

J.P.S.C.

Supreme Court

OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

MANUFACTURERS TRUST COMPANY,
 as Corporate Trustee by merger
 of Chatham Phenix National
 Bank and Trust Company, under
 a certain Trust Mortgage made
 by Roerich Museum to Chatham
 Phenix National Bank and Trust
 Company, Corporate Trustee,
 and Charles C. Moore, Individ-
 ual Trustee, dated as of June
 15th, 1928,

Plaintiff,

against

ROERICH MUSEUM, ROERICH MU-
 SEUM, INCORPORATED, CHARLES C.
 MOORE, as Individual Trustee
 under Trust Mortgage made by
 Roerich Museum, dated as of
 June 15th, 1928, LOUIS L. HORCH,
 et al.,

Defendants.

Clerk's Number
32856/1932.

Plan of Reorganization

On or about June 15, 1928, the Roerich Museum, issued \$1,925,000 in aggregate principal amount of its First Mortgage, Series A 6% Guaranteed Sinking Fund Gold Bond Certificates (hereinafter called "Series A Certificates") under a Trust Mortgage to Chatham Phenix National Bank and Trust Company, as Corporate Trustee, and Charles C. Moore, as Individual Trustee, and \$150,000 in aggregate principal amount of its Serial Series B 6% Guaranteed Gold Bond Certificates secured by a junior lien under said Trust

Mortgage. There are now outstanding \$1,925,000 in aggregate principal amount of said Series A Certificates and \$148,333.34 in aggregate principal amount of said Serial Series B 6% Guaranteed Gold Bond Certificates.

The mortgage above described covers a twenty-four story building located at Riverside Drive and 103rd Street, New York, N. Y., containing approximately 294 apartments of one room and bath, and 48 apartments of two rooms and bath. The first three floors except the lobby and the restaurant are used by the Roerich Museum for cultural and educational purposes exclusively, together with approximately one-half of the floor space contained on the fourth floor. Five apartments are used by the staff of the Museum. The land upon which the building is located has a frontage of 115 feet on Riverside Drive and 120 feet on the north side of 103rd Street.

On or about April 1, 1932 foreclosure proceedings in respect to the mortgage above described were commenced by Manufacturers Trust Company, as Successor Corporate Trustee by merger to Chatham Phenix National Bank and Trust Company, and Charles C. Moore, as Individual Trustee, in the Supreme Court of the State of New York, County of Bronx. At that time the Roerich Museum had failed to pay three monthly deposits on account of the interest due June 15, 1932 on the Series A Certificates and five monthly deposits on account of the interest due on the Serial Series B 6% Guaranteed Gold Bond Certificates due June 15, 1932. Real estate taxes aggregating \$105,956.40, exclusive of interest and penalties thereon as provided by law, were past due and unpaid. Application for a receiver of the mortgaged premises was made in that proceeding by the trustees and Philip J. Curry was appointed receiver. On

June 30, 1932 this receivership was vacated. Foreclosure proceedings were instituted in the Supreme Court of the State of New York, New York County, and Philip J. Dunn and Louis L. Horch were appointed receivers. The last mentioned receivers now are and have been in possession of and have been operating the property since the day of their appointment.

Two Committees were theretofore organized in connection with the situation existing in respect to Series A Certificates. The Committee for the Protection of Holders of First Mortgage Bonds sold through American Bond and Mortgage Company, constituted under the Deposit Agreement, dated October 24, 1929, consisting of Craig B. Hazlewood, Dayton Keith, Frederick G. Curry, Walter J. Sugden, Charles S. Tuttle, and Charles W. Weston, of which Mr. Craig B. Hazlewood is Chairman, is hereinafter referred to as the "Hazlewood Committee." The Bondholders' Protective Committee, constituted under the Deposit Agreement dated as of July 25, 1932, consisting of Harvey Wiley Corbett, John O'Hara Cosgrave, Wilbur F. Holt, Ralph V. D. Magoffin, Arleigh Pelham, Theophile Schneider and Mrs. Lionel Sutro, of which Mr. Corbett is Chairman, is hereinafter referred to as the "Corbett Committee." The holders of Certificates of Deposit issued by the respective Depositories of the Committees are hereinafter referred to as "Depositors."

Both Committees, recognizing that the interests of all Series A Certificate holders can best be protected by concerted action, present this Plan of Reorganization (hereinafter called the "Plan") to the end that it may be considered by all Series A Certificate holders and by the Court before which the foreclosure action brought by Manufacturers Trust Company is pending.

The Committees, in their absolute discretion, shall determine when it is advisable to declare the Plan operative, but in no event shall the Plan be declared operative by the respective Committees (in the manner provided in the respective Deposit Agreements) unless and until such approval of Court has been obtained and a substantial amount of the Series A Certificates is on deposit with either or both Committees. Counsel for the Museum have been cooperating with the Committees in the formulation of this Plan and have indicated that they will perform such legal services in behalf of the Museum as may be necessary to effectuate the Plan.

No provision has been made in this Plan for the participation of the Serial Series B 6% Guaranteed Gold Bond Certificates or other securities of the Roerich Museum.

Foreclosure Sale

If this Plan be declared operative, the foreclosure sale of the premises will probably be held shortly thereafter. It is possible that at the foreclosure sale no sufficient bid will be made by any other prospective purchaser. Unless such a bid is received, the Committees will cause the property to be bid in for the benefit of Depositors, thus eliminating the possibility of a purchase by an outside interest at a wholly inadequate price. The Committees, however, respectively reserve discretion to determine the price to be bid for the property, and also to refrain from purchasing it if in their judgment or in the judgment of either a sufficient price is bid by some one else. The Plan is conditioned upon the acquisition of the mortgaged premises at such sale by or on behalf of the Committees.

If the bid by or on behalf of the Committees shall be accepted the Series A Certificates subject

to this Plan may be used in part payment of the purchase price.

New Company

A new corporation (hereinafter called the "New Company") will be organized under the laws of the State of New York, to acquire the mortgaged property at the foreclosure sale. The New Company will have an authorized capital stock of shares (or less) of Common Stock, without par value, to be disposed of as hereinafter set forth. The form, terms and provisions of the certificate of incorporation, by-laws, proceedings, bonds, mortgages, and stocks and other instruments to be executed, delivered, issued and/or accepted by the New Company in pursuance of this Plan, so far as not to be inconsistent with the statements herein contained, shall be such as the Committees shall in their discretion approve. The Board of Directors in the first instance shall consist of five members, two of whom shall be designated by the Corbett Committee and two designated by the Hazlewood Committee. The fifth director shall be designated by agreement between both Committees, and failing such agreement, then by the then President of The Real Estate Board of New York, Inc.

Voting Trust

In order to make possible the prompt consummation of corporate action, the shares of stock of the New Company will be placed in a voting trust of two years' duration. There shall be three Voting Trustees. Each Committee shall select one Voting Trustee and the third shall be selected by agreement between both Committees and failing such agreement, then by the then President of The Real Estate Board of New York, Inc. The Voting Trust Agreement will provide, among other things,

that any one or more of the Voting Trustees may be removed at any time upon the request in writing or by the vote at a meeting called for that purpose of the holders of Voting Trust Certificates representing 66-2/3% of the shares of the capital stock of said New Company at such time outstanding, and further that no sale of all or substantially all of the property and assets of the New Company, except as hereinafter provided, shall be made if the holders of Voting Trust Certificates representing 33-1/3% of the shares of the capital stock of said New Company at such time outstanding shall, in the manner in said Voting Trust Agreement to be provided, inform the Voting Trustees in writing that they object thereto. The term of the Voting Trust Agreement may be extended from time to time for additional periods (but not beyond _____, 194) upon the vote or written consent of the holders of a majority of the Voting Trust Certificates. The Voting Trust Agreement will contain such other terms and conditions as the Committees shall deem advisable.

New Loan

The Committees will endeavor to obtain for the New Company, on such terms as the respective Committees shall determine, a new loan sufficient to make payment of the amounts set forth below, such loan to be secured by a first mortgage on the property of the New Company to be acquired as aforesaid, maturing not later than _____ years from the date thereof and bearing interest at a rate not exceeding 6% per annum.

The following sums will be paid or provided for out of the proceeds of the new loan and/or funds received from the trustees:

1. Compensation of the Referee and the cost of the foreclosure sale to be fixed by the

Court, estimated at not to exceed \$

2. Amounts of fees and expenses of Trustees and their counsel to be fixed by the Court, estimated at not to exceed \$

3. Such proportion of the remainder of the purchase price (bid in behalf of the Committees) as may equal the participation therein of the holders of Series A Certificates and/or Interest Warrants who have not deposited their Series A Certificates or Interest Warrants with the Depositories of either Committee.

4. The amount of the unpaid real estate taxes, water rates and assessments with interest and penalties thereon, that may be a lien on the premises at the time of the sale. There are now past due unpaid real estate taxes aggregating \$

5. As compensation for the services and expenses of the Hazlewood Committee, \$

6. For expenses of the Corbett Committee, \$. The Committee estimates that its aggregate expenses to date are approximately \$. It estimates future expenses at \$.

7. Other items for which cash must be provided, including, but not being limited to, fees expenses and taxes incident to organization of the New Company and the issuance of its securities, commissions and expenses in connection with the obtaining of a new loan and such other items and counsel fees which the Court may direct to be paid.

After payment of the foregoing, the balance of the new loan will be reserved for working capital.

Distribution of Voting Trust Certificates

Depositors will receive a Voting Trust Certificate representing the ownership of one share of Capital Stock, without par value, of the New Company for each \$100 in principal amount of Series A Certificates deposited by such Depositor. In case any Interest Warrant, subsequent to the Interest Warrant maturing _____, 1933, is detached, the Depositor from whom such Series A Certificate has been accepted may be required to pay to the Committees or to the New Company as a condition of receiving the securities to be distributed hereunder an amount determined by the Committees as fairly representing the value of such Interest Warrant or Warrants not exceeding the face amount thereof. Any shares of stock authorized but not required to carry out the terms of this Plan are to remain unissued.

If this Plan is carried out the holders of Series A Certificates and/or Interest Warrants which have not been previously deposited with any Depositaries of the Committees, or otherwise become entitled to participate in the Plan will be entitled only to their proportionate share of the proceeds of the foreclosure sale available after payment of all foreclosure expenses and taxes, whereas Depositors will receive the securities of the New Company.

Sale of Property by New Company

In the event that the Committees or their nominee are the successful purchasers of the mortgaged property through the instrumentality of the New Company, the Committees will cause the New Company to sell and convey or cause to be sold and conveyed the mortgaged premises to an educational corporation, organized under the laws of the State of New York and controlled by the pres-

ent Roerich Museum interests, (hereinafter called the "Museum"), provided that such educational corporation shall accept title subject to and shall assume the New Loan and shall also accept such title to the mortgaged premises as the New Company may have acquired or become entitled to acquire as a result of the foreclosure sale to be held in the present foreclosure action. At the time of such conveyance such educational corporation, except for the New Loan and the new bond and purchase money mortgage hereinafter referred to, shall have no outstanding indebtedness in excess of \$ _____.

In consideration of the transfer and conveyance of the mortgaged properties by the New Company to the Museum, the Museum will execute and deliver to the New Company its bond and purchase money mortgage, (hereinafter called new bond and new mortgage) maturing fifteen years from the date thereof, in principal amount equal to the aggregate principal amount of Series A Certificates participating in the Plan.

The new mortgage will be a valid lien on the mortgaged premises subject only to the mortgage securing the New Loan above described. The new bond and mortgage shall bear interest at the rate of 4% per annum if earned in such year for the first five-year period, and shall bear interest at a fixed rate of 4% per annum, during the second five-year period, and shall bear interest at the rate of 6% per annum during the last five-year period. Certain net income, as provided in the new bond, shall be paid to the New Company as an amortization fund for the reduction of the principal indebtedness represented by the new bond and mortgage. In lieu of payment in cash to the New Company, shares of Capital Stock of the New Company and/or Voting Trust Certificates therefor may be

delivered to the New Company at the cost thereof to the Museum. Each share of stock (or Voting Trust Certificate therefor) so delivered shall operate to reduce the principal indebtedness of the new bond and mortgage to the extent of one hundred dollars (\$100). For a complete statement of the terms and provisions of the new bond and the new mortgage reference is hereby made respectively to Exhibits A and B attached hereto and made a part hereof.

General Provisions

Under the terms of the Hazlewood Committee Deposit Agreement dated October 24, 1929, Depositors who assent to this Plan need take no action. Depositors who dissent must, within twenty days after the date of the mailing of notice of approval and/or adoption and filing of this Plan, lodge with City Bank Farmers Trust Company, 22 William Street, New York, N. Y., Chicago Title and Trust Company, 69 West Washington Street, Chicago, Ill. or Boston Safe Deposit and Trust Company, 100 Franklin Street, Boston, Mass., (successor Depositary to The Atlantic National Bank of Boston) whichever may be the Depositary with which their Series A Certificates are deposited (1) a letter of dissent, (2) a remittance for their pro rata share of the expenses of the Committee as determined by the Committee but in no event in excess of 5% of the principal amount of Series A Certificates represented by the certificate of deposit, and (3) the certificate of deposit duly endorsed, and such endorsement guaranteed by a bank.

Under the terms of the Corbett Committee Deposit Agreement dated as of July 25, 1932, Depositors who assent to this Plan need take no action. Depositors who dissent must, within

twenty days after the date of the mailing of notice of approval and/or adoption and filing of this Plan, lodge with Empire Trust Company, 120 Broadway, New York, N. Y., a letter of dissent, and thereupon any such Depositor may withdraw his Series A Certificates upon the terms and conditions set forth in the Deposit Agreement.

Depositors who do not dissent as aforesaid will be deemed to have assented to this Plan. Depositors who dissent will have the right to withdraw their Series A Certificates from deposit by reason of such dissent only when, as and if this Plan is approved by the Supreme Court of the State of New York and has been declared operative by the Committees as aforesaid.

Holders of Series A Certificates and/or Interest Warrants who have not deposited with either Committee may do so until the close of business on _____, 1934 and by so doing may share in the benefit of the Plan as Depositors. The Deposit of any Series A Certificates with either Committee subsequent to _____, 1934 will be conclusively presumed to constitute an acceptance of the Plan. The Committees in accordance with the provisions of their respective Deposit Agreements may extend or reopen the period of deposits.

All figures and statements in this Plan are based on reports or other information received by the Committees and are believed to be correct. Said statements and figures, however, are not intended to be construed as representations or warranties.

The Plan and its consummation shall be, in all respects, under the supervision of the Supreme Court of the State of New York, and may be abandoned, altered, amended, modified, changed, departed from or otherwise dealt with by such Court.

In the event of any such abandonment, alteration, modification, change or departure a copy thereof or of the Plan as so modified shall be filed with the Depositaries. In the event any modification or change shall, in the judgment of such Court, or the Committees, affect the rights of any party to the Plan materially and adversely, notice of such filing shall be given and the assent thereto of such party shall be obtained in the manner and with the effect provided in the respective Deposit Agreements.

The Court may supply any deficiency or omission or reconcile any inconsistency in the Plan in such manner and to such extent as shall be deemed by it necessary or expedient to carry out the general purpose of the Plan properly and effectively. This Plan is in all respects to be liberally construed to enable the Committees to carry into effect the general purposes of the Plan.

Respectfully submitted,

Bondholders' Protective Committee
constituted under Deposit Agreement
dated as of July 25, 1932.

By HARVEY WILEY CORBETT,
Chairman.

Committee for the Protection of
Holders of First Mortgage Bonds
sold through American Bond and
Mortgage Company, constituted
under Deposit Agreement dated
October 24, 1929.

By DAYTON KEITH,
Vice-Chairman.

Exhibit A

KNOW ALL MEN BY THESE PRESENTS

that _____,
a corporation organized and existing under the
Laws of the State of New York and having its
principal office at _____
in the Borough of Manhattan, City, County and
State of New York, hereinafter designated as the
Obligor, does hereby acknowledge itself to be
justly indebted to _____,
a corporation organized and existing under the
laws of the State of New York and having its
principal office at _____
in the Borough of Manhattan, City, County and
State of New York, hereinafter designated as the
Obligee, in the sum of

Dollars (\$ _____),

lawful money of the United States of America,
which sum the Obligor does hereby covenant and
agree to pay, on the following terms and condi-
tions, to the Obligee, its successors or assigns, at
its office or agency in the City of New York, on
_____, 1949, with interest
thereon or on so much thereof as shall remain
from time to time unpaid, to be paid and to be
computed as hereinafter provided, that is to say:

1. For the five year period commencing
_____, 1934 and ending _____, 1939,
the Obligor shall pay interest on the unpaid bal-
ance of the principal indebtedness represented
hereby, semi-annually on _____ and
_____ in each year (in each instance
for the six months' period ending on the next pre-
ceding _____ or _____, as the
case may be) at the rate of four per cent. (4%)
per annum, but only if and to the extent that the
surplus income of the Obligor, (as hereinafter de-

fined and provided to be ascertained and determined in the succeeding paragraphs hereof numbered 4 to 11, both inclusive) shall suffice for such payment. Such interest shall not be cumulative and no part of the interest hereon, for the payment of which the surplus income for any interest year, as hereinafter defined, shall be insufficient, need thereafter be paid.

2. For the five year period commencing _____, 1939 and ending _____, 1944, the Obligor shall pay interest on the unpaid balance of the principal indebtedness represented hereby, semi-annually on _____ and _____ in each year, at the rate of four per cent. (4%) per annum.

3. For the five year period commencing _____, 1944, and ending _____, 1949, the Obligor shall pay interest on the unpaid balance of the principal indebtedness represented hereby, semi-annually on _____ and _____ in each year, at the rate of six per cent. (6%) per annum, except that the last installment of interest shall be payable on _____, 1949.

4. The term "surplus income" for any period shall mean the balance remaining after deducting on an accrual basis the following items incurred or paid during such period, from the gross income for such period (as hereinafter defined) of the Obligor:

(a) All operating expenses, including repairs, maintenance, alterations and insurance in connection with the premises covered by the Mortgage collateral hereto, (except such portion of operating expenses as aforesaid as may be incurred in connection with or attributable to that portion of said premises con-

sisting of the auditorium, all of the floor space occupied by the Museum on the first, second and third floors, one-half of the floor space contained on the fourth floor and the reception hall to the Museum, so long as said portions of the premises are used exclusively for Museum, cultural or educational purposes, and apartments numbered 1706, 1707, 2004, 2401 and 2404 so long as said apartments are used for living quarters for the staff engaged in such Museum, cultural or educational purposes), and reasonable wages for employees and reasonable management expenses and commissions. Provided, however, such operating expenses shall not exceed the sum of \$105,000 per annum in any interest year (as hereinafter defined) unless the so-called "United States Bureau of Labor Statistics, Wholesale Commodities Index" shall show that the average price level for any six months' period in any interest year has advanced beyond the price level shown by said commodity index on July 1, 1933, in which case such operating expenses for the six months' period next succeeding the six months' period in which said average price level shall have advanced, as aforesaid, may exceed the sum of \$105,000 per annum by an amount equal to the increased percentage of such price level as shown by said so-called commodity index; the operating expenses hereinabove set forth shall not include any operating expenses incurred in the operation of the restaurant in the mortgaged premises except reasonable wages of employees engaged in the operation of such restaurant and the kitchen used in conjunction therewith;

(b) All real estate taxes, water rates and assessments assessed by the City of New York

which may become a lien on said premises, less such tax exemption as the Obligor may procure, as hereinafter provided, and all income taxes assessed by any governmental authority against the Obligor;

(c) Interest on the prior existing mortgage described in the Mortgage given as collateral hereto, but not including interest on the principal indebtedness represented hereby; payments actually made in reduction of the principal indebtedness secured by said prior existing mortgage, but not exceeding in the aggregate the amount required by such prior existing mortgage to be paid on account of the principal indebtedness secured thereby;

(d) The present real estate tax exemption, to wit \$——, accorded to the Obligor by the City of New York provided, however, (1) that in the event such tax exemption is reduced then the amount of the deduction provided in this sub-paragraph shall be proportionately reduced, and (2) in the event such tax exemption is increased the amount of the deduction provided in this sub-paragraph shall be increased by 50% of such increased tax exemption;

(e) An amount equal to seven and one-half per cent. (7½%) of such part of the gross income (hereinafter defined) of the Obligor as shall exceed the sum of \$250,000 in the current interest year;

(f) An amount equal to the increase in the salaries of any employees, other than executives, employed in the operation of the premises covered by the Mortgage given as collateral hereto caused by the actual compliance of the Obligor with any code or license which

may now or hereafter be imposed with respect to the operation of said premises by any government authority having jurisdiction thereof.

and shall be determined in accordance with approved accounting practice.

5. The term "gross income" for any period shall mean the entire income actually received during such period from the operation of the premises covered by the Mortgage given as collateral hereto, after deducting therefrom such income as may be received by the Obligor from the restaurant and from such portion of said premises, consisting of the auditorium, all of the floor space occupied by the Museum on the first, second and third floors, one-half of the floor space contained on the fourth floor, the reception hall to the Museum and apartments numbered 1706, 1707, 2004, 2401 and 2404 so long as actually used in the manner provided in sub-paragraph (a) of paragraph 4 hereof, provided, however, that there shall be no such deduction with respect to any net income actually received by the Obligor from any activities conducted in such portion of the premises, as aforesaid, by any one other than the Obligor.

6. The term "interest year" as mentioned herein shall mean the twelve months' period ending _____ of each calendar year.

7. On or before _____, 1934, the Board of Trustees of the Obligor shall determine the amount, if any, of the surplus income for the six months' period beginning _____, 1934 and ending _____, 1934, and on or before each _____ and _____ thereafter until and including _____, 1939, the amount, if any, of the surplus income for the period of six months ending the last preceding _____ or _____, as the

case may be, applicable to the payment of interest on the unpaid balance of the principal indebtedness represented hereby at the termination of such preceding six months' period and shall declare to be due and payable and the Obligor shall pay on the _____ or _____, as the case may be, next succeeding the date for such declaration, the semi-annual installments of such interest at such rate not exceeding four per cent. (4%) per annum as the surplus income for the six months' period shall suffice to pay.

8. If the surplus income of the Obligor for the first six months' period of any interest year is not sufficient to pay interest on the unpaid balance of the principal indebtedness represented hereby at the termination of such period at the rate of four per cent. (4%) per annum for such period and the surplus income for the subsequent six months' period of such interest year is sufficient to pay interest at the rate of four per cent. (4%) per annum for such subsequent six months' period on the unpaid balance of the principal indebtedness represented hereby at the termination of such subsequent six months' period and to make up in whole or in part any deficiency for such prior six months' period, such deficiency shall, to the extent possible, be made up from such surplus income of such subsequent six months' period until interest at the rate of four per cent. (4%) for the interest year shall be paid; and in like manner, if the surplus income for the first six months' period of such interest year is sufficient to pay interest on all of the unpaid balance of the principal indebtedness represented hereby at the termination of such period at the rate of four per cent. (4%) per annum for such six months' period and to make up in whole or in part all losses and any deficiency for such subsequent six months' period, such

losses and deficiency shall, to the extent possible, be made up from the surplus income of the first six months' period so that interest at four per cent. (4%) may be paid for the entire interest year, the intention being to provide for the payment from surplus income of four per cent. (4%) per annum if earned, or such part thereof as may be earned, in such entire interest year. In each case such deficiency payments shall be made on the _____ next succeeding the close of such interest year.

9. Within five days after such determination of the amount of surplus income applicable to the payment of interest, the Obligor shall file with the Obligee at its office or agency in the City of New York a copy, certified by the Secretary or Assistant Secretary of the Obligor, of a resolution or resolutions of its Board of Trustees, setting forth the determination and declaration to be made in accordance with paragraphs numbered 7 and 8, and a summarized statement verified by the Treasurer or Assistant Treasurer of the Obligor, showing the amount of the surplus income accounted and whether any surplus income is applicable to the payment of interest on the _____ or _____ as the case may be, next succeeding such declaration, and showing also, the basis or method of ascertaining the same, and shall pay to the Obligee on the _____ or _____, as the case may be, next succeeding such declaration and determination, the amount of interest, if any, payable to the Obligee in accordance with such declaration and determination. If the Obligee shall object to said statement and to the determination of the amount of surplus income applicable to the payment of interest on the unpaid balance of the principal indebtedness represented hereby, the Obligee shall, by written notice sent by registered

mail with postage prepaid, addressed to the Obligor at the premises covered by the Mortgage given as collateral hereto, notify the Obligor of such objection within ten days after the filing of such statement and determination with the Obligee, as hereinabove provided, and the Obligee shall have the right, at the expense of the Obligor, and which expense the Obligor hereby agrees to pay on demand, to cause an inspection to be made of the books of the Obligor by Messrs. Horwath & Horwath, certified public accountants, or their successors, and copies of the report of such certified public accountants shall be filed with the Obligor and the Obligee. The resolution and statement filed by the Obligor with the Obligee shall be final and binding upon the Obligor and Obligee if the amount of surplus income as determined in such report be equal to, or less than, the surplus income as determined in said resolution and statement filed by the Obligor. If the determination of such certified public accountants as to the surplus income made by the Obligor shows an amount of surplus income available for and payable as interest on the unpaid balance of the principal indebtedness represented hereby greater than the determination set forth in said resolution and statement filed by the Obligor with the Obligee, the Obligor, on the interest payment date next succeeding the filing of such accountants' report, in addition to the interest declared payable on such next succeeding interest payment date, shall pay to the Obligee the difference between the amount of interest determined to be payable by the Board of Trustees with respect to said six months' period and the interest which would have been payable if the Board of Trustees had actually determined the amount of surplus income for such period to have been the amount as determined by said accountants' report. In the event of the re-

fusal, failure or inability of Messrs. Horwath & Horwath to act, the Obligee shall notify the Obligor of such refusal, failure or inability to act and should the Obligor and the Obligee be unable to agree on a certified public accountant of the State of New York to act in the place of Messrs. Horwath & Horwath within 10 days after such notice to the Obligor then upon application of either the Obligor or the Obligee such successor certified public accountant of the State of New York shall be appointed by the President of the New York State Society of Certified Public Accountants and upon his failure so to do within 20 days after such application, then the Executive Committee for the time being of the Association of the Bar of the City of New York, upon application of either the Obligor or Obligee, shall appoint such successor certified public accountant.

10. The Obligor covenants and agrees that on or before the day of in the year 1935, and on or before the day of , in each succeeding year thereafter, so long as any part of the principal indebtedness represented hereby shall remain unpaid, it will file with the Obligee a certificate signed and verified by the President or a Vice-President and the Treasurer or an Assistant Treasurer, of the Obligor, stating the net earnings of the Obligor for the interest year next preceding by specifying the surplus income of the Obligor for such interest year, determined as provided in paragraphs 4 to 6 hereof, both inclusive, and deducting therefrom the following:

- (a) All interest paid or payable in accordance with the provisions of paragraphs 1, 2 and 3 hereof for such interest year, on the unpaid balance of the principal indebtedness represented hereby; and

(b) The net deficit, if any, accumulated from _____, 193____, to the beginning of such interest year, resulting from the inadequacy of the gross income of the Obligor, as defined in paragraph 5 hereof, for such period to meet all charges of the character specified in paragraph 4 hereof for such period, and in subdivision (a) of this paragraph 10 for such period;

and the Obligor covenants and agrees that for the purpose of creating an amortization fund for the reduction of the principal indebtedness represented hereby, it will pay to the Obligees in equal semi-annual installments on or before the 1st day of _____ and the 1st day of _____ in each year, beginning with _____, a sum in cash equal to such net earnings for such interest year.

In lieu of all or any part of any payment of cash under this paragraph 10, the Obligor shall have the right to deliver to the Obligees for cancellation, certificates for shares of the capital stock of the Obligees and/or Voting Trust Certificates issued therefor, duly endorsed in blank, with proper governmental stamps affixed and with the signature of the transferor guaranteed by a national bank or trust company doing business in the City of New York, and the Obligor shall receive a credit therefor on account of such amortization fund in an amount equal to the cost to the Obligor of such certificates so delivered, but not exceeding \$100 for each such share of capital stock represented thereby or so delivered.

All cash payments pursuant to this paragraph 10 shall reduce pro rata the principal indebtedness evidenced hereby. All shares of capital stock of the Obligees (or Voting Trust Certificates representing such stock) surrendered to the Obligees pursuant to this paragraph 10 shall reduce the

principal indebtedness evidenced hereby to the extent of \$100 for each share so surrendered.

Interest at the then current rate payable on the indebtedness represented hereby shall be accrued and paid on the next succeeding interest payment date by the Obligor on the amount by which the principal indebtedness represented hereby is reduced by any cash amortization fund payment from the next preceding interest payment date up to the date of the receipt thereof by the Obligees and the prior acceptance by the Obligees of any such amortization fund payment shall not be deemed a waiver of such interest.

Certificates of Reduction of Mortgage in recordable form, duly executed and acknowledged by the Obligees, certifying the amount then due on this bond and the Mortgage given as collateral hereto shall be delivered from time to time on request of the Obligor.

The Obligor shall pay to the Obligees on demand all costs, expenses and counsel fees incurred in withdrawing the capital stock of the Obligees represented by such Voting Trust Certificates so delivered from the Voting Trust subject to which it was issued, and in connection with the reduction of the capital stock of the Obligees by reason of the cancellation of any shares of capital stock received by the Obligees under the provisions of this paragraph 10.

11. The whole of the principal indebtedness represented hereby shall become due at the option of the Obligees after default in the payment of interest for 20 days or after default in the payment of any tax, water rate or assessment for 30 days after notice and demand, and shall immediately become due and payable at the option of the Obligees upon the failure of the Obligor to perform

any of the other terms and conditions of this bond or obligation on its part to be performed. All of the covenants and agreements made by the Obligor contained in the Mortgage given as collateral hereto are hereby made part of this bond or obligation.

IN WITNESS WHEREOF, this bond or obligation has been duly executed by the Obligor this
 day of _____, 193

President.

Attest:

Secretary.

Exhibit B

THIS MORTGAGE made this _____ day of _____, 193 _____, between
 a corporation organized and existing under the laws of the State of New York and having its principal place for the transaction of business at No. _____ in the Borough of Manhattan, City, County and State of New York, as Mortgagor, and
 a corporation organized and existing under the laws of the State of New York and having its principal place for the transaction of business at No. _____ in the Borough of Manhattan, City, County and State of New York, as Mortgagee,

WITNESSETH :

That to secure the payment of an indebtedness in the sum of (\$ _____), lawful money of the United States to be paid on the _____ day of _____, 1949, with interest thereon to be computed and paid according to a certain bond or obligation bearing even date herewith, the Mortgagor hereby mortgages to the Mortgagee, ALL that certain plot, piece or parcel of land, with the buildings thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the Easterly side of Riverside Drive with the Northerly side of 103rd Street; running thence Northerly along the Easterly side of Riverside Drive 115 feet; thence Easterly parallel with 103rd Street and part of the distance through a party wall 100 feet; thence Southerly parallel with Riverside Drive

14 feet 1 inch; thence Easterly parallel with 103rd Street 20 feet; thence Southerly parallel with the Easterly side of Riverside Drive and part of the distance through a party wall 100 feet 11 inches to the Northerly side of 103rd Street and thence Westerly along the Northerly side of 103rd Street 120 feet to the point or place of beginning.

Said premises being known as Nos. 310-311-312 & 312½ Riverside Drive and 323 West 103rd Street.

Subject to covenants and restrictions contained in instruments recorded in the office of the Register of the County of New York in Liber 2, Section 7 of Conveyances, page 490, and in Liber 234, Section 7 of Conveyances, page 5.

TOGETHER with any and all buildings, improvements, fixtures, furniture, furnishings and fittings and articles used or to be used in the operation of said premises, or any part thereof, and together with all buildings and appurtenances now standing or at any time hereafter constructed or placed upon said land or any part thereof, and with any and all replacements thereof, including screens, awnings, curtains, draperies, carpets, electric signs, window shades, dynamos, motors, elevators, lobby furniture, fire prevention and extinguishing apparatus, heating, plumbing and ventilating apparatus, gas and electric light fixtures, and machinery and appliances and appurtenances, ash conveyor, garbage incinerator, power and machinery plant for running and operation of passenger and freight elevators, bathroom furnishings, medicine chests, commodes, and every other article, chattel or thing used or placed or to be placed in said building whether herein enumerated or not and which constitute a part of

the plan thereof and/or used in its operation as an apartment house or otherwise, and all other equipment, and machinery, appliances, furniture, furnishings, fittings and fixtures of every kind in or used in the operation of any building now or hereafter standing on said premises, including furniture, furnishings, fittings and fixtures installed in all public places including lobby, and together, also, with all and singular the tenements, hereditaments, easements, appendages, and appurtenances to said estate and property belonging, or in anywise appertaining, and all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, either in possession or expectancy of the Mortgagor, in and to the above described land and estate and every part and parcel thereof, together with the appurtenances, all of which estate, property, interest and right hereby mortgaged or intended or agreed so to be mortgaged are hereinafter in this Mortgage sometimes referred to as the "premises", and are hereby declared to be and shall be deemed to be real property.

This Mortgage is subject and subordinate to an existing mortgage (which is hereby expressly assumed by the Mortgagor) now a lien on said premises given to secure a principal indebtedness of \$ _____, and also, provided said existing mortgage is discharged of record, to any new mortgage hereafter placed upon said premises to renew or refund or to replace said existing mortgage, providing that the principal amount secured by any such new mortgage shall not exceed the principal amount of said existing mortgage at the time of such renewing, refunding or replacement of said existing mortgage.

And the Mortgagor covenants with the Mortgagee as follows:

1. That the Mortgagor will pay the indebtedness as provided in said bond or obligation.

2. That the Mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the Mortgagee.

3. That no building on the premises shall be removed or demolished without the consent of the Mortgagee.

4. That the whole of said principal sum shall become due (a) after default for 20 days in payment of interest, or (b) after default for 30 days after notice and demand in the payment of any tax, water rate or assessment, and shall immediately become due and payable at the option of the Mortgagee upon failure of the Mortgagor to perform any of the terms and conditions of the aforesaid bond or obligation.

5. That the whole of said principal sum shall become due at the option of the Mortgagee immediately upon the discontinuance of the cultural activities of the Mortgagor in the premises or upon failure of the Mortgagor to operate or cause to be operated at all times a high class restaurant in the premises.

6. That the holder of this Mortgage in any action to foreclose it, shall be entitled (without notice and without regard to the adequacy of any security for the debt) to the appointment of a receiver of the rents and profits of said premises.

7. That the Mortgagor will pay all taxes, assessments or water rates, and in default thereof, the Mortgagee may pay the same.

8. That the Mortgagor within 6 days upon request in person or within 30 days upon request by mail will furnish a statement of the amount

due on this Mortgage, together with a correct list of all leases affecting the mortgaged premises showing as to each lease the space covered thereby, the amount of security, if any, deposited thereunder, the amount of the rent therein reserved and the date of the expiration thereof.

9. That notice and demand or request may be in writing and may be served in person or by mail.

10. That the Mortgagor is well seized of the premises hereby mortgaged and has good and indefeasible title to the same; that it has good right, full power and lawful authority to mortgage and pledge the same in the manner and form herein done or intended to be done, subject, however, to said prior existing mortgage and to covenants and restrictions contained in instruments recorded in the office of the Register of the County of New York in Liber 2, Section 7 of Conveyances, page 490; and in Liber 234, Section 7 of Conveyances, page 5; and that it will forever warrant and defend the title to the same against the claims of all persons whomsoever, except the holder of said prior existing mortgage.

11. That the whole of said principal sum shall become due at the option of the Mortgagee after default for 30 days after notice and demand, in the payment of any installment of any assessment for local improvements, heretofore or hereafter laid, which is or may become payable in annual installments and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installment be not due and payable at the time of such notice and demand.

12. That the whole of said principal sum shall become due at the option of the Mortgagee immediately in the event of the actual or threatened removal of any of the improvements, fixtures or

articles of personal property attached to, or used in operation of, the premises herein described, by the Mortgagor or by any other person having or claiming to have an interest therein, or upon the actual or threatened demolition or removal of any building erected or to be erected on the premises, and in the event of such demolition or removal of any building the interest on the indebtedness secured by this Mortgage shall be at the rate of six per centum per annum from the date of the commencement of such demolition or removal, if such interest rate at the time be less than six per centum per annum; and also that the whole of said principal sum shall become due at the option of the Mortgagee upon any default in keeping the buildings on the premises insured against loss by fire, as required by paragraph "2" above, or if application by any holder of this Mortgage to two or more fire insurance companies, lawfully doing business in the State of New York and issuing policies of fire insurance upon buildings situate in the place where the mortgaged premises are situated, the companies to which application has been made shall refuse to issue such policies.

13. That the whole of said principal sum shall become due at the option of the Mortgagee, if the buildings on the premises are not maintained in reasonably good repair, after notice of the condition of the buildings is given to the Mortgagor, or upon the failure of any owner of said premises to comply with the requirements of any administrative agency or department of the City or State of New York, within three months after an order making such requirement has been issued by said City or State agency or department.

14. In the event of the passage after the date of this Mortgage of any law of the State of New York, deducting from the value of land for the

purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, and of the debt which it secures, the holder of this Mortgage shall have the right to give 30 days' written notice to the owner of the mortgaged premises requiring the payment of the mortgage debt. If such notice be given the said debt shall become due, payable and collectible at the expiration of said 30 days.

15. The whole of said principal sum shall immediately become due at the option of the Mortgagee, if said premises or any part thereof be sold or conveyed by the Mortgagor or conveyed by operation of law or otherwise, without the prior written consent of the Mortgagee, or if the Mortgagor shall effect any leases of space in said premises for a term of more than three years without the prior written consent of the Mortgagee.

16. That the whole of said principal sum shall immediately become due at the option of the Mortgagee, if the Mortgagor shall assign the rents or any part of the rents of the mortgaged premises without first obtaining the written consent of the Mortgagee to such assignment.

17. That the whole of said principal sum shall immediately become due at the option of the holder of this Mortgage after default in the performance of any of the terms, provisions, covenants or agreements contained in any prior mortgage which may be a superior lien upon said premises or should any action be commenced to foreclose any such prior mortgage.

18. That if default be made in the payment of any interest when due, upon any prior mortgage

which may be a superior lien upon said premises and the default continue for a period of 10 days, the holder of this Mortgage shall have the right to pay such interest, and the amount so paid with interest thereon may be added to the indebtedness secured hereby, and shall be a lien on said premises and be collected as part of the debt secured by this Mortgage, and in the event of any such payment of interest this Mortgage and the whole debt secured thereby shall, at the option of the holder thereof, without notice or demand, immediately become due and payable, although the time limited for the payment thereof may not have expired, and the said holder shall have the same rights and remedies as such holder would have if default were made in the payment of the principal sum hereby secured, anything herein or in said bond contained to the contrary notwithstanding.

19. That in the event of any default in paying said principal or interest, the rents and profits of the mortgaged premises are hereby assigned to the holder of this Mortgage as further security for the payment of said indebtedness.

20. That if any action or proceeding be commenced (except an action to foreclose this Mortgage or to collect the debt secured thereby) to which action or proceeding the holder of this Mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the holder of this Mortgage for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable counsel fees) shall be paid by the Mortgagor, together with interest thereon at the rate of six per centum per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises

attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and by the bond which it secures. In any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

21. That the whole of said principal sum shall immediately become due at the option of the Mortgagee, if the Mortgagor should suffer any lien to be hereafter created upon the mortgaged premises or any part thereof or the income therefrom, except the lien of said existing mortgage or extension or renewals thereof hereinabove referred to, or if any judgment shall be taken against the Mortgagor, or any lawful claim or demand accrue which if unpaid, by law might result in a lien or charge on the mortgaged premises or the income therefrom or a judgment against the Mortgagor, and the Mortgagor shall fail to pay or discharge or cause to be discharged or make adequate provision to discharge the same within 60 days after the accruing of such law claims or demands or the entry of any such judgment.

22. That the whole of said principal sum shall become due at the option of the Mortgagee immediately in the event that the Mortgagor shall go into voluntary bankruptcy or insolvency, apply for or consent to the appointment of a receiver of itself or of its property, or make any general assignment for the benefit of its creditors, or suffer to be made and remain unvacated for a period of 60 days any order for the appointment of a receiver of itself or of its property in any proceeding instituted by a creditor, or any final order for the appointment of such receiver in any other

proceeding, or any order adjudicating it to be an involuntary bankrupt or insolvent.

23. This Mortgage is given to secure a certain bond or obligation bearing even date herewith and is subject to all the terms, conditions and covenants set forth in said bond and all of the terms, conditions and covenants in said bond or obligation are incorporated herein the same as though said terms, conditions and covenants of said bond were specifically set forth herein.

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

By.....
President.

Attest:

.....
Secretary.