
| Series B Trustees.....                                | 17          |
| Sinking Fund.....                                     | 17          |
| Sinking Fund Payment Dates.....                       | 17          |
| Special Record Date.....                              | 18          |
| State.....                                            | 18          |
| Stated Maturity.....                                  | 18          |
| Subordinate Assignment.....                           | 18          |
| Substantial.....                                      | 18          |
| Substitute Collateral.....                            | 18          |
| Substitute Property.....                              | 18          |
| Taking.....                                           | 18          |
| Telerate Page 3750.....                               | 18          |
| UCC.....                                              | 18          |
| Year.....                                             | 19          |
| Yield Maintenance Premium.....                        | 19          |
| Section 102. Compliance Certificates and Opinions.... | 20          |
| Section 103. Form of Documents Delivered              |             |
| to Indenture Trustees.....                            | 21          |
| Section 104. Act of Holders.....                      | 21          |
| Section 105. Notices, etc., to Indenture Trustees,    |             |
| Deed of Trust Trustee and Mortgagor...                | 22          |
| Section 106. Notice to Holders; Waiver.....           | 23          |
| Section 107. Effect of Headings and Table of Contents | 24          |
| Section 108. Successors and Assigns.....              | 24          |
| Section 109. Separability Clause.....                 | 24          |
| Section 110. Benefits of Indenture.....               | 24          |
| Section 111. Governing Law; Interpretation.....       | 24          |
| Section 112. Holidays.....                            | 25          |
| Section 113. Ratios and Computations.....             | 25          |

Table Of Contents  
Continued

|                     | <u>Page</u>                                                                          |
|---------------------|--------------------------------------------------------------------------------------|
| ARTICLE TWO         |                                                                                      |
| The Notes           |                                                                                      |
| Section 201.        | Issuance of Notes; Title and Terms..... 26                                           |
| Section 202.        | Denominations; Dating and Form..... 27                                               |
| Section 203.        | Execution of Notes..... 27                                                           |
| Section 204.        | Reserved..... 27                                                                     |
| Section 205.        | Registration; Transfer and Exchange..... 27                                          |
| Section 206.        | Mutilated, Destroyed, Lost and<br>Stolen Notes..... 28                               |
| Section 207.        | Payment of Interest;<br>Interest Rights Preserved..... 29                            |
| Section 208.        | Persons Deemed Owners of Notes..... 31                                               |
| Section 209.        | Cancellation..... 31                                                                 |
| Section 210.        | Authentication, Execution and<br>Delivery of Notes..... 32                           |
| Section 211.        | Limited Recourse..... 32                                                             |
| ARTICLE THREE       |                                                                                      |
| Redemption of Notes |                                                                                      |
| Section 301.        | Applicability of Article..... 34                                                     |
| Section 302.        | Mandatory Redemptions Other Than<br>Through Operation of the Sinking<br>Fund..... 34 |
| Section 303.        | Optional Redemption..... 35                                                          |
| Section 304.        | Redemption; Notice to Indenture<br>Trustees..... 36                                  |
| Section 305.        | Notes to be Redeemed or<br>Purchased Pro Rata..... 36                                |
| Section 306.        | Notice of Redemption to Holders..... 37                                              |
| Section 307.        | Deposit of Redemption Price; Credit<br>with Respect to Surrender of Notes.... 37     |
| Section 308.        | Notes Payable on Redemption Date..... 38                                             |
| Section 309.        | Holder's Right to Indemnity<br>or Redemption..... 39                                 |
| Section 310.        | Holder's Right to Require Redemption..... 40                                         |
| Section 311.        | Right to Release of Properties..... 42                                               |

Table Of Contents  
Continued

|                                                                                           | <u>Page</u> |
|-------------------------------------------------------------------------------------------|-------------|
| ARTICLE FOUR                                                                              |             |
| Sinking Fund and Payment of Notes<br>at Stated Maturity                                   |             |
| Section 401. Sinking Fund Payments.....                                                   | 45          |
| Section 402. Notice of Sinking Fund Payment.....                                          | 46          |
| ARTICLE FIVE                                                                              |             |
| Covenants                                                                                 |             |
| Section 501. Payment of Principal, Premium<br>(if any) and Interest.....                  | 47          |
| Section 502. Limitation Upon Liens Created by<br>Mortgagor.....                           | 47          |
| Section 503. Title; Further Assurances.....                                               | 47          |
| Section 504. Amendments, Waivers, etc. of<br>Other Documents.....                         | 49          |
| Section 505. Repayment of Monies for Note Payments<br>Held by the Indenture Trustees..... | 50          |
| Section 506. Validity of Liens.....                                                       | 51          |
| Section 507. Easements.....                                                               | 51          |
| Section 508. Affirmative Covenants.....                                                   | 51          |
| Section 509. Merger, Consolidation, etc. ....                                             | 54          |
| Section 510. Negative Covenants.....                                                      | 55          |
| ARTICLE SIX                                                                               |             |
| Satisfaction and Discharge of Indenture                                                   |             |
| Section 601. Satisfaction and Discharge of Indenture.                                     | 57          |
| Section 602. Application of Deposited Money.....                                          | 58          |
| ARTICLE SEVEN                                                                             |             |
| Remedies                                                                                  |             |
| Section 701. Events of Default.....                                                       | 59          |
| Section 702. Acceleration of Maturity;<br>Rescission and Annulment.....                   | 61          |
| Section 703. Remedies of, and Suits for Enforcement<br>by, Indenture Trustees.....        | 62          |
| Section 704. Additional Remedies.....                                                     | 65          |

Table Of Contents  
Continued

|                                                                                                               | <u>Page</u> |
|---------------------------------------------------------------------------------------------------------------|-------------|
| Section 705. Indenture Trustees May File Proofs<br>of Claim.....                                              | 67          |
| Section 706. Indenture Trustees May Enforce<br>Claims Without Possession of<br>Notes; Represents Holders..... | 68          |
| Section 707. Application of Money Collected.....                                                              | 68          |
| Section 708. Limitation on Suits.....                                                                         | 69          |
| Section 709. Unconditional Right of Holders<br>to Receive Principal, Premium<br>(if any) and Interest.....    | 69          |
| Section 710. Restoration of Rights and Remedies.....                                                          | 70          |
| Section 711. Rights and Remedies Cumulative and<br>Subject to Applicable Law.....                             | 70          |
| Section 712. Delay or Omission Not Waiver.....                                                                | 70          |
| Section 713. Control by Holders.....                                                                          | 71          |
| Section 714. Waiver of Past Defaults.....                                                                     | 71          |
| Section 715. Undertaking for Costs.....                                                                       | 72          |
| Section 716. Waiver of Appraisement, etc.; Laws.....                                                          | 72          |
| Section 717. Right to Cure or Purchase Notes.....                                                             | 73          |
| Section 718. Additional Remedies with Respect to<br>Properties Located in Texas.....                          | 75          |
| Section 719. Tennessee Deed of Trust and<br>Related Additional Remedies.....                                  | 81          |
| Section 720. Certain Matters Relating to<br>Properties Located in South Carolina..                            | 82          |
| Section 721. Certain Matters Relating to<br>Properties Located in Illinois.....                               | 83          |
| Section 722. Certain Matters Relating to Property<br>Located in Kansas.....                                   | 83          |
| Section 723. Certain Matters Relating to<br>Properties Located in Florida.....                                | 83          |
| Section 724. Certain Matters Relating to<br>Properties Located in Ohio.....                                   | 84          |
| Section 725. Certain Matters Relating to<br>Properties Located in Oklahoma.....                               | 84          |
| Section 726. Certain Matters Relating to<br>Properties Located in Alabama.....                                | 85          |
| Section 727. Certain Matters Relating to<br>Properties Located in West Virginia...                            | 86          |
| Section 728. Certain Matters Relating to<br>Properties Located in Michigan.....                               | 87          |
| Section 729. Certain Matters Relating to<br>Properties Located in Virginia.....                               | 87          |
| Section 730. Certain Matters Relating to Properties<br>Located in Massachusetts.....                          | 89          |
| Section 731. Certain Matters Relating to Properties<br>Located in Georgia.....                                | 90          |



Table Of Contents  
Continued

|                                                                                                            | <u>Page</u> |
|------------------------------------------------------------------------------------------------------------|-------------|
| Section 732. Certain Matters Relating to Properties<br>Located in North Carolina.....                      | 91          |
| Section 733. Certain Matters Relating to Properties<br>Located in Minnesota.....                           | 94          |
| Section 734. Deed of Trust Trustee.....                                                                    | 98          |
| Section 735. Authorization to Execute Instruments,<br>etc. ....                                            | 99          |
| Section 736. Title Upon Sale; Receipt of Sufficient<br>Discharge to Purchaser.....                         | 99          |
| Section 737. Purchase of Estate by a Noteholder.....                                                       | 99          |
| Section 738. Sale a Bar Against the Mortgagor.....                                                         | 100         |
| Section 739. Performance by Lessee.....                                                                    | 100         |
| Section 740. Certain Matters Relating to Properties<br>Located in the Commonwealth of<br>Pennsylvania..... | 100         |
| Section 741. Certain Matters Relating to Properties<br>Located in the State of New York.....               | 101         |

ARTICLE EIGHT

The Indenture Trustees

|                                                                                                                   |     |
|-------------------------------------------------------------------------------------------------------------------|-----|
| Section 801. Acceptance of Trusts.....                                                                            | 103 |
| Section 802. Certain Duties and Responsibilities<br>of the Indenture Trustees.....                                | 103 |
| Section 803. Notice of Defaults.....                                                                              | 104 |
| Section 804. Certain Rights of Indenture Trustees....                                                             | 105 |
| Section 805. Indenture Trustees Not Responsible<br>for Recitals, Issuance of Notes<br>or Recording; Warranty..... | 107 |
| Section 806. Indenture Trustees Shall Not Hold Notes.                                                             | 108 |
| Section 807. Funds May Be Held by Indenture<br>Trustees or Paying Agent.....                                      | 108 |
| Section 808. Compensation and Reimbursement.....                                                                  | 108 |
| Section 809. Indenture Trustee Required; Eligibility.                                                             | 109 |
| Section 810. Resignation and Removal;<br>Appointment of Successor.....                                            | 109 |
| Section 811. Acceptance of Appointment by Successor..                                                             | 111 |
| Section 812. Merger, Conversion, Consolidation<br>or Succession to Business.....                                  | 111 |
| Section 813. Right of Indenture Trustees to<br>Perform Covenants.....                                             | 112 |
| Section 814. Maintenance of Agencies.....                                                                         | 112 |
| Section 815. The Co-Indenture Trustee.....                                                                        | 114 |
| Section 816. Co-Indenture Trustee Acting with<br>Indenture Trustee.....                                           | 114 |

Table Of Contents  
Continued

|                                                                   | <u>Page</u>                                                                    |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------|
| ARTICLE NINE                                                      |                                                                                |
| Holder's Lists and Reports by<br>Indenture Trustees and Mortgagor |                                                                                |
| Section 901.                                                      | Mortgagor to Furnish Indenture Trustees<br>Names and Addresses of Holders..... |
| Section 902.                                                      | Preservation of Information;<br>Communication to Holders.....                  |
| Section 903.                                                      | Reports by Indenture Trustees.....                                             |
| Section 904.                                                      | Reports by the Mortgagor.....                                                  |
|                                                                   | 115<br>115<br>116<br>116                                                       |
| ARTICLE TEN                                                       |                                                                                |
| Supplemental Indentures                                           |                                                                                |
| Section 1001.                                                     | Supplemental Indentures Without<br>Consent of Holders.....                     |
| Section 1002.                                                     | Supplemental Indentures With Consent<br>of Holders.....                        |
| Section 1003.                                                     | Documents Affecting Immunity or<br>Indemnity.....                              |
| Section 1004.                                                     | Execution of Supplemental Indentures....                                       |
| Section 1005.                                                     | Effect of Supplemental Indentures.....                                         |
| Section 1006.                                                     | Reference in Notes to<br>Supplemental Indentures.....                          |
|                                                                   | 117<br>118<br>119<br>119<br>119<br>119                                         |
| ARTICLE ELEVEN                                                    |                                                                                |
| Reserve Funds                                                     |                                                                                |
| Section 1101.                                                     | Note Reserve Fund.....                                                         |
| Section 1102.                                                     | General Provisions Regarding<br>Collection Account and Reserve Funds..         |
|                                                                   | 121<br>121                                                                     |
| ARTICLE TWELVE                                                    |                                                                                |
| Receipt, Distribution and Application<br>of Funds in the Estate   |                                                                                |
| Section 1201.                                                     | Establishment of Collection Account.....                                       |
|                                                                   | 124                                                                            |

Table Of Contents  
Continued

|                                                                                                       | <u>Page</u> |
|-------------------------------------------------------------------------------------------------------|-------------|
| Section 1202. Receipt and Application of Basic<br>Rent When No Event of Default<br>Is Continuing..... | 124         |
| Section 1203. Certain Payments Described in<br>Section 302 and Section 303 hereof....                 | 125         |
| Section 1204. Payments During Continuance of<br>Event of Default.....                                 | 126         |
| Section 1205. Payments for Which Application is<br>Provided in Operative Documents.....               | 127         |
| Section 1206. Payments for Which No Application<br>Otherwise Provided.....                            | 127         |
| Section 1207. Payments Identifiable as to Source.....                                                 | 128         |

ARTICLE THIRTEEN

Subordination to Series A Indenture

|                                                                             |     |
|-----------------------------------------------------------------------------|-----|
| Section 1301. Subordination.....                                            | 129 |
| Section 1302. Payments to, and Action By, the<br>the Series A Trustees..... | 130 |

ARTICLE FOURTEEN

Certain Provisions Regarding the Estate

|                                                        |     |
|--------------------------------------------------------|-----|
| Section 1401. Additional Collateral.....               | 131 |
| Section 1402. Releases.....                            | 132 |
| Section 1403. Release of Excess Land and Equipment.... | 132 |

ARTICLE FIFTEEN

Miscellaneous

|                                                                                                                  |     |
|------------------------------------------------------------------------------------------------------------------|-----|
| Section 1501. Counterparts.....                                                                                  | 134 |
| Section 1502. Relationship Between Mortgagor,<br>Indenture Trustee, Co-Indenture<br>Trustee and Noteholders..... | 134 |
| Section 1503. Maximum Interest Rate.....                                                                         | 134 |
| Section 1504. Recordation.....                                                                                   | 135 |
| Section 1505. Mortgagor's Receipt of Indenture.....                                                              | 135 |

Table Of Contents  
Continued

Page

EXHIBITS AND SCHEDULES

|             |      |                       |
|-------------|------|-----------------------|
| Exhibit A   | .... | Intentionally omitted |
| Exhibit B   | .... | Intentionally omitted |
| Exhibit C   | .... | Form of Notes         |
| Exhibit C-2 | .... | Intentionally omitted |
| Exhibit D   | .... | Officer's Certificate |
| Exhibit E   | .... | Opinion of Counsel    |
| Exhibit F   | .... | Opinion of Counsel    |

Schedule A ..... Land Descriptions and Parking Leases

Appendix A ..... Indiana Fixture Filing Requirements

INDENTURE OF MORTGAGE, DEED OF TRUST  
AND SECURITY AGREEMENT

This Indenture of Mortgage, Deed of Trust, and Security Agreement (and Mortgage Deed for purposes of properties located in Connecticut) is dated as of February 15, 1990 and is between S & A PROPERTIES CORP. (the "Mortgagor"), a Delaware corporation, as mortgagor, THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, as indenture trustee, a national banking association organized and existing under the laws of the United States of America, LESE AMATO, as co-indenture trustee and, to the extent applicable, the DEED OF TRUST TRUSTEE.

WHEREAS, the Mortgagor holds title to the following property and rights (collectively, the "Properties" and individually, a "Property"):

- (i) certain parcels of real property, more particularly described in Schedule A attached hereto (such parcels both individually and collectively referred to herein as the "Land") located in the states of Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia;
- (ii) all buildings, structures and other improvements currently situated, and any hereafter constructed, on the Land (collectively, the "Improvements");
- (iii) all easements, rights and appurtenances relating to either the Land or the Improvements; and
- (iv) all equipment, machinery, fixtures, and other items of property, including, but not limited to, all components thereof, now or hereafter located in, on or used in connection with, the Improvements or necessary to the operation or maintenance thereof, which are now or hereafter owned by the Mortgagor, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, refrigerating, ventilating, waste disposal, air-cooling and air-conditioning apparatus, sprinkler systems and fire and theft protection equipment, all of which are hereby deemed by the parties hereto to constitute real estate under the laws of each State in which a Property is located, together with all replacements, modifications, alterations and additions thereto (collectively, the "Fixtures").

WHEREAS, Mortgagor desires by this Indenture to provide for, among other things, the issuance of one or more Notes and for the deposit, mortgage and pledge by Mortgagor with, and the creation of a security interest in favor of, the Indenture Trustees and to the extent applicable the Deed of Trust Trustee of the Estate, in

BOOK 1688P2204

INDENTURE OF MORTGAGE, DEED OF TRUST  
AND SECURITY AGREEMENT

This Indenture of Mortgage, Deed of Trust, and Security Agreement (and Mortgage Deed for purposes of properties located in Connecticut) is dated as of February 15, 1990 and is between S & A PROPERTIES CORP. (the "Mortgagor"), a Delaware corporation, as mortgagor, THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, as indenture trustee, a national banking association organized and existing under the laws of the United States of America, LESE AMATO, as co-indenture trustee and, to the extent applicable, the DEED OF TRUST TRUSTEE.

WHEREAS, the Mortgagor holds title to the following property and rights (collectively, the "Properties" and individually, a "Property"):

(i) certain parcels of real property, more particularly described in Schedule A attached hereto (such parcels both individually and collectively referred to herein as the "Land") located in the states of Alabama, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia;

(ii) all buildings, structures and other improvements currently situated, and any hereafter constructed, on the Land (collectively, the "Improvements");

(iii) all easements, rights and appurtenances relating to either the Land or the Improvements; and

(iv) all equipment, machinery, fixtures, and other items of property, including, but not limited to, all components thereof, now or hereafter located in, on or used in connection with, the Improvements or necessary to the operation or maintenance thereof, which are now or hereafter owned by the Mortgagor, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, refrigerating, ventilating, waste disposal, air-cooling and air-conditioning apparatus, sprinkler systems and fire and theft protection equipment, all of which are hereby deemed by the parties hereto to constitute real estate under the laws of each State in which a Property is located, together with all replacements, modifications, alterations and additions thereto (collectively, the "Fixtures").

WHEREAS, Mortgagor desires by this Indenture to provide for, among other things, the issuance of one or more Notes and for the deposit, mortgage and pledge by Mortgagor with, and the creation of a security interest in favor of, the Indenture Trustees and to the extent applicable the Deed of Trust Trustee of the Estate, in

BOOK 1688P2204

trust, as security for Mortgagor's obligations to the Holders from time to time of the Notes for the ratable benefit and security of such Holders, and

WHEREAS, the Indenture Trustees and the Deed of Trust Trustee have duly accepted the trust created by this Indenture and as evidence thereof have joined in the execution of this Indenture, and

WHEREAS, all things necessary to make this Indenture the valid and legally binding obligation of Mortgagor in accordance with its terms, for the uses and purposes herein set forth, have been done and performed.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, to secure (i) the payment of the principal of, premium (if any) and interest on the Notes hereinafter issued and from time to time Outstanding, and (ii) all other indebtedness of the Mortgagor to the Noteholders and the Indenture Trustees, now or hereafter existing, whether direct or indirect, including, without limitation, payment and performance of all of Mortgagor's covenants, agreements, and obligations hereunder, and all charges and expenses of collection incurred by the Indenture Trustees, the Deed of Trust Trustee or any Noteholder, including, without limitation, court costs and reasonable attorneys' fees and advances made for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Properties all of which are also secured by this Indenture, and (iii) all of Mortgagor's covenants herein contained and in consideration of the premises and of the purchase of the Notes by the Holders thereof, the Mortgagor has executed and delivered this Indenture; and the Mortgagor has irrevocably Granted, and by these presents and by the execution and delivery hereof does hereby irrevocably grant, bargain, sell, alien, demise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over, warrant and confirm to the Indenture Trustees, the Deed of Trust Trustee, as applicable, and their respective successors and assigns in trust, forever (to the extent legally permitted) with power of sale, for the benefit of the Holders of the Notes all right, title and interest of the Mortgagor in and to all of the property, rights, privileges and franchises described in the following Granting Clauses, to wit:

Granting Clause First

The Properties together with all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances in and to the Land, belonging or in any way appertaining thereto, including, without limitation, any streets, ways, alleys, gores or strips of land adjoining the Land; subject, however, to Permitted Encumbrances;

7

Granting Clause Second

All Basic Rent and Additional Rent and purchase prices in respect of the Properties payable under the Lease, and all other right, title and interest of the Mortgagor, as lessor under the Lease (including all renewal terms under the Lease);

Granting Clause Third

All right, title and interest of the Mortgagor, as lessee under all Parking Leases (including all renewal terms under such leases) whether now owned or hereafter acquired;

Granting Clause Fourth

Proceeds of all of the foregoing and any and all other moneys and property which may from time to time become subject to the lien hereof or which may come into the possession or be subject to the control of the Indenture Trustees or the Deed of Trust Trustee pursuant to this Indenture, including, without limitation, any amounts received pursuant to the Note Reserve Fund or the Collection Account, or any other instrument included in the Estate, including, without limitation, insurance proceeds and all awards which may at any time be made to the Mortgagor for a Taking of the whole or any part of the Estate or any interest therein and other property, if any, delivered to the Indenture Trustees or the Deed of Trust Trustee by or on behalf of the Mortgagor, it being the intention of the Mortgagor and it being hereby agreed that all property hereafter acquired by the Mortgagor and required to be subjected to the lien of this Indenture or intended so to be shall forthwith upon the acquisition thereof by the Mortgagor be subject to the lien of this Indenture as if such property were at the date hereof owned by the Mortgagor and were specifically described in this Indenture and Granted hereby or pursuant hereto;

TO HAVE AND TO HOLD the Estate and all parts thereof unto the Indenture Trustees and the Deed of Trust Trustee and their respective successors and assigns to their own use and benefit forever, BUT IN TRUST, nevertheless for the ratable and proportionate benefit and security of the Holders of the Notes Outstanding for the use and purposes and with the power and authority and subject to the terms and conditions set forth in this Indenture, to secure the payment of principal, premium, (if any) and interest payable under the Notes, which have an aggregate principal amount of Forty Million Dollars (\$40,000,000.00 U.S.) and are due and payable on April 1, 2000 and the payment and performance of Mortgagor's covenants, agreements and obligations hereunder. Notwithstanding the foregoing, this instrument, which creates a lien against property



located in Hamilton County, Ohio, secures loan indebtedness in a maximum amount at any time, exclusive of interest thereon, of 40,000,000 dollars. Notwithstanding the foregoing, this instrument which creates a lien against property located in Oklahoma County and Tulsa County in the State of Oklahoma, secures loan indebtedness in the maximum principal amounts of \$827,373 and \$631,800 respectively. Notwithstanding the foregoing, this instrument, which creates a lien against property located in Johnson County, Kansas, secures loan indebtedness in an amount of \$266,163 at any time, exclusive of interest thereon. Notwithstanding the foregoing, the maximum principal sum secured by property located in the State of New York at execution or which under any contingency may be secured at any time in the future shall not exceed the principal of \$294,577;

PROVIDED, HOWEVER, that if the Mortgagor shall promptly pay or cause to be paid to the Indenture Trustee all the principal, premium (if any) and interest payable under the Notes, at the times and in the manner stipulated therein, herein and in all other instruments securing the Notes, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform and observe all the covenants and promises in the Notes and any renewal, extension or modification thereof, and in this Indenture and in all other instruments securing the Notes to be kept, performed or observed by the Mortgagor, then this Indenture, and all the properties, interests and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect; and provided, further, however, that no obligation of the Mortgagor under the provisions of the Lease, the Parking Leases or any other instrument included in the Estate or with respect thereto shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon the Indenture Trustees;

AND UPON THE TRUSTS and subject to the covenants and conditions hereinafter set forth.

AND IT IS HEREBY COVENANTED AND DECLARED that all the Notes are to be authenticated and delivered and the Estate is to be held and applied by the Indenture Trustees or the Deed of Trust Trustee as applicable, subject to the further covenants, conditions, trusts and uses hereinafter set forth, and the Mortgagor does hereby covenant and agree to and with the Indenture Trustees and the Deed of Trust Trustee, for the ratable and proportionate benefit of all Holders of the Notes thereto appertaining as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS  
OF GENERAL APPLICATION

SECTION 101. Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in effect on the date hereof; and

(3) the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Certain terms used principally in Article Eight hereof are defined in that Article.

"Act" when used with respect to any Holder has the meaning specified in Section 104 hereof.

"Additional Rent" has the meaning specified in the Lease.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Agent" shall mean Chemical Bank or any successor Agent under the Credit Agreement.

"Alterations" shall have the meaning specified in the Lease.

"Alternative Rate" means a rate per annum equal to the Prime Rate plus 0.5 percent; such rate to change as of and on the effective date of any change in the Prime Rate.

"Anniversary Date" has the meaning specified in Section 1302 hereof.

"Applicable Margin" means 1.5 percent per annum.

"Applicable Rate" means a rate per annum equal to LIBOR plus the Applicable Margin.

"Appraisals" means the appraisals by Cushman & Wakefield, Inc., dated May 1, 1989 as set forth in their appraisal letter, dated November 3, 1989, of each of the Properties.

"Assignment" means a senior assignment of the Lease, dated as of the date hereof, from the Mortgagor, as assignor, to the Series A Trustees and the Deed of Trust Trustees under the Series A Indenture, as the case may be, as assignees, assigning the Lease and the rents and other amounts payable thereunder as collateral security for the payment of the Series A Notes, as at the time supplemented or amended as permitted hereby.

"Authorized Agent" means any Paying Agent or Registrar.

"Available Funds" has the meaning specified in Section 1301 hereof.

"Base Sales Price" shall have the meaning specified in the Lease.

"Basic Rent" shall have the meaning specified in the Lease.

"Board of Directors" means either the Board of Directors of the Mortgagor or any duly authorized committee of that Board.

"Board Resolution" means a copy of a resolution, certified by the Secretary or an Assistant Secretary of the Mortgagor to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Indenture Trustee.

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national banks in the City of Dallas, Texas, the City of Hartford, Connecticut, the City of New York, New York or the City of Boston, Massachusetts are authorized, or obligated, by law or executive order to be closed.

"Co-Indenture Trustee" means Lese Amato and, subject to the provisions of Article Eight hereof, her successors in the trusts hereby created.

"Collection Account" means the account established, maintained and denominated as such pursuant to Section 1201 hereof.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

"Corporate Trust Office" means the principal office of the Indenture Trustee at which its corporate trust business shall be administered, which at the date of this Indenture is located at One Constitution Plaza, Hartford, Connecticut 06115 Attention: Corporate Trust Department.

"Credit Agreement" shall mean that certain agreement, dated as of July 25, 1989, among Benale Corporation, Benale Holdings Corporation, Chemical Bank and the Persons listed in Section 2.01 thereof, as such agreement may be amended, supplemented or modified from time to time.

"Deed of Trust Trustee" has the meaning specified in Section 734.

"Defaulted Interest" has the meaning specified in Section 207 hereof.

"Default Rate" means a rate per annum equal to the lesser of either (i) the greater of either (a) the Applicable Rate or the Alternative Rate whichever is then in effect plus 1% or (b) 13.75% or (ii) the maximum rate permitted by law.

"Diversity Requirements" has the meaning specified in the Lease.

"Eligible Investments" shall mean:

(i) any direct obligations of, and obligations fully guaranteed by, the United States of America, including any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America.

(ii) (A) demand and time deposits, in certificates of deposit of, banker's acceptances issued by, or Federal funds sold by any depository institution or trust company incorporated under the laws of the United States of America or any state thereof and subject to the supervision and examination by Federal and/or state authorities or under the laws of any other jurisdiction, as long as at the time of such investment or contractual commitment providing for such investment the commercial paper or other short-term debt obligations of such depository institution or trust company have a credit rating of AA from Standard & Poor's

Corporation and Aa from Moody's Investors Service, Inc. or (B) any other demand or time deposit or certificate of deposit which is fully insured by the Federal Deposit Insurance Corporation;

(iii) repurchase obligations with respect to (A) any security described in clause (i) above or (B) any other security issued or guaranteed by an agency or instrumentality of the United States of America, in either case entered into with a depository institution or trust company (acting as principal) described in clause (ii) (A) above or with any money trust maintained by a broker wherein such trust has a credit rating of AA from Standard & Poor's Corporation and Aa from Moody's Investors Service, Inc.;

(iv) securities bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States of America or any State thereof which have a credit rating of AA from Standard & Poor's Corporation and Aa from Moody's Investors Service, Inc. at the time of such investment;

(v) commercial paper having a rating of AA from Standard & Poor's Corporation and Aa from Moody's Investors Service, Inc. at the time of such investment or pledge as security; or

(vi) any direct obligations of, and obligations fully guaranteed by, a government of a sovereign national which has a credit rating of AA from Standard & Poor's Corporation and Aa from Moody's Investors Service, Inc.

"Estate" means the properties and rights Granted pursuant to the granting clauses of this Indenture and all other property and rights, from time to time subjected to the lien hereof.

"EuroBusiness Day" means any Business Day on which commercial banks in London, England, New York, New York, Boston, Massachusetts and Hartford, Connecticut, are open for domestic and international business (including dealing in United States dollar deposits).

"Event of Default" has the meaning specified in Section 701 hereof.

"Excess Land" has the meaning specified in the Lease.

"Final Sinking Fund Payment" has the meaning specified in Section 401 hereof.

"Fixtures" has the meaning set forth in the recitals to this Indenture.

"Grant" with respect to any property means grant, bargain, sell, alien, demise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over, warrant and confirm, and grant a security interest in, such property.

"Hazardous Materials": means collectively, (A) any substance now or hereafter designated pursuant to Section 1321(b)(2)(A) of Title 33 of the United States Code Annotated (the "Code"), (B) any element, compound, mixture, solution, or substance designated pursuant to Section 9602 of Title 42 of the Code, (C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act Section 6921 of Title 42 of the Code (but not including any waste the regulation of which under the Solid Waste Disposal Act, Section 69091, et seq., Title 42 of the Code, has been suspended by Act of Congress), (D) any toxic pollutant listed under Section 1317(a) of Title 33 of the Code, (E) any hazardous air pollutant listed under Section 112 of the Clear Air Act, Section 7412 of Title 42 of the Code, (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to Section 2606 of Title 15 of the Code, and (G) any substances now or hereafter defined as or included in the definitions of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" under any applicable federal, state, or local laws or regulations.

"Holder" or "Noteholder" means a Person in whose name a Note is registered in the Register.

"Impositions" means all taxes (including, without limitation, all ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction privilege, privilege or license or similar taxes), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not commenced or completed within the term of this Indenture), ground rents, water, sewer or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of each Property and/or the Basic Rent or Additional Rent (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a lien upon (a) Mortgagor (including, without limitation, all franchise, single business or other taxes imposed on Mortgagor for the privilege of doing business in the jurisdiction in which the Property is located) or the Indenture Trustees, Deed of Trust Trustee, or any Noteholder, (b) a Property or any part thereof or any rent therefrom or any

estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with a Property or the leasing or use of any Property or any part thereof, or the acquisition or financing of the acquisition of the Properties by Mortgagor. Nothing contained in this Indenture shall be construed to require the Mortgagor to pay any tax, assessment, levy or charge imposed on any Noteholder or trustee hereunder in the nature of a franchise, capital levy, estate, inheritance, succession, transfer, net income or net revenue tax of any Noteholder or trustee hereunder provided, in the case of any trustee hereunder, such tax, assessment, levy or charge is measured or based upon any fees received by such trustee in its capacity as such under this Indenture.

"Improvements" has the meaning set forth in the recitals to this Indenture.

"Indenture" means this Second Priority Indenture as originally executed or as it may hereafter from time to time be supplemented or amended by one or more indentures supplemental hereto.

"Indenture Trustee" means The Connecticut Bank and Trust Company, National Association a national banking association organized and existing under the laws of the United States of America and, subject to the provisions of Article Eight hereof, its successors in the trusts hereby created.

"Indenture Trustees" means the Indenture Trustee and the Co-Indenture Trustee.

"Independent" means, when used with respect to any Person, a Person who (i) is in fact independent, (ii) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any other obligor upon the Notes, or in any Affiliate of the Mortgagor or such other obligor and (iii) is not connected with the Mortgagor or such other obligor or any Affiliate of the Mortgagor or such other obligor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions. Whenever it is herein provided that any Independent Person's opinion or certificate shall be furnished to the Indenture Trustees, such person shall be appointed by a Mortgagor Order. Such opinion or certificate shall state that the signor has read this definition and that the signor is Independent within the meaning hereof.

"Installment Payment" means any payment of principal and interest due on any Interest Payment Date.

"Insurance Requirements" means all material terms of any insurance policy required by the Lease, all material requirements

of the issuer of any such policy, and all material regulations and then current standards applicable to or affecting a Property or any use or condition thereof, which may, at any time, be recommended by either (i) the Board of Fire Underwriters, if any, having jurisdiction over such Property, or (ii) the Factory Mutual System (or any other body exercising similar functions).

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Notes.

"Interest Period" means (i) a period beginning on the date of issuance of the Notes and ending on the last EuroBusiness Day in September, 1990, and (ii) thereafter, a period beginning on the day immediately succeeding the last EuroBusiness Day of each September and March and ending on the last EuroBusiness Day of each March and September, respectively, thereafter through Maturity.

"Land" has the meaning set forth in the recitals.

"Lease" means the Lease, dated as of the date hereof, between Mortgagor, as lessor, and the Lessee, as lessee, as such Lease may hereafter from time to time be supplemented, amended, waived or modified in accordance with the terms thereof and to the extent permitted by this Indenture.

"Legal Requirements" means all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions (including, without limitation any of the foregoing relating to Hazardous Materials) affecting either any Property or the construction, use or alteration thereof, whether now or hereafter enacted and in force, including any which may (i) require repairs, modifications or alterations in or to a Property or (ii) in any way limit the use and enjoyment thereof, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Mortgagor, at any time in force affecting a Property.

"Lessee" means S & A Restaurant Corp., its permitted successors and assigns, as lessee under the Lease.

"LIBOR" means for each Interest Period, the rate of interest for deposits in United States dollars for a period approximately equal to such six month Interest Period which appear on the Telerate Page 3750 as of 11:00 a.m., London time, on a day that is two EuroBusiness Days preceding the commencement of such Interest Period.

"Loan to Value Ratio" means the ratio, expressed as a percentage, as of the date of determination, of the aggregate



outstanding principal balance of the Notes and Series A Notes allocable to a particular Property, to the appraised value of the Properties as set forth in the Appraisals.

"Maturity" when used with respect to any Note, means the date on which the final payment of principal of, and premium, (if any) on, such Note becomes due and payable as therein or herein provided, whether at a Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Mortgagor Request" and "Mortgagor Order" mean, respectively, a written request or order signed in the name of the Mortgagor by any officer of the Mortgagor referred to in the definition of Officers' Certificate.

"Note Reserve Fund" means the fund established, maintained and denominated as such pursuant to Section 1101 hereof.

"Notes" means the Series B Notes, and individually, a "Note".

"Obligor", when used with reference to the Notes or this Indenture, means the Mortgagor and any successor to the obligations of the Mortgagor or the Lessee under the Lease or any Affiliate of either of them.

"Office of the Co-Indenture Trustee" means the office of Lese Amato, One Constitution Plaza, Hartford, Connecticut 06115.

"Officers' Certificate" means a certificate of the Mortgagor signed by the President or any Vice President or the Treasurer or any other officer authorized to so sign by the board of directors or by-laws of the Mortgagor, and delivered to the Indenture Trustees.

"Operating Cash Flow" means, collectively gross sales plus vending income less the cost of sales, labor, operating expenses (net of vending income), insurance, property taxes and all other controllable costs but before deduction for depreciation, amortization, advertising expenses, general and administrative expenses (corporate, concept, trainee and regional), other income/expenses, interest expenses and income taxes.

"Operative Documents" means the Lease, the Subordinate Assignment, the Series B Subordinated Guaranty, the Second Priority Limited Recourse Guaranty and the Pledge Agreement.

"Opinion of Counsel" means an opinion or opinions in writing signed by Independent legal counsels to the Mortgagor or the Lessee, as the case may be, designated by the Mortgagor or the Lessee, as the case may be, and reasonably satisfactory to the

Indenture Trustees; provided, however, that legal counsels need not be Independent if specifically so provided herein.

"Outstanding", when used with respect to the Notes, means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(i) Notes theretofore cancelled by the Indenture Trustees or delivered to the Indenture Trustees for cancellation pursuant to Section 209 hereof or otherwise;

(ii) Notes for which payment or redemption money in the necessary amount has been theretofore deposited with the Indenture Trustees in trust for the Holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Indenture Trustees has been made; and

(iii) Notes in exchange for or in lieu of which, other Notes have been authenticated and delivered pursuant to this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Notes Outstanding have given any request, demand, authorization, direction, notice, waiver or consent hereunder, Notes owned by the Mortgagor, or any other Obligor of the Notes, the Lessee, or any Affiliate of the Mortgagor or such other Obligor or the Lessee, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Indenture Trustees shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which the Indenture Trustees know to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Indenture Trustees that the pledgee has the right so to act with respect to such Notes and that the pledgee is not the Mortgagor, or any other Obligor of the Notes, the Lessee or any Affiliate of the Mortgagor or such other Obligor or the Lessee.

"Parking Leases" means any and all leases or rights to use and occupy granted now or hereafter to Mortgagor with respect to any land and improvements for parking for patrons and employees of any restaurant located on any of the Properties subject to the lien hereof, and specified in Schedule A.

"Paying Agent" means any person acting as Paying Agent hereunder pursuant to Section 814 hereof.

"Permitted Encumbrances" means with respect to a Property, collectively, (a) all liens and encumbrances disclosed in the

7

title insurance policy issued on such date insuring this Indenture with respect to such Property, insofar as the same may at the time be in effect and be applicable to such Property or any part thereof and shall include, without limitation, the Series A Indenture and the Assignment, (b) liens, if any, for taxes, assessments and governmental charges not yet due or delinquent, or being contested in good faith and by appropriate proceedings in the manner permitted by Article XIII of the Lease, (c) all mechanics' and materialmen's liens insured against under the loan policy of title insurance delivered to the Indenture Trustees contemporaneously herewith and all other such liens which are being contested in good faith and by appropriate proceedings in the manner permitted by Article XIII of the Lease, (d) any and all governmental and public utility easements, licenses or other agreements which have heretofore been granted by the Mortgagor or any predecessor in title or which may hereafter be granted by the Mortgagor with the consent of Lessee and which do not materially and adversely affect (i) the marketability of title to such Property, (ii) the fair market value thereof, or (iii) the use thereof for purposes of the Lease; provided, however, Lessee shall deliver to the Indenture Trustees a certificate of an officer of Lessee as required pursuant to the provisions of the last sentence of Section 12 of the Lease, and (e) such other title and survey exceptions as the Holders pursuant to an Act of Holders may approve.

"Person" means any individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Pledge Agreement" means the Series B Pledge Agreement, dated as of the date hereof, of the holders of all of the outstanding capital stock of the Mortgagor, as pledgor, pledging such stock to the Indenture Trustees, as pledges, as collateral securing the performance by such holders of the Second Priority Limited Recourse Guaranty.

"Predecessor Note" of any particular Note means each previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note, and, for the purposes of this definition, any Note authenticated and delivered under Section 206 hereof in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

"Prime Rate" means, on any day, the prime or base rate for domestic commercial loans announced from time to time by at least two of the three Reference Banks at their respective principal offices as in effect for such day. In the event that on any day the same rate shall not be in effect for two of the three

Reference Banks, the Prime Rate shall on such day be equal to the average (rounded upwards if necessary to the nearest 1/8th of one percent) of the respective prime or base rates for domestic commercial loans announced from time to time by the Reference Banks at their respective principal offices as in effect on such day.

"Properties; Property" each have the meanings set forth in the recitals to this Indenture.

"Pro Rata Share" means a fraction, the numerator of which is the then aggregate principal balance of the Notes Outstanding and the denominator of which is the sum of the then aggregate principal balance of the Notes Outstanding plus the then aggregate principal balance of the Series A Notes Outstanding.

"Redemption Date", when used with respect to any Note to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Notice" has the meaning specified in Section 310(a) hereof.

"Redemption Price", when used with respect to any Note or portion thereof to be redeemed, means 100% of the principal amount thereof, plus the applicable premium (if any) as specified in this Indenture and accrued interest to the Redemption Date. Such term does not include installments of interest the Stated Maturity of which is before the Redemption Date, except in the case of Defaulted Interest.

"Reference Bank" means each of Chemical Bank, Citibank, N.A. and Manufacturers Hanover Trust Company (or their respective successors), provided that in the event any of the foregoing banks shall cease to announce a prime or base rate for domestic commercial loans, the Indenture Trustee shall be entitled to substitute another bank for such bank by giving the Mortgagor and Lessee notice thereof.

"Register" has the meaning specified in Section 205 hereof.

"Registrar" mean any person acting as Registrar hereunder pursuant to Section 814 hereof.

"Regular Record Date" for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) next preceding such Interest Payment Date.

"Reserve Funds" means the Note Reserve Fund, the Credit Reserve Fund or any other reserve fund established hereunder pursuant to an indenture supplemental hereto.

"Responsible Officer", when used with respect to the Indenture Trustee, means the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Vice President (whether or not designated by a number or a word or words added before or after the title "Vice President"), the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, any Senior Corporate Trust Officer, any Corporate Trust Officer or any other officer customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Second Priority Limited Recourse Guarantor" means any signatory to the Second Priority Limited Recourse Guaranty.

"Second Priority Limited Recourse Guaranty" means the Second Priority Limited Recourse Guaranty of payment of the Notes from each of the holders of the outstanding capital stock of the Mortgagor and each of the owners of the Equipment (as defined in the Lease), dated as of the date hereof, as the same may be supplemented or amended in accordance with the terms thereof or hereof.

"Security Agreements" means, collectively, all agreements, executed and delivered by an owner of a portion of the Equipment (as such term is defined in the Lease), each dated as of the date hereof, as the same may be supplemented or amended in accordance with the terms hereof, creating a security interest in the Equipment located on each Property and more particularly described therein.

"Senior Guarantor" means S & A Restaurant Corp., its permitted successors and assigns, as guarantor under the Senior Subordinated Guaranty.

"Senior Subordinated Guaranty" means the Series A Senior Subordinated Guaranty of even date herewith evidencing the guaranty of the Mortgagor's payment and performance obligations under the Series A Notes and the Series A Indenture from the Senior Guarantor, as the same may be supplemented or amended in accordance with the terms thereof.

"Series A Indenture" means the First Priority Indenture of Mortgage, Deed of Trust and Security Agreement, dated as of the date hereof, from the Mortgagor to the Series A Trustees for the benefit of the Series A Noteholders, creating a lien on the Estate which is senior and superior in all respects to the lien of this Indenture, except as otherwise set forth therein.

"Series A Noteholders" means the holders from time to time of the Series A Notes.

"Series A Notes" means (i) the Series A-1 Guaranteed First Priority Mortgage Notes due April 1, 2000, of the Mortgagor issued under and pursuant to the Series A Indenture, and any Series A-1 Notes issued in exchange therefor or in replacement thereof and (ii) the Series A-2 Guaranteed First Priority Mortgage Notes due April 1, 2000, of the Mortgagor issued under and pursuant to the Series A Indenture, and any Series A-2 Notes issued in exchange therefor or in replacement thereof.

"Series A Trustees" means The Shawmut Bank, N.A. and Max Goldsmith and any successor(s) in trust.

"Series B Noteholders" means the holders from time to time of the Series B Notes.

"Series B Notes" means the Series B-1 Notes and the Series B-2 Notes.

"Series B-1 Notes" means the notes, substantially in the form of Exhibit C-1 hereto, and any notes issued in exchange therefor or in replacement thereof pursuant to the provisions of the Indenture.

"Series B-2 Notes" means the notes, substantially in the form of Exhibit C-2 hereto, and any Notes issued in exchange therefor or in replacement thereof pursuant to the provisions of the Indenture.

"Series B Subordinated Guarantor" means S&A Restaurant Corp., its permitted successors and assigns, as guarantor under the Series B Subordinated Guaranty.

"Series B Subordinated Guaranty" means the Series B Subordinated Guaranty of even date herewith evidencing the guaranty of the Mortgagor's payment and performance obligations under the Notes and this Indenture from the Series B Subordinated Guarantor, as the same may be supplemented or amended in accordance with the terms thereof or hereof.

"Series B Trustees" means The Connecticut Bank and Trust Company, National Association and Lese Amato, and any successors in trust.

"Sinking Fund", means with respect to the Notes, the sinking fund provided for in Article Four hereof.

"Sinking Fund Payment Dates" has the meaning set forth in Section 401 hereof.

7

"Special Record Date" for the payment of any Defaulted Interest means the date fixed by the Indenture Trustee pursuant to Subparagraph (d) of Section 207 hereof.

"State" means with respect to each Property, the state in which such Property is located.

"Stated Maturity", when used with respect to any Note or any installment of interest thereon, means the date specified in such Note as the fixed date on which a payment of all or any portion of principal of such Note or such installment of interest is due and payable.

"Subordinate Assignment" means an assignment of the Lease, dated as of the date hereof, from the Mortgagor, as assignor, to the Series B Trustees, as assignees, assigning the Lease and the rents and other amounts payable thereunder, as collateral security for the payment of the Series B Notes, as at the time supplemented or amended, which assignment is subordinated in all respects to the Assignment, except as otherwise expressly set forth therein.

"Substantial" shall have the meaning specified in the Lease.

"Substitute Collateral" means full faith and credit obligations of the United States of America or any political subdivision thereof or debt obligations of corporations rated at least AA and Aa by Standard & Poor's Corporation and Moody's Investor's Service, Inc., respectively.

"Substitute Property" shall have the meaning specified in Section 1401(b).

"Taking" means a taking or voluntary conveyance during the term hereof of all or part of any Property, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of any condemnation or other eminent domain proceeding affecting a Property whether or not the same shall have actually been commenced.

"Telerate Page 3750" means the display designated as "Page 3750" on the Telerate Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for United States Dollar deposits).

"UCC" means the Uniform Commercial Code as in effect in a particular State.

"Year" means a twelve-month period, commencing on the date of initial issuance of the Notes, or on any annual anniversary date thereof, as the case may be.

"Yield Maintenance Premium" means with respect to the Series B-1 Notes only, the premium which shall be the product of (1) the positive difference (expressed as a percentage of the outstanding aggregate principal amount of the Series B-1 Notes before the planned redemption), if any, as of the date of determination, between (a) the present value of all future payments of principal and interest, including the principal amount due at maturity to be made on the outstanding aggregate Series B-1 Notes before the planned redemption, discounted at an interest rate per annum equal to (i) the then "Treasury Constant Maturity Yield Index" (described below) for instruments having a maturity coterminous with, or proximate, but not prior to, the remaining average life of the Series B-1 Notes, plus (ii) 125 basis points and (b) the outstanding aggregate principal amount of the Series B-1 Notes before the planned redemption; the "Treasury Constant Maturity Yield Index" is the average yield for "This Week" as reported by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) published during the second full week preceding the date on which such premium is payable, and (2) the principal amount of Series B-1 Notes being redeemed; provided, however, if there is no Treasury Constant Maturity Yield Index with the maturity referred to above, the weighted average yield to maturity of the Treasury Constant Maturity Yield Indices with maturities next longer and shorter than such remaining average life to maturity, calculated by averaging (and rounding upward to the nearest whole multiple of 1/100 of 1% per annum, if the average is not such a multiple) the yields of the relevant Treasury Constant Maturity Yield Indices (rounded, if necessary, to the nearest 1/100 of 1% with any figure of 1/200 of 1% or above rounded upward); any weighted average yield of Treasury Constant Maturity Yield Indices with two maturities is to be calculated by the Mortgagor in accordance with the following formula:

$$WAY = Y1 + \frac{(Y2 - Y1) (AL - X1)}{(X2 - X1)}$$

Where:

WAY = weighted average yield.

AL = remaining average life to maturity of the Series B-1 Notes.

X1 = number of years closest to and less than AL which equals the maturity of a Treasury Constant Maturity Yield Index for instruments having a maturity shorter



than the remaining average life of the Series B-1 Notes.

X2 = number of years closest to and greater than AL which equals the maturity of a Treasury Constant Maturity Yield Index for instruments having a maturity longer than the remaining average life of the Series B-1 Notes.

Y1 = yield of a Treasury Constant Maturity Yield Index with maturities equal to X1.

Y2 = yield of a Treasury Constant Maturity Yield Index with maturities equal to X2.

SECTION 102. Compliance Certificates and Opinions.

Upon any application or request by the Mortgagor to the Indenture Trustees to take any action under any provision of this Indenture, the Mortgagor shall furnish to the Indenture Trustees an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and, upon request of the Indenture Trustees, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with;

(4) a statement as to whether or not, in the opinion of each such individual, such condition or covenant has been complied with; and

(5) where required, a statement that such individual is Independent.

**SECTION 103. Form of Documents Delivered to Indenture Trustees.**

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Mortgagor may, insofar as it relates to legal matters, be based upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or any Opinion of Counsel may, insofar as it relates to factual matters, be based upon a certificate or opinion of, or representations by, an officer or officers of the Mortgagor stating that the information with respect to such factual matters is in the possession of the Mortgagor, unless such counsel knows or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Whenever any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, such Person may, but need not, consolidate such instruments into one.

**SECTION 104. Act of Holders.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Indenture Trustees and, if hereby expressly required, to the Mortgagor. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein

sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 802 hereof) conclusive in favor of the Indenture Trustees and the Mortgagor, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing and the authority of the Person executing any instrument or writing in cases where a Note is not held by a Person in an individual capacity may be proved in any reasonable manner which the Indenture Trustees deem sufficient.

(c) The ownership of Notes shall be proven by the Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Indenture Trustees or the Mortgagor in reliance thereon, whether or not notation of such action is made upon such Note.

SECTION 105. Notices, etc., to Indenture Trustees, Deed of Trust Trustee and Mortgagor.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Indenture Trustees by any Holder, by the Mortgagor or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and delivered (if sent by a service that guarantees next day delivery) or mailed (by first class registered or certified mail, return receipt requested and postage prepaid) to the Indenture Trustee at its Corporate Trust Office, Attention: Corporate Trust Department and to the Co-Indenture Trustee, at the Office of the Co-Indenture Trustee, or

(2) the Deed of Trust Trustee by the Indenture Trustees, by any Holder, by the Mortgagor or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, certified, first class postage prepaid, to such Deed of Trust Trustee at the address set forth in Section 734 hereof, or

(3) the Mortgagor by any Holder, by the Indenture Trustee, by the Co-Indenture Trustee, by the Deed of Trust Trustee or by an Authorized Agent shall be sufficient for

every purpose hereunder if in writing and mailed, certified, first-class postage prepaid, to the Mortgagor, to the attention of the President, addressed to it at 12404 Park Central Drive, Dallas, Texas 75251, or

(4) an Authorized Agent by any Holder, by the Mortgagor, by the Indenture Trustee or by the Co-Indenture Trustee shall be sufficient for every purpose hereunder if in writing and mailed, certified, first-class postage prepaid, to such Authorized Agent at its principal office at which its corporate trust business is administered.

or to any of the above parties at any other address subsequently furnished in writing by it to each of the other parties listed above. Any notice properly mailed in the manner set forth above shall be deemed given five days after the date of mailing and any notice properly sent by overnight delivery in the manner set forth above shall be deemed given one day after the date sent.

Whenever the Lessee shall send to the Mortgagor, any notice, report, certificate, opinion or other document pursuant to the Lease, the Mortgagor shall promptly after receipt thereof give or furnish the Indenture Trustee a copy of such notice in the manner provided above. The Mortgagor shall provide to each Holder requesting the same, a copy of all communications sent to the Indenture Trustees from, or on behalf of, the Mortgagor.

**SECTION 106. Notice to Holders; Waiver.**

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, certified, first-class postage prepaid, to each Holder affected by such event, at its address as it appears in the Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holder nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice properly mailed in the manner set forth above shall be deemed given five days after the date of mailing.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Indenture Trustees, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 107. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 108. Successors and Assigns.

All covenants, agreements, representations and warranties in this Indenture by the Indenture Trustees, the Deed of Trust Trustees, the Authorized Agent and the Mortgagor shall bind and, to the extent permitted hereby, shall inure to the benefit of and be enforceable by their respective successors and assigns, whether or not so expressed.

SECTION 109. Separability Clause.

In the event any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 110. Benefits of Indenture.

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 111. Governing Law; Interpretation.

THIS INDENTURE AND EACH OF THE NOTES ARE BEING EXECUTED AND DELIVERED IN THE STATE OF NEW YORK AND, EXCEPT AS PROVIDED BELOW, THE PROVISIONS HEREOF AND OF THE NOTES (INCLUDING, WITHOUT LIMITATION, ALL PROVISIONS THEREOF REGARDING THE CONTRACTING FOR, CHARGING OR RECEIVING OF INTEREST) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS FROM TIME TO TIME IN EFFECT IN THE STATE IN WHICH THE APPLICABLE PORTION OF THE ESTATE IS SITUATED.

In any jurisdiction in which this Indenture shall be deemed to be a deed of trust the beneficiaries thereof shall be deemed to be the Holders of the Notes issued and Outstanding hereunder (except in respect of properties located in the State of Colorado and the State of North Carolina, in which case the Indenture Trustees may be deemed to be the beneficiaries thereof and shall in such capacity act on behalf of said Holders).

SECTION 112. Holidays.

In the event any Interest Payment Date, any Redemption Date or the Stated Maturity of the Notes, or any date on which any Defaulted Interest is to be paid, shall not be a Business Day, then (notwithstanding any other provision of this Indenture) payment of interest or principal or premium (if any) need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date or Redemption Date, at the Stated Maturity, or on the date on which the Defaulted Interest is proposed to be paid, and no interest shall accrue for the period from such Interest Payment Date, Redemption Date or Stated Maturity or date for the payment of Defaulted Interest, as the case may be, to and including the next succeeding Business Day.

SECTION 113. Ratios and Computations.

All ratios and computations herein shall be computed in accordance with generally accepted accounting principles but shall not reflect any accounting adjustments due to the Acquisition or Merger (as such terms are defined in the Lease) or any financings or refinancings incurred in connection therewith.

## ARTICLE TWO

### THE NOTES

#### SECTION 201. Issuance of Notes; Title and Terms.

(a) The Mortgagor has authorized the issuance of the Notes in accordance with the terms of this Indenture. Each Note and the Indenture Trustee's certificate of authentication thereon shall be substantially in the forms hereinafter set forth except that each Note may have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as may from time to time be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or to conform to usage or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution thereof.

(b) The aggregate principal amount of the Series B-1 Notes which may be authenticated and delivered under this Indenture shall be limited to the sum of \$40,000,000.00, except in the case of Notes authenticated and delivered upon transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 204, 205, or 206 hereof. No Series B-2 Notes shall be issued under this Indenture. The Notes shall be redeemable as provided in Article Three hereof and shall be subject to a Sinking Fund as provided in Article Four hereof. Upon redemption of any of the Notes pursuant to the provisions of Section 310 hereof, the Indenture Trustees shall, upon Mortgagor Order, retain such Notes without cancelling the same; provided that such Notes thereafter shall no longer be deemed Outstanding hereunder until reissued as hereinafter provided. Thereafter, at any time and from time to time, the Mortgagor shall have the right to present all or any portion of such Notes to the Registrar for registration of transfer provided it shall first have delivered to the Indenture Trustees an Officers' Certificate certifying that if such Notes become outstanding on the date of registration of transfer thereof, (i) the Loan to Value Ratio would not be greater than the Loan to Value Ratio on the date such Notes were redeemed and (ii) the debt service payments required to be made on such Notes together with the debt service payments required to be made on all Notes then Outstanding and Series A Notes Outstanding shall not exceed the amount of Basic Rent prior to redemption.

(c) Payments of the principal of, premium (if any) and interest on the Notes shall be made by the Mortgagor to the Paying Agent at the corporate trust office of the Paying Agent or at any office or agency maintained for such purpose pursuant to Section 814(a) hereof and by the Paying Agent to the account of

each Holder as set forth in the Register, in each case by wire transfer of currency of the United States of America in immediately available funds.

(d) The definitive Notes shall be typed, printed, lithographed or engraved, or produced by any combination of these methods, on steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Notes may be listed, all as determined by the officers executing such Notes as evidenced by their execution thereof.

**SECTION 202. Denominations; Dating and Form.**

The Notes shall be issued only in registered form in denominations of \$250,000 and integral multiples of \$250,000 in excess thereof. Each Note shall be dated the date of its authentication. Each Note shall be substantially in the form of Exhibit C attached hereto.

**SECTION 203. Execution of Notes.**

The Notes shall be executed on behalf of the Mortgagor by its Chairman of the Board, its President or one of its Vice Presidents or Assistant Vice Presidents under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signatures of any of such officers on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Mortgagor shall bind the Mortgagor, notwithstanding that such individuals or any of them had ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the respective dates of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Mortgagor may deliver Notes in accordance with the provisions of this Indenture executed by the Mortgagor to the Indenture Trustee for authentication, together with a Mortgagor Order for the authentication and delivery of such Notes, and the Indenture Trustee in accordance with the Mortgagor Order shall authenticate and deliver such Notes.

**SECTION 204. Reserved.**

**SECTION 205. Registration, Transfer and Exchange.**

The Indenture Trustee shall cause to be kept at the corporate trust office of the Registrar a register for the registration, subject to such reasonable regulations as it may prescribe, of Notes and of transfers of Notes. This register is, and if there shall be more than one Registrar the combined



registers maintained by all such Registrars are, herein sometimes referred to as the "Register."

Upon surrender for registration of transfer of any Note at the corporate trust office of the Registrar, or at any office or agency maintained for such purpose pursuant to Section 815(a) hereof, the Mortgagor shall execute and the Indenture Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes, of any authorized denominations and of a like aggregate principal amount. No transfer of Notes shall be effective unless such transfer has been recorded in the Register.

At the option of the Holder, Notes may be exchanged for other Notes in any authorized denominations of an equal aggregate principal amount, upon surrender of the Notes to be exchanged at such corporate trust office, or at any office or agency maintained for such purpose pursuant to Section 815(a) hereof. Whenever any Notes are so surrendered for exchange, the Mortgagor shall execute, and the Indenture Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Mortgagor, evidencing the same obligations, and entitled to the same security and benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or exchange shall (if so required by the Registrar) be duly endorsed by, or be accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Registrar may require payment by the party requesting such transfer or exchange of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to this Section not involving any transfer.

#### SECTION 206. Mutilated, Destroyed, Lost and Stolen Notes.

If (i) any mutilated Note is surrendered to the Registrar, or if the Indenture Trustees, the Registrar and the Mortgagor receive evidence to their satisfaction of the destruction, loss, or theft of any Note, and (ii) there is delivered to the Indenture Trustees, the Registrar and the Mortgagor evidence to their satisfaction of the ownership and authenticity thereof, and such security or indemnity as may be required by them to save

each of them harmless (the unsecured agreement of indemnity of the original Holders shall be deemed sufficient for this purpose) then, in the absence of notice to the Indenture Trustees, the Registrar or the Mortgagor, that such Note has been acquired by a bona fide purchaser, the Mortgagor shall execute and, upon Mortgagor Request, the Indenture Trustee shall authenticate and deliver, in exchange for any such mutilated Note, or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In the event the entire principal amount of any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Indenture Trustee may upon satisfaction of the conditions set forth in clauses (i) and (ii) of the preceding paragraph cause such Note to be redeemed without surrender thereof except in the case of a mutilated Note.

Upon the issuance of any new Note under this Section, the Registrar may require the payment by the party requesting a new Note of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

Every new Note issued pursuant to this Section in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation hereunder, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and each such new Note shall be entitled to all the security and benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

**SECTION 207. Payment of Interest; Interest Rights Preserved.**

(a) Interest payable on any Note which is punctually paid or duly provided for on any Interest Payment Date shall be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest.

(b) The Mortgagor shall pay to the registered Holder of each Series B-2 Note interest on the unpaid principal amount of such Series B-2 Note at the Applicable Rate (or the Alternative Rate, if applicable) payable, to the extent accrued for the related Interest Period, on each Interest Payment Date. The Indenture Trustee shall determine the applicable LIBOR on the day which is two EuroBusiness Days prior to the first day of each

Interest Period and shall promptly notify Mortgagor of such applicable LIBOR. If, on any date on which LIBOR is to be determined, no LIBOR quotation is available on Telerate Page 3750, then the Alternative Rate shall apply until such date that a LIBOR quotation is available on Telerate Page 3750 at the designated time and for deposits for a period approximately equal to the remainder of the applicable Interest Period. The Indenture Trustee shall notify Mortgagor that the Alternative Rate shall be the rate to be utilized herein no later than 12:00 noon (New York time) on such date of determination; and

(c) The following amounts shall be payable on each Series B-2 Note:

- (i) interest shall accrue on the principal balance of such Series B-2 Note prior to an Event of Default at the Applicable Rate or Alternative Rate, whichever is applicable, such interest to be payable on each Interest Payment Date commencing on the first of such Interest Periods occurring after the date of issuance of the Series B-2 Note; and
- (ii) interest shall accrue on the principal balance of such Series B-2 Note from and after the date of an Event of Default or Maturity (whether by acceleration or otherwise) at the Default Rate, such interest to be paid upon demand.

(d) Any interest payable on any Note which is not punctually paid or duly provided for on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date (or to the Person in whose name such Note is registered upon original issuance thereof) by virtue of his having been such Holder; and such Defaulted Interest shall be paid by the Mortgagor, at its option, as follows:

The Mortgagor may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Mortgagor shall notify the Indenture Trustee and the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Note (stated per \$1,000 of principal amount Outstanding) and the date of the proposed payment, and at the same time the Mortgagor shall remit to the Indenture Trustee for deposit to the Collection Account an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the

Indenture Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Indenture Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days after the receipt by the Indenture Trustee of the notice of the proposed payment. The Indenture Trustee shall promptly notify the Mortgagor and the Registrar of such Special Record Date and, in the name of the Mortgagor, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of Notes at its address as it appears in the Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been given as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered on such Special Record Date.

(e) Subject to the foregoing provisions of this Section, each Note delivered under this Indenture upon registration of transfer of, or in exchange for or in lieu of, any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note, and each such Note shall bear interest from whatever date shall be necessary so that neither gain nor loss in interest shall result from such transfer, exchange or replacement.

SECTION 208. Persons Deemed Owners of Notes.

Prior to due presentment for registration of transfer of any Note, the Indenture Trustees, the Deed of Trust Trustee, if applicable, the Paying Agent, the Registrar, and the Mortgagor may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of, premium (if any) and (subject to Section 207 hereof) interest on, such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Indenture Trustees, the Paying Agent, the Registrar, nor the Mortgagor shall be affected by notice to the contrary.

SECTION 209. Cancellation.

All Notes surrendered for payment, credit against any redemption payment, registration of transfer or exchange shall be delivered to the Indenture Trustee, and if surrendered to any Person other than the Indenture Trustee shall be delivered by such Person to the Indenture Trustee, and shall be promptly cancelled by the Indenture Trustee. No Notes shall be

authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Notes held by the Indenture Trustee shall be destroyed unless the Mortgagor otherwise directs.

**SECTION 210. Authentication, Execution and Delivery of Notes.**

(a) Upon Mortgagor Request and in accordance with the conditions to the issuance of the Notes set forth in subsection (b) below, the Mortgagor shall execute and deliver to the Indenture Trustee, for authentication upon original issuance, the initial issue of Notes in an aggregate principal amount equal to \$40,000,000. The Indenture Trustee shall thereupon authenticate and deliver the initial issue of Notes upon Mortgagor Request without any further action by the Mortgagor.

(b) The issuance and authentication of the initial issue of Notes shall be subject to the satisfaction of the following conditions:

(1) the Mortgagor shall have furnished to the Indenture Trustees an Opinion of Counsel in respect of the Mortgagor as to such matters as the Indenture Trustees may reasonably request and in form and substance reasonably satisfactory to each of them; and

(2) no Event of Default under and as defined in Article XVII of the Lease shall have occurred and no Event of Default shall have occurred hereunder and the Mortgagor shall have furnished to the Indenture Trustees an Officers' Certificate substantially in the form of Exhibit D hereto.

(c) No Note shall be secured by or entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication, in the form provided for herein, executed by the Indenture Trustee by the manual signature of one of its authorized officers, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

**SECTION 211. Limited Recourse.**

All payments of principal, premium (if any) and interest shall be made in accordance with the terms of Article Twelve hereof. Each Holder, by its acceptance of a Note, agrees (1) that, except in the case of fraud or willful misconduct, it will look solely to (i) the assets subject to the lien of this Indenture and the income and proceeds received by the Indenture Trustees therefrom to the extent available for distribution to

such Holder as herein provided, (ii) the Series B Subordinated Guarantor under the Series B Subordinated Guaranty and (iii) the collateral securing the Second Priority Limited Recourse Guaranty, and the collateral under the Security Agreements and the Pledge Agreement, and (2) that, except in the case of fraud or willful misconduct, no officer, director, employee or shareholder of the Mortgagor shall be liable to any Holder or to the Indenture Trustees for any amounts payable under any Note or this Indenture.

### ARTICLE THREE

#### REDEMPTION OF NOTES

##### SECTION 301. Applicability of Article.

Redemption of the Notes, as required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

##### SECTION 302. Mandatory Redemptions Other Than Through Operation of the Sinking Fund.

The Notes shall be redeemed at the applicable Redemption Price, otherwise than through the operation of the provisions of Article Four hereof, and:

(1) in whole or in part, at any time and from time to time, with the proceeds of the sale of a Property pursuant to Section 11.1 of the Lease and upon discontinuance of operations on such Property and at a Redemption Price equal to the product of the Base Sales Price therefor multiplied by the Pro-Rata Share together with accrued interest thereon to the date of redemption plus (except as set forth in Section 307(b)) a Yield Maintenance Premium in respect of the principal amount of the Series B-1 Notes being redeemed;

(2) in whole or in part, at any time and from time to time, with the proceeds of the sale of a Property pursuant to Section 11.2 of the Lease, upon exercise by the Lessee of its purchase option thereunder, at a Redemption Price equal to the product of the Base Sales Price therefor multiplied by the Pro-Rata Share together with accrued interest thereon to the date of redemption plus a Yield Maintenance Premium in respect of the principal amount of the Series B-1 Notes being redeemed;

(3) in whole or in part, at any time and from time to time, with the proceeds of the sale of a Property pursuant to Section 11.5 of the Lease upon exercise by Lessee of its purchase option thereunder, at a Redemption Price equal to the product of the Base Sales Price therefor multiplied by the Pro Rata Share together with accrued interest thereon to the date of redemption without premium;

(4) in whole or in part, at any time and from time to time, with the proceeds of the sale of a Property pursuant to Section 15.3(c) of the Lease, upon the occurrence of a Substantial destruction or Substantial Taking of any Property, at a Redemption Price equal to the product of the Base Sales Price therefor multiplied by the Pro-Rata Share

together with accrued interest thereon to the date of redemption without premium;

(5) in whole or in part, at any time and from time to time, with the proceeds of the sale of a Property pursuant to Section 37(a) of the Lease, upon violation of the Diversity Requirements of the Lease, at a Redemption Price equal to the product of the Base Sales Price therefor multiplied by the Pro-Rata Share, together with accrued interest thereon to the date of redemption plus a Yield Maintenance Premium in respect of the principal amount of the Series B-1 Notes being redeemed; and

(6) in whole or in part, at any time, and from time to time, with the proceeds of the sale of a Property pursuant to Section 37(b) of the Lease and Section 310 hereof relating to a breach of certain covenants of Lessee contained in Article XXXVI of the Lease, at a Redemption Price equal to the product of the Base Sales Price therefor multiplied by the Pro-Rata Share, together with accrued interest thereon to the date of redemption, plus a premium equal to one percent (1%) of the principal amount of the Series B-1 Notes being redeemed.

The Redemption Date for the redemption of Notes pursuant to this Section shall be the first Interest Payment Date occurring not less than 45 days after giving of the notice required to be delivered pursuant to the Lease by the Lessee in respect of the event described above that provides the basis for such redemption.

#### SECTION 303. Optional Redemption.

(a) Except as set forth in paragraph (b) below, the Mortgagor may, at any time on an Interest Payment Date occurring after April 1, 1995, at its option, upon not less than sixty nor more than ninety days prior written notice to the Indenture Trustees, redeem or cause to be redeemed the Notes, in whole or in part (but not less than integral multiples of \$100,000), upon payment to the Indenture Trustee of the Redemption Price therefor equal to the principal amount thereof to be redeemed, together with accrued interest thereon to the date of such payment plus a Yield Maintenance Premium in respect of the principal amount of the Series B-1 Notes being redeemed.

(b) Notwithstanding the provisions of paragraph (a) above, the Mortgagor shall not, however, redeem any of the Notes pursuant to such option prior to April 1, 1997 directly or indirectly from, or in anticipation of, money borrowed having a financing cost to the Mortgagor or any Affiliate of less than the interest rate borne by the Notes; and in case of any redemption before such date, the Mortgagor will deliver to the Indenture



Trustees and Officers' Certificate stating that such redemption will comply with this paragraph.

**SECTION 304. Redemption; Notice to Indenture Trustees.**

In case of any redemption of Notes otherwise than through the operation of the Sinking Fund, the Mortgagor shall at least 60 days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Indenture Trustees), notify the Indenture Trustees and the Registrar by a Mortgagor Request of (1) such Redemption Date, (2) the principal amount of Notes to be redeemed, (3) the basis upon which, pursuant to this Indenture, such principal amount has been computed, (4) whether a premium is due thereon, and if so, the amount thereof and setting forth the basis upon which such amount was determined, and (5) the principal amount of Notes, if any, delivered to the Registrar as provided in Section 307(b) hereof which are to be credited against the principal amount of Notes to be redeemed.

**SECTION 305. Notes to be Redeemed or Purchased Pro-Rata.**

(a) In the case of a mandatory redemption of fewer than all of the Notes Outstanding pursuant to clauses (1), (2), (3), (4), (5) and (6) of Section 302 hereof or an optional redemption of fewer than all of the Notes Outstanding pursuant to Section 303 hereof, the Notes shall be redeemed on a pro rata basis without preference or priority of any Note over any other Note.

(b) The Indenture Trustees shall promptly notify the Registrar, the Mortgagor and the Paying Agent in writing of the principal amount of each Note to be redeemed.

(c) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal of such Note which has been or is to be redeemed.

(d) In the event that the Mortgagor desires to acquire Notes and to submit them in connection with a redemption as contemplated pursuant to Section 307(b) hereof, it shall, after delivery to the Holders of the notice required pursuant to Section 306 hereof, make an offer on identical terms to each of the Holders of the Notes Outstanding to purchase that portion of the Notes which it desires to submit. In the event that more than one Holder agrees to sell its Notes to the Mortgagor, then the Mortgagor shall purchase such Notes from those Holders willing to sell pro rata, based on the percentage that the aggregate principal amount of each such Holder's Notes bears to the aggregate principal amount of all of the Notes held by the Holders which are willing to sell.

**SECTION 306. Notice of Redemption to Holders.**

(a) Notice of redemption shall be given not less than 30 nor more than 45 days prior to the Redemption Date, to each Holder of Notes, at its address appearing in the Register.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) that the redemption is by operation of the Sinking Fund, if such is the case,
- (4) if less than all Outstanding Notes are to be redeemed, in the case of partial redemption, the principal amount of the Notes to be redeemed (stated per \$1,000 of principal amount Outstanding),
- (5) that on the Redemption Date the Redemption Price will become due and payable upon each Note, and that interest thereon shall cease to accrue on and after said date on such amount to be redeemed,
- (6) if redemption of the Notes is to be made in full, the place or places where the Notes are to be surrendered for payment of the Redemption Price, and
- (7) the amount of any premium payable in respect of the Series B-1 Notes upon such redemption (stated per \$1,000 of principal amount to be redeemed).

(b) Notice of redemption of Notes shall be given by the Indenture Trustees in the name of the Mortgagor.

**SECTION 307. Deposit of Redemption Price; Credit with Respect to Surrender of Notes.**

(a) Except as provided in subsection (b) of this Section, on or before the Business Day next preceding any Redemption Date specified in Section 302 or Section 303 hereof, an amount of money in immediately available funds sufficient to pay the Redemption Price of all the Notes or portions thereof which are to be redeemed on that Redemption Date shall be remitted to the Paying Agent for deposit into the Collection Account by the Mortgagor or, if such amount shall have been previously paid over to the Indenture Trustee pursuant to this Indenture, by the Indenture Trustee.

(b)(i) In satisfaction of all or any part of any redemption payment pursuant to Section 302, Section 303 or Section 309

hereof, the Mortgagor may elect, by a notice given to the Indenture Trustee not later than 15 days prior to the date set for redemption, that there be applied as a credit against such redemption payment, at the Redemption Price, in lieu of payment in cash, Notes acquired by the Mortgagor after notice of such redemption has been given to the Holders pursuant to Section 306 hereof and in the manner set forth in Section 305(d) hereof and delivered by the Mortgagor to the Indenture Trustees for cancellation concurrently with the delivery of such notice, and upon such election and application of such Notes as a credit against any redemption payment, the aggregate principal amount of Notes to be redeemed shall be reduced by the aggregate principal amount of the Notes being so applied as a credit; provided, however, that no such credit shall exceed the aggregate principal amount of Notes to be redeemed on the Redemption Date specified in such Mortgagor Request; and provided further, however, that no Yield Maintenance Premium shall be paid with respect to such Notes being submitted for credit against the Redemption Price of any redemption payment.

(ii) In the event that Notes are delivered to the Indenture Trustees to be applied pursuant to this Section 307(b) in satisfaction of any redemption payment pursuant to Section 302, Section 303 or Section 309 hereof, the amounts otherwise payable under the Lease in respect of such redemption payment shall be reduced by an amount equal to the sum of (A) the aggregate Redemption Price of the Notes so being applied as a credit plus (B) if the Redemption Date specified in such Mortgagor Request is an Interest Payment Date and if such Notes shall have been so surrendered prior to the Regular Record Date with respect to such Interest Payment Date, an amount equal to the interest which would have been payable on such Notes on such Redemption Date if such Notes had been Outstanding on such Regular Record Date.

SECTION 308. Notes Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the corporate trust office of the Paying Agent without presentation of the Notes at the Redemption Price, and from and after such date (unless there shall be a default in the payment of the Redemption Price) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in full in accordance with said notice such Note shall be paid at the Redemption Price; provided, however, that installments of interest shall be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such on the relevant Regular or Special Record Date according to their terms and the provisions of Section 207 hereof.

If any Note called for redemption shall not be so paid on the Redemption Date set therefor, the principal of such Note and

premium (if any) shall, until paid, bear interest from the Redemption Date at the rate provided for in such Note.

**SECTION 309. Holders Right to Indemnity or Redemption.**

(a) Mortgagor agrees to indemnify and hold harmless the Indenture Trustee, the Co-Indenture Trustee and each Holder (each an "Indemnatee") and to reimburse each Indemnatee, on demand, for any payments made by an Indemnatee in respect of (i) income taxes paid to the States of Minnesota and Indiana and the Commonwealth of Massachusetts as required by the laws of such jurisdictions in effect on the date hereof and (ii) the reasonable costs and expenses incurred by any Indemnatee with respect to payment of any such taxes, including reasonable attorneys' fees and expenses and accountants' fees incurred in the preparation of any tax return related thereto (collectively, the "Indemnified Expenses"); provided that (A) Mortgagor shall only be obligated to indemnify an Indemnatee hereunder if (i) such tax liability is incurred solely as a result of the transaction contemplated by this Indenture, and (ii) that such Indemnatee would not otherwise be liable for income tax in such State or Commonwealth and (iii) such Indemnatee complies with the provisions of paragraph (b) below, and (B) the amount of the tax for which the indemnification hereunder is applicable is net of any federal income tax benefit derived by the Indemnatee.

(b) Notice of any claim for Indemnified Expenses shall be given by an Indemnatee to Mortgagor and shall set forth the amount of such claim and be accompanied by (i) a copy of the relevant state tax return (which shall be kept confidential), (ii) a copy of each invoice for any related expenses incurred in connection herewith and (iii) a certificate signed by the chief financial officer of such Indemnatee, setting forth the federal income tax benefit derived by the Indemnatee as the result of the payment of such tax. Upon receipt of one or more claims hereunder, the Mortgagor shall (1) if any such claim or claims individually or in the aggregate, exceed the sum of \$100,000, promptly notify the Indenture Trustees, the Holders and the holders of the Series A Notes and (2) pay to the Indemnities the amount of any and all such claims.

(c) Upon receipt of the notice from the Mortgagor in accordance with the provisions of paragraph (b) above to the effect that the claims submitted hereunder have equaled or exceeded the sum of \$100,000, the Holders of 51% in aggregate principal amount of Notes then Outstanding together with the holders of 51% in aggregate principal amount of Series A Notes then Outstanding may, by notice given to Mortgagor and the Agent, require the Mortgagor to redeem a portion of the Notes and Series A Notes in an amount equal to the unpaid principal balance of such notes allocable to the Properties located in any or all of the States of Minnesota and Indiana and the Commonwealth of

Massachusetts, as specified by such Holders and the holders of the Series A Notes in the notice to Mortgagor, without premium, on the first Interest Payment Date occurring not sooner than ninety (90) days after the date of such notice.

(d) The provisions of paragraph (c) above notwithstanding, the right of the Holders and the holders of the Series A Notes to require redemption of the Notes shall be subject to the prior written approval of the Agent. Accordingly, the Agent shall have the right to notify the Indenture Trustees as to whether or not it shall consent to such redemption within thirty (30) days after the date of the notice provided to the Agent in accordance with the provisions of paragraph (c) above. If the Indenture Trustees shall not have received a notice from the Agent granting or withholding its consent within such thirty-day period, the Agent shall be deemed not to have consented to such redemption. The provisions of this paragraph are for the express benefit of the Agent and may not be modified without its written consent. All rights of the Agent under this Section 309 shall terminate upon the indefeasible payment in full of all amounts outstanding under the Credit Agreement.

(e) If the Agent shall have failed to consent to the redemption of Notes as provided above the Mortgagor may not, and if the Mortgagor shall so elect by a notice given to the Holders within thirty (30) days after the date of the notice specified in paragraph (c) above the Mortgagor need not, redeem Notes and the Series B Notes as required by the Holders and the holders of Series A Notes, but shall continue to indemnify each Indemnitee for Indemnification Expenses, without limitation as to the amount thereof.

#### SECTION 310. Holders Right to Require Redemption.

(a) If (1)(A) the Indenture Trustees receive a certificate pursuant to the provisions of Section 36.7 of the Lease indicating that Lessee is not in compliance with the covenants set forth in Section 36.1, 36.2, 36.3, 36.4, 36.5 or 36.6 of the Lease and (B) the previous certificate delivered to the Indenture Trustee indicated that the Lessee was in compliance with such covenants (any such certificate satisfying the requirements of clauses (A) and (B) being hereinafter referred to as an "Initial Noncompliance Certificate") or (2) the Indenture Trustees, following receipt of an Initial Noncompliance Certificate, receive a certificate pursuant to the provisions of Section 36.7 of the Lease indicating both (x) that Lessee is not in compliance with certain of such covenants and (y) the magnitude of the breach of any of such covenants has increased since the date of the previous notice or certificate to the extent set forth below:

- (A) a further reduction in the Consolidated Net Worth (as defined in the Lease) of Lessee in excess of

7

10% of its Consolidated Net Worth at the end of its preceding fiscal quarter; or

- (B) a subsequent merger, consolidation or sale of assets has occurred which reduced the Consolidated Net Worth of Lessee in excess of 10% of its Consolidated Net Worth immediately prior to such merger, consolidation or sale of assets; or
- (C) a deterioration of Lessee's Interest Expense Coverage Ratio (as defined in the Lease) by more than 10% below such ratio in effect at the end of its preceding fiscal quarter; or
- (D) the incurrence of additional Indebtedness (as defined in the Lease) not expressly permitted pursuant to the provisions of Section 36.5 of the Lease; or
- (E) the making of a Restricted Payment (as defined in the Lease) after the end of the preceding fiscal quarter of Lessee; or
- (F) the making of a Material Acquisition (as defined in the Lease) after the end of the preceding fiscal quarter of Lessee;

then, in any such event, the Indenture Trustee shall provide to each Holder and to the Agent a copy of each such notice or certificate, together with all information relating thereto provided to it by the Mortgagor or the Lessee and a statement from the Indenture Trustees indicating that each Holder, subject to the provisions of paragraph (b) below, has a one-time option, exercisable by delivering written notice thereof to the Indenture Trustee not more than forty-five (45) days after the date of the Indenture Trustee's notice, to require the Mortgagor to redeem its Note pursuant to the provisions of this Section and Section 302(5) on the first Interest Payment Date occurring not sooner than one hundred twenty (120) days after the date of the Indenture Trustee's notice. If the Holders of Notes having an aggregate unpaid principal balance at least equal to 80% of the total aggregate principal balance of Notes then Outstanding elect to have their Notes redeemed, then all Holders of Notes Outstanding will be deemed to have elected to require their Notes to be redeemed. In any such event, the Indenture Trustee shall, as promptly as practicable, give notice to those Holders who did not elect to have their Notes redeemed that such Notes will, nonetheless pursuant to the provisions of this Section, be redeemed as set forth herein. Not less than 45 days prior to the date set for redemption, the Indenture Trustee shall notify the Mortgagor of the aggregate principal amount of Notes to be redeemed (the "Redemption Notice").

(b) The provisions of paragraph (a) above notwithstanding, the right of the Holders to require redemption of the Notes shall be subject to the prior written approval of the Agent. Accordingly, the Agent shall have the right to notify the Indenture Trustees as to whether or not it shall consent to such redemption within thirty (30) days after the date of the notice provided to the Agent in accordance with the provisions of paragraph (a) above. If the Indenture Trustees shall not have received a notice from the Agent granting or withholding its consent within such thirty-day period, the Agent shall be deemed not to have consented to such redemption. The provisions of this paragraph are for the express benefit of the Agent and may not be modified without its written consent. All rights of the Agent pursuant to this Section shall terminate upon the indefeasible payment in full of all amounts outstanding under the Credit Agreement.

SECTION 311. Right to Release of Properties.

(a) If a redemption of Notes shall occur pursuant to the provisions of Section 302, Section 303, Section 309 or Section 310 of this Indenture, the Mortgagor shall be entitled to have (i) the affected Property in the case of a redemption pursuant to clause (1), (2), (3) or (4) of Section 302 released from the lien hereof, as hereinafter provided or (ii) one or more Properties, as specified in the notice given pursuant to Section 309(c), in the case of a redemption pursuant to Section 309 released from the lien hereof, as hereinafter provided and (iii) one or more Properties in the case of a redemption pursuant to clause (5) or (6) of Section 302, Section 303 or pursuant to Section 310, released from the lien hereof as hereinafter provided.

(b) In accordance with the provisions of Section 37(a) of the Lease and in connection with the Redemption of Notes pursuant to the provisions of Section 302(4) or the provisions of Section 303 of this Indenture, the Indenture Trustee shall, except as set forth in Section 302, select the Properties to be released from the lien hereof in an appropriate number and in appropriate locations in order to satisfy the Diversity Requirements at all times, but otherwise on a random basis. In addition, the Indenture Trustee shall select Properties (i) which have an aggregate original appraised value, as set forth in the related Appraisals, as close as possible to, but not exceeding, the aggregate principal amount of Notes and Series A Notes, if any, to be redeemed, and (ii) in accordance with the standards set forth in clause (i) of paragraph (c) below. The Indenture Trustee shall give the Mortgagor not less than thirty (30) days' prior written notice of the Properties so selected to be released on the Interest Payment Date following such notice.

(c) If a redemption of Notes shall occur pursuant to the provisions of Section 310 of this Indenture, the Mortgagor shall be entitled to have one or more Properties released from the lien hereof (subject in all respects to the Diversity Requirements) as hereinafter provided, but only if either (1) no Series A Notes are then outstanding or (2) all the Series A Notes then outstanding were simultaneously redeemed pursuant to Section 310 of the Series A Indenture. If some, but not all, of the Notes are to be redeemed, the Mortgagor shall have the option, exercisable within fifteen (15) days after the date of the Redemption Notice, to select the Properties to be released from the lien hereof or to permit the Indenture Trustees, subject to the provisions of Section 1302(a) hereof, to make such selection. If the Mortgagor fails to timely make such selection it will be deemed to have elected to permit the Indenture Trustees to select. If either (i) subject to the provisions of Section 1302(a) hereof, the Indenture Trustees select the Properties to be released, (1) that number of Properties shall be released such that the Loan to Value Ratio after such redemption and release is as close as possible to (but never higher than) the Loan to Value Ratio in effect immediately prior to such redemption and release, and (2) the aggregate Operating Cash Flow of the Properties remaining subject to the lien hereof shall, for the twelve months immediately preceding the Redemption Date, be at least equal to the aggregate Operating Cash Flow of such Properties for the fiscal year ended May 31, 1989 as set forth in an Officer's Certificate delivered to the Indenture Trustees promptly after the Properties to be released from the lien hereof are selected or (ii) the Mortgagor is to select the Properties to be released, (1) if either (A) fifty (50) or fewer Properties are to be released, the Loan to Value Ratio after such redemption and release shall be at least five percent (5%) lower than the Loan to Value Ratio in effect immediately prior to such redemption and release or (B) more than fifty (50) Properties are to be released, the Loan to Value Ratio after such redemption and release shall be at least ten percent (10%) lower than the Loan to Value Ratio in effect immediately prior to such redemption and release, and (2) the aggregate Operating Cash Flow of the Properties remaining subject to the lien hereof shall for the twelve months immediately preceding the Redemption Date, be at least equal to the aggregate Operating Cash Flow of such Properties for the fiscal year ended May 31, 1989 as set forth in an Officer's Certificate delivered to the Indenture Trustees promptly after the Properties to be released from the lien hereof are selected. The party selecting Properties to be released from the lien hereof pursuant to the provisions of this Section 311(c) shall notify the other party, not less than 30 days prior to the date set for redemption of the specific Properties so selected.

(d) Upon receipt by the Indenture Trustees of the applicable Redemption Price pursuant to the provisions of either Section 302, Section 303, Section 309 or Section 310 hereof, the



affected Property or Properties, as the case may be, shall, on the same basis as and in accordance with, the provisions of Section 1402, be released from the lien of this Indenture.

## ARTICLE FOUR

### SINKING FUND AND PAYMENT OF NOTES AT STATED MATURITY

#### SECTION 401. Sinking Fund Payments.

(a) As and for a Sinking Fund for the retirement of the Notes, until all the Notes are paid or payment thereof is provided for, on or before (as described below) the dates for Sinking Fund payments (the "Sinking Fund Payment Dates"), and beginning with the first Sinking Fund payment as set forth below and continuing to and including the Maturity of the Notes (the "Final Sinking Fund Payment"), an amount in immediately available funds will be deposited by the Mortgagor with the Indenture Trustee or the Paying Agent sufficient to redeem on the Sinking Fund Payment Dates, the principal amount of Notes required to be redeemed on each such date pursuant hereto at a Redemption Price equal to the principal amount of the Notes to be redeemed plus accrued interest thereon; provided, however, that the aggregate principal amount of Notes to be redeemed pursuant to the Sinking Fund on any Sinking Fund Payment Date shall be (i) increased by the amount of any payments received from the Mortgagor and held in the Note Reserve Fund pursuant to the provisions of Section 1403, except that if, during the term of this Indenture, the increase in the Sinking Fund payments from funds received pursuant to Section 1403 shall, in the case of the Series B-1 Notes, exceed the sum of \$375,000.00 redemption of Series B-Notes effected thereafter with monies paid pursuant to Section 1403 shall include a Yield Maintenance Premium on the principal amount of Series B-1 Notes thereafter so redeemed. Amounts so deposited, together with any funds required from the Note Reserve Fund, shall be applied to the redemption of Notes Outstanding pro rata on the Sinking Fund Payment Dates. Commencing with April 1, 1990 and continuing monthly thereafter to April 1, 1999, the Mortgagor shall remit to the Indenture Trustee an amount equal (except as reduced by amounts received in accordance with the provisions of Section 1203(c)) to one-twelfth of the next Sinking Fund Payment (exclusive, however, of the Final Sinking Fund Payment) coming due for deposit to the Note Reserve Fund. Commencing with April 1, 1999 and continuing monthly thereafter to April 1, 2000, the Mortgagor shall remit, in advance, an amount equal to the interest which will accrue on the aggregate unpaid principal balance of the Notes for such month (notwithstanding the payment of the Final Sinking Fund Payment on the date specified in the following sentence). The amount of the Final Sinking Fund Payment shall be remitted by the Mortgagor to the Indenture Trustee in advance, on the Interest Payment Date next preceding the Stated Maturity of the Notes, notwithstanding that such payment shall not be applied in redemption of Notes until the date specified in paragraph (b) below. Anything contained in this Indenture to the contrary notwithstanding, the Final Sinking

Fund Payment may be made in cash, by delivery to the Indenture Trustees of a letter of credit, the terms and conditions of which are acceptable to the Holders of 66-2/3% in aggregate principal amount of Notes Outstanding, issued by a bank the long-term unsecured debt obligations of which shall at the time of issuance of such letter of credit, have a credit rating of AA or better by Standard & Poor's Corporation or Aa by Moody's Investors Service, Inc., or by delivery of such other security as may be acceptable to the Holders of 66-2/3% in aggregate principal amount of Notes Outstanding.

(b) The amount of each annual Sinking Fund payment, commencing April 1, 1991 and continuing through and including April 1, 2000, and each of the Sinking Fund Payment Dates are as set forth below:

| <u>Payment Date</u> | <u>Amount to be Redeemed</u> |
|---------------------|------------------------------|
| April 1, 1991       | \$ 180,000                   |
| April 1, 1992       | 180,000                      |
| April 1, 1993       | 240,000                      |
| April 1, 1994       | 255,000                      |
| April 1, 1995       | 275,000                      |
| April 1, 1996       | 315,000                      |
| April 1, 1997       | 345,000                      |
| April 1, 1998       | 385,000                      |
| April 1, 1999       | 435,000                      |
| April 1, 2000       | \$37,390,000                 |

SECTION 402. Notice of Sinking Fund Payment.

On or before the forty-five (45) days prior to each Sinking Fund Payment Date, the Mortgagor shall deliver to the Indenture Trustee and the Registrar a Mortgagor Order specifying the amount of the next ensuing Sinking Fund payment. Additionally, the Registrar shall, upon the receipt of such Mortgagor Order, cause notice of the redemption thereof to be given in the name of the Mortgagor to the Holders together with a copy of such Mortgagor Order in the manner provided in Section 306 hereof. Such notice having been duly given, the redemption of the Notes shall be made upon the terms and in the manner stated in Section 305 and 308 hereof.

## ARTICLE FIVE

### COVENANTS

#### SECTION 501. Payment of Principal, Premium (if any) and Interest.

The Mortgagor will duly and punctually pay the principal of, premium (if any) and interest on the Notes in accordance with, and subject to, the terms of the Notes and this Indenture, including, without limitation, Section 211 hereof. Payment of the Notes shall be made by wire transfer of immediately available funds to the Corporate Trust Office of the Indenture Trustee as initial Paying Agent hereunder to account No. 000-089-2.

Payment on each Note by the Indenture Trustee shall be remitted to the Holder thereof without presentation of such Note at its address therefor set forth in the Register by wire transfer of immediately available funds if an account number is included therein for such purpose, and if not, by check mailed to such address by certified mail, postage prepaid.

#### SECTION 502. Limitation Upon Liens Created by Mortgagor.

The Mortgagor agrees that it will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or security interest in or with respect to any of the properties or assets of the Estate resulting from the acts or omissions of the Mortgagor or resulting from the non-payment of any taxes based on or measured by the revenues or income of the Mortgagor except the Series A Indenture and any pledge, lien, charge, encumbrance or security interest expressly permitted by this Indenture or the Lease, including Permitted Encumbrances.

#### SECTION 503. Title; Further Assurances.

(a) Mortgagor has title to the Estate, free and clear of all liens, charges, encumbrances, security interests and adverse claims whatsoever, except the Lease, the Series A Indenture and Permitted Encumbrances. This Indenture is and will remain at all times during the term hereof a valid and enforceable second perfected lien on the Estate, subject only to Permitted Encumbrances, and the Mortgagor will preserve such title and will forever warrant and defend the validity and priority of the lien hereof against the claims of all Persons whatsoever.

(b) No part of the Properties forms any part of a residential homestead or is exempt from foreclosure sale under the laws of the State.

7

(c) The Lease is in full force and effect in accordance with its terms, has not been cancelled or modified, has not been assigned or encumbered except to the Indenture Trustees pursuant to the Subordinate Assignment and to the Series A Trustees pursuant to the Assignment, no Basic Rent (as defined in the Lease) has been prepaid, and no Default (as defined in the Lease) exists under the Lease.

(d) At the time of the execution and delivery of this Indenture, and within 60 days prior to the close of each fifth anniversary of April 1, 1990, the Mortgagor will furnish to the Indenture Trustees one or more Opinions of Counsel (who need not be Independent) (1) stating that such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this Indenture and all necessary financing statements, notifications of secured transactions and other instruments as is necessary to make effective and maintain the liens and security interests contemplated hereby and reciting the details of such action (including the jurisdictions in which such actions were taken), or stating that no such action is required, and (2) stating what, if any, action of the foregoing character may reasonably be expected to become necessary during the succeeding five year period to so maintain the liens and security interests contemplated by this Indenture.

(e) to the best of Mortgagor's knowledge, except as may be disclosed in the reports of Fred C. Hart Associates, Inc., dated May 19, 1989, June 15, 1989 and December 21, 1989, with respect to the Properties (1) no Hazardous Materials have been integrated into any part of any Property in violation of any applicable law; (2) no enforcement, cleanup, removal or other governmental or regulatory actions have, at any time been instituted, completed or threatened against any Property, or against any person with respect to any Property, pursuant to any law, ordinance or regulation; (3) no violation or non-compliance with any such law, ordinance or regulations relating to Hazardous Materials has occurred with respect to any Property at any time; (4) no claims have, at any time, been made or threatened by any third party against any Property or against any person with respect to any Property, relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials located on any Property; (5) no activity has been conducted that would cause any Property to become a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring a Property within the ambit of, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq., or any state or local ordinance or regulation relating to Hazardous Materials; and (6) no occurrence or condition on any real property adjoining or in the vicinity of any Property exists to the best knowledge of Mortgagor that would cause such Property or any part thereof to be classified as "border-zone property" under the provisions of the California Health and Safety Code,

Section 25220, et seq., if located in California (or be subject to an analogous classification under the laws of the jurisdiction in which a Property is located if not in California) or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of any Property under any similar law, ordinance or regulation.

SECTION 504. Amendments, Waivers, etc. of Other Documents.

(a) Without the consent of the Holders of 66-2/3% in principal amount of Outstanding Notes, by Act of said Holders delivered to the Mortgagor and the Indenture Trustees, the Mortgagor may not (i) cancel, terminate, accept the surrender of, modify, amend or supplement the Lease, as in effect at the time of execution of this Indenture or as amended, modified or supplemented pursuant to this Section, or give any consent, waiver, authorization or approval thereunder, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions thereof or of modifying in any manner the rights of the respective parties thereunder or (ii) modify, amend, refinance, extend, consolidate or supplement the Series A Indenture or any document executed in connection therewith (except as expressly set forth therein) in any manner which would materially and adversely affect the interests of the Holders of the Series B Notes; provided, however, that the actions specified in subsection (b) of this Section may be taken without the consent of any Holder.

(b) Subject to the provisions of subsection (c) of this Section, the Mortgagor, at any time and from time to time without the consent of the Indenture Trustees or of any Holder, may modify, amend or supplement the Lease or any other Operative Document in order to cure any ambiguity, to correct or supplement any provision thereof which may be defective or inconsistent with any other provision thereof or of any provision of this Indenture, or to make any other provision with respect to matters or questions arising thereunder or under this Indenture which shall not be inconsistent with the provisions of this Indenture, or to comply with the provisions of Article Fourteen hereof, provided such action shall not, in the judgement of the Indenture Trustee, adversely affect the interests of the Holders or the Indenture Trustees.

(c) No modification, amendment, supplement, consent, waiver, authorization or approval with respect to the Lease, whether effected pursuant to subsection (a) or pursuant to subsection (b) of this Section, and anything in such subsections or elsewhere in this Indenture to the contrary notwithstanding shall, without the consent of the Holder of each Outstanding Note,

(1) modify, amend or supplement the Lease in such a way as to extend the time of payment of Basic Rent or any other amounts payable under the Lease as originally executed, or reduce the amount of any installment of Basic Rent payable under the Lease so that the same is less than the payment of interest and Sinking Fund installment on the Notes to be made from such installment of Basic Rent as provided in Section 1202 hereof, or reduce the aggregate amount of any other payment contemplated by Section 302 or Section 310 hereof to be made under the Lease as originally executed so that the same is less than the Redemption Price of the Notes to be redeemed from such payments as provided in Section 1203 hereof, after giving effect to any payment of interest and Sinking Fund payment to be made on the Redemption Date on which such Redemption Price is payable if such Redemption Date is an Interest Payment Date, or

(2) modify, amend or supplement the Lease in such a way as to, or give any consent, waiver, authorization or approval which would, release the Lessee from its obligation in respect of payment of Basic Rent or any other amounts payable under the Lease as originally executed, in any manner inconsistent with clause (1) above, except as provided in the Lease as originally executed.

(d) The Indenture Trustees and the Mortgagor shall have the right to give the Lessee notice of the occurrence of such events specified in Article XVII of the Lease, which with the passage of time and such notice, shall constitute an Event of Default as defined in said Article XVII. However, only the Indenture Trustees shall have the right to give the Lessee a notice of election to end the term of the Lease as contemplated in said Article XVII and the Mortgagor shall not have the right, without the prior written consent of the Indenture Trustees, to waive an Event of Default under the Lease and the rights of the Lessor and Indenture Trustees consequent thereon.

(e) Upon receipt of an Officers' Certificate and Opinion of Counsel (which counsel need not be Independent) stating that any action proposed to be taken hereunder complies with the provisions of this Section, the Indenture Trustees shall consent thereto and evidence their consent to any action permitted by this Section in writing and the Indenture Trustees shall be fully protected in relying on such Officers' Certificate and Opinion of Counsel.

SECTION 505. Repayment of Monies for Note Payments Held by the Indenture Trustees.

Any money deposited with the Indenture Trustee or any Paying Agent in trust for the payment of the principal of, premium (if any) or interest on any Note and remaining unclaimed for

three years after such principal, premium (if any) or interest has become due and payable shall be withdrawn from the Collection Account and paid to the Mortgagor on Mortgagor Request or to any other Person on Mortgagor's request (to the extent such monies shall have been deposited by such other Person); and the Holders of any Notes Outstanding shall thereafter, as unsecured general creditors look only to the Mortgagor or such other Person, to the extent such monies shall have been paid to the Mortgagor or such other Person, as the case may be, for payment therefor, and all liability of the Indenture Trustee or any such Paying Agent with respect to such trust money shall thereupon cease.

SECTION 506. Validity of Liens.

The Mortgagor represents and warrants that it has, and covenants that it shall continue to have, full power and lawful authority to Grant and otherwise create the liens and security interests vested hereby.

SECTION 507. Easements.

The rights of the Indenture Trustees hereunder shall be subject to the rights of the Lessee to grant such easements as are permitted by the terms of the Lease. The Indenture Trustees shall execute such documents submitted to them by Mortgagor that are necessary to enable Lessee to exercise such rights in accordance with the applicable provisions of the Lease.

SECTION 508. Affirmative Covenants.

Until this Indenture and the lien created hereby shall terminate in accordance with Article Six hereof, the Mortgagor shall:

(a) Recordation, Filing, etc. At all times cause this Indenture, and each amendment or modification hereof or supplement hereto (and such financing statements covering the Fixtures and the Subordinate Assignment, and continuation statements in respect thereof, under the UCC as in effect, in each State) to be recorded, registered and filed and kept recorded, registered and filed in such manner and in such places as appropriate, and comply with all applicable statutes and regulations, in order to establish, preserve and protect the security priority of this Indenture on the Estate and the rights of the Indenture Trustees and Noteholders hereunder. The Mortgagor shall pay, or shall cause to be paid, all taxes, fees and other charges incurred in connection with such recording, registration, filing and compliance.

(b) Maintenance and Repairs. Keep and maintain, or cause the Lessee to keep and maintain, each Property in good order, repair and operating condition (ordinary wear and tear excepted



7

so long as each Property is kept in good order, repair and operating condition) and make, or cause the Lessee to make, all repairs and replacements necessary to that end. The Indenture Trustees shall identify the Properties necessary to enable Lessee to comply with the provisions of Section 9.1(e) of the Lease.

(c) Payment of Impositions and Utility Charges. Pay or cause the Lessee to pay all Impositions while the same may be paid without fine, penalty, interest (unless payable in installments bearing interest) or additional cost, unless the same shall be contested in good faith and by appropriate proceedings by either the Mortgagor or the Lessee in the manner permitted by Article XIII of the Lease. Any Impositions that are payable in installments may be paid in installments as provided in Article IV of the Lease. The Mortgagor will furnish or will cause the Lessee to furnish to the Indenture Trustees, promptly, upon request, official receipts or other satisfactory proof evidencing such payments. In addition, the Mortgagor will pay or will cause the Lessee to pay all utility charges as required by Article IV of the Lease. The Mortgagor shall not be entitled to any credit on the Notes or on any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Imposition or utility charges or any part thereof.

(d) Compliance with Legal, Insurance and Series A Indenture Requirements, Instruments, etc. Promptly (i) comply or cause the Lessee promptly to comply, in all material respects, with all Legal Requirements and Insurance Requirements unless the same shall be contested in good faith and by appropriate proceedings by either the Mortgagor or the Lessee in the manner permitted by Article XIII of the Lease, (ii) procure, maintain and comply with, or cause the Lessee promptly to procure, maintain and comply with, all material licenses or other authorizations required for any use of each of the Properties then being made, and for the proper erection, installation, operation, repair and maintenance of the Improvements, the Fixtures or any part of any thereof and (iii) pay, comply with, observe and perform all of the terms, covenants, provisions and conditions of the Series A Indenture and all documents executed in connection therewith.

(e) Insurance. Maintain or cause the Lessee to maintain insurance of the types and in the amounts required by, and otherwise complying with, Article XIV of the Lease and promptly deliver or cause to be promptly delivered to the Indenture Trustees, not less than fifteen (15) days before the expiration of any such insurance, certificates evidencing the replacement or renewal thereof together with evidence satisfactory to the Indenture Trustees that the premiums therefor have been paid, and if requested by the Indenture Trustees, Mortgagor shall deliver copies of new or renewal policies from time to time in effect but not sooner than ninety (90) days after the expiration of the policy previously in effect.

(f) Damage, Destruction or Taking. In case of any material damage to or destruction of any of the Properties or any part thereof, or in case of any Taking, forthwith give or cause Lessee to give written notice thereof to the Indenture Trustees. In case of any such material damage, destruction or Taking, the Indenture Trustees shall, except as provided in Section 1302, be entitled to all insurance proceeds, payments or awards on account thereof, to the same extent the Mortgagor would be entitled thereto under the Lease, and the Mortgagor hereby irrevocably assigns to the Indenture Trustee all of its rights to any such insurance proceeds, payments or awards. With respect to a Taking, the Mortgagor will file or prosecute or will cause to be filed or prosecuted in good faith and by appropriate proceedings conducted with due diligence what would otherwise be its claim for any such award or payment and cause the same to be collected and paid over to the Indenture Trustees, and irrevocably authorizes and empowers the Indenture Trustees in the name of the Mortgagor or otherwise to file and prosecute any such claim and to collect, receipt for and retain the same. The Mortgagor will pay or cause to be paid all costs and expenses reasonably incurred by the Indenture Trustees, or by any Noteholders, in connection with any Taking and the seeking and obtaining of any award or payment in respect thereof. Unless an Event of Default shall have occurred under the Lease, all sums so received by the Indenture Trustees shall be deposited in the Collection Account and withdrawn therefrom to be applied in accordance with the provisions of Article XV of the Lease, except that any such sums received with respect to a Taking for temporary use shall be applied in accordance with the provisions of Section 15.2 of the Lease. If an Event of Default shall have occurred under the Lease or if such Lease shall be terminated, all sums so received by the Indenture Trustees shall be applied in the manner specified in Section 1204 hereof.

(g) Corporate Existence. Subject to the provisions of Section 509 below, preserve and keep in full force and effect its corporate existence, rights and franchises and privileges as a corporation under the laws of the State of Delaware and comply with all laws applicable to it, and do or cause to be done all things necessary to preserve and to keep in full force and effect its right to own property in each of the States in which a Property is located.

(h) Notification of Default, Etc. Promptly after obtaining knowledge thereof, notify the Indenture Trustees of any default hereunder or under the Lease or any Pledge Agreement, Security Agreement, Series A Indenture or any document executed in connection therewith or of any action or proceeding materially and adversely affecting a Property or the Lessee or any debtor under any Security Agreement.

(i) Inspection. Permit the Indenture Trustees or any of their authorized representatives upon reasonable prior notice to Mortgagor to inspect the books and records of the Mortgagor and any of the Properties during usual business hours.

SECTION 509. Merger, Consolidation, etc.

Nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of the Mortgagor with or into any corporation or corporations, or successive consolidations or mergers or shall prevent any sale, conveyance or lease of all or substantially all of the property of the Mortgagor to any other corporation authorized to acquire and operate the same. It is provided further, however, that, upon any sale, conveyance or lease and upon any such merger or consolidation in which the Mortgagor is not the surviving entity, the due and punctual payment of the principal of, and premium, if any, and interest on, all of the Notes, according to their tenor, and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Mortgagor (including, without limitation, the covenants contained in Sections 510(e), 510(f) and 510(i) below) shall be expressly assumed by supplemental indenture satisfactory in form and substance to the Indenture Trustees and delivered to the Indenture Trustees by the entity (if other than the Mortgagor) formed by such consolidation, or into which the Mortgagor shall have been merged, or by the entity which shall have acquired or leased such property, together with an Opinion of Counsel, satisfactory to the Indenture Trustees, stating that such supplemental indenture is valid, binding and enforceable against the parties thereto in accordance with its terms. Any such successor entity shall, as set forth in an Officers' Certificate delivered to the Indenture Trustees prior to any such proposed consolidation or merger, have a net worth at least equal to the net worth of the Mortgagor immediately prior to any such consolidation or merger. In case of any such consolidation, merger, sale, conveyance or lease and upon the assumption by such successor entity, by supplemental indenture, as hereinabove provided, such successor entity shall succeed to and be substituted for the Mortgagor, with the same effect as if it had been named herein as the Mortgagor. Such successor entity thereupon may cause to be signed and may issue either in its own name or in the name of the Mortgagor any of the Notes issuable hereunder pursuant to Section 205 or 206 hereof, and such Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore issued in accordance with this Indenture as though all such Notes had been issued at the date of the execution of this Indenture; provided, however, that such successor entity will indemnify and hold harmless each Noteholder from any adverse tax consequences from such Notes so issued.

SECTION 510. Negative Covenants.

So long as any of the Notes remain Outstanding, the Mortgagor will not:

(a) The Lease and Series A Indenture. Except as provided in Section 504(b), amend, cancel, modify, or terminate the Lease, accept the surrender thereof, give any consent or waiver thereunder, accept or reject any offer to purchase a Property thereunder, allow the interest of the Lessee thereunder to be assigned other than as permitted by Article XXV of the Lease, or in any way impair its rights or those of the Indenture Trustees or the Noteholders under the Lease pursuant to the Assignment or modify, amend, refinance, consolidate, extend or supplement, the Series A Indenture or any document executed in connection therewith (except as expressly set forth therein) in any manner which would materially and adversely affect the interests of the Holders of the Series B Notes.

(b) Liens. Directly or indirectly create or permit to be created or to remain undischarged any mortgage, charge, lien or encumbrance on, or attachment or pledge of, or conditional sale or other title retention agreement with respect to, the Estate or any part thereof, its interest or the interest of the Indenture Trustees therein, or the Basic Rent or Additional Rent (as defined in the Lease) or other sums payable pursuant to the Lease, except (i) this Indenture, the Subordinate Assignment and the Series A Indenture and Assignment, (ii) Permitted Encumbrances, (iii) easements, restrictions, liens, charges and other encumbrances permitted by the Lease or this Indenture, (iv) liens being contested in good faith and by appropriate proceedings in the manner permitted by Article XIII of the Lease, and (v) liens arising out of or created by any statute, the discharge of which cannot under the terms of such statute at the particular time be effected by the Mortgagor; provided, however, that any such statutory liens will promptly be discharged as and when such discharge is possible or permissible. The Mortgagor shall have the right to grant, without the prior consent of the Indenture Trustees, any easement that constitutes a Permitted Encumbrance.

(c) Alterations, Replacements, Etc. Make, or permit the Lessee to make, alterations, substitutions and replacements (collectively, the "Alterations") to the Improvements or the Fixtures or any part of any thereof except in accordance with Article X of the Lease. Any Alterations shall immediately become subject to the lien and security interest of this Indenture and shall become part of the Improvements or the Fixtures, as the case may be. All materials that are scrapped or removed from the Properties in connection with the Alterations permitted hereby or the repairs required by subsection 508(b) hereof, however, shall be deemed released from the lien of this Indenture and may be dealt with by the Mortgagor or the Lessee in accordance with the applicable provisions of the Lease.

(d) Merger or Consolidation; Transfer of Properties. Except as provided for in Section 509 hereof, merge or consolidate with any other entity or sell, lease, transfer or otherwise dispose of, including a voluntary conveyance as a result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, all or any part of the Estate except as permitted hereby.

(e) Purchases and Leases. Purchase or agree to purchase or lease any real or personal property, other than as contemplated hereby.

(f) Restrictions on Business. Engage in any business or other undertaking other than the business of acquiring, selling, owning, holding, mortgaging and leasing the Properties to the Lessee pursuant to the Lease and all matters incidental to the foregoing, as contemplated hereby.

(g) Loans. Make any advance or loan to, or invest in or purchase any security of, or assume, guarantee, purchase or otherwise become directly or indirectly liable upon the obligation of, any person, partnership, corporation, association or other legal entity, or make any commitment so to do.

(h) Dividends, Officers' Compensation, Etc. Declare or pay any dividends on any shares of its capital stock or make any other distribution on, or any purchase, redemption or other acquisition of, any shares of its capital stock, except out of net earnings and the proceeds from the sale of the Notes; or pay any wages or salaries or other compensation to officers, directors, employees or others except out of net earnings.

(i) Indebtedness. Create, incur, assume or suffer to exist any indebtedness whatsoever, direct, contingent or otherwise, except (A) the Notes and the Series A Notes and (B) unless an Event of Default has occurred which has not been waived, any indebtedness of the Mortgagor to Lessee incurred in connection with improvements to the Properties financed by Lessee; provided, however, that any such indebtedness shall impose no obligation on the Mortgagor to make any payments to Lessee until any and all sums due and payable hereunder are paid in full and the Property is released from the lien hereof, and provided further that at the time the indebtedness is incurred Lessee waives any and all rights to file for any remedy available under any Federal or State bankruptcy laws as a creditor of Mortgagor with respect to such indebtedness prior to the payment in full of all of Mortgagor's obligations hereunder and the Properties are released from the lien hereof.

ARTICLE SIX

SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 601. Satisfaction and Discharge of Indenture.

This Indenture shall cease to be of further effect (except as to any rights of registration of transfer or exchange of Notes herein expressly provided for), and the Indenture Trustees or the Deed of Trust Trustee, on demand and, if permitted by law, at the expense of the Mortgagor, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either (A) all Notes theretofore authenticated and delivered (other than Notes which have been mutilated, destroyed, lost or stolen and which have been replaced as provided in Section 206 hereof) or (B) all such Notes not theretofore delivered to the Indenture Trustees for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Indenture Trustees for the giving of notice of redemption by the Indenture Trustees in the name of the Mortgagor,

and the Mortgagor, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Indenture Trustees in trust (subject to Section 807(c) hereof) for the purpose of paying and discharging the entire indebtedness on such Notes not theretofore cancelled by the Indenture Trustees or delivered to the Indenture Trustees for cancellation, an amount sufficient to discharge such indebtedness, including principal, premium (if any) and interest to the date of such deposit (in the case of Notes which have become due and payable), or to the Stated Maturity or Redemption Date, as the case may be;

(2) all other sums then due and payable hereunder have been paid; and

(3) the Mortgagor has delivered to the Indenture Trustees an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

ARTICLE SIX

SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 601. Satisfaction and Discharge of Indenture.

This Indenture shall cease to be of further effect (except as to any rights of registration of transfer or exchange of Notes herein expressly provided for), and the Indenture Trustees or the Deed of Trust Trustee, on demand and, if permitted by law, at the expense of the Mortgagor, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either (A) all Notes theretofore authenticated and delivered (other than Notes which have been mutilated, destroyed, lost or stolen and which have been replaced as provided in Section 206 hereof) or (B) all such Notes not theretofore delivered to the Indenture Trustees for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Indenture Trustees for the giving of notice of redemption by the Indenture Trustees in the name of the Mortgagor,

and the Mortgagor, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Indenture Trustees in trust (subject to Section 807(c) hereof) for the purpose of paying and discharging the entire indebtedness on such Notes not theretofore cancelled by the Indenture Trustees or delivered to the Indenture Trustees for cancellation, an amount sufficient to discharge such indebtedness, including principal, premium (if any) and interest to the date of such deposit (in the case of Notes which have become due and payable), or to the Stated Maturity or Redemption Date, as the case may be;

(2) all other sums then due and payable hereunder have been paid; and

(3) the Mortgagor has delivered to the Indenture Trustees an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Mortgagor to the Indenture Trustees under Section 808 hereof shall survive.

**SECTION 602. Application of Deposited Money.**

All money remitted to the Indenture Trustees pursuant to Section 601 hereof shall be deposited in the Collection Account and held in trust and applied by them, in accordance with the provisions of the Notes and this Indenture, to the payment to the Persons entitled thereto of the principal, premium (if any), and interest for the payment of which such money has been deposited with the Indenture Trustees.



## ARTICLE SEVEN

### REMEDIES

#### SECTION 701. Events of Default.

"Event of Default", wherever used herein, means any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

(1) any installment of interest upon any Note shall not be paid when it becomes due and payable; or

(2) the principal, premium, including Yield Maintenance Premium (if any) or Redemption Price of any Note shall not be paid at its Maturity or upon call for redemption or submitted for redemption pursuant to Section 310 hereof; or

(3) any Sinking Fund installment shall not be paid when and as payable by the terms of Article Four hereof; or

(4) an event shall occur which shall constitute an Event of Default as defined in Article XVII of the Lease whether or not a notice of election to terminate the Lease has been given; or

(5) any representation or warranty made by the Mortgagor in any certificate furnished to the Indenture Trustees in connection with or pursuant to this Indenture or in any other document or instrument delivered in connection with this Indenture shall prove to be incorrect in any material respect;

(6) a default shall occur in the payment and/or performance of any covenant or agreement on the part of (a) the Series B Subordinated Guarantor to be paid or performed under the Series B Subordinated Guaranty, (b) the Senior Guarantor to be paid or performed under the Senior Subordinated Guaranty or (c) Mortgagor under the Series A Indenture or any document executed in connection therewith, and such default shall continue beyond any applicable grace period; or

(7) a default shall occur in the performance of any covenant or agreement on the part of any Second Priority Limited Recourse Guarantor to be performed under the Second

Priority Limited Recourse Guaranty and such default shall continue beyond any applicable grace period; or

(8) any representation or warranty made by the Series B Subordinated Guarantor in the Series B Subordinated Guaranty or in any statement, report, schedule, notice or other writing furnished by the Series B Subordinated Guarantor in connection therewith shall prove to have been incorrect in any material respect at the time made; or

(9) final judgment(s) shall be entered against Mortgagor or the Series B Subordinated Guarantor the aggregate amount of which exceed \$5,000,000 and such judgment(s) are not discharged, stayed, bonded or satisfied within forty-five (45) days after payment is due thereunder; or

(10) Except as provided in clauses (1) through (9) and (11) through (15) of this Section, Mortgagor shall fail to observe or perform any other term, covenant or condition of this Indenture and such failure shall continue for a period of thirty (30) days after notice thereof, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if Mortgagor proceeds promptly and with due diligence to cure such failure and diligently completes the curing thereof; or

(11) The Holders shall be prohibited from requiring a redemption of Notes pursuant to the provisions of Section 310(a) because of a refusal by the Agent to consent thereto in accordance with the right granted to the Agent pursuant to the provisions of Section 310(b); or

(12) An Event of Default shall occur pursuant to the provisions of Section 15 of the Pledge Agreement (other than clause (ii) except as it relates to the Pledge Agreement, or clauses (iv) or (v) thereof) or Section 10 of the Security Agreement; (other than Sections 10(e), 10(f), 10(k) and 10(j) thereof); or

(13) a transfer or conveyance of any interest in any of the Properties shall have occurred which is not permitted pursuant to the express provisions of the Lease and this Indenture, or

(14) the Mortgagor or the Series B Subordinated Guarantor shall commence a voluntary case or other proceeding seeking (i) liquidation, reorganization or other relief with respect to itself or its debts under bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial

part of its property, or shall consent to any such relief or to the appointment or taking possession by any such official in an involuntary case or other proceeding commenced against it; the effectuation of a general assignment for the benefit of creditors; the failure generally to pay its debts as they become due; or the taking of any corporate action in order to authorize any of the foregoing; or

(15) an involuntary case or other proceeding shall be commenced against the Mortgagor or the Series B Subordinated Guarantor seeking (i) liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 consecutive days.

**SECTION 702. Acceleration of Maturity; Rescission and Annulment.**

If an Event of Default occurs and is continuing, then in every such case, except as provided in Section 717, the Indenture Trustees or the Holders of not less than 25% in aggregate principal amount of the Outstanding Notes may declare the principal of all the Notes to be due and payable immediately, by written notice to the Mortgagor (and to the Indenture Trustees if given by Holders), and upon any such declaration such principal, together with a Yield Maintenance Premium and all accrued and unpaid interest thereon as and for the Redemption Price thereof shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Notes has been made and prior to any sale of the Estate, or any part thereof, made under this Article, as herein-after in this Article provided, or the entry of a judgment or decree for payment of moneys due hereunder or under the Notes has been obtained by the Indenture Trustees, the Holders of 66-2/3% in principal amount of the Outstanding Notes, by written notice to the Mortgagor and the Indenture Trustees, may rescind and annul such declaration and its consequences and reinstate the original maturity date of the Notes previously accelerated, if

(1) there has been paid or deposited with the Indenture Trustees in the Estate a sum sufficient to pay

(A) all overdue installments of interest on all Notes,

(B) any Sinking Fund installment which shall have become due, and the principal of and premium (if any)

on any such Notes which have become due otherwise than by such declaration or acceleration, and interest thereon at the rate or rates provided for in such Notes,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate provided for in the Notes,

(D) all sums paid or advanced by the Indenture Trustees hereunder and the reasonable compensation, expenses, disbursements and advances of the Indenture Trustees, their agents and counsel;

and

(2) all Events of Default with respect to the Notes, this Indenture and the Operative Documents other than the nonpayment of the principal of the Notes which have become due solely by such acceleration, have been cured or waived as provided in Section 714 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

SECTION 703. Remedies of, and Suits for Enforcement by, Indenture Trustees.

(a) If an Event of Default occurs and is continuing, the Indenture Trustees, as assignees under the Subordinate Assignment of the Lease or as mortgagees hereunder of the Estate may, and when required pursuant to the provisions of Section 713 hereof shall, exercise any or all of the rights and powers and pursue any or all of the remedies with respect to any or all of the Estate or otherwise, accorded to the Mortgagor, as lessor in Article XVII of the Lease, if an Event of Default as provided in Article XVII of the Lease shall have occurred and be continuing, or as otherwise provided in this Article, and may, subject to the terms of the Lease and applicable law, take possession of all or any part of the Properties subject to the lien hereof or pursuant hereto and may exclude the Mortgagor and, subject to the terms of the Lease, the Lessee and all Persons claiming by, through or under any of them, wholly or partly therefrom, and the Indenture Trustees and the Deed of Trust Trustee may exercise any other right or remedy in lieu of and in addition to the foregoing which may be available to them under applicable law or proceed by appropriate court action to enforce the terms hereof, of the Lease or both, to recover damages for the breach hereof, of the Lease or both, or to cancel the Lease as to any or all of the Properties; provided, however, that notwithstanding any provision herein to the contrary, the Indenture Trustees and the Deed of Trust Trustee shall not sell any of the Properties unless a

declaration of acceleration has been made pursuant to Section 702 hereof.

At any sale of any or all of the Properties pursuant to the exercise by the Indenture Trustees of any of the remedies afforded by this Section, the Indenture Trustees or the Deed of Trust Trustee and any Noteholder may bid for and purchase such Property. To the extent permitted by applicable law, the Mortgagor hereby waives any rights now or hereafter conferred by statute or otherwise by applicable law which may require the Indenture Trustees or the Deed of Trust Trustee to sell, lease or otherwise use any portion of the Estate in mitigation of the damages as set forth in this Section or which may otherwise limit or modify any of the Indenture Trustees' or Holders' rights or remedies under this Section.

Whenever, prior to any sale of a Property, or any part thereof, all arrears of interest upon the Notes, with interest on overdue installments of interest at the rate prescribed in the Notes (to the extent that payment and receipt of such interest is not in violation of applicable law), together with all sums paid or advanced by the Indenture Trustees under any provision hereof and the reasonable and proper charges, expenses and liabilities of the Indenture Trustees, its agents and counsel, and all other sums then payable by the Mortgagor hereunder, including any Sinking Fund installment and the principal of, premium (if any) and all accrued unpaid interest on all Notes then Outstanding which shall then be due and payable (otherwise than upon declaration of acceleration pursuant to Section 702 hereof), shall be paid by or for the account of the Mortgagor and/or collected out of the Estate or provision satisfactory to the Indenture Trustees shall be made for such payment, and all Events of Default shall be cured or waived, then, so long as no declaration of acceleration has been made pursuant to Section 702 hereof or, if such a declaration has been made, upon rescission and annulment thereof pursuant to Section 702 hereof, the Indenture Trustees shall, provided the Lease is still in effect, surrender to the Mortgagor, its successors or assigns, such possession of the Properties as the Mortgagor is entitled to under the Lease, and shall pay over upon Mortgagor Order to the Person therein specified the amount of any tolls, rents (excluding Basic Rent), issues, profits, products, revenues and other income of the Estate arising from the exercise of any remedies by the Indenture Trustees hereunder then remaining unexpended in the hands of the Indenture Trustees and thereupon the Indenture Trustees shall be restored to their former positions and rights hereunder in respect of the Estate, but no such surrender shall extend to or affect any subsequent default or Event of Default or impair any right consequent thereon.

The Mortgagor shall, at the request of the Indenture Trustees, to the extent permitted by applicable law, promptly

7

execute and deliver to the Indenture Trustees such instruments or other documents as the Indenture Trustees may deem necessary or advisable to enable the Indenture Trustees or an agent or representative designated by the Indenture Trustees, at such time or times and place or places as the Indenture Trustees may specify, to obtain possession of all or any part of the Properties possession of which the Indenture Trustees shall at the time be entitled hereunder. If the Mortgagor shall for any reason fail to execute and deliver such instruments and documents after such request by the Indenture Trustees, the Indenture Trustees shall be entitled, in a proceeding to which the Mortgagor shall be a necessary party, to seek a judgment for specific performance of the covenants contained in the foregoing sentence, conferring upon the Indenture Trustees the right to immediate possession and requiring the Mortgagor to execute and deliver such instruments and documents to the Indenture Trustees. Upon every taking of possession of any portion of the Properties pursuant to this Article, the Indenture Trustees may, from time to time, at the expense of the Estate and the Mortgagor, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Properties, as it may deem proper. In each such case, the Indenture Trustees shall have the right, subject to applicable law, to use, operate, lease, control or manage the Properties, and to exercise all rights and powers of the Mortgagor relating to the Properties, as the Indenture Trustees shall deem appropriate, including the right to enter into any and all such agreements with respect to the use, operation, leasing, control or management of the Properties or any part thereof, as the Indenture Trustees may determine; and the Indenture Trustees shall be entitled to collect and receive directly all tolls, rents (including Basic Rent), issues, profits, products, revenues and other income of the Properties and every part thereof, without prejudice, however, to the right of the Indenture Trustees under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustees hereunder. In accordance with the terms of Section 1205 hereof, such tolls, rents (including Basic Rent), issues, profits, products, revenues and other income shall be applied to pay the expenses of using, operating, leasing, controlling or managing the Properties, and of all maintenance, insurance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Indenture Trustees except as provided in Section 1302, may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Properties or any part thereof (including the employment of appraisers, engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Mortgagor in accordance with Section 508 hereof), and all other payments which the Indenture Trustees may be required or authorized to make under any provision of this Indenture, including Section 1205 hereof, as well as just and reasonable

compensation for the services of the Indenture Trustees, and of all persons properly engaged and employed by the Indenture Trustees.

(b) If an Event of Default occurs and is continuing and the Indenture Trustees shall have obtained possession of or title to any or all of the Properties, the Indenture Trustees may elect not to use or operate any of the Properties or cause any of the Properties to be used or operated directly or indirectly by itself or through agents or other representatives or to lease, license or otherwise permit or provide for the use or operation of any or all of the Properties by any other Person unless (i) the Indenture Trustees shall have been able to obtain insurance in kinds, at rates and in amounts satisfactory to it in its discretion to protect the Estate and the Indenture Trustees, as Indenture Trustees and individually, against any and all liability for loss or damage to the Properties and for public liability and property damage resulting from use or operation of the Properties and (ii) funds are available in the Estate to pay for all such insurance or, in lieu of such insurance, the Indenture Trustees are furnished with indemnification from the Holders of the Notes or any other Person upon terms and in amounts satisfactory to the Indenture Trustees in their sole discretion to protect the Estate and the Indenture Trustees, as Indenture Trustees and individually, against any and all such liabilities.

(c) If there shall be a failure to make payment of the principal of any Note at its Stated Maturity, or of a Redemption Price upon call for redemption, or if there shall be a failure to pay the premium (if any) or interest on any Note when the same becomes due and payable, the Indenture Trustees may institute, in their own names and as trustees of an express trust, a judicial proceeding for the collection of the sums so due and unpaid on the Notes, and may prosecute such proceeding to judgment or final decree, and may enforce such judgment or final decree with respect to the whole amount of any such sums so due and unpaid.

If an Event of Default with respect to the Notes occurs and is continuing, the Indenture Trustees may in their sole discretion proceed to protect and enforce their rights and the rights of the Holders by such appropriate judicial proceedings as the Indenture Trustees shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### SECTION 704. Additional Remedies.

In addition to the remedies provided for in Section 703 hereof, but subject to the provisions of Section 717 hereof, upon

the occurrence of an Event of Default with respect to the Notes Outstanding hereunder, the Indenture Trustees may, to the extent permitted by applicable law, take any or all of the following actions, at the same or at different times:

(a) Possession. Subject to the rights of Lessee or any permitted sublessee, if any, enter upon the Properties and take possession of all or any portion of the Estate and lease and let the Properties, or any portion of any thereof, and receive all the rents, issues and profits thereof which are overdue, due or to become due, and apply the same, after payment of all reasonably necessary charges and expenses, on account of the Notes and the Indenture Trustees are hereby given and granted full power and authority to do any act or thing which the Mortgagor might or could do in connection with the management and operation of any or all of the Properties. This covenant shall become effective either with or without any action brought to foreclose this Indenture and without applying at any time for a receiver of such rents.

(b) Foreclosure. Institute an action of foreclosure, or take other action as the law may allow, at law or in equity, for the enforcement of this Indenture, and proceed thereon to final judgment and execution of the entire unpaid balance of the Notes which are then due and payable including costs of suit, interest and reasonable attorneys' fees. In case of any sale of the Estate (except to the extent prohibited by law with respect to any of the Estate located in the State of Colorado) by virtue of judicial or nonjudicial proceedings, the Estate may be sold in one parcel and as an entirety or in such parcels, manner or order as the Indenture Trustees in their sole discretion may elect. The failure to make any tenants parties defendant to a foreclosure proceeding and to foreclose their rights will not be asserted by the Mortgagor as a defense in any proceeding instituted by the Indenture Trustees to realize upon the Estate or to collect any deficiency remaining unpaid after the foreclosure sale of the Estate.

(c) Appointment of Receiver. Appoint a receiver of the rents, issues and profits of the Estate without the necessity of proving either the depreciation or the inadequacy of the value of the security or the insolvency of the Mortgagor or any person who may be legally or equitably liable to pay moneys secured hereby, and the Mortgagor and each such person waive such proof and hereby consent to the appointment of a receiver.

(d) Fair Rental Payment. In the event that during the pendency of any Event of Default the Mortgagor is using or occupying the Estate, or any part thereof, it is hereby agreed, (except to the extent prohibited only with respect to that portion of the Estate located in the State of Colorado), that the Mortgagor shall pay such reasonable rental monthly in advance as



the Indenture Trustees shall demand for the Estate, or the part so occupied, and the use of personal or real property covered by this Indenture.

(e) Excess Monies. Apply on account of the Notes and the interest thereon or on account of any arrearage of interest thereon, or on account of any principal balance due pursuant to the Notes or after a foreclosure sale of the Estate, or any part thereof, whether or not a deficiency action shall have been instituted, or to any costs incurred by the Indenture Trustees, any unexpended monies still retained by the Indenture Trustees that were paid to the Indenture Trustees by the Lessee pursuant to the Lease or otherwise or by the Mortgagor for the payment of, or as security for the payment of, taxes, assessments, municipal or governmental rates, charges, liens, water or sewer rents, or insurance premiums, if any, or in order to secure the performance of some other act by, or obligation of, the Mortgagor.

(f) Other Remedies. Exercise any and all other rights and remedies granted under this Indenture or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including, without limitation, if an Event of Default shall have occurred under, and as defined in, the Lease, requiring Lessee to purchase any or all of the Properties pursuant to Section 37(c) of the Lease.

**SECTION 705. Indenture Trustees May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Lessee, the Mortgagor or Series B Subordinated Guarantor or Second Priority Limited Recourse Guarantor or the property of the Lessee, Mortgagor or Series B Subordinated Guarantor or Second Priority Limited Recourse Guarantor or their creditors, the Indenture Trustees (irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration in accordance with Section 702 hereof, or otherwise, and irrespective of whether the Indenture Trustees shall have made any demand for the payment of overdue principal, premium (if any) or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove such proofs of claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustees (including any claim for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustees, their agents and counsel) and of the Holders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Indenture Trustees, and in the event that the Indenture Trustees shall consent to the making of such payments directly to the Holders, to pay to the Indenture Trustees any amount due to them for the reasonable compensation, expenses, disbursements and advances of the Indenture Trustees, their agents and counsel, and any other amounts due to the Indenture Trustees.

Nothing herein contained shall be deemed to authorize the Indenture Trustees to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Indenture Trustees to vote in respect of the claim of any Holder in any such proceeding.

SECTION 706. Indenture Trustees May Enforce Claims Without Possession of Notes; Represents Holders.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Indenture Trustees without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Indenture Trustees shall be brought in their own names as trustees of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Indenture Trustees, their agents and counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered. In any proceedings brought by the Indenture Trustees (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustees shall be a party) the Indenture Trustees shall be held to represent all the Holders, and it shall not be necessary to make any Holders parties to such proceedings.

SECTION 707. Application of Money Collected.

Subject to the provisions of Section 703 hereof, any money collected by the Indenture Trustees pursuant to this Article shall be applied as specified in Section 1204 hereof on, in the case of payment to the Holders, the date or dates fixed by the Indenture Trustees and, in case of the distribution of such money on account of principal, premium (if any) or interest, upon presentation of Notes and upon surrender thereof if fully paid.

SECTION 708. Limitation on Suits by Holders.

No Holder of any Notes shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, the Limited Guaranty or the Senior Subordinated Guaranty, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Indenture Trustees either in accordance with Section 702 or 713 hereof;

(2) the Holders of a majority of principal amount of the Outstanding Notes shall have made written request to the Indenture Trustees to institute proceedings in accordance with the provisions of Section 713 hereof and the Indenture Trustees have not instituted such proceedings within 60 days after receipt of the notice from the Holders of a majority of the principal amount of the Outstanding Notes;

(3) such Holder or Holders have offered to the Indenture Trustees reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and

(4) no direction inconsistent with such written request given pursuant to Section 713 hereof to the Indenture Trustees shall have been given by the Holders of a majority of the principal amount of Outstanding Notes within 60 days after receipt of the notice referred to in (2) above;

it being understood and intended that no one or more Holders of Notes shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Notes, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the ratable benefit of all the Holders of Notes.

SECTION 709. Unconditional Right of Holders to Receive Principal, Premium (if any) and Interest.

Notwithstanding any other provision in this Indenture including Section 708, the Holder of any Note Outstanding shall have the right, which is absolute and unconditional, to receive payment of the principal of and (subject to Section 207 hereof) interest on such Note on the respective Stated Maturities expressed in such Note (or, in the case of redemption, on the Redemption Date upon surrender of such Note) and of the premium (if any) on such Note when due and payable and to institute suit

for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the lien of this Indenture upon any property subject to such lien.

**SECTION 710. Restoration of Rights and Remedies.**

If the Indenture Trustees or any Holder has instituted any proceeding to enforce any right or remedy or in the exercise of any power under this Indenture by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Indenture Trustees, the Deed of Trust Trustee, or to such Holder, then and in every case the Mortgagor, the Indenture Trustees, the Deed of Trust Trustee, and the Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions and rights hereunder, including the position and rights of the Indenture Trustees with respect to the Estate, and thereafter all rights, powers and remedies of the Indenture Trustees, the Deed of Trust Trustee, and the Holders shall continue as though no such proceeding had been instituted.

**SECTION 711. Rights and Remedies Cumulative and Subject to Applicable Law.**

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 206 hereof, no right, power or remedy herein conferred upon or reserved to the Indenture Trustees or to the Holders is intended to be exclusive of any other right, power or remedy and every right, power and remedy shall, to the extent permitted by law, be cumulative and concurrent and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise and may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustees or the Holders. The exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. The exercise of any right, power or remedy shall be subject to applicable law.

**SECTION 712. Delay or Omission Not Waiver.**

No delay or omission of the Indenture Trustees or of any Holder of any Note to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right, power and

remedy given by this Article or by law to the Indenture Trustees or the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustees or by the Holders, as the case may be.

SECTION 713. Control by Holders.

Subject to the provisions of Section 804(5), the Holders of a majority of principal amount of Outstanding Notes shall have the right, during the continuance of an Event of Default,

(1) to require the Indenture Trustees, to the extent permitted by applicable law, to proceed to enforce this Indenture, either by judicial proceedings for the enforcement of the payment of the Notes and the foreclosure of this Indenture and the sale of the Estate or, at the election of the Indenture Trustees, by the exercise of the power of entry and/or sale or other remedies hereby conferred, and

(2) to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustees or exercising any trust or power conferred on the Indenture Trustees; provided that

(A) such direction shall not be in conflict with any rule of law or with this Indenture and shall not unduly prejudice the rights of Holders other than those constituting such majority, and

(B) the Indenture Trustees may take any other action deemed proper by the Indenture Trustees which is not inconsistent with such direction.

SECTION 714. Waiver of Past Defaults.

The Holders of not less than 66-2/3% in principal amount of Outstanding Notes may on behalf of all Holders of Outstanding Notes waive any past default hereunder and its consequences, except a default

(1) in the payment of the principal of, premium (if any) or interest on any Note, or in the payment of any Sinking Fund payment, or

(2) in respect of a covenant or provision hereof which under Article Five or Ten hereof cannot be modified or amended without the consent of each Holder of an Outstanding Note.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have

been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 715. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of a Note by its acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Indenture Trustees for any action taken or omitted by them as Indenture Trustees, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Indenture Trustees, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of Outstanding Notes, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Note on or after the Stated Maturities expressed in such Note (or, in the case of redemption, on or after the Redemption Date) or the payment of the premium (if any) on such Note on or after the date such premium becomes due and payable.

SECTION 716. Waiver of Appraisement, etc.; Laws.

(a) The Mortgagor covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption law wherever enacted, now or at any time hereafter in force, in order to prevent or hinder the enforcement of this Indenture or the absolute sale of the Estate, or any part thereof, or the possession thereof by any purchaser at any sale under this Article; and the Mortgagor, for itself and all who may claim under it, so far as it now or hereafter lawfully may, hereby waives the benefit of all such laws.

(b) The Mortgagor hereby waives and releases, to the extent permitted by law:

(i) All benefit that might accrue to the Mortgagor by virtue of any present or future law exempting the Estate, or any part of the proceeds arising from any sale of the Estate, from attachment, levy or sale on execution; and

(ii) Exemption from civil process; and

- (iii) Redemption or extension of time for payment; and
- (iv) Any right to have the Estate marshalled.

The Mortgagor further agrees that any court having jurisdiction to foreclose this Indenture may order the sale of the Estate as an entirety.

(c) If any law in this Section referred to and now in force, of which the Mortgagor or its successor might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section.

SECTION 717. Right to Cure or Purchase Notes.

If an Event of Default under, and as defined in, Section 17.1(a) of the Lease relating to the non-payment of Basic Rent thereunder shall have occurred and if such Event of Default shall not constitute the third consecutive or the fifth occurrence of such default, then the Indenture Trustee shall, upon receipt of written notice of the occurrence of any such Event of Default from the Series A Trustees, within two Business Days after receipt thereof, deliver a copy of such notice to the holders of the Notes. Thereafter, at any time prior to the expiration of a period of twenty-five (25) days after the date of such notice, any one or more of the Series B Noteholders acting through the Indenture Trustees may (but need not) pay to the Indenture Trustee an amount equal to the principal and interest (and premium, if any) then due on the Series A Notes, payable other than by acceleration, together with any interest due thereon on account of the delayed payment thereof, provided, however, that such payment by the Series B Noteholders shall not be deemed to cure any Event of Default under Section 17.1(a) of the Lease or any corresponding Event of Default under this Indenture arising therefrom. If payment is timely received from the holders of the Series B Notes, then such holders shall have the sole right, prior to the occurrence of a subsequent Event of Default hereunder, to control the exercise of all remedies available to them under the Lease. If a Noteholder desires to exercise its right to make such payment(s), it shall do so by notifying, in writing, the Indenture Trustee of its election within fifteen (15) days of its receipt of the notice from the Indenture Trustees. If more than one Noteholder so elects, then the Indenture Trustees shall (i) determine the amount to be paid by each by multiplying the total payment to be made by a fraction, the numerator of which shall be the amount of the Notes held by each so electing and the denominator of which shall be the aggregate of the Notes held by all so electing, (ii) shall notify all Noteholders so electing within five (5) days after the expiration of the fifteen (15) day period of the amount to be

paid by them and (iii) shall collect all amounts so paid and remit them to the Series A Trustees.

If an Event of Default under, and as defined in, Section 17.1(a) of the Lease relating to the non-payment of Basic Rent thereunder shall have occurred which is the third consecutive or fifth occurrence of such default or if an Event of Default under any other section of the Lease shall have occurred, the Indenture Trustees shall, upon receipt of written notice of the occurrence of any such Event of Default from the Series A Trustees, within two Business Days after receipt thereof, deliver a copy of such notice to the holders of the Notes. Thereafter, at any time prior to the expiration of a period of twenty-five (25) days after such notice is deemed received, any one or more of the Series B Noteholders acting through the Indenture Trustees may (but need not) deliver to the Series A Trustees a written notice of the exercise of an election to purchase all (but not less than all) of the Series A Notes Outstanding from the holders thereof on the first Interest Payment Date occurring not less than sixty (60) days after the expiration of such 25-day period for a purchase price equal to the aggregate unpaid principal balance thereof together with a Yield Maintenance Premium and interest accrued thereon to the date of purchase. If a Noteholder desires to exercise its election to purchase all of the Series A Notes, it shall do so by notifying, in writing, the Indenture Trustees of its election within twenty (20) days of its receipt of the notice from the Indenture Trustees and the Indenture Trustees shall then notify the Series A Trustees within the twenty-five (25) day period. If more than one Noteholder elects to purchase all of the Series A Notes, then the Noteholders so electing shall purchase the Series A Notes in the proportion that the amount of the Notes held by each so electing bears to the aggregate of the Notes held by all so electing. The Indenture Trustees shall (i) determine the amount to be paid by each Noteholder so electing, as set forth above, (ii) promptly notify each Noteholder so electing of the amount to be paid by it, which payment shall be due on the date set forth in the Indenture Trustees notice but no earlier than ten (10) days before the date payment is due to the Series A Trustees, (iii) collect all amounts so paid and remit them to the Series A Trustees against delivery of the Series A Notes to be acquired, duly endorsed and registered to the Noteholders.

Nothing contained in this Indenture shall prohibit any Noteholder from acquiring a Series A Note(s) and references herein to Series A Noteholder, Noteholder or Series B Noteholder shall be deemed to include such Person holding the applicable note(s).



7

**SECTION 718. Additional Remedies with Respect to Properties Located in Texas.**

Any term or provision of this Section 718 to the contrary notwithstanding, the Deed of Trust Trustee named in Section 734 hereof shall have all power, authority, right and benefit granted to the Indenture Trustee in exercising the remedies described in this Indenture, without the necessity of joinder of the Indenture Trustees. With respect to the Properties located in the State of Texas:

(a) The Indenture Trustees may sell or offer for sale the Properties in such portions, order and parcels as the Indenture Trustees may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. In instances where the Properties are located in the State of Texas, such sale shall be conducted at the courthouse of the county in which the Properties (or any of that portion thereof to be sold) are located (whether the parts or parcels thereof, if any, in different counties are contiguous or not), in the area at the courthouse designated by the commissioner's court of said county as the area where such sales are to take place or, if no area is designated by the commissioner's court, in the area at the courthouse designated in the notice of sale hereinafter described, on the first Tuesday of a month between the hours of 10:00 a.m. and 4:00 p.m. (the commencement of sale to occur within three (3) hours following the time designated in the hereinafter described notice of sale as the earliest time at which such sale shall occur if required by applicable law) after the advertising the time, place and terms of sale and that portion of the Properties to be sold by posting or causing to be posted written or printed notice thereof at least twenty-one (21) days before the date of the sale both at the courthouse door at each county in which the Properties are located, and by filing a copy of such notice with the county clerk of each county in which the Properties are located, which notice shall be posted at the courthouse door and filed with the county clerk by the Indenture Trustees, or by any person acting for him. The Indenture Trustees shall serve, or shall cause to be served at least twenty-one (21) days before the date of sale, written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the Notes according to the records of the Indenture Trustees by the deposit of such notice in the United States mail, postage prepaid and addressed to the debtors at the debtors' last known address as shown by the records of the Indenture Trustees. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

7

(b) With respect to that portion of the Property constituting collateral subject to the Uniform Commercial Code of the State of Texas, the Indenture Trustees may, at their option, accomplish the sale of such collateral jointly with the sale of the real property pursuant to Section 51.002 of the Texas Property Code relating to the sale of real estate, or separately by Chapter 9 of the Texas Business and Commerce Code relating to the sale of collateral after default by the debtors (as said section and chapter now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same. In the event of a sale of Collateral pursuant to Chapter 9 of the Texas Business and Commerce Code, if notice to the Mortgagor of the intended disposition is required by law, such notice shall be deemed commercially reasonable if given to the Mortgagor at least ten (10) calendar days prior to the date of the sale. Nothing contained in this paragraph shall be construed to limit in any way the Indenture Trustees' right to sell the Properties by private sale if, and to the extent that such private sale is permitted under the laws of the state where the Properties (or that portion thereof to be sold) are located or by public or private sale after entry of a judgment by any court of competent jurisdiction ordering the same. At any such sale:

(i) whether made under the power herein contained, the aforesaid Section 51.002, the Texas Business and Commerce Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for the Indenture Trustees to be physically present at, or to have constructive possession of, the Properties (the Mortgagor shall deliver to the Indenture Trustees any portion of the Properties not actually or constructively possessed by the Indenture Trustees immediately upon demand by the Indenture Trustees) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale;

(ii) each instrument of conveyance executed by the Indenture Trustees shall contain a general warranty of title, binding upon the Mortgagor;

(iii) Each and every recital contained in any instrument of conveyance made by the Indenture Trustees shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Notes, advertisement and conduct of such sale in the manner provided herein and

otherwise by law and appointment of any successor Indenture Trustee hereunder;

(iv) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed;

(v) the receipt by the Indenture Trustees or such other party or officer making the sale of the full amount of the purchase money shall be sufficient to discharge the purchaser or purchasers from any further obligation for the payment thereof, and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof;

(vi) to the fullest extent permitted by law, the Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar, both at law and in equity, against the Mortgagor and against all other persons claiming or to claim the property sold or to any part thereof by, through or under the Mortgagor; and

(vii) to the extent and under such circumstances as are permitted by law, either of the Indenture Trustees may be a purchaser at any such sale.

(c) Separate Sales. The Property may be sold in one or more parcels and in such manner and order as the Indenture Trustee may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

(d) Occupancy After Foreclosure. Subject to the provisions of any written agreement to the contrary, the purchaser at any foreclosure sale hereunder shall become the legal owner of the Property. All occupants (except those which have previously executed a prior written agreement with the purchaser) of the Property or any part thereof shall become tenants at sufferance of the purchaser at the foreclosure sale and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Property, other than the statutory action of forcible detainer in any justice court having jurisdiction over the Property.

(e) Successor Deed of Trust Trustees. The Deed of Trust Trustee may resign by the giving of notice of such resignation, in writing, to the Indenture Trustees. If the Deed of Trust Trustee shall die, resign or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by the Indenture Trustees so to do, or if for any reason the Indenture Trustee shall prefer to appoint a substitute trustee to act instead of the aforementioned Deed of Trust Trustee, the Indenture Trustees shall have full power to appoint a substitute trustee, and, if preferred, several substitute trustees in succession, who shall succeed to all the estates, rights, powers and duties of the aforementioned Deed of Trust Trustee. Such appointment may be executed by any authorized agent of the Indenture Trustees, and if any such Indenture Trustee be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Mortgagor hereby ratifies and confirms any and all acts which the forenamed Deed of Trust Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof.

(f) Succession Instruments. Any new trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder, with like effect as if originally named as Deed of Trust Trustee herein; but nevertheless, upon the written request of the Indenture Trustees or of the successor trustee, the Deed of Trust Trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed all of the estates, properties, rights, powers and trusts of the Deed of Trust Trustee so ceasing to act and shall duly assign, transfer and deliver any of the property and moneys held by such Deed of Trust Trustee to the successor trustee so appointed in its or his place.

(g) The proceeds from any disposition made pursuant to this Section 718, or any other sums received by the Indenture Trustee or the Deed of Trust Trustee hereunder, shall be applied, as the case may be, as follows:

FIRST, to the payment of all expenses of collection or of advertising, appraising, selling, and conveying the Property (or any part thereof) including, without limitation, a reasonable commission to the Deed

of Trust Trustee and reasonable attorneys' fees, accounting fees, appraisal costs, investigation expenses, and court costs, incurred by the Deed of Trust Trustee; and

SECOND, As provided in Section 1204 hereof.

(h) Assignment of Leases and Rents. (i) Mortgagor hereby assigns to Indenture Trustees all rents, royalties, bonuses, issues, profits, revenue, income and other benefits derived from the Property or arising from the use or enjoyment of any part thereof or from any lease pertaining thereto ("Rental") such assignment being upon the following terms: (a) until receipt from Indenture Trustees of notice of an Event of Default which has not been waived, each lessee of a direct lease from Mortgagor may pay Rental directly to Mortgagor, but Mortgagor covenants to hold all Rentals so paid in trust for the use and benefit of Indenture Trustee; (b) upon receipt from Indenture Trustees of notice that an Event of Default has occurred which has not been waived, each lessee of a direct lease from Mortgagor is hereby authorized and directed to pay directly to Indenture Trustees all Rental thereafter accruing, and the receipt of Rental by Indenture Trustee shall be a release of such lessee to the extent of all amounts so paid; (c) Rental so received by Indenture Trustees shall be applied by Indenture Trustees, first, to the expenses, if any, of collection and then in accordance with other terms of this Indenture; (d) Indenture Trustees shall not be liable for its failure to collect, or its failure to exercise diligence in the collection of Rental, but shall be accountable only for Rental that it shall actually receive; and (e) this assignment shall terminate upon the release of this Indenture but no lessee shall be required to take notice of termination until a copy of such release shall have been delivered to such lessee. This assignment is in addition and supplement to, and Indenture Trustees' rights under this Section 718 are cumulative of, Indenture Trustees' rights under, any other security documents concerning or applicable to each lease now or at any time hereafter existing or Rentals thereunder, or any part thereof. Mortgagor's rights under this Indenture to collect Rental arising from or out of the leases shall be deemed to arise from a limited license (the "License") which is herein granted to Mortgagor. As between Indenture Trustees and Mortgagor, and any person claiming through or under Mortgagor, the assignment contained in this Section 718 is intended to be absolute, unconditional, and presently effective, and the provisions of Subsections 718((b)(i) and (ii) are intended solely for the benefit of each lessee and shall never inure to the benefit of Mortgagor or any person claiming through or under Mortgagor, other than a lessee who

has not received such notice. It shall never be necessary for Indenture Trustees to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section 718. The License granted by this Indenture to Mortgagor shall be automatically revoked upon the occurrence of an Event of Default which has not been waived.

(i) Subordination of Leases. Nothing in this Section 718 shall ever be construed as subordinating the liens of this Indenture to any lease; provided, however, that any proceedings by the Indenture Trustees to foreclose this Indenture, or any action by way of its entry into possession after an Event of Default which has not been waived, shall not operate to terminate any lease which has been approved in writing from the Indenture Trustees to the lessee thereunder, and the Indenture Trustees will not cause any lessee under any such approved lease to be disturbed in his possession and enjoyment of the leased premises so long as such lessee shall continue to fully and promptly pay the Rental and perform all of the terms, covenants, and provisions of the lease.

(ii) Security Agreement. This Indenture shall be a security agreement between Mortgagor, as the debtor, and the Deed of Trust Trustee, as the secured party, covering the Property constituting personal property or fixtures governed by the Texas Uniform Commercial Code (hereinafter called the "Code"), and Mortgagor grants to the Deed of Trust Trustee a security interest in such portion of the Property. In addition to the Deed of Trust Trustees' other rights hereunder, the Deed of Trust Trustee shall have all rights of a secured party under the Code. Mortgagor shall execute and deliver to the Deed of Trust Trustee all financing statements that may be required by the Deed of Trust Trustee to establish and maintain the validity and priority of the Deed of Trust Trustees' security interest and Mortgagor shall bear all costs thereof, including all Uniform Commercial Code searches reasonably required by the Deed of Trust Trustee. If the Deed of Trust Trustee should dispose of any of the Property pursuant to the Code, ten (10) days written notice by the Deed of Trust Trustee to Mortgagor shall be deemed to be reasonable notice; provided, however, the Deed of Trust Trustee may dispose of such property in accordance with the foreclosure procedures of this Indenture in lieu of proceeding under the Code.

7

SECTION 719. Tennessee Deed of Trust and Related  
Additional Remedies.

With respect to the deed of trust on the Properties located in Tennessee the following provisions shall be applicable notwithstanding any contrary provisions appearing elsewhere herein. Upon the occurrence of an Event of Default which has not been waived and the election to sell the Properties or any portion thereof, notice of such sale shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the county in which the Properties are located and the date of the first publication shall be not less than 21 days prior to the date of the sale. In addition, the Deed of Trust Trustee shall give such other notice of an Event of Default and election to sell, if any, as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of the time, terms and place of sale as may then be required by law, and without the necessity of any demand on the Mortgagor, the Deed of Trust Trustee shall sell the Properties or the portion thereof so specified at a public auction to the highest bidder for cash in lawful money of the United States of America free of the equities of redemption, homestead, dower, the statutory right of redemption, and all other rights, and exemption of every kind, all of which are expressly waived, between the hours of 10:00 a.m. and 4:00 p.m. at the door of the courthouse in the county in which a Property is located. If a Holder is the highest bidder, the Holder may credit the portion of the purchase price that would be distributable to the Holder against part of the indebtedness secured by this Indenture in lieu of paying cash. The Deed of Trust Trustee may, from time to time, postpone the sale of all or any portion of a Property by public announcement thereof at the time and place notified therefor or by such other notice as shall be required by law. The Deed of Trust Trustee, from time to time, also may rescind any such notice of an Event of Default and notice of their election to sell a Property. The exercise by the Deed of Trust Trustee of such right of postponement or rescission shall not constitute a waiver of any Event of Default then existing or subsequently occurring nor impair the right of the Deed of Trust Trustee to give notice of an Event of Default and notice of their election to sell a Property nor otherwise affect any provision of this Indenture or any other security for the indebtedness secured by this Indenture.

The equity of redemption and statutory right of redemption, are hereby expressly waived.

Anything herein to the contrary notwithstanding, the only functions of the Deed of Trust Trustee for Tennessee are to exercise the powers of sale in Section 719 and all duties related thereto upon being instructed to do so by the Indenture Trustees.

7

The Indenture Trustee may replace the Deed of Trust Trustee for Tennessee by recording an instrument naming a successor in the Register's Office of the counties in which the Properties in Tennessee are located.

SECTION 720. Certain Matters Relating to Properties Located in South Carolina.

With respect to the mortgage on the Properties located in the State of South Carolina:

Whereas, the Mortgagor is well and truly indebted unto the Holders and the Indenture Trustees (hereinafter in this Section referred to collectively as "Mortgagee") as evidenced by the Mortgagor's Notes, which Notes are secured by this Indenture;

Now, know all men, that the Mortgagor, in consideration of the aforesaid debt, and in order to secure the payment thereof and other obligations set forth herein, and of any other further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for its account by the Mortgagee, as provided herein and pursuant to Section 29-3-50 of the South Carolina Code, has Granted, bargain, sold, and release, and by these presents does Grant, bargain, sell and released unto the Mortgagee, its successors and assigns, the South Carolina Properties herein,

Together with all and singular rights, members, hereditaments, and appurtenances to the same belonging or in any way incident or appertaining and all of the rents, issues, and profits which may arise or be had therefrom,

To have and to hold, all and singular the said premises unto the Mortgagee, its heirs, successors and assigns, forever, and

The Mortgagee covenants and agrees that the Mortgagor shall hold and enjoy the premises above conveyed until there is an Event of Default under this Indenture which has not been waived or in the Notes secured hereby. It is the true meaning of this instrument that if the Mortgagor shall fully perform all the terms, conditions, and covenants of this mortgage and Indenture, and of the Notes secured hereby, that then this mortgage shall be utterly null and void; otherwise to remain in full force and virtue.

The Mortgagor hereby expressly waives any right to apply for or seek an appraisal of the Property as provided under South Carolina Code of Laws, 1976, as amended, Section 29-3-680, et seq. The lien of the within Indenture may secure future advances, extensions, or rewards, the sum of which shall not exceed the principal amount secured hereby; and the lien may also



secure interest which is deferred, accrued, or capitalized, all of which is provided for in Section 29-3-50, South Carolina Code of Laws, 1976, as amended.

SECTION 721. Certain Matters Relating to Properties Located in Illinois.

With respect to the mortgage on the Properties located in Illinois, the maximum amount secured by this Indenture shall be \$40,000,000.

SECTION 722. Certain Matters Relating to Properties Located in Kansas.

With respect to the mortgage on the Properties located in Kansas, the maximum amount secured by this Indenture shall be \$266,163. A Property located in Kansas may be released from this Indenture upon payment of the above amount secured in Kansas and the satisfaction of the requirements of Section 1402.

SECTION 723. Certain Matters Relating to Properties Located in Florida.

A. Indenture Secures Future Advances. With respect to this Indenture as it relates to Properties located in Florida:

This Indenture is given to secure not only the amount initially secured by this Indenture, but also such future advances, whether such advances are obligatory or are to be made at the option of the Indenture Trustees or the Noteholders, or otherwise, as are made within 20 years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Indenture. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed two times the face amount of the amount initially secured by this Indenture, plus interest thereon.

B. Removal and Substitution. The Indenture Trustee may remove the Deed of Trust Trustee for Florida at any time or from time to time and select a successor trustee or trustees in the event of the death, removal, resignation, refusal to act, or inability to act of the Deed of Trust Trustee for Florida or, in its sole discretion, for any reason whatsoever, the Indenture Trustee or the Holders, as applicable may, without notice, without specifying any reason therefor, and without applying to any court, select and appoint a successor trustee or trustees, and all powers, rights and duties and authority of the Deed of Trust Trustee for Florida shall thereupon become vested in the successor. The substitute trustee shall not be required to give

7

bond for the faithful performance of his duties unless required by the Indenture Trustee or the Holders, as applicable.

C. Any Deed of Trust Trustee for Florida May Act. If more than one Deed of Trust Trustee for Florida is appointed under this Indenture, all rights granted to and all powers conferred upon the Deed of Trust Trustee for Florida hereunder may be exercised by both or either of the Deed of Trust Trustee for Florida.

D. Expenses. All reasonable expenses, charges, counsel fees and other disbursements incurred by the Deed of Trust Trustee for Florida in and about the administration and executed by this Indenture in the performance of its duties and powers hereunder shall be secured by this Indenture.

E. Approval of Legal Description. Mortgagor has read and does hereby approve the legal description of the Land which is the subject hereof, as set forth in Schedule A attached hereto, and hereby indemnifies the Indenture Trustees, the Deed of Trust Trustee and the Noteholders and their attorneys with respect to any liability which might arise as a consequence of § 697.10, Florida Statutes.

SECTION 724. Certain Matters Relating to Properties Located in Ohio.

The parties intend that this Indenture shall be entitled to the benefits of division (B) of Ohio Revised Code Section 5301.232.

SECTION 725. Certain Matters Relating to Properties Located in Oklahoma.

Without in any way limiting the other provisions of this Indenture, but in addition thereto and in amplification thereof, upon the occurrence of any Event of Default which has not been waived, Mortgagor hereby confers on the Indenture Trustees the power to sell the Properties, and the interests of persons therein, in the manner and pursuant to the procedures set forth in the "Oklahoma Power of Sale Mortgage Foreclosure Act" (46 O.S. §§40-49), as said Act may be amended from time to time, or pursuant to other applicable statutory or judicial authority. If no cure is effected within the statutory time limits, the Indenture Trustees may accelerate the indebtedness secured hereby without further notice (the aforementioned statutory cure period shall run concurrently with any contractual provision for notice before acceleration of debt) and may then proceed in the manner and subject to the conditions of the above-referenced statutes to send to Mortgagor and other necessary parties a notice of sale and may sell and convey the Properties in accordance with the above-referenced laws. The Indenture Trustees may enforce this Indenture by exercising said power of sale or at the Indenture

Trustees' sole option by judicial foreclosure proceedings as provided by law. No action of the Indenture Trustees based upon the provisions contained herein or in the Oklahoma Power of Sale Mortgage Foreclosure Act, including, without limitation, the giving of the notice of intent to foreclose by power of sale or the notice of sale, shall constitute an election of remedies which would preclude the Indenture Trustees from pursuing judicial foreclosure before or at any time after commencement of the power of sale foreclosure procedure. If the Indenture Trustees institute judicial proceedings to enforce this Indenture, Mortgagor hereby waives or does not waive, at the sole option of the Indenture Trustees, appraisal of the Properties, said option to be exercised by the Indenture Trustees at the time judgment is rendered or at any time prior thereto. Mortgagor fully understands the consequences of conferring on the Indenture Trustees the above-described power of sale, and if the Indenture Trustees elect to enforce this Indenture by exercising said power of sale, Mortgagor hereby expressly waives to the fullest extent permitted by law any right to a judicial hearing prior to the sale of the Properties. As often as any proceedings may be taken to foreclose this Indenture, whether pursuant to the power of sale herein conferred or by judicial proceedings, or to foreclose the security interest herein granted to the Indenture Trustees, Mortgagor agrees to pay to the Indenture Trustees, in addition to all other sums due, all costs and expenses, including reasonable attorney fees, incurred by the Indenture Trustees.

Notwithstanding any provisions to the contrary contained in this Indenture, Mortgagor shall not be required to pay the Oklahoma Real Estate Mortgage Tax to be paid upon the recording of this Indenture as prescribed by and levied pursuant to 68 O.S. §1901-1910; provided, however, that the payment of said mortgage tax by the Indenture Trustees shall not affect Mortgagor's responsibility to pay all other fees, taxes and assessments as prescribed in this Indenture.

A POWER OF SALE HAS BEEN GRANTED IN THIS INDENTURE. A POWER OF SALE MAY ALLOW THE INDENTURE TRUSTEES TO TAKE THE MORTGAGED PROPERTIES AND SELL THEM WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY THE MORTGAGOR UNDER THIS INDENTURE.

SECTION 726. Certain Matters Relating to Properties Located in Alabama.

Notwithstanding anything else to the contrary herein, with respect to the Properties located in the State of Alabama, the Indenture Trustees shall have the following additional rights:

Upon the occurrence of an Event of Default which has not been waived, or at any time thereafter, this Indenture shall be subject to foreclosure and may be foreclosed as now provided by

law in case of past due mortgages, and the Indenture Trustees shall be authorized, at their option, whether or not possession of the Property is taken, after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Indenture Trustee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Indenture Trustees, their successors and assigns, may bid at any sale or sales had under the terms of this Indenture and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving, to the extent permitted by law, the application of any doctrine or marshalling or like proceeding. In case the Indenture Trustees, in the exercise of the power of sale herein given, elect to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Notes shall have been paid in full.

SECTION 727. Certain Matters Relating to Properties Located in West Virginia.

Any sale of any part of the Properties located in the State of West Virginia may be made at the front door of the courthouse of any County wherein any of the Properties are situated and shall be made after having first published notice thereof once a week for two successive weeks preceding the date of sale in a qualified newspaper circulated in the County in which the Properties or the portion thereof to be sold is situate, after having served notice thereof upon the Mortgagor directed to the address of the Mortgagor given herein for such purpose, and after having served notice thereof at least twenty (20) days in advance of such sale upon any subsequent lienholder who has previously notified the Indenture Trustee in writing at the address given herein for such purpose of such lienholder's subordinate lien. The notice of any sale shall set forth the day, time and place of sale, the names of the parties to this Indenture, the date of this Indenture, the office and book in which it is recorded, the quantity and description of the Properties or portion thereof to be sold and the terms of sale. The Indenture Trustee herein shall have full power to fix the day, time, place and terms of sale including cash on hand on the day of sale, and may appoint

or designate any one or more persons as agent to perform any act necessary or incident to any sale, including the conduct of a sale in the name of the Indenture Trustee, its substitute or successor. Any sale hereunder may be adjourned by announcement at the time and place for such sale without further notice.

**SECTION 728. Certain Matters Relating to Properties Located in Michigan.**

With respect to the properties located in the State of Michigan:

The Indenture Trustees shall have all rights and remedies provided for in this Indenture or otherwise permitted by law. In addition, upon the occurrence of an Event of Default which has not been waived, Indenture Trustees shall have the right, and are hereby authorized, to sell, release and convey the Properties, at public sale, execute and deliver to the Purchasers at such sale good and sufficient deeds of conveyance, rendering any surplus funds, after payment of all sums due under this Indenture in full and the expenses of such sales, including attorney's fees as provided by law, to Mortgagor, all in accordance with Chapter 32 of the Michigan Revised Judicature Act, as the same may be amended from time to time, and any similar statutory provisions which may hereafter be enacted in addition thereto or in substitution therefor. In the case of any such sale under this Indenture, by virtue of judicial proceedings or otherwise, the Properties may be sold in one parcel and as an entirety or in such parcels, manner and order as the Indenture Trustees may elect in their sole discretion. Mortgagor waives the right to require any such sales to be made in parcels or the right to select such parcels.

**SECTION 729. Certain Matters Relating to Properties Located in Virginia.**

A. Virginia Deed of Trust. (i) In Virginia this instrument shall be deemed to be a Deed of Trust. (ii) All provisions within this Deed of Trust with respect to the Deed of Trust Trustee are applicable in Virginia. (iii) To the extent that there are any inconsistencies between the provisions of this Section 729 and the provisions of Sections 702 through 717, the provisions of this Section 729 shall control. (iv) All remedies granted to the Indenture Trustee in Sections 702 through 717, except for the provisions in Section 703 which allow the Indenture Trustee to bid for and purchase the Property at sale of any or all of the Properties pursuant to an exercise of its remedies herein, have been granted to the Virginia Deed of Trust Trustee.

B. Statutory Short Form References. The following provisions of Section 55-59.2 and 55-60 of the Code of Virginia

of 1954, as amended (the "Virginia Code") are hereby incorporated herein by reference:

Exemptions waived.  
Subject to all upon default.  
Renewal, extension or reinstatement permitted.  
Reinstallment permitted.  
Right of anticipation reserved on the terms set forth in the Notes.  
Priority in direct order of maturity.  
Substitution of Virginia Trustee permitted with or without cause pursuant to the provisions of Section 26-49 of the Virginia Code.

C. Foreclosure. If an Event of Default shall have occurred which has not been waived, the Indenture Trustee as agent for the Holder or subject to the provisions of 713 the Holders at its or their option, may effect the foreclosure of this Indenture by directing the Deed of Trust Trustee for Virginia to sell the Estate or any portion thereof at public auction at such time and place, and upon such terms and conditions, as the Indenture Trustee or the Holders, as applicable, may deem expedient or as may be required or permitted by applicable law. The Deed of Trust Trustee for Virginia shall first give notice prior to the sale of the Estate or any portion thereof as to the time, place and terms by publication in a newspaper having general circulation in the city or county in which the applicable portion of the Estate to be sold is located, as may be required or permitted by applicable law. In the event of any sale under the terms of this Indenture, the Mortgagor shall pay a reasonable fee to the Deed of Trust Trustee for Virginia which shall be in lieu of all other fees and commissions permitted by statute or custom to be paid, reasonable attorneys' fees and all expenses incurred in obtaining or continuing abstracts of title for the purpose of any such sale.

Anything to the contrary herein notwithstanding, this Indenture shall be deemed to be a Deed of Trust with respect to those portions of the Estate located in the Commonwealth of Virginia and all of the provisions hereof with respect to the Deed of Trust Trustee shall be applicable to the counterparts of this Indenture that create liens upon such portions of the Estate. All of the rights and remedies conferred upon the Indenture Trustees in Sections 702-717, except for the right to bid for any purchase any or all of the Properties at foreclosure, shall be deemed to have been granted to the Virginia Deed of Trust Trustee. To the extent of any inconsistency between this Section 728 and Sections 702-717, this Section 728 shall control.

D. Application of the Proceeds. The Deed of Trust Trustee for Virginia shall receive and receipt the proceeds of any sale, no purchaser being required to see to the application of the

proceeds except as may otherwise be provided in Section 58.1-3340 of the Virginia Code, and apply the same in the manner required by Section 55-59.4 of the Code.

E. Virginia Deed of Trust Trustee.

(i) Removal and Substitution. The Indenture Trustee may remove the Deed of Trust Trustee for Virginia at any time or from time to time and select a successor trustee or trustees in the event of the death, removal, resignation, refusal to act, or inability to act of the Deed of Trust Trustee for Virginia or, in its sole discretion, for any reason whatsoever, the Indenture Trustee or the Holders, as applicable may, without notice, without specifying any reason therefor, and without applying to any court, select and appoint a successor trustee or trustees, and all powers, rights and duties and authority of the Deed of Trust Trustee for Virginia shall thereupon become vested in the successor. The substitute trustee shall not be required to give bond for the faithful performance of his duties unless required by the Indenture Trustee or the Holders, as applicable.

(ii) Any Deed of Trust Trustee for Virginia May Act. If more than one Deed of Trust Trustee for Virginia is appointed under this Indenture, all rights granted to and all powers conferred upon the Deed of Trust Trustee for Virginia hereunder may be exercised by both or either of the Deed of Trust Trustee for Virginia.

(iii) Expenses. All reasonable expenses, charges, counsel fees and other disbursements incurred by the Deed of Trust for Virginia in and about the administration and executed by this Indenture in the performance of its duties and powers hereunder shall be secured by this Indenture.

SECTION 730. Certain Matters Relating to Properties Located in Massachusetts.

With respect to the mortgage on the Properties located in the Commonwealth of Massachusetts:

Know all men by these presents that Mortgagor, for consideration paid, grants to the Indenture Trustees, with MORTGAGE COVENANTS AND IN TRUST WITH POWER TO SELL, to secure the payment of the indebtedness and other obligations set forth herein, the Massachusetts Properties.

This Indenture is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements on the part of Mortgagor herein undertaken shall be kept and fully and seasonably performed, that no breach of the conditions specified herein shall be permitted and that upon any breach of such

condition, Mortgagee shall have the STATUTORY POWER OF SALE. For purposes of this Indenture, the term "default" as used in the statutory power of sale shall mean an Event of Default as defined herein.

SECTION 731. Certain Matters Relating to Properties Located in Georgia.

With respect to this Indenture as it relates to Properties located in Georgia:

Mortgagor does hereby Grant unto Indenture Trustee and the successors, successors-in-title and assigns of Indenture Trustee all of the Estate, TO HAVE AND TO HOLD the Estate and all parts, rights, members and appurtenances thereof, for the use, benefit and behoof of Indenture Trustee and the successors, successors-in-title and assigns of Indenture Trustee, IN FEE SIMPLE forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Estate, and has good right to convey the same is unencumbered except for the Permitted Encumbrances as defined in Section 101 hereof, and that Mortgagor does warrant and will forever defend the title thereto against the claims of all persons whomever, except as to the Permitted Encumbrances.

This Indenture is intended to operate and is to be construed as a deed passing the title to the Estate to Indenture Trustee and is made under those provisions of the existing laws of the State of Georgia relating to deeds to secure debt, and not as a mortgage, and is given to secure the payment of the Notes. Should the Notes be paid according to the tenor and effect thereof when the same shall become due and payable, and should Mortgagor perform all covenants herein contained in a timely manner, then this Indenture shall be cancelled and surrendered.

Without in any way limiting the other provisions of this Indenture, but in addition thereto and in amplification thereof, upon the occurrence of any Event of Default which has not been waived, Indenture Trustee, at its option, may sell the Property or any part of the Property at one or more public sale or sales before the door of the courthouse of the county in which the Property or any part of the Property is situated, to the highest bidder for cash, in order to pay the indebtedness, and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff's sales are advertised in said county. At any such public sale, Indenture Trustee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple, with full general warranties of title and to this end; and Indenture Trustee, its agents, representatives, successors or assigns, may bid and



purchase at such sale; and Mortgagor hereby constitutes and appoints Indenture Trustee the agent and attorney-in-fact of Mortgagor to make any such sale and conveyance, and thereby to divest Mortgagor of all right, title and equity that Mortgagor may have in and to the Property and to vest the same in the purchaser or purchaser's at such sale or sales, and all the purchasers at such sale or sales, and all the acts or doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Mortgagor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise are granted as cumulative of the other remedies provided hereby or by law for collection of the indebtedness and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the indebtedness. In the event of any sale under this Indenture by virtue of the exercise of the powers herein granted, pursuant to any order in any judicial proceeding or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Indenture Trustee in its sole discretion may elect, and if Indenture Trustee so elects, Indenture Trustee may sell the personal property covered by this Indenture at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State of Georgia, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Properties are sold or the indebtedness is paid in full. If the indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Indenture Trustee may, at its option, exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Indenture Trustee may determine.

SECTION 732. Certain Matters Relating to Properties Located in North Carolina.

Notwithstanding anything else to the contrary herein, with respect to the Properties located in the State of North Carolina, the following shall apply:

A. CONVEYANCE:

In consideration of the premises and for the purposes aforesaid, and in further consideration of the sum of One Dollar (\$1.00) paid to the Mortgagor by the Deed of Trust Trustee, receipt of which is hereby acknowledged, the Mortgagor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Deed of Trust Trustee, its successors and assigns, Properties located in North Carolina, DESCRIBED IN THE LEGAL DESCRIPTION ATTACHED AS AN EXHIBIT HERETO.

7

TO HAVE AND TO HOLD the Properties unto the Deed of Trust Trustee, its successors and assigns, in fee simple forever, upon the trusts set forth in this Indenture, with a Power of Sale.

B. FORECLOSURE AND APPLICATION OF SALE PROCEEDS:

(i) Foreclosure and Sale. Upon the occurrence of an Event of Default which has not been waived, the Indenture Trustees may notify the Deed of Trust Trustee to exercise the power of sale granted hereunder and upon such notification it shall be lawful for and the duty of the Deed of Trust Trustee and the Deed of Trust Trustee is hereby authorized and empowered to expose to sale and to sell the Estate or any part thereof at public sale to the highest bidder for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in Deeds of Trust and upon such sale, the Deed of Trust Trustee shall convey title to the portion of the Estate so sold to the purchaser in fee simple. The Mortgagor agrees that in the event of a sale hereunder, the Indenture Trustees shall have the right to bid at such sale. The Deed of Trust Trustee may require the successful bidder at any sale to deposit immediately with the Deed of Trust Trustee cash or certified check in an amount up to ten percent (10%) of the bid up to and including \$1,000.00 plus five percent (5%) of any excess of the bid over \$1,000.00, provided that notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise it shall be applied to the purchase price. If personal property is sold hereunder, it need not be at the place of sale. The published notice, however, shall state the time and place where such personal property may be inspected prior to sale. The Estate may be sold in such parcels or lots as the Deed of Trust Trustee may determine and the Estate may be sold at one sale or in multiple sales as determined by the Deed of Trust Trustee. The exercise of the power of sale hereunder by the Deed of Trust Trustee on one or more occasions shall not be deemed to extinguish the power of sale which power of sale shall continue in full force and effect until all of the Estate shall have been finally sold and properly conveyed to the purchasers at the sales. The Deed of Trust Trustee's commission shall be five percent (5%) of the gross proceeds of the sale for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Mortgagor shall pay all expenses incurred by the Deed of Trust Trustee, including reasonable attorneys' fees, and a partial Deed of Trust Trustee's commission computed on five percent (5%) of the outstanding indebtedness in accordance with the

7

following schedule: one-fourth (1/4th) thereof before the Deed of Trust Trustee issues a notice of hearing on the right to foreclose; one-half (1/2) thereof after issuance of said notice; three-fourths (3/4ths) thereof after such hearing; and the full commission after the initial sale.

(ii) Application of Sale Proceeds and Rents. After any foreclosure sale of the Estate or a portion thereof, the Deed of Trust Trustee shall receive the proceeds of sale. No purchaser shall be required to see to the application of the proceeds and the Deed of Trust Trustee shall apply the proceeds of the sale and any other sums which then may be held by the Deed of Trustee under this Deed of Trust as follows:

FIRST: To the payment of the costs and expenses of such sale, including compensation to the Deed of Trust Trustee and all expenses incurred by the Deed of Trust Trustee, including attorneys' fees for services actually rendered; and

SECOND: As provided in Section 1204 hereof.

C. APPOINTMENT OF SUBSTITUTE DEED OF TRUST TRUSTEE.

The Indenture Trustees shall at any time have the irrevocable right to remove the Deed of Trust Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in this State, and in the event of the death or resignation of the Deed of Trust Trustee herein named, the Indenture Trustee shall have the right to appoint his successor by such written instrument. Any Deed of Trust Trustee so appointed shall be vested with the title to the Properties, and shall possess all the powers, duties and obligations herein conferred on the Deed of Trust Trustee in the same manner and to the same extent as though he were named herein as Deed of Trust Trustee.

D. SECURITY AGREEMENT.

This Indenture shall constitute a security agreement pursuant to the Uniform Commercial Code for any items constituting a part of the Properties which, under applicable law, may be subjected to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Indenture Trustees a security interest in such items. Mortgagor agrees that the Indenture Trustees may file this Indenture, or a reproduction thereof, in the real estate records of other appropriate index, as a financing statement for any of such items including, without limitation, those items which are, or are to become fixtures with respect to the Land. In addition, Mortgagor agrees to execute and

deliver to Indenture Trustees, upon their request, any financing statements, as well as extensions, renewals and amendments thereof, as Indenture Trustees may require to perfect a security interest with respect to such items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof. Without the prior written consent of Indenture Trustees, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in items constituting a part of the Properties, including replacements and additions thereto except as otherwise expressly set forth in the Security Agreements. Upon the occurrence of an Event of Default which has not been waived the Indenture Trustees shall have the remedies of a secured party under the Uniform Commercial Code. In exercising any of said remedies, Indenture Trustees may proceed against the items of real property and any items of personal property specified above as part of the Properties separately or together and in any order whatsoever, without in any way affecting the availability of Indenture Trustees' remedies under the Uniform Commercial Code or of the remedies provided herein. THE COLLATERAL IS OR INCLUDES FIXTURES.

SECTION 733. Certain Matters Relating to Properties Located in Minnesota.

The following provisions shall apply with respect to the Properties located in the State of Minnesota (the "Minnesota Properties"):

(a) Acceleration; Foreclosure. If any Event of Default has occurred and is continuing, the Indenture Trustees may, at their option, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

(i) The Indenture Trustees may exercise all of their rights under paragraph (b) below.

(ii) The Indenture Trustees shall have and may exercise, with respect to all Fixtures, all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code as in effect in the State of Minnesota. If notice to the Mortgagor of the intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to the Mortgagor (in the manner specified in Section 105) at least 10 calendar days prior to the date of intended disposition. The Mortgagor shall pay on demand all costs and expenses incurred by the Indenture Trustees in exercising such rights and remedies, including but not limited to reasonable attorneys' fees and legal expenses.

7

(iii) The Indenture Trustees may (and are hereby authorized and empowered to) foreclose this Mortgage by action or advertisement pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Minnesota Properties at public auction and convey the same to the purchaser in fee simple and, out of the proceeds arising from such sale, to pay all indebtedness secured hereby, with interest, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees the Mortgagor agrees to pay; provided, however, that notwithstanding any provision herein to the contrary, the Indenture Trustees shall not sell any of the Properties unless a declaration of acceleration has been made pursuant to Section 702 hereof.

(iv) The Indenture Trustees may exercise another rights and remedies available to them by law or, to the extent not prohibited by applicable law, agreement.

(b) Assignment of Rents and Leases.

(i) Upon the occurrence of any Event of Default which has not been waived, the Indenture Trustee may, at their option, in addition to the other remedies set forth in paragraph (a) above:

(A) in the name, place and stead of the Mortgagor and without becoming a mortgagee-in-possession (i) enter upon, manage and operate the Minnesota Properties or retain the services of one or more independent contractors to manage and operate all or any part of the Minnesota Properties; (ii) make, enforce, modify and accept surrender of the Lease; (iii) obtain or evict tenants, collect, sue for, fix or modify all tolls, rents (including Basic Rent), issues, profits, products, revenues and other income of such Properties and every part thereof (all of the foregoing arising from the Properties located in Minnesota being herein called the "Minnesota Rents"), and enforce all rights of the Mortgagor under the Lease; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Indenture.

(B) with or without exercising the rights set forth in subparagraph (A) above, give or require the Mortgagor to give notice of any or all tenants authorizing and directing them to pay all Minnesota Rents directly to the Indenture Trustees; and

(C) without regard to any waste, adequacy of the security or solvency of the Mortgagor, apply for the appointment of a receiver of the Minnesota Properties, to

which appointment the Mortgagor hereby consents, whether or not foreclosure proceedings have been commenced under this Indenture and whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the Minnesota Rents pursuant to paragraph (ii) shall not cure or waive any Event of Default (or notice of default) under this Indenture or invalidate any act done pursuant to such notice.

(ii) All Minnesota Rents collected by the Indenture Trustees or the receiver each month shall be applied as follows:

(A) to payment of all reasonable fees of the receiver approved by the court;

(B) to payment of all tenant security deposits then owing pursuant to the provisions of Minnesota Statutes Section 504.20;

(C) to payment of all prior or current real estate taxes and special assessments with respect to the Minnesota Properties:

(D) to payment of all premiums then due for insurance required by the provisions of this Indenture;

(E) to payment of expenses incurred for normal maintenance of the Minnesota Properties;

(F) if received prior to any foreclosure sale of the Minnesota Properties, to the Indenture Trustees for payment of the indebtedness secured by this Indenture, but no such payment made after acceleration of the indebtedness shall affect such acceleration;

(G) if received during or with respect to the period of redemption following a foreclosure sale of the Minnesota Properties:

(1) if the purchaser at the foreclosure sale is not the Indenture Trustees, first to the Indenture Trustees to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by this Indenture and second to the purchaser to be retained as a credit to the redemption price, but if the Minnesota Properties are not redeemed, then to the purchaser of the Minnesota Properties;

- (2) if the purchaser at the foreclosure sale is the Indenture Trustee, to the Indenture Trustees to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Indenture or this Indenture, and the balance to be retained by the Indenture Trustees as a credit to the redemption price, but if the Minnesota Properties are not redeemed, then to the Indenture Trustees, whether or not any such deficiency exists.

The rights and powers of the Indenture Trustees under this paragraph (b) and the application of Minnesota Rents under this paragraph (b) shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after the foreclosure sale.

(C) Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Fixtures. For this purpose, the following information is set forth:

- (i) Name and Address of Debtor:

S & A Properties Corp.  
12404 Park Central Drive  
Dallas, Texas 75251

- (ii) Name and Address of Secured Parties:

The Connecticut Bank and Trust Company,  
National Association, as indenture trustee  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust Department

Lese Amato, as co-indenture trustee  
c/o The Connecticut Bank and Trust Company,  
National Association  
One Constitution Plaza  
Hartford, Connecticut 06115

- (iii) This document covers goods which are or are to become fixtures.

- (iv) The Debtor named above is the record owner of the real estate described herein.

(d) Limitation of Indebtedness Secured by Mortgage. Notwithstanding anything in this Indenture to the contrary, the maximum principal amount of the Indebtedness (other than protective advances) secured by the lien of this Indenture on the

Minnesota Properties shall be \$332,015. The principal amount of the Indebtedness secured by this Mortgage shall not be reduced as a result of any payment or application of proceeds of any other collateral, if any, received by the Indenture Trustee, except to the extent that application of the amounts so received reduces the principal amount of the Note to less than \$332,015.

(e) Acknowledgment Regarding Future Advances. To the extent that this Indenture secures indebtedness other than the Notes, the amount of such indebtedness is not currently known.

The Indenture Trustees acknowledge that they are aware of the provisions of Minnesota Statutes § 287.05, subd. 5, and intend to comply with the requirements contained therein.

SECTION 734. Deed of Trust Trustee.

For purposes of enforcing the rights and remedies granted to the Indenture Trustee herein, the following Deed of Trust Trustees shall have all the rights and benefits under this Indenture granted to the Indenture Trustee with respect only to the Properties indicated below and such Deed of Trust Trustees shall take any and all actions contemplated herein for and on behalf of the Indenture Trustees upon the direction of the Indenture Trustee.

(a) With respect to all Properties located in Florida, the Deed of Trust Trustee shall be Andrew M. Smulian whose address c/o Tew Jordan & Schulte, 701 Brickell Avenue, Miami, Florida 33131-2801, as Deed of Trust Trustee;

(b) With respect to all Properties located in North Carolina the Deed of Trust Trustee shall be The Fidelity Company, whose address is Post Office Drawer 84, Winston-Salem, North Carolina 27102, Attn: Dennis W. McNames;

(c) With respect to all properties located in Virginia, the Deed of Trust Trustee shall be E. Peter Kane whose address is c/o Harton & Williams, 3050 Clain Bridge Road, 6th Floor, Fairfax, Virginia 22030;

(d) With respect to all Properties located in Tennessee, the Deed of Trust Trustee shall be Thomas F. Wells, having an address c/o First American Title Company of the Midwest, 100 North Main Building, Memphis, Tennessee 38103; and

(e) With respect to all Properties located in Texas the Deed of Trust Trustee shall be Charles E. Odom having an address c/o First American Title Insurance Company, 2000 Berring Drive, Suite 100, Houston, Texas 77057, as Deed of Trust Trustee.



SECTION 735. Authorization to Execute Instruments, etc.

The Mortgagor irrevocably appoints the Indenture Trustees as its true and lawful attorneys, severally and not jointly, which appointment is coupled with an interest and is irrevocable, in the Mortgagor's name and stead and on its behalf, for the purpose of (a) executing on behalf of the Mortgagor and filing continuation statements and any necessary amendments to all financing statements naming the Indenture Trustees and/or the Noteholders as the secured parties filed under any applicable UCC, and (b) effectuating any sale, assignment, transfer or delivery of the Estate or any part thereof or any interest therein for the enforcement of this Indenture whether pursuant to foreclosure, power of sale or otherwise, to execute and deliver all such deeds, bills of sale, assignments, releases and other instruments as the Indenture Trustees may consider necessary or appropriate, with full power of substitution, the Mortgagor hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. If so requested by the Indenture Trustees, the Lessee or any other purchaser, the Mortgagor shall ratify and confirm any such sale, assignment, transfer or delivery by executing and delivering to the party requesting the same all proper deeds, bills of sale, assignments, releases and other instruments as may be designated in any such request.

SECTION 736. Title Upon Sale; Receipt of Sufficient Discharge to Purchaser.

After the occurrence of an Event of Default hereunder, and upon the sale of the Estate or any part thereof or any interest therein, whether pursuant to foreclosure, power of sale or otherwise, the purchaser shall acquire good title thereto, free of the lien of this Indenture and free of all rights of redemption, whether statutory, equitable or otherwise, in the Mortgagor to the extent permitted by applicable law. The receipt of the officer making the sale under judicial proceedings or of the Indenture Trustees or the Noteholders shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obligated to see to the application thereof. All occupants of any Property sold or any part thereof shall become tenants at sufferance of the purchaser, and shall deliver possession thereof immediately to such purchaser on demand. It shall not be necessary for the purchaser at any such sale to bring any action for possession of the Property so purchased other than statutory action of forcible detainer in any justice court having jurisdiction.

SECTION 737. Purchase of Estate by a Noteholder.

Any Noteholder may be a purchaser of the Estate or any part thereof or any interest therein at any sale thereof, whether pur-

suant to foreclosure, power of sale or otherwise, and may apply the indebtedness secured hereby to the purchase price.

**SECTION 738. Sale a Bar Against the Mortgagor.**

The sale of the Estate or any part thereof or any interest therein, whether pursuant to foreclosure, power of sale or otherwise under this Indenture, shall forever bar any claim with respect thereto by the Mortgagor to the extent permitted by applicable law.

**SECTION 739. Performance by Lessee.**

Compliance by the Lessee with the provisions of the Lease which if done by the Mortgagor would constitute compliance with provisions of this Indenture, shall be deemed compliance by the Mortgagor with such provisions hereof. Performance by the Lessee of any of the Mortgagor's obligations hereunder, whether or not pursuant to the Lease, shall be the equivalent of the Mortgagor's performance thereof.

**SECTION 740. Certain Matters Relating to Properties Located in Pennsylvania.**

The following provisions shall apply with respect to the Mortgages on the Properties located in the Commonwealth of Pennsylvania.

**Security Agreement.** This Indenture constitutes a security agreement under the Uniform Commercial Code in effect in the Commonwealth of Pennsylvania (the "Code") and creates a security interest in the Fixtures described herein and the proceeds thereof. Upon the recording of this Indenture in the office of the Recorder of Deeds in and for each county in Pennsylvania where any of the Properties are located, this Indenture shall also be effective as a financing statement filed in such office as a fixture filing with respect to the Fixtures, as provided in Section 9402(f) of the Code. For this purpose, the following information is set forth:

(i) Name and Address of Debtor:

S & A Properties Corp  
12404 Park Central Drive  
Dallas, Texas 75251

(ii) Name and Address of Secured Parties:

The Connecticut Bank and Trust Company,  
National Association as indenture trustee  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust Department

Lese Amato, as co-indenture trustee  
c/o The Connecticut Bank and Trust Company,  
National Association  
One Constitution Plaza  
Hartford, Connecticut 06115

(iii) This document covers goods which are or are to become fixtures.

(iv) The Debtor named above is the record owner of the real estate described herein.

Upon the occurrence of any Event of Default hereunder which has not been waived, the Indenture Trustees shall have in addition to any other rights and remedies hereunder, all of the rights and remedies granted to a secured party under the Uniform Commercial Code with respect to all personal property. To the extent permitted by law, Mortgagor and the Indenture Trustees agree that the items set forth on the financing statements filed with respect hereto shall be treated as part of the Land and Improvements regardless of the fact that such items are set forth in the financing statements. Such items are contained in the financing statements to create a security interest in favor of the Indenture Trustees in the event such items are determined to be personal property under the law. Notwithstanding any release from the lien hereof of any or all of that property constituting part of the Properties which is deemed "real property", any proceeding to foreclose this Indenture or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest in the Fixtures created hereby and referred to above until the repayment or satisfaction in full of the obligations of Mortgagor as are now or hereafter evidenced by the Notes.

SECTION 741. Certain Matters Relating to Properties Located in the State of New York.

With respect to Properties located in the State of New York, Mortgagor will, in compliance with Section 13 of the Lien Law of the State of New York, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the

cost of the improvement before using any part of the total of the same for any other purpose.

## ARTICLE EIGHT

### THE INDENTURE TRUSTEES AND THE DEED OF TRUST TRUSTEES

#### SECTION 801. Acceptance of Trusts.

The Indenture Trustees hereby accept the trusts imposed upon them by this Indenture, and covenant and agree to perform the same as herein expressed and agree to receive and disburse all monies constituting part of the Estate in accordance with the terms hereof; and the Indenture Trustees shall not be answerable or accountable hereunder except as in this Article provided.

#### SECTION 802. Certain Duties and Responsibilities of the Indenture Trustees and the Deed of Trust Trustees.

(a) Except during the continuance of an Event of Default,

(1) the Indenture Trustees and the Deed of Trust Trustees shall undertake to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustees and the Indenture Trustees and the Deed of Trust Trustees agree that they will not manage, control, use, sell, dispose of or otherwise deal with any part of the Estate, except as required by the terms of the Lease and as otherwise provided herein; and

(2) in the absence of bad faith on their part, the Indenture Trustees and the Deed of Trust Trustees may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Indenture Trustees and the Deed of Trust Trustees and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Indenture Trustee, the Indenture Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default has occurred, the Indenture Trustees and the Deed of Trust Trustees shall exercise such of the rights and powers vested in them by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Indenture Trustees or the Deed of Trust Trustees from

liability for their own negligent action, their own negligent failure to act, or their own willful misconduct, except that

(1) this subsection (c) shall not be construed to limit the effect of subsection (a) of this Section;

(2) the Indenture Trustee and the Deed of Trust Trustees shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Indenture Trustee or the Deed of Trust Trustee, as the case may be, unless it shall be proved that the Indenture Trustee or the Deed of Trust Trustee, as the case may be, was negligent in ascertaining the pertinent facts;

(3) the Indenture Trustees and the Deed of Trust Trustees shall not be liable with respect to any action taken or omitted to be taken by them in good faith in accordance with the direction of the Holders of a majority in principal amount of Outstanding Notes relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustees or the Deed of Trust Trustees, or exercising any trust or power conferred upon the Indenture Trustees or the Deed of Trust Trustees, under this Indenture; and

(4) no provision of this Indenture shall require the Indenture Trustees or the Deed of Trust Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if either of them shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to them.

(d) Whether or not herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustees or the Deed of Trust Trustees shall be subject to the provisions of this Section.

#### SECTION 803. Notice Of Defaults.

Within 15 days after the occurrence of any default hereunder, the Indenture Trustee shall transmit by mail notice of such default known to the Indenture Trustees to all Holders, as their names and addresses appear in the Register, unless such default shall have been cured.

SECTION 804. Certain Rights of Indenture Trustees.

Except as otherwise provided in Section 802 hereof:

(1) the Indenture Trustees and the Deed of Trust Trustees may rely upon and shall be protected in acting or refraining from acting in reliance upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, Note or other paper document believed by them to be genuine and to have been signed or presented by the proper Person or Persons;

(2) any request or direction of the Mortgagor mentioned herein shall be sufficiently evidenced by a Mortgagor Order or Mortgagor Request;

(3) whenever in the administration of this Indenture the Indenture Trustees or the Deed of Trust Trustee, as the case may be, shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Indenture Trustees and the Deed of Trust Trustees (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on their part, rely upon an Officers' Certificate;

(4) the Indenture Trustees and the Deed of Trust Trustees may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by them hereunder in good faith in reliance thereon;

(5) the Indenture Trustees and the Deed of Trust Trustees shall be under no obligation to exercise any of the rights or powers vested in them by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Indenture Trustees and the Deed of Trust Trustee, as the case may be, reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by them in compliance with such request or direction;

(6) the Indenture Trustees and the Deed of Trust Trustees shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, Note or other paper or document, but the Indenture Trustees and the Deed of Trust Trustees, in their discretion, may make such further inquiry or investigation into such facts or matters as they may see fit;

(7) the Indenture Trustees and the Deed of Trust Trustees may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and may, at the Mortgagor's expense, consult with counsel, accountants and other professionals to be selected and employed by them, and the reasonable expenses thereof shall be paid by the Mortgagor, and the Indenture Trustees and the Deed of Trust Trustees shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by them hereunder;

(8) In accepting the trusts hereunder and under the Operative Documents, the Indenture Trustees are acting solely as trustees hereunder and not in their respective individual capacities and all Persons, other than the Mortgagor and the Holders, having any claim against the Indenture Trustees or the Deed of Trust Trustees, arising by reason hereof, shall look only to the Estate for payment or satisfaction thereof;

(9) The Indenture Trustees and the Deed of Trust Trustees shall have no duty to make, arrange or ensure the completion of the payment of or be under any duty in respect of any tax, assessment or other governmental charge which may be levied or assessed on the Estate or any part thereof or against the Mortgagor;

(10) The Indenture Trustees and the Deed of Trust Trustees shall have no obligation to see to the payment or discharge of any liens (other than the lien hereof, and then only to the extent herein provided), or to see to the application of any payment of the principal of, premium or interest on any obligation secured thereby or to the delivery or transfer to any Person of any property released from such lien, or to give notice to or make demand upon any mortgagor, mortgagee or other Person for the delivery or transfer of any of such property;

(11) The Indenture Trustees and the Deed of Trust Trustees shall not be concerned with or accountable to any Person for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions hereof or of any Operative Document or of any property or securities or the proceeds thereof which shall be released from the lien hereof or thereof in accordance with the provisions hereof or thereof;

(12) The Indenture Trustees and the Deed of Trust Trustees shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements contained in any Operative Document to be



7

performed or observed by the Mortgagor or any other party to any Operative Document; and

(13) The Indenture Trustees and the Deed of Trust Trustees shall not be charged with knowledge of any Event of Default under any Operative Document (except default in the payment of moneys to the Indenture Trustees which the Mortgagor is required to pay or cause to be paid to the Indenture Trustee on or before a specified date), unless either (i) in the case of the Indenture Trustee, a Responsible Officer of the Indenture Trustee assigned to its corporate trust department shall have actual knowledge of such Event of Default or (ii) written notice of such Event of Default shall have been given to the Indenture Trustees and the Deed of Trust Trustee by the Mortgagor, any other obligor on such Notes or by any Holders of at least 10% in aggregate principal amount of the Notes then Outstanding.

SECTION 805. Indenture Trustees Not Responsible for Recitals, Issuance of Notes or Recording; Warranty.

The recitals contained herein and in the Notes, except for the certificate of authentication, shall not be taken as the statements of the Indenture Trustees, and the Indenture Trustees assume no responsibility for their correctness. The Indenture Trustees make no representations as to the value or condition of the Estate or any part thereof, as to the title of the Mortgagor thereto or as to the security afforded thereby or hereby, or as to the validity or genuineness of any securities at any time pledged or deposited with the Indenture Trustees hereunder.

The Indenture Trustees make no representation or warranty as to the validity, sufficiency, legality or enforceability of this Indenture, the Notes, the Lease, or any document constituting a portion of the Estate or as to the correctness of any statement contained in any thereof, except to the extent that any such statement was or is expressly made by the Indenture Trustee or the institution acting as Indenture Trustee, except that the Indenture Trustees hereby represent and warrant that this Indenture has been executed and delivered by the Indenture Trustees and, in the case of the Indenture Trustee, by one of its officers who is duly authorized to execute and deliver such document on its behalf. The Indenture Trustees shall have no responsibility with respect to the recording, re-recording, filing or re-filing, under the laws of any jurisdiction, of this Indenture or any other document or statement that may be required or permitted to be recorded, re-recorded, filed or re-filed under any such laws to protect the security interests created by or pursuant to the Granting Clauses and Article Thirteen of this Indenture.

SECTION 806. Indenture Trustees and Deed of Trust Trustees Shall Not Hold Notes.

The Indenture Trustees and the Deed of Trust Trustees in their individual capacity shall not become the owners or pledgees of Notes.

SECTION 807. Funds May Be Held by Indenture Trustees or Paying Agent.

(a) Subject to subsection (b) of this Section, any monies held by the Indenture Trustee or the Paying Agent hereunder as part of the Estate may, until paid out by the Indenture Trustee or the Paying Agent as herein provided, be carried by the Indenture Trustee or the Paying Agent on deposit with itself, and neither the Indenture Trustees nor the Paying Agent shall have any liability for interest upon any such monies except as otherwise provided in Article Eleven hereof.

(b) Any monies deposited with the Indenture Trustee pursuant to the terms of this Indenture shall be deposited by the Indenture Trustee in interest bearing accounts in any bank or trust company which is a member of the Federal Reserve System and which has combined capital and surplus and undivided profits of not less than \$300,000,000 (including the Indenture Trustee if such requirement as to Federal Reserve System membership and combined capital and surplus and undivided profits are satisfied), as the Mortgagor shall specify in a Mortgagor Request.

SECTION 808. Compensation and Reimbursement.

The Mortgagor hereby covenants and agrees:

(1) to pay to the Indenture Trustees from time to time reasonable compensation for all services rendered by them hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of any express trust);

(2) except as otherwise expressly provided herein, to reimburse the Indenture Trustees and the Deed of Trust Trustees upon their request for all reasonable expenses, disbursements and advances incurred or made by the Indenture Trustees in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of their agents and counsel), except any such expense, disbursement or advance as may be attributable to their negligence or bad faith; and

(3) to indemnify the Indenture Trustees and the Deed of Trust Trustees for, and to hold them harmless against any

loss, liability or expense incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of this Indenture, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder.

This Indenture also secures the performance by the Mortgagor of its indemnification obligation hereunder. Should the Indenture Trustees or the Deed of Trust Trustees incur any liability, loss, damage or expense with respect to which indemnification is available under this provision, the amount thereof, together with interest thereon at the rate set forth in the Notes, shall be secured by this Indenture and shall be payable by the Mortgagor to the Indenture Trustees or the Deed of Trust Trustees, as the case may be, upon demand.

**SECTION 809. Indenture Trustee Required; Eligibility.**

There shall at all times be an Indenture Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then, for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

**SECTION 810. Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of any of the Indenture Trustees and no appointment of a successor Indenture Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Indenture Trustee under Section 812 hereof.

(b) An Indenture Trustee may resign at any time by giving written notice thereof to the Mortgagor. If an instrument of acceptance by a successor Indenture Trustee shall not have been delivered to such Indenture Trustee and the Mortgagor within 30 days after the giving of such notice of resignation, the resigning Indenture Trustee may petition any court of competent

jurisdiction for the appointment of a successor Indenture Trustee.

(c) An Indenture Trustee may be removed at any time by Act of the Holders of a majority in principal amount of Outstanding Notes, delivered to such Indenture Trustee and to the Mortgagor.

(d) If at any time:

(1) the Indenture Trustee shall cease to be eligible under Section 810 hereof and shall fail to resign after written request therefor by the Mortgagor or by any such Holder, or

(2) the Indenture Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver of the Indenture Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Mortgagor may remove such Indenture Trustee, or (ii) subject to Section 715 hereof, any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of such Indenture Trustee and the appointment of a successor Indenture Trustee.

(e) If an Indenture Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Indenture Trustee for any cause, the Mortgagor shall promptly appoint a successor Indenture Trustee. If, within one year after such resignation or removal or the occurrence of such vacancy or incapability, a successor Indenture Trustee shall be appointed by Act of the Holders of a majority in principal amount of Outstanding Notes delivered to the Mortgagor and the retiring Indenture Trustee, the successor Indenture Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Indenture Trustee and supersede the successor Indenture Trustee appointed by the Mortgagor. If no successor Indenture Trustee shall have been so appointed by the Mortgagor or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of itself and all others similarly situated, subject to Section 715 hereof, petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee.

(f) The Mortgagor shall give notice of each resignation and each removal of an Indenture Trustee and each appointment of a

successor Indenture Trustee to the Holders of Notes as their names and addresses appear in the Register. Each notice shall include the name of the successor Indenture Trustee and the address of its Corporate Trust Office or Office of Co-Indenture Trustee, as the case may be.

**SECTION 811. Acceptance of Appointment by Successor.**

Every successor Indenture Trustee appointed hereunder shall execute, acknowledge and deliver to the Mortgagor and to the retiring Indenture Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Indenture Trustee shall become effective and such successor Indenture Trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Indenture Trustee; but, on request of the Mortgagor or the successor Indenture Trustee, such retiring Indenture Trustee shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Indenture Trustee upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Indenture Trustee, and shall duly assign, transfer and deliver to such successor Indenture Trustee all property and money held by such retiring Indenture Trustee hereunder; provided, however that in the event the retiring Indenture Trustee fails to convey such estates, properties rights, powers and trusts and deliver all property and money held within ten (10) days of any request by the Mortgagor or the successor Indenture Trustee, then such conveyances and deliveries shall be deemed to have been satisfied for the benefit of the successor Indenture Trustee. Upon request of any such successor Indenture Trustee, the Mortgagor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Indenture Trustee all such estates, properties, rights, powers and trusts.

No successor Indenture Trustee shall accept its appointment unless at the time of such acceptance such successor Indenture Trustee shall be qualified and eligible under this Article.

**SECTION 812. Merger, Conversion, Consolidation or Succession to Business.**

Any corporation into which the Indenture Trustee may be merged and converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Indenture Trustee, shall be the successor of the Indenture Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further

7

act on the part of any of the parties hereto. In case any Notes shall have been authenticated, but not delivered, by the Indenture Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Indenture Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Indenture Trustee had itself authenticated such Notes.

**SECTION 813. Right of Indenture Trustees to Perform Covenants.**

If the Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder and such failure shall not be cured within the applicable grace period, if any, the Indenture Trustees without notice to or demand upon the Mortgagor or the Lessee and without waiving or releasing any rights, obligations or default hereunder, and except as provided in Section 1302, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Mortgagor and may enter upon any Property for such purpose and take all such action thereon as, in the Indenture Trustees' opinion, may be necessary or appropriate therefor. All reasonable sums so paid by the Indenture Trustees and all costs and expenses (including, without limitation, attorney's fees and expenses) so incurred, together with interest thereon at the rate borne by the Notes, from the date of payment or incurring, shall constitute additional indebtedness secured by this Indenture and shall be paid by the Mortgagor to the Indenture Trustees on demand.

**SECTION 814. Maintenance of Agencies.**

(a) There shall at all times be maintained in the Borough of Manhattan, The City of New York, an office or agency where Notes may be presented or surrendered for transfer or exchange or for the registration thereof, and for payment of principal, premium (if any) and interest and where notices and demands to or upon the Indenture Trustees in respect of the Notes or of this Indenture may be served. Written notice of the location of each such office or agency and of any change of location thereof shall be given to the Mortgagor and to the Indenture Trustees. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office.

(b) There shall at all times be a Registrar and a Paying Agent hereunder. Each such Authorized Agent shall be a bank or trust company, shall be a corporation or association organized and doing business under the laws of the United States or any State, with (other than in the case of an indemnified affiliate of the Indenture Trustees) a combined capital and surplus of at

least \$50,000,000, in the case of a Paying Agent, and (other than in the case of an indemnified affiliate of the Indenture Trustee) \$25,000,000, in the case of a Registrar, and in all cases shall be authorized under such laws to exercise corporate trust powers, subject to supervision by Federal or State authorities. The Indenture Trustee is hereby appointed as Paying Agent and Registrar hereunder.

(c) Any Paying Agent (other than the Indenture Trustee) from time to time appointed hereunder shall execute and deliver to the Indenture Trustees an instrument in which said Paying Agent shall agree with the Indenture Trustees, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of, premium (if any) and interest on the Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Indenture Trustees notice of any default by any obligor upon the Notes in the making of any such payment of principal, premium (if any) or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Indenture Trustees, forthwith pay to the Indenture Trustees all sums so held in trust by such Paying Agent.

Notwithstanding any other provisions of this Indenture, any payment required to be made to or received or held by the Indenture Trustees may, to the extent authorized by written instructions of the Indenture Trustees, be made to or received or held by a Paying Agent in the Borough of Manhattan, The City of New York, for the account of the Indenture Trustees.

(d) Any corporation into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation, or conversion to which any Authorized Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authorized Agent, shall be the successor of such Authorized Agent hereunder if such successor corporation is otherwise eligible under this Section, without the execution of filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor corporation.

(e) Any Authorized Agent may at any time resign by giving written notice of resignation to the Indenture Trustees and to the Mortgagor. The Mortgagor may (except with respect to the Indenture Trustees), and at the request of the Indenture Trustees shall, at any time terminate the agency of any Authorized Agent

by giving written notice of termination to such Authorized Agent and to the Indenture Trustees. Upon the resignation or termination of an Authorized Agent or in case at any time any Authorized Agent shall cease to be eligible under this Section (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Mortgagor shall promptly appoint one or more qualified successor Authorized Agents approved by the Indenture Trustees to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section. The Mortgagor shall give written notice of any such appointment to the Indenture Trustees and shall mail notice of such appointment to all Holders as their names and addresses appear on the Registrar.

(f) The Mortgagor agrees to pay from time to time to each Authorized Agent reasonable compensation for its services and to reimburse it for its reasonable expenses.

SECTION 815. The Co-Indenture Trustee.

(a) The Co-Indenture Trustee hereby appoints the Indenture Trustee as its agent or attorney, with full power and authority, insofar as permitted by law, to exercise any and all rights, powers, duties and obligations conferred upon the Co-Indenture Trustee by this Indenture. The Indenture Trustee hereby acknowledges and accepts such appointment.

(b) The Indenture Trustee, at any time, by an instrument in writing executed by it, may remove the Co-Indenture Trustee, and in such event, by an instrument in writing executed by it, may appoint a successor or successors to the Co-Indenture Trustee, anything contained herein to the contrary notwithstanding.

SECTION 816. Co-Indenture Trustee Acting with Indenture Trustee.

The rights, powers, duties and obligations conferred or imposed upon the Indenture Trustees or any of them shall be conferred or imposed upon and exercised or performed solely by the Indenture Trustee, except as expressly provided otherwise by this Indenture and except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by the Co-Indenture Trustee, or the Indenture Trustee and the Co-Indenture Trustee jointly.



ARTICLE NINE

HOLDERS' LISTS AND REPORTS BY INDENTURE TRUSTEES  
AND MORTGAGOR

SECTION 901. Mortgagor to Furnish Indenture Trustees Names  
and Addresses of Holders.

The Mortgagor will furnish or cause to be furnished (including from its Paying Agents) to the Indenture Trustees

(a) semi-annually, not more than 10 days after each Regular Record Date, a list, in such forms as the Indenture Trustees may reasonably require, of the names and addresses of the Holders as of such Regular Record Date, and

(b) at such other times as the Indenture Trustees may request in writing, within 30 days after the receipt by the Mortgagor of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

provided, however, that during any period when the Indenture Trustee is the sole Registrar, no such list shall be required to be furnished.

SECTION 902. Preservation of Information; Communication to Holders.

(a) The Indenture Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders (i) contained in the most recent list furnished to the Indenture Trustees as provided in Section 901 hereof, and (ii) received by the Indenture Trustee in its capacity as Registrar, if so acting. The Indenture Trustee may destroy any list furnished to it as provided in Section 901 hereof upon receipt of a new list so furnished.

(b) If any Holder applies in writing to the Indenture Trustee then the Indenture Trustee shall, within five Business Days after the receipt of such application, afford such applicant access to the information preserved at the time by the Indenture Trustee in accordance with Section 902(a) hereof.

(c) Every holder of Notes, by receiving and holding the same, agrees with the Mortgagor and the Indenture Trustee that neither the Mortgagor nor the Indenture Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 902(b) hereof, regardless of the source from which such information was derived, and that the Indenture Trustees shall

not be held accountable by reason of mailing any material pursuant to a request made under Section 902(b) hereof.

**SECTION 903. Reports by Indenture Trustees.**

(a) On or before May 15 of each year commencing with the year 1990, so long as any Notes are Outstanding, the Indenture Trustees shall transmit to all Holders, as provided in subsection (b) of this Section 903, a brief report dated as of the preceding March 15 with respect to their eligibility under Section 809 hereof.

(b) Reports pursuant to this Section shall be transmitted by mail to all Holders of Notes, as the names and addresses of such Holders appear in the Register.

**SECTION 904. Reports by the Mortgagor.**

The Mortgagor will furnish the Indenture Trustee with the following:

(i) Within 120 days after the end of each of the Mortgagor's fiscal years, an Officer's Certificate, stating that to the best of the signer's knowledge after making due inquiry, the Mortgagor is not in Default in the performance or observance of any of the terms of the Operative Documents, or if the Mortgagor shall be in default to his knowledge, specifying all such defaults, and the nature thereof, and the steps being taken to remedy the same;

(ii) Within 120 days after the end of each of the Mortgagor's fiscal years, a balance sheet, income statement and statement of changes in financial position of the Company all as certified by an officer of the Mortgagor; and

(iii) With reasonable promptness such other information respecting the financial condition and affairs of the Mortgagor as the Indenture Trustees may from time to time reasonably require.

ARTICLE TEN

SUPPLEMENTAL INDENTURES

SECTION 1001. Supplemental Indentures Without Consent of Holders.

The Mortgagor and the Indenture Trustees, at any time and from time to time, without the consent of any Holders, may enter into any one or more indentures supplemental hereto, including Indenture Supplements, in form satisfactory to the Indenture Trustees, for the following purposes:

(1) to correct or amplify the description of any property at any time subject to the lien of this Indenture or to subject to the lien of this Indenture property pledged in replacement of any property subject to the lien of this Indenture in accordance with Article X of the Lease; or

(2) to evidence the succession of another corporation to the Mortgagor, and the assumption by any such successor of the covenants of the Mortgagor herein and in the Notes contained; or

(3) to add to the covenants of the Mortgagor, for the benefit of the Holders of the Notes, or to surrender any right or power herein conferred upon the Mortgagor; or

(4) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, to convey, transfer, assign, mortgage or pledge any property to or with the Indenture Trustees or to make any other provisions with respect to matters or questions arising under this Indenture which, in the Indenture Trustees' opinion, shall not adversely affect the interests of the Holders of the Notes. The Indenture Trustees shall incur no liability in making any determination as to whether any such supplement shall adversely affect the interest of the Holders if the Indenture Trustees make such determination in good faith upon advice of counsel; or

(5) to supplement this Indenture to subject to the lien hereof a Substitute Property or Substitute Collateral pursuant to the provisions of Section 1401 and Section 1402; or

(6) to release Excess Land pursuant to the provisions of Section 1403.

**SECTION 1002. Supplemental Indentures With Consent of Holders.**

With the consent of the Holders of 66 2/3% in principal amount of Outstanding Notes, by Act of said Holders delivered to the Mortgagor and the Indenture Trustees, the Mortgagor may, and the Indenture Trustees, subject to Section 1003 hereof, shall, at any time and from time to time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights and obligations of the Holders and of the Mortgagor under this Indenture; provided, however, that no such supplemental indenture shall without the consent of the Holder of each Outstanding Note,

(1) change the Stated Maturity of the principal of, or any installment of interest on, or the dates or circumstances of payment of premium (if any) on, any Note, or reduce the principal amount thereof or the premium (if any) or interest thereon, or change the place of payment where, or the coin or currency in which, any Note or the premium (if any) or interest thereon is payable or impair the right to institute suit for the enforcement of any such payment of principal or interest on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or such payment of premium (if any) on or after the date such premium becomes due and payable, or change the dates or the amounts of payments to be made through the operation of the Sinking Fund as provided in Article Four hereof, or

(2) effect any amendment to or supplement of this Indenture or to any of the Operative Documents referred to in Section 504(b) hereof that is prohibited by Section 504(b) hereof, or

(3) create any security interest with respect to the Estate ranking prior to, or on a parity with, the security interest created by this Indenture, or deprive any Holder of any Note then Outstanding of the lien of this Indenture on the Estate, or

(4) reduce the percentage in principal amount of Outstanding Notes, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver (of compliance with certain provisions of this Indenture, or of certain defaults hereunder and their consequences) provided for in this Indenture, or

(5) modify any of the provisions of this Section or Section 713 hereof, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note, or

(6) modify any of the provisions of subsection (c) of Section 504 hereof except to provide that certain other provisions of the Lease and the other Operative Documents cannot be modified or waived without the consent of the Holder of each Outstanding Note.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 1003. Documents Affecting Immunity or Indemnity.

If in the opinion of the Indenture Trustees any document required to be executed pursuant to the terms of Section 1002 hereof adversely affects any interest or right or duty or immunity or indemnity in favor of the Indenture Trustees under this Indenture, the Indenture Trustees may in their discretion decline to execute such document.

SECTION 1004. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Indenture Trustees shall be entitled to receive, and (subject to Section 802 hereof) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

SECTION 1005. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 1006. Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Mortgagor bear a notation in form approved by the Mortgagor and the Indenture Trustees, as to any matter provided

for in such supplemental indenture; and, in such case, suitable notation may be made upon Outstanding Notes after proper presentation and demand. If the Mortgagor shall so determine, new Notes so modified as to conform in the opinion of the Mortgagor and the Indenture Trustees to any modification of this Indenture contained in such supplemental indenture, may be prepared at the expense of the Mortgagor and executed by the Mortgagor and authenticated and delivered by the Indenture Trustees in exchange for Outstanding Notes.

## ARTICLE ELEVEN

### RESERVE FUNDS

#### SECTION 1101. Note Reserve Fund.

(a) The Mortgagor shall open at the Corporate Trust Office, one or more trust accounts which shall collectively be the "Note Reserve Fund". Any amounts received by the Indenture Trustee pursuant to the terms of the Subordinate Assignment as Basic Rent under the Lease shall be deposited in the Note Reserve Fund, together with any Eligible Investments (and any income earned thereon) in which such moneys are or will be invested or reinvested during the term of the Notes, and shall be held by the Indenture Trustee in the Note Reserve Fund as part of the Estate, subject to disbursement and withdrawal solely by the Indenture Trustees and as herein provided.

(b) So long as no Event of Default shall have occurred, all or a portion of the Note Reserve Fund shall be invested and reinvested upon Mortgagor Order pursuant to the provisions of Section 1102 hereof. All income or other gains from investment of moneys deposited in the Note Reserve Fund shall be deposited by the Indenture Trustee in the Note Reserve Fund immediately upon receipt, and any loss resulting from such investment shall be charged to the Note Reserve Fund.

(c) Unless the Notes have been declared due and payable pursuant to Article Seven and moneys collected by the Indenture Trustee with respect to such Notes are being applied in accordance with Section 1204, amounts on deposit in the Note Reserve Fund on any Interest Payment Date shall be withdrawn from the Note Reserve Fund, in the amounts required, if any, for deposit to the Collection Account and for application as set forth in Section 1202 hereof.

(d) So long as no Event of Default shall have occurred which has not been waived, all gains from investment of monies deposited in the Note Reserve Fund (net of any losses) shall be remitted to the Series A Trustees on each Interest Payment Date. So long as no Event of Default shall have occurred which has not been waived, all gains from investment of monies pursuant to Section 1101 of the Series A Indenture, and remitted to the Series B Trustees pursuant to the provisions of said Section, shall be paid over to the Mortgagor promptly upon receipt thereof by the Series B Trustees.

#### SECTION 1102. General Provisions Regarding Collection Account and Reserve Funds.

(a) The Collection Account and the Reserve Funds shall relate solely to the Notes and other property included in the

Estate securing the Notes. Cash and other property in the Collection Account and the Reserve Fund shall not be commingled with any other moneys or property of the Mortgagor. Notwithstanding the foregoing, the Indenture Trustee may hold any funds or other property received or held by it as part of the Collection Account or the Reserve Fund in collective accounts maintained by it in the normal course of its business and containing funds or property held by it for other Persons including Mortgagor; provided, however, that such accounts are under the sole control of the Indenture Trustee and the Indenture Trustee maintains adequate records indicating the ownership of all such funds or property and the portions thereof held for credit to the Collection Account or the Reserve Fund.

(b) The Mortgagor will not direct the Indenture Trustee to make any investment of any funds in the Collection Account or the Reserve Fund or to sell any investment held in the Collection Account or the Reserve Fund except in writing and under the following terms and conditions:

(i) each such investment shall be made in the name of the Indenture Trustee (in its capacity as such) or in the name of a nominee of the Indenture Trustee (or, if, as indicated by an Opinion of Counsel delivered to the Indenture Trustee, applicable law provides for perfection of pledges of an investment not evidenced by a certificate or other instrument through registration of such pledge on books maintained by or on behalf of the issuer of such investment, such pledge may be so registered),

(ii) the Indenture Trustee shall have sole control over such investment, the income thereon and the proceeds thereof,

(iii) any certificate or other instrument evidencing such investment shall be delivered directly to the Indenture Trustee or its agent, and

(iv) the proceeds of each sale of such an investment shall be remitted by the purchaser thereof directly to the Indenture Trustee for deposit in the Collection Account or the Reserve Fund in which such investment was held.

(c) All or a portion of the Collection Account and the Reserve Funds shall be invested and reinvested in one or more Eligible Investments bearing interest or sold at discount as specified in a Mortgagor Order. No such investment shall mature later than the Business Day immediately preceding the next Interest Payment Date.

(d) If any amounts are needed for disbursement from the Collection Account or the Reserve Fund and sufficient uninvested funds are not available therein to make such disbursement, in the absence of a Mortgagor Order for the liquidation of investments held therein in an amount sufficient to provide the required



funds, the Indenture Trustee shall cause to be sold or otherwise converted to cash a sufficient amount of the investments in the Collection Account or such Reserve Fund.

(e) The Indenture Trustee shall not in any way be held liable by reason of any insufficiency in the Collection Account or the Reserve Fund except for losses on investments which are liabilities of the Indenture Trustee as obligor thereon, or as a result of its gross negligence or willful misconduct.

(f) All investments of funds in the Collection Account or the Reserve Fund and all sales of investments held in the Collection Account or the Reserve Fund shall, except as provided below, be made by the Indenture Trustee in accordance with a Mortgagor Order. Subject to compliance with the requirements of paragraph (c) above, such Mortgagor Order may authorize the Indenture Trustee to make investments set forth therein, to make investments from time to time consistent with the general instructions set forth therein, or to make specific investments pursuant to written, telegraphic or telephonic instructions of the employees or agents of the Mortgagor specified therein, in each case in such amounts as such Mortgagor Order shall specify.

In the event that:

(i) the Mortgagor shall have failed to give investment directions to the Indenture Trustee by 11:00 A.M. Hartford, Connecticut time on any Business Day authorizing the Indenture Trustee to invest the funds then in the Collection Account or the Reserve Fund, or

(ii) an Event of Default shall have occurred, the Indenture Trustee shall invest and reinvest the funds then in the Collection Account and the Reserve Fund to the fullest extent practicable, in such manner as the Indenture Trustee shall from time to time determine, but only in one or more Eligible Investments bearing interest or sold at a discount. All investments made pursuant to clause (i) above shall mature on the next Business Day following the date of such investment, and all such investments made pursuant to this clause (ii) shall mature no later than the first Business Day prior to the date on which the Indenture Trustee proposes to make a distribution to Noteholders.

(g) Subject to the restriction on the maturity of investments set forth in paragraph (c) above, and notwithstanding paragraph (b) above, the Mortgagor will give appropriate and timely investment directions to the Indenture Trustee such that at the close of business on not more than two Business Days in any one calendar year not more than an aggregate of \$50,000 of funds in the Collection Account and the Reserve Fund remained uninvested.

ARTICLE TWELVE

RECEIPT, DISTRIBUTION AND APPLICATION OF FUNDS  
IN THE ESTATE

SECTION 1201. Establishment of Collection Account.

The Mortgagor shall open at the Corporate Trust Office, one or more trust accounts which shall collectively be the "Collection Account". Any monies received by the Indenture Trustees which are to be deposited in the Collection Account pursuant to the provisions of this Indenture, together with any Eligible Investments in which such moneys are invested or reinvested during the term of the Notes, shall be held as part of the Estate, subject to disbursement and withdrawal solely by the Indenture Trustees as herein provided.

SECTION 1202. Receipt and Application of Basic Rent When No Event of Default Is Continuing.

(a) The portion of each payment of Basic Rent to which the Indenture Trustees are entitled pursuant to the terms of the Subordinate Assignment and this Indenture and any payment of interest on overdue installments of such portion of Basic Rent to which the Indenture Trustees are entitled pursuant to the terms of this Indenture and the Subordinate Assignment made by the Lessee at any time shall forthwith be deposited by the Indenture Trustees in the Note Reserve Fund.

(b) Except as otherwise provided in Section 1204 hereof, any sums held by the Indenture Trustees at any time in the Note Reserve Fund shall be withdrawn from the Note Reserve Fund and deposited to the Collection Account for withdrawal and distribution by the Indenture Trustees forthwith on each Stated Maturity in the following order of priority:

first, so much as shall be required to pay in full the interest, but not any Defaulted Interest, then due on the Notes shall be paid to the Holders of Notes Outstanding and applied to such accrued interest;

second, so much as shall be required to pay in full the Sinking Fund payment or payments then due in accordance with Section 401 hereof shall be paid to the Holders of Notes Outstanding and be applied to the redemption of Notes in accordance with Section 401 hereof or, if such Stated Maturity date is the Maturity date of the Notes, so much as shall be required to pay in full the aggregate unpaid principal balance of the Notes then due shall be paid to the Holders of Notes Outstanding and be applied to the redemption of the Notes in full; and

third, so much as shall be required to pay any other sums due hereunder shall be paid to the Persons entitled thereto and applied to the indebtedness then remaining, and

fourth, unless an Event of Default shall have occurred which has not been waived, the balance, if any, of such payment remaining thereafter shall be distributed to the Mortgagor or as the Mortgagor may request; provided, however, that in the event that any such payment of Basic Rent shall not be received by the Indenture Trustees when due and as a result thereof principal of or premium or interest on the Notes was not paid in full when due then the Indenture Trustees shall, prior to distributing the balance of such payment pursuant to this clause fourth, deduct therefrom an amount equal to the principal of or premium or interest which would have otherwise been payable pursuant to clause first above if such payment of Basic Rent had been received by the Indenture Trustees when due, and shall hold such amount for distribution in accordance with Section 1202(c) hereof.

(c) Except as otherwise provided in Section 1204 hereof, any payment with respect to Defaulted Interest and any payment of interest on overdue installments of Basic Rent (to which the Indenture Trustees are entitled pursuant to the provisions of the Subordinate Assignment) received by the Indenture Trustees at any time from the Lessee or the Senior Guarantor or any amount held by the Indenture Trustees pursuant to the proviso to clause fourth of Section 1202(b) hereof shall be distributed by the Indenture Trustees in the following order of priority: first, so much of such payment as shall be required to pay in full the interest including Defaulted Interest then due on the Notes shall be distributed to the Persons entitled thereto; and, second, unless an Event of Default has occurred which has not been waived, the balance, if any, of such payment remaining thereafter shall be distributed to the Mortgagor or as the Mortgagor may request.

SECTION 1203. Certain Payments Described in Section 302, Section 303, Section 309 and Section 310 hereof.

(a) Any payments that are described in Section 302, Section 303, Section 309 and Section 310 hereof shall forthwith be deposited by the Indenture Trustees in the Collection Account.

(b) Except as otherwise provided in Section 1204 and 1205 hereof, any payment received by the Indenture Trustees at any time pursuant to subsection (a) of this Section shall be withdrawn from the Collection Account and distributed by the Indenture Trustees in the following order of priority: first, so much of such payment as shall be required to pay accrued and unpaid interest on the Notes to be redeemed shall be applied to

the payment of such interest; second, so much of such payment as shall be required to pay the Redemption Price (including the premium, if any) of the portion of the Notes to be redeemed pursuant to Section 302 or Section 303, Section 309 or Section 310 hereof on the Redemption Date therefor (such aggregate principal amount to be reduced by the aggregate principal amount of Notes, if any, being applied as a credit to such redemption payment pursuant to Article Three hereof) shall be applied to the redemption of Notes on such Redemption Date with any applicable premium due thereon; and third, provided no Event of Default shall have occurred which has not been waived, the balance, if any, of such payment remaining thereafter shall be distributed to the Mortgagor or as the Mortgagor may request.

(c) Anything contained hereinabove to the contrary notwithstanding, fifty percent (50%) of the Redemption Price (exclusive of interest and any premium included therein) paid pursuant to the provisions of Section 302 in respect of a mandatory redemption of the Notes shall be applied, in reduction of the final Sinking Fund payments otherwise due hereunder until such payments hereunder at least equal the sum of \$2,610,000. The remaining 50% of each such redemption payment, and all subsequent redemption payments pursuant to Section 302 (exclusive of interest and any premium included therein) in excess thereof, shall be applied, in reduction of the final payment due at Maturity on the Notes. All payments made pursuant to Section 303 or Section 309 in respect of redemptions of the Notes (exclusive of interest and any premium included therein) shall be applied in reduction of the Sinking Fund payments in sequential order up to and including the Sinking Fund payment due at Maturity.

SECTION 1204. Payments During Continuance of Event of Default.

All payments received and amounts held or realized by the Indenture Trustees after an Event of Default shall have occurred and which has not been waived (including any amounts realized by the Indenture Trustees from the exercise of any remedies pursuant to Article Seven hereof), as well as all payments or amounts then held or thereafter received by the Indenture Trustees as part of the Estate while such Event of Default shall be continuing (including any sums received pursuant to the provisions of Section 717 and Section 1301 hereof), subject to the provisions of Article Seven, shall be distributed forthwith by the Indenture Trustees in the following order of priority: first, so much of such payments or amounts as shall be required to pay the Indenture Trustees all amounts then due them hereunder shall be applied to pay the Indenture Trustees such amounts; second, so much of such payments or amounts remaining as shall be required to pay the principal of, premium (if any) and accrued interest on all Notes Outstanding and then due and payable, whether by declaration of acceleration pursuant to Section 702 hereof or

otherwise, shall be applied ratably to the payment of such principal, premium (if any) and interest; and in case such payments or amounts shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal, premium (if any) and interest, without any preference or priority of one Note over another, ratably according to the aggregate amount so due for principal, premium (if any) and interest, at the date fixed by the Indenture Trustees for the distribution of such payments or amounts; and the balance, if any, of such payments remaining thereafter shall be distributed to Persons entitled thereto; provided, however, that if an Event of Default shall have occurred and which has not been waived no payments shall be made to the Mortgagor or as the Mortgagor may request so long as any Note shall remain Outstanding.

**SECTION 1205. Payments for Which Application is Provided in Operative Documents.**

Except as otherwise provided in this Article and Section 1302, any payments received by the Indenture Trustees for which provision as to the application thereof is made in the Operative Documents shall be distributed to the person for whose benefit such payment was made.

**SECTION 1206. Payments for Which No Application Otherwise Provided.**

Except as otherwise provided in Section 1204 or in Section 1302 hereof,

(a) any payments received by the Indenture Trustees for which no provision as to the application thereof is made elsewhere in this Indenture, and

(b) any payments received and amounts realized by the Indenture Trustees with respect to the Estate to the extent received or realized at any time after the conditions set forth in Section 601 hereof for the satisfaction and discharge of this Indenture shall have been satisfied, as well as any other amounts remaining as part of the Estate after such satisfaction,

shall be distributed forthwith by the Indenture Trustees in the following order of priority: first, so much of such payments as shall be required to pay the Indenture Trustees all amounts then due it hereunder shall be applied to pay the Indenture Trustees such amounts; second, the balance, if any, of such payments of amounts remaining thereafter shall be distributed to the Mortgagor or as the Mortgagor may request.

SECTION 1207. Payments Identifiable as to Source.

Any payments received or applied hereunder by the Indenture Trustees shall be accounted for by the Indenture Trustees so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof.

ARTICLE THIRTEEN

SUBORDINATION TO SERIES A INDENTURE

SECTION 1301. Subordination.

This Indenture, the lien hereof and the rights and remedies herein contained are, and shall continue to be, subject and subordinate to the Series A Indenture, the lien thereof and the rights and remedies thereunder, which Series A Indenture is to be recorded immediately prior hereto, but not to any modification, amendment, refinancing, extension, consolidation or supplementing of the Series A Indenture unless such modification, amendment, refinancing, extension, consolidation or supplementing thereof is expressly permitted by the terms thereof and does not materially and adversely affect the interests of the Holders of the Series B Notes. In furtherance thereof, the holders of the Series B Notes shall not be entitled to receive any monies secured by this Indenture, including, without limitation, payments of Basic Rent, condemnation awards or insurance proceeds, the proceeds of sale of any Property or payments under any guaranty, unless and until (i) prior to the occurrence of an Event of Default, under and as defined in, the Series A Indenture, all scheduled payments and redemption payments then due and owing to the holders of the Series A Notes have been paid in full, (ii) after such an Event of Default has occurred and the Series A Notes have been accelerated, all monies then due and owing to the holders of the Series A Notes have been paid in full, and (iii) if pursuant to the Series A Indenture there has been a drawing under the LOC (as that term is defined in the Series A Indenture), all monies due to the LOC Issuer (as that term is defined in the Series A Indenture), has been repaid in full. Mortgagor hereby represents to the Indenture Trustees that (i) the Mortgagor (a) is not in default under any of the terms, covenants or provisions of the Series A Indenture and (b) knows of no event which but for the passage of time or the giving of notice or both would constitute a default under the Series A Indenture, (ii) the Series A Trustees have not commenced any action or given any notice to Mortgagor for the purpose of exercising its rights upon default by Mortgagor under the Series A Indenture, (iii) the Series A Indenture has not been modified or amended and (iv) all payments due under the Series A Indenture to and including the date hereof have been paid in full. Mortgagor covenants with the Indenture Trustees and agrees that (i) Mortgagor will send to the Indenture Trustees copies of all notices of default under the Series A Indenture and the Series A Notes within three (3) Business Days of Mortgagor's receipt thereof, and (ii) if the Mortgagor shall fail to make any payment or perform any act required to be made or performed pursuant to the terms of the Series A Indenture and such failure shall not be cured within the applicable grace period, if any, the Indenture Trustees without notice or demand upon the Mortgagor and without waiving or releasing any rights,

obligations or default hereunder may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Mortgagor and may enter upon the Property for such purpose and take all such action thereon as in the Indenture Trustees' opinion may be necessary or appropriate therefor. All reasonable sums expended by the Indenture Trustees pursuant to the terms of this Section 13 including, without limitation, reasonable attorneys' fees, together with interest thereon at the Default Rate from the date of payment or incurring, shall constitute additional indebtedness secured by this Indenture and shall be paid by the Mortgagor to the Indenture Trustees on demand.

**SECTION 1302. Payments to, and Action By, the Series A Trustees.**

(a) So long as any of the Series A Notes remain unpaid (i) the Series A Trustees shall have the first and prior right to select Properties to be released from the lien of the Series A Indenture and this Indenture upon a redemption of Series A Notes and Notes hereunder, unless such redemption solely affects Notes issued under this Indenture; (ii) the Series A Trustees shall be entitled to hold and apply all monies received in respect of damage to a Property or a Taking thereof in accordance with the provisions of Article XV of the Lease; and (iii) except during any cure period for which the Holders of the Notes shall have exercised their option as provided in Section 717, the Series A Trustees shall have the right to control all foreclosure proceedings and the operation, management and maintenance of the Properties.

(b) Only after the occurrence of an Event of Default which has not been waived, the Indenture Trustees and the Holders of the Notes shall be obligated to hold, in trust, for the benefit of the Holders of the Series A Notes and shall promptly pay to the Series A Trustees for the benefit of the Holders of the Series A Notes (i) any proceeds realized upon foreclosure, sale or other transfer of the Properties until the Series A Notes shall have been paid in full and (ii) any other monies received for which the Holders of the Series A Notes or the Series A Trustees shall be entitled to pursuant to the terms of the Series A Indenture and this Indenture.



ARTICLE FOURTEEN

CERTAIN PROVISIONS REGARDING THE ESTATE

SECTION 1401. Additional Collateral.

(a) If, pursuant to the provisions of Article XXXVIII of the Lease, the Lessee elects to provide Substitute Collateral in payment of the purchase price for a Property, then, upon compliance by the Mortgagor and Lessee with the applicable provisions of the Lease and delivery to the Indenture Trustees of such Substitute Collateral and of an Opinion of Counsel (which need not be Independent), substantially in the form of Exhibit E hereto, the Mortgagor and the Indenture Trustees shall without the consent of the Noteholders, at the Mortgagor's expense, (1) enter into an indenture or indentures supplemental hereto which thereafter shall form a part hereof, to add to the description of the Estate such Substitute Collateral and (2) execute, deliver, file and record such instruments (including, without limitation, an appropriate amendment to the Lease and UCC financing statements) as are necessary or appropriate to effectuate such substitution. Upon the subjection of such Substitute Collateral to the lien hereof, the Indenture Trustees shall cause the Property for which substitution has been made to be released from this Indenture as provided in Section 1402 hereof.

(b) If, pursuant to Article XXXVIII of the Lease, the Lessee shall exercise its right to substitute for a Property, another restaurant property similar in purpose and function to such Property (a "Substitute Property") meeting the applicable requirements of the Lease then, upon compliance by the Mortgagor and Lessee with the applicable provisions of the Lease and delivery to the Indenture Trustees of an Opinion of Counsel (which need not be Independent), substantially in the form of Exhibit F hereto, the Mortgagor and the Indenture Trustees may, without the consent of the Noteholders, at the Mortgagor's expense, (i) enter into (1) an indenture or indentures supplemental hereto which thereafter shall form a part hereof, to add to the description of the Properties the Substitute Property and (2) a supplement to the Subordinate Assignment to add to the description of the Leased Properties (as defined therein) the Substitute Property and (ii) execute, deliver, file and record such instruments (including, without limitation, an appropriate amendment to the Lease and UCC financing statements) as are necessary or appropriate to effectuate such substitution. Upon the subjection of a Substitute Property to the lien hereof, the Indenture Trustees shall cause the Property for which substitution has been made to be released from this Indenture as provided in Section 1402 hereof.

SECTION 1402. Releases.

The Mortgagor shall have the right, at any time and from time to time, to obtain, in accordance with the provisions of this Indenture and the Lease, a release of any Property subject to the lien of this Indenture and the Indenture Trustees shall, from time to time, release any such Property from the lien of this Indenture, but only upon receipt by and deposit with the Indenture Trustees on or prior to the date of the proposed release of the following:

(i) A Board Resolution requesting such release and describing the Property so to be released; and

(ii) An Officers' Certificate dated the date of such release, setting forth in substance as follows:

(1) that no Event of Default has occurred which has not been cured;

(2) that the unpaid principal amount of Notes Outstanding at the date of such certificate is a specified amount;

(3) that the release of the Property so to be released will not be inconsistent with any of the provisions of this Indenture, and that such Property is required or permitted to be so sold or disposed of pursuant to the Lease (specifying the applicable provisions) or provisions of this Indenture (specifying the applicable provisions) and that all conditions precedent herein and in the Lease provided for relating to such release have been complied with;

(iii) the Redemption Price and premium if any, to be remitted to the Indenture Trustees in connection with such release; and

(iv) An Opinion of Counsel (which need not be Independent) stating that the certificates, opinions and other instruments which have been or are therewith delivered to and deposited with the Indenture Trustees conform to the requirements of this Indenture and the Lease and that the Property so sold or disposed of may be lawfully released from the lien of this Indenture, that all conditions precedent herein provided for relating to such release have been complied with.

SECTION 1403. Release of Excess Land and Equipment.

(a) The Mortgagor shall have the right, at any time and from time to time, to a release from the lien hereof of any

Excess Land upon deposit to the Note Reserve Fund of an amount equal to the net purchase price therefor received by Mortgagor upon a sale thereof as contemplated in Section 11.4 of the Lease multiplied by the Pro Rata Share, together with delivery to the Indenture Trustees of copies of all documents, certificates and opinions required pursuant to Section 11.4 of the Lease, together with such other documents, certificates or Opinions of Counsel (which need not be Independent) as the Indenture Trustees may reasonably request.

(b) In the event that pursuant to Section 8(d) of the Security Agreements, any of the Equipment is sold, the Mortgagor shall, upon release of such Equipment from the lien of the Security Agreements, deposit to the Note Reserve Fund an amount equal to the net sale proceeds received therefor.

## ARTICLE FIFTEEN

### MISCELLANEOUS

#### SECTION 1501. Counterparts.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. All of said counterparts shall be identical except that, to facilitate recordation, in any particular counterpart, there may be omitted those portions of Schedule A which describe Properties situated in counties or cities other than the counties or cities which such counterpart is to be recorded.

#### SECTION 1502. Relationship between Mortgagor, Indenture Trustee, Co-Indenture Trustee, Deed of Trust Trustee and Noteholders.

Nothing contained in this Indenture is intended to create, directly or indirectly, a partnership, joint venture or other entity between the Mortgagor and the Indenture Trustee, Co-Indenture Trustee, Deed of Trust Trustee or any Noteholder. The Mortgagor hereby acknowledges that the sole relationship between the Mortgagor and any Noteholder is that of borrower and lender and further acknowledges that no Noteholder shall be deemed to have made any investment in the Properties solely by reason of the making of a loan secured by and under the terms of this Indenture.

#### SECTION 1503. Maximum Interest Rate.

All agreements between the Mortgagor and the Indenture Trustees and the Noteholders, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the maturity of any payments hereunder or under the Notes or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to the Noteholders exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to the Noteholders in excess of the maximum lawful amount, and if from any circumstance the Noteholders shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of the Notes and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal, such excess shall be refunded to the Mortgagor. All interest paid or agreed to be paid to the Noteholders shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread

throughout the full period until payment in full of the principal so that the interest hereon for such full period shall not exceed the maximum amount permitted by applicable law.

**SECTION 1504. Recordation.**

To facilitate recordation, in any particular counterpart, portions of Exhibit A hereto which describe properties situated in counties other than the county in which such counterpart is to be recorded may have been omitted. Portions of the Properties consist of goods which are, or are to become, fixtures relating to the Land and the Mortgagor expressly covenants and agrees that the filing of this Indenture in the real estate records of each county where a Property is located shall also operate from the time of filing therein as a financing statement and security agreement filed as a fixture filing in accordance with the UCC as enacted in each State in which a Property is located.

**SECTION 1505. Mortgagor's Receipt of Indenture.**

Mortgagor hereby acknowledges receipt of a true copy of this Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and, by parties in corporate form, by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

THUS DONE AND SIGNED, on the day, month and year mentioned above, but effective as of February 15, 1990, in the County of New York, State of New York, before the undersigned witnesses and me, Notary, after due reading of the whole.

[SEAL]

Attest:

S & A PROPERTIES CORP.,  
12404 Central ~~Drive~~ Drive  
Dallas, Texas 75251,  
as Mortgagor

By: Robert Svehlak  
Robert Svehlak  
President

Witness:

Lawrence J. Steele  
Lawrence J. Steele

Attest:

Carolyn Skelley  
Carolyn Skelley  
Secretary

By: S. E. Herkle  
Name: S. E. Herkle  
Title: Assistant Treasurer

Witness:

Lawrence J. Steele  
Lawrence J. Steele

[SEAL]

Attest:

Sandy Lamarr Cody  
Sandy Lamarr Cody  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION  
One Constitution Plaza  
Hartford, Connecticut 06115,  
as Indenture Trustee

By: Lese Amato  
Lese Amato  
Vice President

BOOK 1688P.2339

Witness:

LJ Steele  
Lawrence J. Steele

Witnesses:

LJ Steele  
Lawrence J. Steele

Jonathan Warren  
Jonathan Warren

Lese Amato  
Lese Amato  
c/o The Connecticut Bank and Trust  
Company, National Association  
One Constitution Plaza  
Hartford, Connecticut 06115,  
as Co-Indenture Trustee

BOOK 1688P2340

THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:

Richard D. Rudder, Esq.  
Brown & Wood  
One World Trade Center  
New York, New York 10048  
Attorney at Law

THE ADDRESS OF THE  
INDENTURE TRUSTEES IS:

The Connecticut Bank and Trust  
Company, National Association  
One Constitution Plaza  
Hartford, Connecticut 06115

BOOK 1688P.2341



NORTH CAROLINA

STATE OF NEW YORK    )  
                              : SS:  
COUNTY OF NEW YORK    )

I, a Notary Public of the County and State aforesaid, certify that Marci McLean, personally came before me this day and acknowledged that she is Assistant Secretary of S & A PROPERTIES, CORP., a Delaware corporation, Mortgagor, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and Assistant Treasurer, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and notarial stamp and seal this 10th day of March, 1990.

Jason M. Lesko  
Notary Public

My Commission expires: 2/27/91

[Stamp/Seal]



JASON M. LESKO  
NOTARY PUBLIC, State of New York  
No. 41-4947514  
Qualified in Queens County  
Signature Filed in New York County  
Commission Expires Feb. 27, 1991

BOOK 1688P2342

NORTH CAROLINA

STATE OF NEW YORK     )  
                              : ss:  
COUNTY OF NEW YORK    )

I, a Notary Public of the County and State aforesaid, certify that Sandy Lamar Codey, personally came before me this day and acknowledged that she is Assistant Secretary of The Connecticut Bank and Trust Company, National Association, a national banking association, Indenture Trustee, and that by authority duly given and as the act of the banking association, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by her as its Assistant Secretary.

Witness my hand and notarial stamp or seal, this 21st day of February, 1990.

Jason M. Lesko  
Notary Public

My Commission expires: 2/27/91

[Stamp/Seal]

JASON M. LESKO  
NOTARY PUBLIC, State of New York  
No. 41-4947514  
Qualified in Queens County  
Signature Filed in New York County  
Commission Expires Feb. 27, 1991

BOOK 1688P2343

NORTH CAROLINA

STATE OF NEW YORK )  
: ss:  
COUNTY OF NEW YORK )

I, a Notary Public of the County and State aforesaid, certify that Lese Amato, Co-Indenture Trustee personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial stamp and seal this 21st day of February, 1990.

Jason M. Lesko  
Notary Public

My Commission expires: 2/27/91

[Stamp/Seal]

JASON M. LESKO  
NOTARY PUBLIC, State of New York  
No. 41-4947514  
Qualified in Queens County  
Signature Filed in New York County  
Commission Expires Feb. 27, 1991

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate 5 of Jason M. Lesko N.P. N.Y. Co  
(here give name and official title of the officer signing the certificate, passed upon)

N-9

PRESENTED FOR  
REGISTRATION  
AND RECORD

(are) certified to be correct. This the 16th day of March 19 90

MAR 16 11 56 AM '90

L. E. Speas, Register of Deeds

L.E. SPEAS

By Jessie Holden Deputy-Register

Probate and Filing Fee \$ 368.00 REGISTER OF DEEDS  
FORSYTH COUNTY NC

BOOK 1688p2344

Exhibit "A"

LEGAL DESCRIPTION OF REAL ESTATE  
LOCATED IN FORSYTH COUNTY, NORTH CAROLINA

BEGINNING at an iron stake, being the intersection of the East right of way line of Bethesda Road in the South right of way of the Southern Railway; running thence with the Southern Railway right of way, North 53 07' East 52.06 feet to an iron stake; continuing thence North 53 31' East 93.94 feet to an iron stake; running thence South 36 07' 13" East 114.26 feet to an iron stake; running thence North 83 01' East 26.87 feet to an iron stake; running thence South 06 59' East 71.21 feet to an iron stake; running thence South 83 01' West 224.00 feet to an iron stake in the East right of way line of Bethesda Road; running thence with the east right of way line of Bethesda Road, North 06 59' West 125.00 feet to the point and place of beginning, containing 31,800 square feet, more or less, and being in accordance with a survey by John G. Bane, Registered Land Surveyor; being a portion of the property described in Deed Book 970, Page 296, Forsyth County, North Carolina Registry.

ALSO, being described as:

BEGINNING at an iron pipe, being the intersection of the east right of way line of Bethesda Road and the South right of way of the Southern Railway; running thence with the Southern Railway right of way, N 53 -17'-12" E. 51.97' to an iron pipe; continuing thence N. 53 -31'-00" E. 93.94' to an iron pipe; running thence S. 36 -07'-13" E. 144.26' to an iron pipe; running thence N. 83 -01'-00" E. 26.87' to an iron pipe; running thence S. 06 -59'-00" E. 71.02 to an iron pipe; running thence S. 83 -01'-00" W. 224.00' to an iron pipe in the east right of way line of Bethesda Road; running thence with the east right of way line of Bethesda Road N. 06 -59'-05" W. 125.00' to the point and place of beginning, containing 31,763 square feet, BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 970, PAGE 296 FORSYTH COUNTY, NORTH CAROLINA REGISTRY.

UNDER AND SUBJECT TO all agreements, covenants, liens, reservations, exceptions, restrictions and other encumbrances of record.

Block 6057 Lot 3

BOOK 1688P2345

7838 N. Point Blvd.  
Winston-Salem, N.C. 27106

Site No. 3443

"Exhibit A"

LEGAL DESCRIPTION OF REAL ESTATE  
LOCATED IN FORSYTH COUNTY, NORTH CAROLINA

Legal description according to DSA Group Survey dated May 11, 1989  
reads as follows:

BEGINNING at a point in the North right of way margin of North Point Boulevard (formerly Silas Creek Parkway), said point being S 81 11'00" E 135.43 feet, thence S 82 26' 46" E 93.89 feet from the Southeast corner of the tract deeded to Shelton Companies in Deed Book 1229, Page 1291, Forsyth County, North Carolina Registry; thence from point of Beginning and running the following new lines N 00 14' 28" E 158.51 feet to a point, thence S 89 45' 32" E 185.00 feet to a point, thence S 00 14' 28" W 170.00 feet to a point in the North right of way margin of Silas Creek Parkway, thence with the North right of way margin of Silas Creek Parkway along an arc 185.42 feet to the point and place of BEGINNING, said arc having a chord of N 86 12' 14" W 185.36 feet.

Together with those certain easement rights established by the Declaration of Restrictions and Grant of Easements recorded in Book 1269, Page 956, and by Amendment No. 1 to Declaration of Restrictions and Grant of Easements recorded in Book 1377, Page 951, and by Amendment No. 2 to Declaration of Restrictions and Grant of Easements Recorded in Book 1605, Page 67.

Where the words "Silas Creek Parkway" appear in the above legal description, they shall mean "North Point Boulevard".

BOOK 1688p2346

~~Exhibit A~~

~~Intentionally Omitted~~

Exhibit B

Intentionally Omitted

BOOK 1688P2347

FORM OF SERIES B-1 NOTES

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THIS NOTE MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT.

S & A PROPERTIES CORP.

12.75% GUARANTEED SECOND PRIORITY MORTGAGE NOTE,  
SERIES B-1, DUE April 1, 2000

\$ \_\_\_\_\_

No. \_\_\_\_\_

S & A PROPERTIES CORP. (the "Mortgagor"), a Delaware corporation, for value received, hereby promises to pay to

or registered assigns, the principal sum of .

on or before April 1, 2000 and to pay interest thereon at the rate of 12.75% from and including March 14, 1990 to the extent accrued for the related Interest Period on each April 1 and October 1 (each an "Interest Payment Date"), payable commencing on October 1, 1990 and continuing thereafter on each Interest Payment Date until the principal hereof is paid in full and, after the date of an Event of Default or Maturity (whether by acceleration or otherwise) at the Default Rate (to the extent that the payment of such interest shall be legally enforceable). Interest on the principal sum of this Note shall be computed on the basis of (i) actual days elapsed during a 365-day year for the period from and including March 14, 1990 to, but not including, April 1, 1990 and (ii) thereafter, a 360-day year consisting of twelve (12), thirty (30) day months. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture hereinafter referred to, be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest which shall be the fifteenth day (whether or not a Business Day) next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered Holder on the Record Date when such

BOOK 1688p2348

interest was due and payable but shall be paid to the Person in whose name this Note (or one more Predecessor Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Indenture Trustee, notice whereof shall be given to Holders of Notes not more than 15 days nor less than 10 days prior to such Special Record Date, all as more fully provided in said Indenture. Payment of the principal of, premium (if any) and interest on this Note will be made at the corporate trust office of the Paying Agent or at any office or agency maintained for such purpose pursuant to Section 814(a) of the Indenture hereinafter referred to (in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Paying Agent by check mailed to the address of the Person entitled thereto as such address shall appear on the Register.

This Note is one of a duly authorized issue of Series B-1 12.75% Guaranteed Second Priority Mortgage Notes and Series B-2 Guaranteed Second Priority Mortgage Notes, designated as set forth on the face hereof (collectively, the "Notes" and individually, a "Note"), to be issued under and pursuant to a Second Priority Indenture of Mortgage, Deed of Trust and Security Agreement, dated as of February 15, 1990 (the "Indenture"), between the Mortgagor as mortgagor, The Connecticut Bank and Trust Company, National Association as corporate trustee and Lese Amato as individual trustee, for the trust created under the Indenture (collectively, the "Indenture Trustees"). The Indenture also designates Andrew M. Smulian, the Fidelity Company, E. Peter Kane, Thomas F. Wells and Charles E. Odom as deed of trust trustees (collectively, the "Deed of Trust Trustees") for the purposes more particularly set forth in the Indenture. All capitalized terms not defined herein have the respective meanings ascribed to them in the Indenture. Reference is hereby made to the Indenture for a statement of the properties thereby mortgaged, conveyed, pledged and assigned, the nature and extent of the security, the respective rights thereunder of the Mortgagor, the Indenture Trustees, the Deed of Trust Trustees and the Holders of the Notes, and the terms upon which the Notes are, and are to be, authenticated and delivered, as well as for a statement of the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions in the Indenture each Holder hereof agrees by its acceptance of this Note.

All payments of principal, premium (if any) and interest to be made to the Holder under this Note and the Indenture shall be made in accordance with the terms of Article Twelve of the Indenture. Each Holder, by its acceptance of a Note, agrees (1) that, except in the case of fraud or willful misconduct, it will look solely to (i) the assets subject to the lien of the Indenture and the income and proceeds received by the Indenture



Trustees therefrom to the extent available for distribution to such Holder as provided in the Indenture, (ii) the Series B Subordinated Guarantor under the Series B Subordinated Guaranty and (iii) the collateral securing the Second Priority Limited Recourse Guaranty, and the collateral under the Security Agreements and the Pledge Agreement, and (2) that except in the case of fraud or willful misconduct, no officer, director, employee or shareholder of the Mortgagor shall be liable to any Holder or to the Indenture Trustees for any amounts payable under this Note or the Indenture.

As more fully provided in the Indenture, the Notes are subject to redemption under the following circumstances, at a Redemption Price equal to the principal amount thereof and applicable premium (if any), together with interest accrued to the Redemption Date:

(a) Commencing on April 1, 1990, and continuing thereafter to April 1, 1999 through operation of the Sinking Fund in the principal amounts set forth below by remitting to the Indenture Trustee an amount equal (except as reduced by amounts received in accordance with the provisions of Section 1203(c) of the Indenture) to one-twelfth of the next Sinking Fund Payment coming due for deposit to the Note Reserve Fund and, in advance on October 1, 1999 an amount in cash or in other collateral as specified in the Indenture equal to the Final Sinking Fund Payment which shall be applied to the Notes on April 1, 2000;

(b) in whole or in part, at any time and from time to time, in certain cases on a mandatory basis and in other cases at the option of the Mortgagor, but in each such case with the applicable premium due thereon, if any, all as specified in Article Three of the Indenture. All payments received by the Indenture Trustees shall be applied to the Notes in accordance with the provisions of Article Twelve of the Indenture.

The principal amounts of Notes to be redeemed pursuant to the Sinking Fund and each of the Sinking Fund Payment Dates are as follows:

|                  |            |                  |            |
|------------------|------------|------------------|------------|
| April 1, 1991... | \$ 180,000 | April 1, 1996... | \$ 315,000 |
| April 1, 1992... | 180,000    | April 1, 1997... | 345,000    |
| April 1, 1993... | 240,000    | April 1, 1998... | 385,000    |
| April 1, 1994... | 255,000    | April 1, 1999... | 435,000    |
| April 1, 1995... | 275,000    | April 1, 2000... | 37,390,000 |

The Notes may be redeemed, in whole or in part (but not less than integral multiples of \$100,000), at the option of the Mortgagor, any time on an Interest Payment Date occurring after April 1, 1995 upon not less than sixty nor more than ninety days prior written notice to the Indenture Trustees. The Mortgagor

shall not redeem any of the Notes prior to April 1, 1997 directly or indirectly from, or in anticipation of, money borrowed having a financing cost to the Mortgagor or any Affiliate of less than the interest rate borne by the Notes.

In the event of any mandatory redemption of fewer than all of the Notes Outstanding or an optional redemption of fewer than all of the Notes Outstanding, all amounts received by the Indenture Trustees shall be applied to the Notes on a pro rata basis, without preference or priority of any Note over any other Note. In the event of any mandatory redemption of Notes (other than pursuant to the Sinking Fund), fifty percent of the Redemption Price (exclusive of interest and any premium included therein) shall be applied in reduction of the Final Sinking Fund payments otherwise due hereunder until such redemption payments hereunder equal the sum of \$2,610,000. The remaining fifty percent of each such redemption payment and all subsequent redemption payments pursuant to Section 302 of the Indenture (exclusive of interest and any premium included therein) in excess thereof, shall be applied in reduction of the final payment due at Maturity of the Notes. All payments made pursuant to Sections 303 and 309 of the Indenture in respect of redemptions of the Notes (exclusive of interest and any premium included therein) shall be applied in reduction of the Sinking Fund payments in sequential order up to and including the Sinking Fund payment due at Maturity.

In case of any redemption of Notes in full, unpaid interest installments the Stated Maturity of which is on or prior to the Redemption Date will be payable to the Holders of such Notes or one or more Predecessor Notes of record at the close of business on the relevant Regular or Special Record Date referred to on the face hereof.

In the event of redemption of this Note in part only, upon surrender of this Note if so requested by Mortgagor, a new Note or Notes for the unredeemed portion hereof shall be issued in the name of the Holder of this Note upon the surrender hereof. If an Event of Default shall occur and be continuing, the principal of all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture, and the Indenture Trustees may, in certain circumstances, to the extent permitted by applicable law, take possession of all or any part of the Estate and sell all or part of the Estate at public or private sale, as the Indenture Trustees and the Deed of Trust Trustees may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle all or part of the Estate as the Indenture Trustees and the Deed of Trust Trustees in their sole discretion may determine; provided, however, that the Indenture Trustees may elect not to use or operate all or part of the Estate directly or

indirectly by themselves or through agents or representatives or to lease, license or otherwise permit or provide for the use or operation of all or part of the Estate by others with title remaining in the Indenture Trustees as provided in the Indenture.

If an Event of Default under, and as defined in, Section 17.1(a) of that certain lease between Mortgagor, as lessor, and S&A Restaurant Corp., as lessee, dated as of the date hereof (the "Lease") relating to the non-payment of Basic Rent shall have occurred which is the third consecutive or fifth such default or if an Event of Default under any other section of the Lease shall have occurred, the Indenture Trustees shall upon receipt of written notice of the occurrence of any such Event of Default from the Series A Trustees deliver a copy of such notice to the Holders of the Notes. Thereafter, at any time prior to the expiration of a period of twenty-five (25) days after such notice is deemed given, any one or more of the Holders of the Notes acting through the Indenture Trustees may (but need not) deliver to the Series A Trustees a written notice of the exercise of an election to purchase all (but not less than all) of the Series A Notes Outstanding from the Holders thereof on the first Interest Payment Date occurring not less than sixty (60) days after the expiration of such twenty-five (25) day period for a purchase price equal to the aggregate unpaid principal balance thereof together with a Yield Maintenance Premium and interest accrued thereon to the date of purchase. If such offer is delivered to the Indenture Trustees, the Indenture Trustees shall advise the Holders thereof in accordance with the procedures set forth in the Indenture.

The right of the Holder of this Note to institute action for any remedy under the Indenture, including the enforcement of payment of any amount due hereon, is subject to certain restrictions specified in the Indenture.

The Indenture permits the amendment thereof and of the Lease and certain other documents referred to in the Indenture and the modification of the rights and obligations of the Indenture Trustees and the Mortgagor and of the rights of the Holders under the Indenture at any time by the Mortgagor and the Indenture Trustees with certain exceptions and subject in certain cases to the consent of the Holders of specified percentages in aggregate principal amount of the Notes at the time Outstanding, as provided in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Notes at the time Outstanding, on behalf of all Holders, to waive compliance by the Mortgagor and the Lessee with certain provisions of the Indenture and the Lease, respectively, or to give certain consents thereunder and to waive certain past defaults under the Indenture and the Lease

and their consequences. Any such consent or waiver by the Holder shall be binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent or waiver is made upon this Note.

As provided in the Indenture and subject to certain limitations therein set forth, this Note is transferable, and upon surrender of this Note for registration of transfer at the corporate trust office of the Registrar in Hartford, Connecticut, or at any office or agency maintained for such purposes pursuant to Section 814(a) of the Indenture, the Mortgagor shall execute, and the Indenture Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of authorized denominations, of the same tenor and for the same aggregate principal amount, which will be issued to the designated transferee or transferees. Every Note presented or surrendered for registration of transfer or exchange shall (if so required by the Registrar) be duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by the Holder or his attorney duly authorized in writing.

The Notes are issuable only as registered Notes without coupons in the denominations of \$250,000 and any integral multiples of \$250,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, these Notes are exchangeable for a like aggregate principal amount of Notes but of a different authorized denomination, as requested by the Holder surrendering the same, upon presentation thereof for such purpose at the corporate trust office of the Registrar in Hartford, Connecticut.

No service charge shall be made for any such registration of transfer or exchange, but the Registrar may require payment by the party requesting such transfer or exchange of a sum sufficient to cover any tax or other governmental charge payable in connection therewith other than exchanges pursuant to Section 206 of the Indenture which do not involve a transfer.

Prior to due presentment for registration of transfer of this Note, the Deed of Trust Trustee, the Mortgagor, the Indenture Trustees, the Paying Agent and the Registrar may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of the principal of, premium (if any) and (subject to limitations specified on the face hereof) interest on, this Note and for all other purposes whatsoever whether or not this Note be overdue, and neither the Mortgagor, any Indenture Trustee, the Deed of

Trust Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

AS PROVIDED IN THE INDENTURE, THE INDENTURE AND THE NOTES, SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK EXCEPT THAT THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED UNDER THE INDENTURE SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS FROM TIME TO TIME IN EFFECT IN THE STATE IN WHICH THE APPLICABLE PORTION OF THE ESTATE IS SITUATED.

In any jurisdiction in which the Indenture shall be deemed to be a deed of trust, the beneficiaries thereof shall be deemed to be the Holders of the Notes issued and Outstanding (except in respect of properties held in the State of Colorado and the State of North Carolina, in which case the Indenture Trustees may be deemed to be the beneficiaries thereof and shall in such capacity act on behalf of said Holders).

Unless the certificate of authentication hereon has been executed by the Indenture Trustee, by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

The Mortgagor, signers, sureties, guarantors and endorsers of this Note severally waive demand, presentment, notice of dishonor, relief from valuation and appraisement laws, notice of intention to accelerate the indebtedness evidenced hereby, notice of the acceleration of the maturity hereof, diligence in collecting, grace (except as may be expressly provided for in the Indenture), notice (except as may be expressly provided for in the Indenture) and protest, and agree to one or more extensions for any period or periods of time and partial payments, before or after maturity, without prejudice to the holder.

\*

\*

\*

IN WITNESS WHEREOF, the Mortgagor has caused this Note to be duly executed, under its corporate seal.

Dated: As of February 15, 1990

[SEAL]

Attest:

S & A PROPERTIES CORP.

\_\_\_\_\_  
Marci McLean  
Assistant Secretary

By: \_\_\_\_\_  
Robert Svehlak  
President

[SEAL]

Attest:

\_\_\_\_\_  
Marci McLean  
Assistant Secretary

By: \_\_\_\_\_  
Silvia Merkle  
Assistant Treasurer

Certificate of Authentication

This is one of the Notes referred to in the within-mentioned Indenture.

THE CONNECTICUT BANK AND TRUST  
COMPANY, NATIONAL ASSOCIATION  
as Indenture Trustee

By \_\_\_\_\_  
Authorized Officer

New York

STATE OF NEW YORK     )  
                              : SS.:  
COUNTY OF NEW YORK    )

On the \_\_\_\_\_ day of March, 1990, before me personally came Robert Svehlak, to me known, who being by me duly sworn, did depose and say that he resides at 2111 Brandeis Drive, Richardson, Texas; that he is the President of S & A Properties Corp., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument in such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

[Notarial Seal]



Form of Series B-2 Notes

Intentionally Omitted

No Series B-2 Notes shall be  
Issued under this Indenture

BOOK 1688P2358

Exhibit D  
Series B Indenture

OFFICERS' CERTIFICATE  
Pursuant to Section 210 of the  
Series B Indenture

We, \_\_\_\_\_ and \_\_\_\_\_, [Vice] President  
and [Assistant] Treasurer, respectively of S & A Properties  
Corp., as mortgagor, (the "Mortgagor"), do each hereby certify  
that:

(a) I have read the conditions set forth in Section 210 of  
the Series B Indenture and the definitions relating thereto;

(b) My statements expressed in this certificate are based  
upon [provide brief statement as to the nature and scope of the  
examination or investigation upon which the statements or  
opinions contained herein are based];

(c) I have made, in my opinion, an examination or  
investigation as is necessary to enable me to express an informed  
opinion as to whether or not the conditions set forth in Section  
210 of the Series B Indenture have been complied with;

(d) In my opinion, such conditions set forth in Section 210  
of the Series B Indenture have been complied with; and

(e) No Event of Default under and as defined in Article 17  
of the Lease has occurred and no Event of Default has occurred  
under and as defined in the Series B Indenture.

IN WITNESS WHEREOF, we have hereunto set our hands this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Name:  
Title: [Vice] President

\_\_\_\_\_  
Name:  
Title: [Assistant] Treasurer

BOOK 1688P2359

Exhibit E  
Series B Indenture

[Form of Independent Counsel Opinion]

S&A Properties Corp.  
12404 Park Central Drive  
Dallas, Texas 75251

Shawmut Bank, N.A.  
[or any successor trustee of  
the Series A Notes]  
One Federal Plaza  
Boston, Massachusetts 02211

The Connecticut Bank and Trust  
Company, National Association  
[or any successor trustee of  
the Series B Notes]  
Corporate Trust Department  
100 Constitution Plaza - 6th Floor  
Hartford, Connecticut 06115

Re: S & A Properties Corp./  
S & A Restaurant Corp. - Substitution of Property

Ladies and Gentlemen:

We have acted as special counsel for S & A Properties Corp.  
(the "Lessor"), S & A Restaurant Corp. (the "Lessee"), \_\_\_\_\_  
\_\_\_\_\_ (the "Substituted Operating Subsidiary") and \_\_\_\_\_  
\_\_\_\_\_ (the "Replaced Operating Subsidiary") in con-  
nection with the substitution of the [Bennigan's] [Steak and Ale]  
restaurant located at \_\_\_\_\_ (the  
"Substitute Property") for the [Bennigan's] [Steak and Ale] (the  
restaurant located at [address], [state] (the "Replaced  
Property").

BOOK 1688p2360

We have examined such documents and records of the Lessor, the Lessee, the Substituted Operating Subsidiary and Replaced Operating Subsidiary as we have deemed appropriate, including, without limitation, the following (collectively, the "Documents"):

(1) Lease between the Lessor and the Lessee, dated as of \_\_\_\_\_, 1990 (the "Lease") and Memorandum of Lease between the Lessor and the Lessee, dated as of \_\_\_\_\_, 1990 (the "Memorandum of Lease");

(2) Amendment No. \_\_\_\_ to the Lease between the Lessor and the Lessee, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Lease Amendment") and Memorandum of Lease Amendment between the Lessor and the Lessee, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Memorandum of Lease Amendment");

(3) First Priority Indenture of Mortgage, Deed of Trust and Security Agreement from the Lessor to Shawmut Bank, N.A. and Max Goldsmith, as trustees (the "Series A Trustees") dated as of \_\_\_\_\_, 1990 (the "Series A Indenture");

(4) Amendment No. \_\_\_\_ to the Series A Indenture from the Lessor to the Series A Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series A Indenture Amendment");

(5) Second Priority Indenture of Mortgage, Deed of Trust and Security Agreement from the Lessor to The Connecticut Bank and Trust Company, National Association and Lese Amato, as trustees (the "Series B Trustees"), dated as of \_\_\_\_\_, 1990 (the "Series B Indenture");

(6) Amendment No. \_\_\_\_ to the Series B Indenture from the Lessor to the Series B Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series B Indenture Amendment");

(7) Uniform Commercial Code Financing Statements relating to the Fixtures (as defined in the Series A Indenture Amendment and the Series B Indenture Amendment, respectively) on the Substitute Property in compliance with Section 38(b)(vii) of the Lease (collectively, the "Fixture Filings");

(8) First Priority Assignment of Lease from the Lessor to the Series A Trustees, dated as of \_\_\_\_\_, 1990 (the "Series A Assignment");

(9) Amendment No. \_\_\_\_ to Series A Assignment from the Lessor to the Series A Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series A Assignment Amendment");

(10) Second Priority Assignment of Lease from the Lessor to the Series B Trustees, dated as of \_\_\_\_\_, 1990 (the "Series B Assignment");

(11) Amendment No. \_\_\_ to the Series B Assignment from the Lessor to the Series B Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series B Assignment Amendment");

[(12) First Priority Security Agreement from the Replaced Operating Subsidiary to the Series A Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series A Security Agreement") [only if Equipment is to be owned by the Substituted Operating Subsidiary]];

[(13) Amendment No. \_\_\_ to the Series A Security Agreement from the Substituted Operating Subsidiary to the Series A Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series A Security Agreement Amendment") [only if Equipment is to be owned by the Substituted Operating Subsidiary]];

[(14) Second Priority Security Agreement from the Replaced Operating Subsidiary to the Series B Trustees, dated as of \_\_\_\_\_, 1990 (the "Series B Security Agreement") [only if Equipment is to be owned by the Substituted Operating Subsidiary]];

[(15) Amendment No. \_\_\_ to the Series B Security Agreement from the Substituted Operating Subsidiary to the Series B Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series B Security Agreement Amendment") [only if Equipment is to be owned by the Substituted Operating Subsidiary]];

(16) Uniform Commercial Code Financing Statements relating to the Equipment (as defined in the Series A Security Agreement Amendment and Series B Security Agreement Amendment, respectively) on the Substitute Property (i) made by the Substituted Operating Subsidiary as debtor and the Series A Trustees as secured party and (ii) made by the Substituted Operating Subsidiary as debtor and the Series B Trustees as secured party (collectively, the "Equipment Filings") [only if Equipment is to be owned by the Substituted Operating Subsidiary]];

(17) An officer's certificate, dated \_\_\_\_\_, \_\_\_\_\_, delivered pursuant to Section 38(b)(i) of the Lease;

(18) A copy of a final as-built survey of the Substitute Property, in compliance with Section 38(b)(iv) of the Lease;

(19) Counterparts of an ALTA owner's and loan policies of title insurance in compliance with Section 38(b)(v) of the Lease;

(20) Certificates of insurance in compliance with Section 38(b)(vi) of the Lease; and

(21) A copy of the appraisal required by Section 38(b)(ix) of the Lease.

Based upon the foregoing, we are of the opinion that:

1. Each of the Lessor, the Lessee and the Substituted Operating Subsidiary is duly qualified as a foreign corporation authorized to do business and is in good standing in the [State] [Commonwealth] of [Substitute Property State].

2. It is not necessary for holders of the \_\_\_% Series A Guaranteed First Priority Mortgage Notes or the \_\_\_% Series B Guaranteed Second Priority Mortgage Notes (collectively, the "Noteholders") or the Series A Trustees or the Series B Trustees to qualify to do business in the [State] [Commonwealth] of [Substitute Property State] solely in order to carry out the transactions contemplated in the Amended Documents (as hereinafter defined), and the Noteholders, the Series A Trustees and the Series B Trustees will not be subject to taxation by the [State] [Commonwealth] of [Substitute Property State] solely as a result of the Noteholders, the Series A Trustees or the Series B Trustees, as the case may be, carrying out such transactions; assuming that such transactions are the parties only transactions in the [State] [Commonwealth] of [Substitute Property State].

3. Pursuant to the Lease, the Lessee has delivered the documents and instruments required by Section 38 of the Lease (no opinion being expressed as to whether or not such documents and instruments are satisfactory to Lessor's Assignee).

4. The parties to the Lease Amendment, the Memorandum of Lease Amendment, the Series A Indenture Amendment, the Series B Indenture Amendment, the Series A Assignment Amendment, the Series B Assignment Amendment, the Series A Security Agreement Amendment and the Series B Security Agreement Amendment (collectively, the "Amended Documents") have full power, authority and legal right to execute and deliver, and to perform and observe the provisions of, each of the Amended Documents and to carry out the transactions contemplated in the Amended Documents, except with respect to the Series A Trustees and Series B Trustees, as to whom we express no opinion.

5. Each of the Amended Documents has been duly authorized, executed and delivered by the respective parties thereto, except the Series A Trustees and Series B Trustees, as to whom we express no opinion, and each is a legal, valid and binding instrument enforceable in accordance with its terms except as

such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws or by the application of equitable principles (whether such enforcement is sought by proceedings in equity or at law).

6. The execution and delivery of the Amended Documents by the respective parties thereto, except the Series A Trustees and Series B Trustees as to whom we express no opinion, compliance with the provisions thereof and the consummation of the transactions therein contemplated will not result in (1) a breach, default or violation of (i) any [State] law or governmental rule or regulation applicable to such parties now in effect, (ii) any provision of the charter or by-laws of such parties, (iii) to our knowledge, any judgment, order or decree of any court, arbitrator, administrative agency or other governmental authority or (iv) to our knowledge, any agreement or instrument to which any such party is a party or by which it is bound, (2) to our knowledge, the acceleration of any obligation of such parties to the Amended Documents or (3) the creation or imposition of any lien, claim or encumbrance (other than the liens created pursuant to the Amended Documents) upon the Substitute Property or revenues of such parties to the Amended Documents.

7. The transactions contemplated and payments made and to be received pursuant to the Amended Documents do not violate the usury laws of the [State] [Commonwealth] of [Substitute Property State].

8. To our knowledge, there are no actions, proceedings or investigations pending or threatened against or affecting the Lessor, the Lessee or the Substituted Operating Subsidiary (or any basis therefor known to us) before or by any court, arbitrator, administrative agency or other governmental authority which would, individually or in the aggregate, if adversely decided, materially and adversely affect the financial condition or operations of the Lessor, the Lessee or the Substituted Operating Subsidiary or their ability to carry out the transactions contemplated in the Amended Documents.

9. No consent, approval or other authorization of, or registration, declaration or filing with, any [State] court or governmental agency or commission is required for the valid execution and delivery of any of the Amended Documents, or for the validity or enforceability thereof, or for the performance by the parties of their obligations thereunder, except for the due recordation or filing requirements set forth in paragraphs 11, 12 and 13 hereof.

10. The Memorandum of Lease Amendment, the Series A Indenture Amendment, the Series B Indenture Amendment, the Series A Assignment Amendment and the Series B Assignment Amendment are each in form satisfactory for recording in the [Office of the County Recorder] of [County] County in the [State] [Commonwealth] of [Substitute Property State] and upon such recordation each constitutes a perfected interest in and (except in the case of the Memorandum of Lease Amendment) a perfected lien upon the property or contract rights described therein. No other recordation or filing is required to preserve such interest or lien. No fees, taxes, or other charges are due in the [State] [Commonwealth] of [Substitute Property State] (i) in connection with the execution and delivery of the Lease Amendment or (ii) in connection with the execution, delivery, filing and recording of the Memorandum of Lease Amendment, the Series A Indenture Amendment, the Series B Indenture Amendment, the Series A Assignment Amendment and the Series B Assignment Amendment [except \_\_\_\_\_].

11. The Series A Indenture Amendment and the Series B Indenture Amendment each create a security interest in the Fixtures in the [State] [Commonwealth] of [Substitute Property State] [and no financing or other statements are required to be filed to perfect such security interest under the Uniform Commercial Code of [Substitute Property State], provided the Series A Indenture Amendment and the Series B Indenture Amendment are properly recorded in [County] County]. [Upon the recordation or filing of the Series A Indenture Amendment and the Series B Indenture Amendment in the [Office of the County Recorder] of [County] County, [State] [Commonwealth] of [Substitute Property State] and the recordation and filing of the Fixture Filings in the [Office of the Secretary of State and in the Office of the County Recorder] in the [State] [Commonwealth] of [Substitute Property State], the Series A Trustees and the Series B Trustees shall have a legal, valid and binding perfected lien upon the collateral described therein, pursuant to the Uniform Commercial Code of [Substitute Property State].] [To continue the effectiveness of the Fixture Filings, continuation statements must be filed in such offices in the [State] [Commonwealth] of [Substitute Property State] within six months prior to the expiration of each fifth anniversary of the date of filing of the Financing Statements. Any such continuation statement must be signed by the secured party, who should identify the original statement by file number and state that the original statement is still effective.] [No other recordation or filing is required to preserve such lien.] No fees, taxes or other charges are due in the [State] [Commonwealth] of [Substitute Property State] in connection with the execution, delivery, filing and recording of the Fixture Filings [except \_\_\_\_].



12. The Series A Security Agreement Amendment and the Series B Security Agreement Amendment create a security interest in the Equipment in the [State] [Commonwealth] of [Substitute Property State] [and no financing or other statements are required to be filed to perfect such security interest under the Uniform Commercial Code of [Substitute Property State], provided the Series A Security Agreement Amendment and the Series B Security Agreement Amendment are properly recorded in [County] County]. [Upon the recordation or filing of the Series A Security Agreement Amendment and the Series B Security Agreement Amendment in the [office of the County Recorder] of [County] County, [State] [Commonwealth] of [Substitute Property State] and the recordation and filing of the Equipment Filings in the [Office of the Secretary of State and in the Office of the County Recorder] in the [State] [Commonwealth] of [Substitute Property State], the Series A Trustees and the Series B Trustees shall have a legal, valid and binding perfected lien upon the collateral described therein, pursuant to the Uniform Commercial Code of [Substitute Property State].] To continue the effectiveness of the Equipment Filings, continuation statements must be filed in such offices in the [State] [Commonwealth] of [Substitute Property State] within six months prior to the expiration of each fifth anniversary of the date of filing of the Financing Statements. Any such continuation statement must be signed by the secured party, who should identify the original statement by file number and state that the original statement is still effective. [No other recordation or filing is required to preserve such lien.] No fees, taxes or other charges are due in the [State] [Commonwealth] of [Substitute Property State] in connection with the execution, delivery, filing and recording of the Series A Security Agreement Amendment, Series B Security Agreement Amendment or the Equipment Filings except [\_\_\_\_\_].

Very truly yours,

Exhibit F  
Series B Indenture

[Form of Independent Counsel Opinion]

S&A Properties Corp.  
12404 Park Central Drive  
Dallas, Texas 75251

Shawmut Bank, N.A.  
[or any successor trustee of the  
Series A Notes]  
One Federal Plaza  
Boston, Massachusetts 02211

The Connecticut Bank and Trust  
Company, National Association  
[or any successor trustee of the  
Series B Notes]  
Corporate Trust Department  
100 Constitution Plaza - 6th Floor  
Hartford, Connecticut 06115

Re: S & A Properties Corp./  
S & A Restaurant Corp. - Substitution of Collateral

Ladies and Gentlemen:

We have acted as special counsel for S & A Properties Corp. (the "Lessor") and S & A Restaurant Corp. (the "Lessee") in connection with the substitution of \_\_\_\_\_ (the "Substitute Collateral") for the [Bennigan's] [Steak and Ale] (the "Replaced Property").

We have examined such documents and records of the Lessor and Lessee as we have deemed appropriate, including, without limitation, the following (collectively, the "Documents"):

BOOK 1688p2367

- (1) Lease between the Lessor and the Lessee, dated as of \_\_\_\_\_, 1990 (the "Lease") and Memorandum of Lease between the Lessor and the Lessee, dated as of \_\_\_\_\_, 1990 (the "Memorandum of Lease");
- (2) Amendment No. \_\_\_\_ to the Lease between the Lessor and the Lessee, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Lease Amendment") and Memorandum of Lease Amendment between the Lessor and the Lessee, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Memorandum of Lease Amendment");
- (3) First Priority Indenture of Mortgage, Deed of Trust and Security Agreement from the Lessor to Shawmut Bank, N.A. and Max Goldsmith, as trustees (the "Series A Trustees") dated as of \_\_\_\_\_, 1990 (the "Series A Indenture");
- (4) Amendment No. \_\_\_\_ to the Series A Indenture from the Lessor to the Series A Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series A Indenture Amendment");
- (5) Second Priority Indenture of Mortgage, Deed of Trust and Security Agreement from the Lessor to The Connecticut Bank and Trust company, National Association and Lese Amato, as trustees (the "Series B Trustees"), dated as of \_\_\_\_\_, 1990 (the "Series B Indenture");
- (6) Amendment No. \_\_\_\_ to the Series B Indenture from the Lessor to the Series B Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series B Indenture Amendment");
- (7) First Priority Assignment of Lease from the Lessor to the Series A Trustees, dated as of \_\_\_\_\_, 1990 (the "Series A Assignment");
- (8) Amendment No. \_\_\_\_ to Series A Assignment from the Lessor to the Series A Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series A Assignment Amendment");
- (9) Second Priority Assignment of Lease from the Lessor to the Series B Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series B Assignment Amendment");
- (10) Amendment No. \_\_\_\_ to the Series B Assignment from the Lessor to the Series B Trustees, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Series B Assignment Amendment"); and
- (11) Letter from \_\_\_\_\_, in form and substance in compliance with Section 38(c)(i) of the Lease.

Based upon the foregoing, we are of the opinion that:

1. Pursuant to the Lease, the Lessee has delivered the documents and instrument required by Section 38 of the Lease (no opinion being expressed as to whether or not such documents and instruments are satisfactory to Lessor's Assignees).

2. The Lessor and the Lessee have full power, authority and legal right to execute and deliver, and to perform and observe the provisions of, the Lease Amendment, the Memorandum of Lease, the Series A Indenture Amendment, the Series B Indenture Amendment, the Series A Assignment Amendment and the Series B Assignment Amendment (collectively, the "Amended Documents").

3. Each of the Amended Documents has been duly authorized, executed and delivered by the respective parties thereto, except the Series A Trustees and Series B Trustees, as to whom we express no opinion, and each is a legal, valid and binding instrument enforceable in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws or by the application of equitable principles (whether such enforcement is sought by proceedings in equity or at law).

4. The execution and delivery of the Amended Documents by the respective parties thereto, except the Series A Trustees and Series B Trustees as to whom we express no opinion compliance with the provisions thereof and the consummation of the transactions therein contemplated will not result in (1) a breach, default or violation of (i) any [State] law or governmental rule or regulation applicable to such parties now in effect, (ii) any provision of the charter or by-laws of such parties, (iii) to our knowledge any judgment, order or decree of any court, arbitrator, administrative agency or other governmental authority or (iv) to our knowledge any agreement or instrument to which any such party is a party or by which it is bound, (2) to our knowledge the acceleration of any obligation of such parties to the Amended Documents or (3) the creation or imposition of any lien, claim or encumbrance (other than the liens created pursuant to the Amended Documents) upon the property or revenues of such parties to the Amended Documents.

5. The transactions contemplated and payments made and to be received pursuant to the Amended Documents do not violate the usury laws of the [State] [Commonwealth] of [Substitute Property State].

6. To our knowledge, there are no actions, proceedings or investigations pending or threatened against or affecting the Lessor or the Lessee (or any basis therefor known to us) before

or by any court, arbitrator, administrative agency or other governmental authority which would, individually or in the aggregate, if adversely decided, materially and adversely affect the financial condition or operations of the Lessor or the Lessee or their ability to carry out the transactions contemplated in the Amended Documents.

7. No consent, approval or other authorization of, or registration, declaration or filing with, any [State] court or governmental agency or commission is required for the valid execution and delivery of any of the Amended Documents, or for the validity or enforceability thereof, or for the performance by the parties of their obligations thereunder.

8. The Memorandum of Lease Amendment, the Series A Indenture Amendment, the Series B Indenture Amendment, the Series A Assignment Amendment and the Series B Assignment Amendment are each in form satisfactory for recording in the [Office of the County Recorder] of [County] County in the [State] [Commonwealth] of [State] and upon such recordation each constitute, a perfected interest in and (except in the case of the Memorandum of Lease Amendment) a perfected lien upon the property or contract rights described therein. No fees, taxes, or other charges are due in the [State] [Commonwealth] of [State] (i) in connection with the execution and delivery of the Lease Amendment or (ii) in connection with the execution, delivery, filing and recording of the Memorandum of Lease Amendment, the Series A Indenture Amendment, the Series B Indenture Amendment, the Series A Assignment Amendment and the Series B Assignment Amendment [except \_\_\_\_\_].

9. [The security interest created by the Series A Indenture Amendment in that portion of the Trust Estate consisting of certificated securities ("Definitive Securities"), as defined in Section 8-102(1)(a) of the Uniform Commercial Code of [State] ("UCC"), the distributions thereon ("Distributions") and the proceeds ("Proceeds"), as defined in Section 9-306(1) of the UCC, will be perfected by delivery of possession of such Definitive Securities, Distributions and Proceeds to the [Series A Trustees] and shall, to the extent a security interest in the Definitive Securities, Distributions and Proceeds may be perfected under Article 8 of the UCC, constitute a valid, perfected first-priority security interest in such portion of such Definitive Securities, Distributions and Proceeds, provided that (i) the [Series A Trustees] take possession of the Definitive Securities without notice of any adverse claim to the Definitive Securities as knowledge that the Definitive Securities are subject to a security interest and (ii) the [Series A Trustees] take possession of the Definitive Securities in the [State]

1177

[Commonwealth] of [State] and the Definitive Securities remain in the continuous possession of the [Series A Trustees] in the [State] [Commonwealth] of [State].

[The security interest created by the Series A Indenture Amendment and the Series B Indenture Amendment in that portion of the Trust Estate consisting of [describe type of government securities] issued in book-entry form on the records of the Federal Reserve Bank of New York ("Uncertificated Securities") and all Distributions thereon and Proceeds thereof deposited in the \_\_\_\_\_ Account will be a perfected first priority security interest so long as (a) ownership of such Uncertificated Securities is recorded solely and exclusively in the name of a depository (as defined in \_\_\_\_\_ C.F.R. § \_\_\_\_\_ and hereinafter referred to as a "Depository") by appropriate entry in the records of the Federal Reserve Bank of New York, (b) such Uncertificated Securities are identified on the records of such Depository as being held solely and exclusively for the [Series A Trustees], (c) such Depository sends a confirmation of the transfer of such Uncertificated Securities to the [Series A Trustees], (d) such Distributions and Proceeds thereon remain on deposit in the \_\_\_\_\_ Account, and (e) the Series A Trustee does not have notice of any adverse claim to the Uncertificated Securities or knowledge that the Uncertificated Securities are subject to a security interest; and no action other than maintaining such registration and maintaining possession of such Distributions and Proceeds in the \_\_\_\_\_ Account in the [State] [Commonwealth] of [State] is necessary to maintain such security interest as a perfected first priority security interest.]

[The security interest created by the Series A Indenture Amendment and the Series B Indenture Amendment in that portion of the Trust Estate consisting of securities held for the account of the Lessor by [insert name of Clearing Corporation] ("Clearing Corporation Securities") and all Distributions thereon and Proceeds thereof credited to the account of the [Series A Trustees] at [insert name of Clearing Corporation] will be perfected upon (a) the making by [insert name of Clearing Corporation] of appropriate entries on its books reducing the appropriate securities account of [the Lessor] [an entity maintaining an account on behalf of the Lessor] and increasing the appropriate securities account of the [Series A Trustees] [designee of the Series A Trustees] by the amount of the Clearing Corporation Securities, (b) the sending of a confirmation by [insert name of Clearing Corporation] to the [Series A Trustees] [designee of the Series A Trustees] of the transfer of such Clearing Corporation Securities, (c) [if a designee of the Series A Trustees is used] the execution by the [Series A Trustees] and [designee of the Series A Trustees] of an appointment and

acknowledgment to the effect that [designee of the Series A Trustees] holds such Clearing Corporation Securities for the sole and exclusive benefit of the [Series A Trustees]; and such security interest will constitute a valid, perfected first-priority security interest in such Clearing Corporation Securities and the Distributions thereon and the Proceeds thereof so long as such Clearing Corporation Securities are continuously maintained in the [State] [Commonwealth] of [State] in the custody of [insert name of Clearing Corporation] or of a custodian bank (as defined in Section 8-102(4) of the UCC) or the nominee of either subject to [insert name of Clearing Corporation's] control and are (x) registered in the name of [insert name of Clearing Corporation] or of a custodian bank or the nominee of either, (y) identified on the records of [insert name of Clearing Corporation] for the sole and exclusive account of the [Series A Trustees] [designee of the Series A Trustees] and (z) [if a designee of the Series A Trustees is used] held by the designee for the sole and exclusive benefit of the [Series A Trustees], and (d) the Series A Trustee does not have notice of any adverse claim to the Clearing Corporation Securities or knowledge that the Clearing Corporation Securities are subject to a security interest.

Very truly yours,

THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED  
~~RETURN TO:~~

Richard D. Rudder  
Richard D. Rudder, Esq.  
Brown & Wood  
One World Trade Center  
New York, New York 10048  
Attorney at Law

BOOK 1688P2373