

6294593

604

AMENDED AND RESTATED MORTGAGE, DEED OF TRUST,  
DEED TO SECURE DEBT AND SECURITY AGREEMENT

Date: As of February 15, 1996

Mortgagor/Grantor: NATIONAL WAREHOUSE INVESTMENT COMPANY, a  
California limited partnership

Address: c/o The Shidler Group  
Four Embarcadero Center, Suite 3150  
San Francisco, California 94111

Mortgagee/  
Beneficiary/  
Grantee: UNIBANK A/S

Address: 13-15 West 54th Street  
New York, New York 10019

Trustee: FOUNDERS TITLE COMPANY

Address: 1100 East 6600 South  
Suite 140  
Salt Lake City, Utah 84121

Mortgage Amount: \$5,405,651.88

Location of  
Premises: County of Salt Lake,  
State of Utah

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Instrument Prepared by,  
Record and return to:

ROBINSON SILVERMAN PEARCE  
ARONSOHN & BERMAN  
1290 Avenue of the Americas  
New York, New York 10104

Attn.: Eric I Cohen, Esq.

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03/04/96 4:35 PM 6294593 64-00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FOUNDERS TITLE  
REC BY: V ASHBY DEPUTY - WI

06846-00015/345043.3

DK 7343FG2686

RECITAL

A. The Mortgagor is the owner of the Premises described in Schedule A hereto.

B. The Mortgagee originally lent \$10,500,000 to Holman/Shidler Investment Corporation ("Borrower"), which was evidenced by a note of Borrower dated July 16, 1991 in that amount (the "Prior Note"), the current outstanding balance of which is \$5,405,651.88.

C. The terms and provisions of the Prior Note have been amended and restated by Borrower pursuant to that certain Amended and Restated Term Note (the "Note") dated as of the date hereof in the principal amount of \$5,405,651.88, and delivered by Borrower to Mortgagee.

D. The Mortgagor executed and delivered to the Mortgagee its guaranty of the Prior Note (the "Prior Guaranty"), dated July 16, 1991 and the Mortgagee, in order to secure its obligations pursuant thereto, executed and delivered to Mortgagee a certain mortgage (the "Prior Mortgage"), dated July 16, 1991, and recorded on August 7, 1995 in Book 7201, page 1102 in the Office of the Recorder, County of Salt Lake, State of Utah, encumbering the Premises.

E. Pursuant to that certain Amended and Restated Guaranty of the Note dated the date hereof (the "Guaranty"), and executed by Mortgagor, Mortgagor has amended and restated the Prior Guaranty.

F. Mortgagor, in order to secure its obligations pursuant to the Guaranty, has executed and delivered this Amended and Restated Mortgage, Deed of Trust, Deed to Secure Debt and Security Agreement (the "Mortgage"), which Mortgage amends and restates the Prior Mortgage such that the terms and provisions of such Prior Mortgage shall be the terms and provisions set forth below.

CERTAIN DEFINITIONS

The Mortgagor and the Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery, building materials, inventory and articles of personal property and replacements thereof owned by Mortgagor, other than those owned or rented by lessees and service vendors now or at any time hereafter affixed to, attached to, placed upon, or located at and used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Premises or the Improvements on the Premises together with any proceeds realized from the sale, transfer or conversion of any of the above.

"Documents" means the Note (as hereinafter defined), this Mortgage, the Loan Agreement, the Environmental Indemnity, the Guaranty, the Personal Guaranty, and all other documents further evidencing and/or securing the loan evidenced by the Note.

"Environmental Indemnity" means that certain Amended and Restated Environmental Indemnity dated as of the date hereof, executed by Borrower, Robert W. Holman and Jay H. Shidler in favor of the Mortgagee, and as the same may be further amended or supplemented, modified and/or restated from time to time.

"Events of Default" means the events and circumstances described as such in Section 2.01 hereof.

"Guarantor" means, collectively, Jay H. Shidler and Mortgagor.

"Improvements" means all improvements, structures or buildings, and replacements and alterations thereof, to be erected or now or hereafter located upon the Premises including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said improvements, structures or buildings.

"Involuntary Rate" means the Default Rate (as defined in the Loan Agreement), but in no event higher than the maximum rate allowed by the applicable law.

"Loan Agreement" means that certain Amended and Restated Term Loan Agreement dated as of the date hereof, between Borrower and Mortgagee, as the same may be further amended or supplemented, modified and/or restated from time to time, setting forth, inter alia, certain of the terms and conditions of advance and repayment of the loan evidenced by the Note.

"Mortgage Amount" means \$5,405,651.88.

"Mortgagee" means Unibank A/S, its successors and assigns and shall also mean the "Beneficiary" or the "Grantee" as the context requires.

"Mortgagor" means National Warehouse Investment Company, a California limited partnership, and shall also mean the "Grantor" or the Trustor, as the context requires.

"Note" means that certain Amended and Restated Term Note dated as of the date hereof made by Borrower to order of Mortgagee in the Mortgage Amount, together with all modifications, extensions, restatements and amendments thereto.

"Personal Guaranty" means the Personal Guaranty as defined in the Loan Agreement.

"Premises" means the Premises described in Schedule A hereto including all of the easements, rights, privileges and appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in and to the strips and gores, streets, and ways adjacent thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired.

"Trustee" means the Trustee, if any, named on the cover page of this instrument.

All terms of this Mortgage which are not defined above have the meaning set forth in this Mortgage.

#### GRANTING CLAUSE

NOW, THEREFORE, the Mortgagor, for consideration paid, in order to secure the Mortgagor's obligations under the Guaranty, and the performance and observance of all the provisions hereof hereby gives, grants, bargains, sells, MORTGAGES AND WARRANTS, aliens, demises, releases, conveys, assigns, transfers, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, with mortgage covenants, all its estate, right, title and interest in, to and under any and all of the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;
- (iv) all proceeds of the conversion, voluntary or involuntary of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and any unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor and real estate tax and assessment refunds and credits at any time accruing to the benefit of the Mortgagor or the Mortgaged Property, even if relating to taxes and assessments payable for a period or periods prior to the date hereof;
- (v) all leases and rents of the Premises or any part thereof now or hereafter entered into and all right, title and interest of the Mortgagor thereunder; and including, without limitation, the Mortgagor's right, if any, to cash or securities deposited thereunder;
- (vi) all utility or municipal deposits made by or on behalf of Mortgagor or made in connection with the Premises;
- (vii) to the extent assignable, all plans, drawings, specifications, site plans, sketches, samples, contracts and agreements, however characterized from time to time prepared for use in connection with the construction of the Improvements;
- (viii) to the extent assignable, all contracts, agreements and understandings now or hereafter entered into, relating to or involving the performance of any work, rendering of any services, and supply of any materials or the conduct of operations in and the management of the Premises including, without limitation, construction contracts, architect agreements, management agreements, contracts of sale, options and other agreements and deposits made thereunder and proceeds of same, however characterized affecting the operation, maintenance, management, leasing or sale of the Premises and/or the Improvements; and
- (ix) to the extent assignable, any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished whether necessary or not, for the operation and use of the Premises and/or the Improvements and/or Chattels, including, without limitation, building permits, environmental certificates, certificates of operation, warranties and guarantees;

To HAVE AND TO HOLD in fee simple unto the Mortgagee, its successors and assigns forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if Borrower or Mortgagor, and the successors or assigns of Borrower or Mortgagor, shall well and truly pay unto Mortgagee, its successors, or assigns the principal amount of the Note, and interest as provided in the Note, and all other amounts payable pursuant to this Mortgage, and Borrower or Mortgagor shall well and truly abide by and comply with each and every covenant and agreement set forth

herein and in the Note, as the case may be, then these presents and the estate hereby granted shall cease, determine and be void; and

Insofar as the Mortgaged Property is located in Georgia, THIS INSTRUMENT IS A DEED passing legal title pursuant to the laws of the State of Georgia governing deeds to secure debt, and it is not a mortgage; and

This instrument is also a security agreement granting a present and continuing security interest and security title in the portion of the Mortgaged Property constituting personal property or fixtures, and a financing statement filed as a fixture filing, pursuant to the Uniform Commercial Code of the laws of such states.

This instrument is made and intended to secure payment and performance of: (i) the Grantor's obligations under the Guaranty with respect to an indebtedness of Borrower to Grantee evidenced by the Note, bearing interest and payable as provided in the Note, the final payment being due on May 31, 1998, if not sooner paid; (ii) any and all renewal or renewals, extension or extensions, modification or modifications of the Guaranty, or substitution or substitutions for the Guaranty, either in whole or in part; (iii) all advances to or for the benefit of Grantor, if any, made by Grantee pursuant to the terms of this instrument or the Documents; (iv) all expenses incident to enforcing the obligations of the Grantor pursuant to the Guaranty, including, without limitation, the collection of the indebtedness secured by this instrument; (v) all duties and obligations of Grantor under this instrument and the other Documents; and (vi) the Grantor's obligations under the Guaranty with respect to all indebtedness now or hereafter owing by Borrower or Grantor to Grantee pursuant to the Documents, and any and all renewal or renewals, extension or extensions, modification or modifications of said indebtedness, and substitution or substitutions for said indebtedness, either in whole or in part. (The obligations and indebtedness which this instrument is given to secure are herein sometimes collectively called the "Indebtedness"; this instrument is hereinafter sometimes called this "Mortgage".)

#### ARTICLE I

##### PARTICULAR COVENANTS, WARRANTIES AND REPRESENTATIONS OF THE MORTGAGOR

The Mortgagor covenants, warrants, represents and agrees as follows:

Section 1.01. (a) The Mortgagor warrants that it has a good and marketable title to an indefeasible fee estate in the Premises subject in all cases to no lien, charge or encumbrance except such as are listed as exceptions to title in the title policy insuring the lien of this Mortgage or are permitted under the Loan Agreement. The Mortgagor is a duly organized and validly existing California limited partnership, qualified to do business in each jurisdiction where the Premises are located, with full power and authority to consummate the transactions contemplated hereby.

(b) The Mortgagor further warrants that it will own the Chattels free and clear of liens and claims except as permitted by the Loan Agreement; and that this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property subject only to the exceptions referred to above. The Mortgagor has full power and lawful authority to mortgage and convey the Mortgaged Property in the manner and form herein done or intended hereafter to be done. 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 and parties whomsoever.

Section 1.02. The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require, for the better assure conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, and for filing, registering or recording this Mortgage and, promptly after Mortgagee's demand therefor, will execute and deliver one or more financing statements, chattel mortgages or comparable security instruments, and renewals thereof to evidence more effectively the lien hereof upon the Chattels.

Section 1.03. (a) The Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage and any security instrument creating a lien or evidencing the lien hereof upon the Chattels and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property.

(b) The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery and recording of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

Section 1.04. Intentionally omitted.

Section 1.05. (a) The Mortgagor will, so long as it is owner of any part of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges, as a limited partnership under the laws of the State of California and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court and applicable to the Mortgagor.

(b) Except as previously disclosed to Mortgagee in writing, the Mortgaged Property currently complies with and will continue to comply with all applicable restrictive covenants, zoning and subdivision regulations, rules, ordinances, statutes, orders and decrees and building codes, all applicable health laws and regulations and all other applicable laws, rules and regulations in all material respects. If the Mortgagor receives notice from any federal, state, county or local governmental authority that it is not in compliance with any of same, Mortgagor will provide Mortgagee with a copy of such notice promptly.

(c) Except as set forth in the Loan Agreement, there are no actions, suits or proceedings pending, or to the knowledge of Mortgagor, threatened against or affecting the

Mortgaged Property or the Improvements, at law or in equity or before or by any governmental authority.

Section 1.06. All rights, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 1.07. (a) The Mortgagor, from time to time, will pay and discharge prior to delinquency all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes imposed upon Mortgagor or the Mortgaged Property), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public charges whether of a like or different nature, imposed upon or assessed against it or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against it or the Mortgaged Property or the revenues, rents, issues, income or profits thereof. Notwithstanding anything to the contrary contained in the foregoing, in no event shall Mortgagor be obligated to pay or discharge income, franchise or other similar taxes, inheritance, discharge estate and gift taxes, imposed on the Mortgagee.

In the event that a default shall have occurred in the making of any installment of interest or principal due under the Note, Mortgagee may, at its option, to be exercised by thirty (30) days' written notice to the Mortgagor, require the deposit by the Mortgagor, at the time of each payment of an installment of interest or principal under the Note, of an additional amount sufficient to discharge the obligations under this subsection (a) and Section 1.09(a). The determination of the amount so payable and of the fractional part thereof to be deposited with the Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by the Mortgagee in its sole discretion. Such amounts shall be held by the Mortgagee without interest and applied to the payment of the obligations in respect to which such amounts were deposited or, at the option of the Mortgagee, to the payment of said obligations in such order or priority as the Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, the Mortgagor within ten (10) days after demand shall deposit the amount of the deficiency with the Mortgagee. The Mortgagee shall not be required to segregate the amounts deposited with it under this Section 1.07, but may commingle same with any other funds held by it. Nothing herein contained shall be deemed to affect any right or remedy of the Mortgagee under any provisions of this

Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the Involuntary Rate to the indebtedness hereby secured.

(b) The Mortgagor will pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee. The Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien (other than Permitted Indebtedness (as such term is defined in the Loan Agreement), as otherwise permitted by Section 6.02 of the Loan Agreement or the lien for taxes not yet due) to be created upon or attach to the Mortgaged Property; provided, however, that Mortgagor shall not be deemed to be in default hereunder by reason of the filing of any such lien unless Mortgagor fails to discharge such lien by bonding, payment or otherwise within forty-five (45) days after the filing of same.

(c) Nothing in this Section 1.07 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section so long as the Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the sale or forfeiture of the Premises or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security reasonably satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation under this Section 1.07 and of any additional charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section shall become necessary to prevent the delivery of a tax deed or other similar instrument conveying the Mortgaged Property or any portion thereof because of non-payment, then the Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed or other similar instrument.

Section 1.08. Intentionally Omitted.

Section 1.09. (a) The Mortgagor will maintain liability insurance with respect to the Mortgaged Property and will keep the Improvements and Chattels insured against loss by fire, casualty and such other hazards as may be customarily insured against for the benefit of the Mortgagee. Such insurance shall be written in forms, amounts (which, with respect to insurance against fire, casualty and other hazards, shall be at least equal to the replacement cost of the Improvements), and by companies reasonably satisfactory to the Mortgagee. The policies shall by their terms be noncancellable without at least thirty (30) days' prior written notice to the Mortgagee and losses thereunder shall be payable to the Mortgagee pursuant to the standard mortgagee endorsement. The policy or policies of such insurance, or certificate thereof, shall be delivered to the Mortgagee. Not later than thirty (30) days prior to the expiration of each such policy, Mortgagor shall deliver a valid policy or certificate evidencing a renewed policy (or new policies marked "premium paid") upon the terms required by this Mortgage. The Mortgagor shall give the Mortgagee prompt notice of any loss covered by such insurance and the Mortgagee shall have the right to join the Mortgagor in adjusting any loss in excess of \$10,000. Any moneys received as payment for any loss under any such insurance shall be paid over to the Mortgagee to be applied at the option of the Mortgagee to reduce the



Indebtedness or to restore the Mortgaged Property. Notwithstanding anything to the contrary herein contained, provided that (x) the cost of the repair or restoration of the Mortgaged Property, as reasonably estimated by Mortgagee, shall not exceed thirty percent (30%) of the appraised value of the Mortgaged Property and (y) such repair or restoration can reasonably be completed at least ninety (90) days prior to the maturity date of the Note, such proceeds shall be made available to Mortgagor for the repair or restoration of the Mortgaged Property, further subject to the following conditions: (i) there does not exist an Event of Default under this Mortgage, (ii) Mortgagor deposits (the "Additional Deposit") with Mortgagee an amount, in cash, which Mortgagee, in its reasonable discretion, determines is necessary, in addition to the net proceeds of insurance, to pay, in full, the cost of the repair, rebuilding and restoration, (iii) rental income insurance is available to compensate for any decrease in income from the Mortgaged Property due to the casualty during the period of repair and (iv) such other reasonable conditions as a reasonably prudent lender would impose in a similar situation. In any event, the Mortgaged Property shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the Improvements may reasonably exceed the greater of (x) \$50,000 or (y) ten percent (10%) of the then fair market value of the Improvements as estimated by Mortgagee, then prior to the commencement of such work, the Mortgagee must approve final plans and specifications of such work which plans Mortgagee will review and approve or disapprove within ten (10) days after its receipt of the same. In the event Mortgagee fails to notify Mortgagor of such approval or disapproval within ten (10) days of such receipt, said plans shall be deemed approved. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon Mortgagee's being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers of lien, contractors' and subcontractor's sworn statements, title continuations and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' and materialmen's lien claims. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If at any time the undisbursed balance of the insurance proceeds and the Additional Deposit held by Mortgagee shall not, in the reasonable opinion of Mortgagee, be sufficient to pay in full, the balance of the costs, which will be incurred in connection with the completion of the repair, rebuilding or restoration, Mortgagor shall deposit the deficiency with Mortgagee before any further disbursements are made by Mortgagee. Any surplus which may remain out of said insurance proceeds or any amounts otherwise deposited with Mortgagee by or on behalf of Mortgagee, and the Additional Deposit, if any, after payment of the cost of repair, rebuilding and restoration, shall be paid to any party entitled thereto as the same may appear on the records of the Mortgagee. Interest shall be allowed to Mortgagor on any proceeds of insurance or Additional Deposit held by Mortgagee. The insurance proceeds and any Additional Deposit made by Mortgagor need not be kept separate and apart from any other funds of Mortgagee. If the insurance proceeds are made available for repair, rebuilding or restoration, such work shall be done and completed by Mortgagor in an expeditious and diligent fashion, in compliance with all applicable laws, rules and regulations and, if required hereby, in accordance with the plans and specifications approved by Mortgagee.

(b) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 1.09 unless the Mortgagee has approved the insurance company and the form and content of the insurance policy, including, without limitation, the naming thereon of the Mortgagee as a named insured with loss payable to the Mortgagee under a standard mortgage endorsement of the character above described. The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee the policy or policies or certificates of such insurance.

(c) The insurance required by this Mortgage may be effected by blanket and/or umbrella policies issued to Mortgagor covering the Mortgaged Property and other properties (real and personal) owned or leased by Mortgagor, provided that such policies otherwise comply with the provisions of this Mortgage and allocate to the Mortgaged Property the coverage specified from time to time by Mortgagee (which, with respect to insurance against fire, casualty and other hazards, shall be at least equal to the replacement cost of the Improvements), without possibility of reduction or coinsurance by reason of, or damage to, any other property (real or personal) named therein, and if the insurance required by this Mortgage shall be effected by any such blanket or umbrella policies, Mortgagor shall furnish to Mortgagee valid certificates of insurance evidencing such policies, with schedules attached thereto showing the amount of insurance afforded by such policies applicable to the Mortgaged Property.

Section 1.10. If an Event of Default shall have occurred and be continuing with respect to the performance by Mortgagor of any of the covenants contained in this Mortgage, or any covenant contained in the Guaranty, the assignment of leases, if any, or the other Documents, the Mortgagee may make advances and/or disbursements to perform the same, and all sums so advanced and/or disbursed shall be a lien upon the Mortgaged Property and shall be secured hereby. The Mortgagor will repay within 10 days after Mortgagee's demand therefor all sums so advanced and/or disbursed with interest at the Involuntary Rate, provided that Mortgagee provides reasonable documentation of the nature and amount of same with such demand. The provisions of this Section 1.10 shall not be deemed a waiver of any default in any covenant contained in this Mortgage, or contained in the Note, the assignment of leases, if any, or the other Documents.

Section 1.11. (a) The Mortgagor will keep accurate records and books of account in which full, accurate and correct entries will be made of all dealings or transactions in relation to Mortgagor's business and affairs in accordance with Modified GAAP (as such term is defined in the Loan Agreement). The Mortgagor will permit the Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Premises and examine its records and books of account and to discuss its affairs, finances and accounts with the Mortgagor, at such reasonable times as may be requested by the Mortgagee on two (2) business days advance written notice.

(b) The Mortgagor will, and will cause the Guarantor to, at their own cost and expense, deliver to the Mortgagee the financial statements required to be delivered to Mortgagee pursuant to, and in accordance with, Section 6.01(b) of the Loan Agreement.

(c) Intentionally Omitted.

Section 1.12. (a) The Mortgagor will not threaten, commit, permit or suffer any waste to occur on or to the Mortgaged Property, or any part thereof, or alter the Mortgaged

Property or any part thereof in any manner or make any change in its use which will in any way materially increase any risk of fire or other hazards arising out of construction or operation of the Mortgaged Property. The Mortgagor will, at all times, maintain the Mortgaged Property in good operating order and condition and will promptly make, from time to time, all structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals, replacements, additions and necessary improvements in connection therewith. The Improvements shall not be removed, demolished or substantially altered (other than in the ordinary course of business), nor shall any Chattels be removed without the prior written consent of the Mortgagee, except where appropriate replacements free of superior title, liens and claims are immediately made of value at least equal to the value of the Chattels removed.

(b) In the event that the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or any other casualty, or in the event of a taking of a portion of the Mortgaged Property as a result of any exercise of the power of eminent domain, the Mortgagor shall promptly restore, replace, rebuild, or alter the same as nearly as possible to the condition they were in immediately prior to such fire, other casualty or taking, and shall take such other reasonable additional actions and measures as shall be necessary to avoid any default or forfeiture under any applicable agreement or termination of any leases as a result thereof. Although damage to or destruction of the Mortgaged Property, or any portion thereof, shall not of itself constitute a default hereunder, the failure of the Mortgagor to restore, replace, rebuild or alter the same, as hereinabove provided, shall constitute a default hereunder regardless of the availability of insurance proceeds or condemnation awards for such purpose (except to the extent that Mortgagee is obligated pursuant to the terms of this Mortgage to make such proceeds available to the Mortgagor for such purpose and fails to do so).

(c) Except as set forth in the Loan Agreement, the Mortgaged Property currently complies with, and in the future the Mortgagor will promptly comply, or cause compliance with all laws, ordinances, rules, regulations and other requirements (including, without limitation zoning and subdivision) of all governmental authorities whatsoever having jurisdiction of or with respect to the Mortgaged Property or any portion thereof or the use and occupation thereof, except where failure to comply would not have a material adverse effect on Mortgagor, or the ownership or operation of the Mortgaged Property, or on Mortgagee.

(d) The Mortgagor will not, without the prior written consent of the Mortgagee, initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof.

Section 1.13. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor from time to time will deliver to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to the Mortgagee up to the Mortgage Amount. The Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid. In any such condemnation proceedings the Mortgagee may be

represented by counsel selected by the Mortgagee but the Mortgagor may appear by its counsel to contest the amount of the condemnation award. The proceeds of any award or compensation so received shall, at the option of the Mortgagee, either be applied, without premium, to the prepayment of the Note or be paid over to the Mortgagor for restoration of the Improvements. The Mortgagee shall not be limited to the interest paid on the proceeds of any award or compensation, but shall be entitled to the payment of interest at the rates provided for herein or in the Note.

Section 1.14. (a) Except to the extent permitted by the Loan Agreement, the Mortgagor will not, without the prior written consent and approval of the Mortgagee in each instance, (i) execute an assignment of the rents from the Premises or any part thereof, (ii) enter into any leases, lettings or license arrangement affecting the Premises or any part thereof (other than in the ordinary course of business), or (iii) in any other manner impair the value of the Mortgaged Property or the security of the Mortgage. Reference is hereby made to Section 291-f of the Real Property Law (to the extent that any portion of the Mortgaged Property is located in the State of New York), and Mortgagor will not, without the prior written consent and approval of Mortgagee in each instance, (i) terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or of any part thereof, now existing or hereafter to be made, (ii) modify or vary any such lease in any manner which would reasonable be expected to have a material adverse effect on the Premises or Mortgagor's ability to fulfill its obligations hereunder, or (iii) accept prepayments of any installments of rents to become due under such leases, except prepayments not to exceed one month's rent in the nature of security for the performance of the lessees thereunder. Mortgagee shall not unreasonably withhold or delay its consent to any leases, lettings or license agreements affecting the Premises or amendments, modifications or terminations thereof. If Mortgagee shall not have responded to Mortgagor's request for consent to any such transaction within five (5) days after receipt of the documentation evidencing the same, Mortgagee shall be deemed to have consented thereto.

(b) The Mortgagor will at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases of the Premises or any part thereof now or hereafter existing, on the part of the lessor thereunder to be kept and performed and shall use reasonable efforts to compel performance by the lessee under each lease of all obligations, covenants, and agreements by such lessee to be performed thereunder; provided, however, that Mortgagor shall not be required to bring any action against any tenant to compel such performance as a result of the foregoing. If any of such leases provide for the giving by the lessee of certificates with respect to the status of such leases, the Mortgagor shall exercise its right to request such certificates within five (5) days of any demand therefor by the Mortgagee. The Mortgagor shall promptly notify the Mortgagee of (i) the commencement of any action or proceeding by any lessee, the purpose of which shall be the cancellation of any lease or diminution or offset against the rent payable under any such lease, or (ii) the interposition by any lessee of any defense in any action or proceeding brought by the Mortgagor against such lessee, or (iii) a written notice received by the Mortgagor from any lessee claiming constructive eviction, and will cause a copy of any process, pleading or notice received by the Mortgagor in reference to any such action, defense or claim to be promptly delivered to the Mortgagee.

(c) Not more than twice in any consecutive twelve (12) month period (unless there has been a materially adverse change in the rents collected from the Premises), the Mortgagor

shall furnish to the Mortgagee, within thirty (30) days after a request by the Mortgagee to do so, a written statement containing a schedule of all leases of all or any part of the Premises, the names of the respective lessees, the terms of their respective leases, the space occupied and the rentals payable thereunder, and, if also requested, true copies of all such leases.

Section 1.15. The Mortgagee and its authorized representatives shall have the right at all reasonable times during usual business hours to enter upon and inspect all portions of the Mortgaged Property upon two (2) business days' advance written notice (except in the event of an emergency, in which case no notice shall be required) which notice need not be in writing.

Section 1.16. To the extent not so provided by applicable law each new lease of the Premises, or any part thereof shall provide that, in the event of the enforcement by the Mortgagee of the remedies provided for by law or equity or by this Mortgage, the lessee thereunder will, upon request of any person succeeding to the interest of the Mortgagor as a result of such enforcement, automatically become the lessee of said successor in interest, without change in the terms or other provisions of such lease, provided, however, that said successor in interest shall not be bound by (i) any payment of rent or additional rent for more than one month in advance, (ii) any amendment or modification of the lease made without the consent of the Mortgagee or such successor in interest, or (iii) any work required to be done by the Mortgagor pursuant to the terms of said lease. Each such lease shall also provide that, upon request by said successor in interest, such lessee shall execute and deliver an instrument or instruments confirming such attachment.

Section 1.17. The Mortgagor agrees that if any action or proceeding be commenced, excepting an action to foreclose this Mortgage or to collect the indebtedness hereby secured, to which action or proceeding the Mortgagee is a party by reason of the execution of this Mortgage or the Note which it secures, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the reasonable out-of-pocket expenses of any such litigation to prosecute or defend the transaction and the rights and lien created hereby (including, without limitation, reasonable attorneys' fees) shall, subject to the provisions of Section 6.01(j) of the Loan Agreement, be paid by the Mortgagor together with interest thereon from the date of payment by the Mortgagee at the Involuntary Rate. All such sums paid and the interest thereon shall be a lien upon the Mortgaged Property, and shall be secured hereby.

Section 1.18. The Mortgagor agrees that in the event of the passage after the date of this Mortgage of any law deducting any lien from the value of land for the purpose of taxation, or changing in any way the laws now in force for the taxation of mortgages or debts secured by a mortgage, or the manner of the collection of any such taxes, so as to impose upon Mortgagee any tax that previously would have been payable by Mortgagor, the whole of the principal sum secured by this Mortgage, together with interest due thereon, shall at the option of the Mortgagee become immediately due and payable unless Mortgagor is lawfully permitted to pay and pays the amount of such taxes or to reimburse and reimburses Mortgagee therefor.

Section 1.19. (a) The Mortgaged Property is and at all times will be provided with adequate water, sewer and other utility facilities, in compliance with all applicable laws and regulations.

(b) The Mortgaged Property has frontage on, and direct access for ingress and egress to, legally dedicated street(s).

(c) The Mortgagor has not made or assumed any contract, agreement or arrangement involving the payment of fees or commissions which would bind Mortgagee or its successors following a foreclosure of this Mortgage.

(d) At all times prior to the payment in full of the indebtedness evidenced by the Note and other sums secured hereby, the Mortgaged Property shall be managed by the Mortgagor or the Borrower, or by a management company pursuant to an agreement which shall have been approved in writing by the Mortgagee prior to execution thereof.

Section 1.20. Except as otherwise provided in the Loan Agreement, the Mortgagor shall not, directly or indirectly, by transfer, mortgage or conveyance, do or suffer the assignment, transfer, sale, conveyance, or encumbrance junior or senior hereto of the Mortgaged Property or any part thereof or any interest therein or undergo a change in the controlling equity ownership of the Mortgagor without in each instance the prior written consent of the Mortgagee, except for Permitted Indebtedness (as defined in the Loan Agreement).

Section 1.21. (a) Except as disclosed to Mortgagee on Schedule 5.01(p) and Schedule 1.01(b) to the Loan Agreement, Mortgagor represents and warrants that to the best of Mortgagor's knowledge the following statements are true in all material respects:

(i) No Hazardous Materials (as hereinafter defined) have been or are stored, treated, disposed of or incorporated into, on or around the Premises and no underground storage tanks exist on the Premises;

(ii) The Premises is in compliance with all applicable environmental, health and safety requirements;

(iii) Any business currently or heretofore operated on the Premises has disposed of its waste on the Premises in accordance with all applicable statutes, ordinances and regulations;

(iv) Mortgagor has received no notice of any pending or threatened action or proceeding arising out of any alleged violation of environmental, health and safety requirements; and

(v) Any business operated on the Premises has all governmental permits required under applicable statutes, ordinances and regulations which permits are in full force and effect and no condition exists which might threaten the validity of such permits.

(b) Mortgagor, at Mortgagor's sole cost and expense, agrees to ameliorate and remove from the Mortgaged Property with all reasonable due care, any contamination of the Mortgaged Property by Hazardous Materials which subsists or exists on the Mortgaged Property the presence of which violates any applicable environmental, health or safety requirement, such amelioration or removal to be accomplished in accordance with applicable law and in accordance with the terms and procedures as may be required by federal, state, or local governmental agencies having jurisdiction including, but not limited to, any Regional Water Quality Control Board and the Environmental Protection Agency. "Hazardous Material(s)" for purposes of this instrument shall mean any asbestos-containing materials and all toxic substances or hazardous substances or hazardous wastes as such

terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., the Resource Conservation and Recovery Act 42 U.S.C. Section 9601, et seq., or any other applicable federal, state or municipal law, regulation, ordinance or requirement, all as amended or hereinafter amended.

(c) The provisions of this Section 1.21 shall be in addition to any and all obligations and liabilities Mortgagor may have to the Mortgagee at common law, and shall survive the transactions contemplated herein.

Section 1.22. The Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property, non-compliance with which shall affect the security of this Mortgage, or shall impose any duty or obligation upon the Mortgagor and the Mortgagor shall do or cause to be done all things reasonably necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

## ARTICLE II EVENTS OF DEFAULT AND REMEDIES

Section 2.01. One or more of the following events shall be "Events of Default" hereunder:

(a) if (i) there shall have been an Event of Default, as defined in the Loan Agreement or, (ii) default shall be made in the payment of any tax required by Section 1.07 to be paid and said default shall have continued for a period of ten (10) days, or (iii) default shall be made in the due observance or performance of any covenant or agreement on the part of the Mortgagor contained in sections 1.01(a) (subject to Mortgagor's right to contest certain liens pursuant to Section 1.07), the first sentence of Section 1.09(a), 1.14(a) or 1.20 (subject to Mortgagor's right to contest certain liens pursuant to Section 1.07) hereof (for the purposes of this clause, and for subparagraph (b) below, if any representation made in Section 1.01 shall be incorrect in any material respect, it shall be deemed to be a default); or

(b) if default shall be made in the due observance or performance of any other covenant or agreement on the part of the Mortgagor contained herein and such default shall have continued for a period of twenty (20) days after written notice thereof shall have been given to the Mortgagor by the Mortgagee, provided that if any such default cannot reasonably be cured within the applicable grace period and Mortgagor has in good faith commenced to cure such default and is diligently pursuing such a cure, then the Mortgagor shall have such reasonable additional period, not to exceed sixty (60) days, as may be necessary to cure such default if such extension of time to cure shall not subject the Mortgagee to criminal prosecution, or would not reasonably be expected to result in the loss or forfeiture of all or any portion of the Mortgaged Property, provided that the Mortgagor duly commences to effect such cure during such 20-day period and thereafter diligently completes same; or

(c) if the Mortgagor shall file a petition in bankruptcy or for an arrangement or for reorganization pursuant to the Federal Bankruptcy Code or any similar law, federal or state, or if, by decree of a court of competent jurisdiction, the Mortgagor shall be adjudicated a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its

debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any, part of the Mortgaged Property; or

(d) if a decree or order for relief is entered by a court having jurisdiction in the Mortgaged Property in respect of the Mortgagor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Mortgagor or for any substantial part of the Mortgaged Property, or ordering the winding-up or liquidation of any of its affairs and such decree or order shall continue unstayed or unappealed and in effect for a period of sixty (60) consecutive days; or

(e) if final judgment for the payment of money shall be rendered against the Mortgagor which judgment has a material adverse effect, as determined by Mortgagee in its reasonable discretion, on Mortgagor or the ownership of the Mortgaged Property or the operation thereof and the Mortgagor shall not discharge or bond the same or cause it to be discharged or bonded within thirty (30) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered, and secure a stay of execution pending such appeal; or

(f) if the holder of a junior or senior mortgage or other lien or encumbrance on the Mortgaged Property, or any part thereof, institutes foreclosure or other proceedings for the enforcement of its remedies thereunder provided that no such action by the holder of any lien or encumbrance which Mortgagor has the right to contest pursuant to Section 1.07 shall be deemed an Event of Default hereunder provided that Mortgagor shall be contesting same in accordance with Section 1.07 (this subsection (g) shall not be construed to imply that the Mortgagee consents to any junior or senior lien or encumbrance other than any liens or encumbrances permitted by the Loan Agreement).

Upon the occurrence and during the continuance of one or more Events of Default hereunder:

I. The Mortgagee may declare the entire principal of the Note then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest shall become and be immediately due and payable, anything in the Note or in this Mortgage to the contrary notwithstanding;

II. The Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Premises and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers; and upon every such entry, the Mortgagee, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, whereof it shall become possessed as aforesaid; and likewise, from time to time, at the expense of the Mortgagor, the Mortgagee may make all necessary or proper



repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all gross receipts, earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof, all of which shall for all purposes constitute property of the Mortgagee; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvement and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, the Mortgagee may apply the moneys arising as aforesaid in a manner consistent with the Loan Agreement; and

III. The Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may exercise any of the following remedies:

(1) sell the Mortgaged Property or any part thereof to the extent permitted and pursuant to the procedures provided by law, and all estate, right, title and interest, claim and demand therein, at one or more sales, as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law. Grantee may hold one or more sales hereunder until the Indebtedness has been satisfied in full; or

(2) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(3) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, this Mortgage, or the other Documents or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect; or

(4) with respect to the personal property and fixtures in which a security interest is herein granted, at Grantee's option, Grantee may exercise any or all of the rights accruing to a secured party under this Mortgage, the Uniform Commercial Code and any other applicable law. Grantor shall, if Grantee requests, assemble all such personal property and make it available to Grantee at a place or places, to be designated by Grantee, which shall be reasonably convenient to Grantor and Grantee. Any notice required to be given by Grantee of a public or private sale, lease or other disposition of the personal property or any other intended action by Grantee

shall be delivered in a manner consistent with that provided for under Section 9.02 of the Loan Agreement, at least ten (10) business days prior to such proposed action, and shall constitute reasonable fair notice to Grantor of any such action.

Section 2.02. (a) The Mortgagee may, to the extent permitted by applicable law, adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, the Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(b) Upon the completion of any sale or sales made by the Mortgagee under or by virtue of this Article II, the Mortgagee, or any officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. The Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for the purpose, and as may be designated in such request. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties, interests and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(c) Notwithstanding anything to the contrary contained herein the purchase money, proceeds or avails of any sale made under or by virtue of this Article II, together with any other sums received by the Mortgagee under this Mortgage, shall be applied as provided for in Section 8.03 of the Loan Agreement.

(d) Upon any sale made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage.

Section 2.03. (a) Subject to the provisions of Section 4.20 hereof, the Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage or any guarantee executed by the Guarantor and the right of the Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Mortgaged Property or any part thereof and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the indebtedness

hereby secured, the Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Guaranty, and to enforce payment of all other charges, payments and costs due under this Mortgage, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest thereon at the Involuntary Rate. In case of proceedings against the Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then the Mortgagee shall be entitled to prove the whole amount of indebtedness and interest due upon the Guaranty to the full amount thereof, and all other payments, charges and costs due under this Mortgage, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property, provided, however, that in no case shall the Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Mortgaged Property or any part thereof and the distribution from the estate of the Mortgagor.

(b) No recovery of any judgment by the Mortgagee and no levy of any execution under any judgment upon the Mortgaged Property or upon any other property of the Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of the Mortgagee hereunder, but such liens, rights, powers and remedies of the Mortgagee shall continue unimpaired as before.

Section 2.04. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by the Mortgagee to obtain judgment for the principal of, or interest on, the Note and other sums required to be paid by the Mortgagor pursuant to any provisions of this Mortgage, or of the Documents, or of any nature in aid of the enforcement of the Note or of this Mortgage, the Mortgagor does hereby (a) waive personal service of process and consent to service by certified mail to the address of the Mortgagor set forth on the cover page of this Mortgage (with copies to be sent as provided in Section 4.03), and (b) if required by the Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof or any business or businesses conducted thereon and of all the earnings, revenues, rents, issues, profits and income thereof. After the happening of any Event of Default, or upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Mortgagee, the Mortgagee shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the Mortgage indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of such receiver or receivers.

Section 2.05. Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, the Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

Section 2.06. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such rights or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every

power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee.

Section 2.07. The Mortgagor will not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage or any guarantee, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment, or order of any court of competent jurisdiction, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor for itself and all who may claim under it, waive, to the extent that it lawfully may, all right to have the Mortgaged Property or any part thereof marshaled upon any foreclosure hereof.

Section 2.08. During the continuance of any Event of Default and pending the exercise by the Mortgagee of its right to exclude the Mortgagor from all or any part of the Premises, the Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Premises or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Premises to the Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery of possession of premises for non-payment of rent, however designated.

### ARTICLE III

#### CONCERNING THE TRUSTEE

Section 3.01. The Trustee, by its acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for willful negligence or misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms hereof.

Section 3.02. The Trustee may resign at any time upon giving thirty (30) days' notice in writing to the Grantor and to the Beneficiary.

Section 3.03. The Beneficiary may, with or without cause, remove the Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of the Trustee, or in its sole discretion for any reason whatsoever the Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor Trustee, and all powers, rights, duties and authority of the Trustee, as aforesaid, shall thereupon become vested in such successor. Such appointment shall be by written instrument filed for recordation in the same official office as this Deed of Trust is recorded. Neither the Trustee nor any such substitute trustee shall be required to make oath, file inventory or give bond for the faithful performance of his duties unless required by the Beneficiary. The Beneficiary's power of appointment may be exercised as often and whenever the Beneficiary deems it advisable and the exercise of such power, no matter how often, shall not be an exhaustion thereof. Such appointment may be

executed by any person acting in a representative capacity and shall be conclusively presumed to have been executed with appropriate authority.

#### ARTICLE IV

#### MISCELLANEOUS

Section 4.01. All of the grants, covenants, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of the Mortgagor and the successors and assigns of the Mortgagee. If there be more than one mortgagor, the covenants and warranties hereof shall be joint and several. As used herein, the singular shall include the plural as the context requires.

Section 4.02. In the event any one or more of the provisions contained in this Mortgage or in the Note or in any of the other Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 4.03. All notices and other communications provided for hereunder shall be in the English language, in writing (including telegraphic communication) and sent by certified mail, return receipt requested, by overnight courier or by facsimile or by hand delivery addressed as follows:

To the Mortgagor:

c/o The Shidler Group  
Four Embarcadero Center  
Suite 3150  
San Francisco, CA 94111  
Attn: Robert W. Holman, Jr.  
Telecopier: (415) 391-6259

with copies to:

The Shidler Group  
Four Embarcadero Center  
Suite 3150  
San Francisco, CA 94111  
Attn: Susan Burrus  
Telecopier: (415) 391-1852

c/o The Shidler Group  
810 Richard Street  
Suite 1000  
Honolulu, Hawaii 96813  
Attn: Jay H. Shidler  
Telecopier: (808) 528-7127

Barack, Ferrazzano, Kirschbaum  
& Perlman  
333 West Wacker Drive  
Chicago, Illinois 60606  
Attn: Suzanne Bessette-Smith, Esq.  
Telecopier: (312) 984-3150

If to the Mortgagee:

Unibank A/S  
13-15 West 54th Street  
New York, New York 10019  
Attn: Carsten Beith,  
Asst. Vice President Corporate  
Finance  
Telecopier: (212) 603-1685

with a copy (except for Notices of Borrowing under the Loan Agreement) to:

Robinson Silverman Pearce  
Aronsohn & Berman  
1290 Avenue of the Americas  
New York, New York 10104  
Attn: Eric I Cohen, Esq.  
Telecopier: (212) 541-4630

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall be deemed to have been given for all purposes herein on the earlier of actual receipt with respect to personal delivery or overnight courier, or three (3) days after the date of the mailing thereof, or, with respect to facsimiles, upon receipt of confirmation or receipt of an answerback.

Section 4.04. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

Section 4.05. This Mortgage, and any instruments made in connection herewith, may be assigned by the Mortgagee without notice to, or the consent of, the Mortgagor or any other party in accordance with the terms and conditions of the Loan Agreement.

Section 4.06. The information set forth on the cover hereof is hereby incorporated herein.

Section 4.07. The Involuntary Rate provided for herein shall continue to accrue and be paid on any amount to which the Involuntary Rate is applied until said amount is paid in full.

Section 4.08. The creation of this Mortgage, the attachment and perfection of the lien, security title or security interest in the Mortgaged Property, and the rights and remedies of the Mortgagee and the enforcement thereof with respect to the Mortgaged Property, as provided herein and by the laws of the state in which the Mortgaged Property is located, shall be governed by and construed in accordance with the internal laws of the state in which the Mortgaged Property is located (except where the laws or conflict of laws rules of such state would otherwise require; see, e.g., Section 9-103(3)(b) of the Uniform Commercial Code). Otherwise to the extent permitted by applicable law, the Note, the other Documents and all other obligations of Mortgagor shall be governed by and construed in accordance with the internal laws of the State of New York.

Section 4.09. Neither this Mortgage nor any provision hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the Mortgagee.

Section 4.10. (a) This Mortgage shall be deemed to be a Security Agreement pursuant to the Uniform Commercial Code of the State in which the Mortgaged Property or any part thereof is located and Mortgagor (as Debtor) hereby grants to Mortgagee (as Secured Party) a continuing security interest in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property.

(b) The Mortgagor and the Mortgagee agree that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing the express declaration

and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such property is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) above that notice of the Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

Section 4.11. (a) The Mortgagor represents and warrants to the Mortgagee that the Premises do not comprise Property identified by the Secretary of Housing and Urban Development as an area having special flood hazards, or to the contrary, that the Premises have been so identified but that the Premises has been insured under the National Flood Insurance Act of 1968, as amended by Flood Disaster Protection Act of 1973.

(b) The Mortgagor covenants and warrants that if the Premises are so identified by the Secretary of Housing and Urban Development as having special flood hazards, it will keep the Premises insured against loss by flood hazards in an amount at least equal to the replacement value of the Improvements, or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, whichever is less.

Section 4.12. Wherever "attorneys' or counsel fees" are referred to herein, it shall include such reasonable fees whether incurred out of court or in litigation, including, without limitation, appeals and bankruptcy proceedings.

Section 4.13. Whenever reference is made in this Mortgage to a lease, lessee, tenancy or tenant, such reference shall be deemed to include a sublease, sublessee, subtenancy or subtenant, as the case may be.

Section 4.14. Intentionally omitted.

Section 4.15. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage. Any counterpart or group of counterparts of this Mortgage recorded in a single county or state may be treated with respect to the rights and remedies available to Mortgagee as a separate mortgage or group of mortgages covering only the

portions of the Mortgaged Premises located in the county or state where that counterpart or those counterparts are recorded.

Section 4.16. If the payment of the indebtedness evidenced by the Note is now or hereafter further secured by assignments of leases or rentals, security agreements, financing statements, mortgages, collateral assignments, pledges, contracts of guaranty, or other additional security documents, any default under the provisions of any such further security documents shall constitute and be a default under this Mortgage, and the Mortgagee may, at its option, exhaust any one or more of the said security documents and the security thereunder as well as the Mortgaged Property covered by this Mortgage either concurrently or independently and in such other and further manner as the Mortgagee may elect, and Mortgagee may apply the proceeds received therefrom upon the mortgage indebtedness without waiving or affecting Mortgagee's rights and remedies under this Mortgage exercised hereunder or whether contained or exercised under any other such security documents.

Section 4.17. Intentionally omitted.

Section 4.18. Nothing contained herein shall create any joint venture, partnership, agency or trust arrangement between Mortgagor and Mortgagee.

Section 4.19. The lien of this Mortgage shall be released from portions of the Mortgaged Property upon the sale(s) thereof, pursuant to and in accordance with the terms, conditions and provisions more particularly set forth in the Loan Agreement.

Section 4.20. Notwithstanding any other provision of this Mortgage, the obligation of Mortgagor to pay the amounts to be paid by it pursuant to the Guaranty, and to perform and observe and make good the other covenants, warranties and agreements contained herein, shall not be enforced by any action or proceeding against Mortgagor or its partners wherein or whereby any deficiency or other money judgment shall be sought against Mortgagor or its partners (a "Deficiency Action") and neither Mortgagor nor its partners shall be liable for such deficiency or other money judgment; provided that Mortgagor may be made a party defendant in a foreclosure action against the Premises and any judgment in such foreclosure action shall be enforceable against the Premises and provided further that nothing contained above shall be deemed (i) to affect the lien of this Mortgage, (ii) to be a release or impairment of the other obligations of Mortgagor under the Guaranty, this Mortgage or any other Documents, (iii) to limit Mortgagee from enforcing its rights under the Note, this Mortgage or any Document, or to constitute a waiver, release or discharge of any indebtedness or obligation under the Note or secured by this Mortgage, or (iv) to affect the personal liability of the Guarantor under the Guaranty or the Personal Guaranty or of the indemnitors under the Environmental Indemnity, to the extent such liability may be limited therein. Nothing set forth in (i) through (iv) of the preceding sentence shall be deemed to give rise to any personal liability of Mortgagor or its partners, except to the extent that they are personally liable pursuant to the Guaranty, the Personal Guaranty or the Environmental Indemnity. Notwithstanding the foregoing, Mortgagor shall be personally liable to Mortgagee at all times for the misapplication by the Mortgagor in a manner which is fraudulent and/or contrary to the provisions of the Mortgage of (a) any insurance proceeds paid under any insurance policies by reason of damage, loss or destruction to the Premises or the Improvements to the full extent of such proceeds or (b) proceeds or awards resulting from condemnation or other taking in lieu of condemnation of any portion of the Premises or the Improvements to the full extent of such proceeds or awards or (c) tenant security deposits, but only to the extent actually received by Mortgagor and not applied on account of a tenant default; and Mortgagor, Guarantors and the



aforesaid indemnitors shall be personally liable for any damages to Mortgagee resulting from any fraud or intentional misrepresentation made by Mortgagor, Guarantors or the aforesaid indemnitors, as the case may be.

Section 4.21. THE MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE, THE NOTE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THE LOAN, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE MORTGAGOR OR MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT TO MORTGAGEE TO MAKE THE LOAN AND ACCEPT THE GUARANTY SECURED HEREBY.

Section 4.22. To facilitate recordation, in certain counterparts hereof only that portion of Schedule A and only that cover page which contain specific descriptions of the Mortgaged Property located in the recording jurisdiction in which the particular counterpart is to be recorded and only acknowledgments which are acceptable for such jurisdiction are included. Complete copies of this Mortgage containing the entire Schedule A, all cover pages and all acknowledgments have been retained by Mortgagor and Mortgagee.

Section 4.23. Intentionally omitted.

#### ARTICLE V

##### PARTICULAR STATE PROVISIONS

Section 5.01. To the extent that the Mortgaged Property is located in the State of Utah, the following provisions shall apply:

(a) Insofar as the Mortgaged Property is located in Utah, this instrument shall be a Trust Deed, and the Mortgagor, as Trustor, hereby CONVEYS AND WARRANTS TO Chicago Title Insurance Corporation, AS TRUSTEE, IN TRUST, WITH POWER OF SALE, all of the Mortgaged Property located in the State of Utah, FOR THE PURPOSE OF SECURING THE INDEBTEDNESS.

(b) The Mortgagor hereby requests that a copy of any Notice of Default and of any Notice of Sale given in connection with the exercise of the Power of Sale under the applicable Utah Statutes be mailed to the Mortgagor at the Mortgagor's address specified in Section 4.03 of this Mortgage.

(c) Supplementing the remedies granted to the Mortgagee pursuant to Section 2.01 hereof, if an Event of Default shall have occurred and be continuing, in such event, Mortgagee shall have the following remedy:

To cause the Trustee to sell the Mortgaged Property in the manner provided by law by exercise of the power of sale hereby conferred, or at the option of the Mortgagee,

The Mortgagee may cause the Trustee to foreclose this instrument in the manner provided by law for the foreclosure of mortgages on real property.

IN WITNESS WHEREOF, this Mortgage has been duly executed under seal by the Mortgagor.

Signed, sealed and delivered in the presence of:

*Elaine Tucker*  
Name: Elaine Tucker

*Kim Aquino*  
Name: Kim Aquino

NATIONAL WAREHOUSE  
INVESTMENT COMPANY, a  
California limited  
partnership

By: Holman/Shidler Investment  
Corporation, a Hawaii  
corporation, general  
partner

By: *Jay H. Shidler*  
Name: Jay H. Shidler  
Title: Vice President

UNIBANK A/S

By: *Michael J. Maher*  
Name: Michael J. Maher  
Title: Senior Vice President

By: *Thomas P. McKeef*  
Name: Thomas P. McKeef  
Title: Vice President

[Corporate Seal]

Attest:

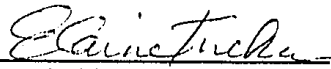
\_\_\_\_\_  
Assistant Secretary

CORPORATE GENERAL PARTNER ACKNOWLEDGEMENT

STATE OF HAWAII )  
 ) ss.:  
CITY AND COUNTY OF HONOLULU )

On this 5th day of FEBRUARY, 1996, before me, the undersigned officer, personally appeared Jay H. Shidler personally known and acknowledged themselves to me to be the Vice President of Holman/Shidler Investment Corporation, a Hawaii corporation (the "Corporation") said Corporation acting in its capacity as the corporate general partner of National Warehouse Investment Corporation, a California limited partnership (the "Partnership"), pursuant to the partnership agreement of the Partnership, and that as such officers, being duly authorized to do so pursuant to its by-laws or a resolution of its board of directors, executed and acknowledged the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by themselves as such officers as their free and voluntary act and deed and the free and voluntary act and deed of said Corporation and Partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public  
Name: Elaine Tucker

NOTARIAL SEAL



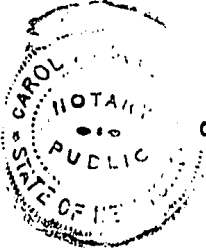
My Commission Expires: 11/29/96

My County of Residence: Honolulu

BK7343PG2712

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

On this 4th day of February, 1996, before me personally appeared Michael S. Miller, to me known, who being by me duly sworn, did depose and say that he is Senior Vice President of Unibank A/S, the bank described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

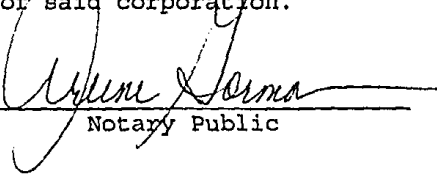


CAROL A. GOODMAN  
Notary Public, State of New York  
No. 01G05019812  
Qualified in New York County  
Commission Expires Nov. 1, 1997

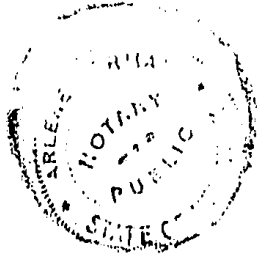
Carol A. Goodman  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

On this 15<sup>th</sup> day of FEBRUARY, 1996, before me personally appeared Thomas Hickey to me known, who, being by me duly sworn, did depose and say that he is Vice President of Unibank A/S, the bank described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

  
Notary Public

ARLENE GORMAN  
NOTARY PUBLIC, State of New York  
No. 01G05020996  
Qualified in Nassau County  
Commission Expires December 6, 1997

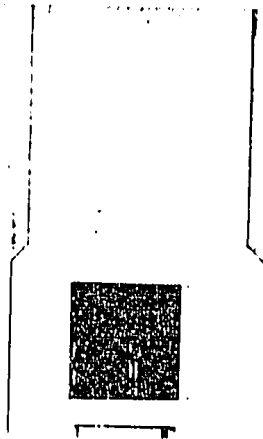


SCHEDULE A

The land referred to in this Commitment is described as follows:

BEGINNING at a point which is South  $0^{\circ}03'34''$  East 66.50 feet and North  $89^{\circ}56'26''$  East 36.85 feet from the North quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian; and running thence along the East line of Redwood Road South  $0^{\circ}54'51''$  East 167.96 feet; thence South  $01^{\circ}41'39''$  East 300.04 feet; thence South  $6^{\circ}48'55''$  East 52.5 feet; thence North  $89^{\circ}56'26''$  East 1001.68 feet; thence North  $0^{\circ}03'34''$  East 520.00 feet to the South line of the Salt Lake Garfield and Western Railroad property; thence South  $89^{\circ}56'26''$  West 1020.00 feet along said South line of Railroad property to the point of beginning.

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DK 7343 PG 2715