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Cook County Recorder 59.00



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THIS MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") is entered into as of April 14, 2000 by TRUSERV CORPORATION, a Delaware corporation ("Mortgagor"), having its principal place of business at 8600 West Bryn Mawr Avenue, Chicago, Illinois 60631-3505, in favor of BANK OF AMERICA, N.A. ("Bank of America"), having an office at 231 South LaSalle Street, Chicago, Illinois 60697, as Collateral Agent (as defined below) for the Benefited Parties (as defined in the Intercreditor Agreement referred to below). The Collateral Agent and the other Benefited Parties are referred to herein collectively as the "Secured Parties".

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RECITALS

WHEREAS, pursuant to an Intercreditor Agreement dated as of the date hereof (as amended, restated or otherwise modified from time to time, the "Intercreditor Agreement"; capitalized terms used but not defined herein have the respective meanings given thereto in the Intercreditor Agreement), certain creditors of the Company and Bank of America, as the Collateral Agent (in such capacity, the "Collateral Agent"), have agreed that (i) the Benefited Obligations (as defined in the Intercreditor Agreement) shall be secured and guaranteed as set forth in the Intercreditor Agreement and (ii) Bank of America shall act as collateral agent for the Benefited Parties; and

WHEREAS, as a condition to various extensions of credit and other financial accommodations by the Secured Parties to Mortgagor, or modifications to the terms thereof, the Secured Parties have required that Mortgagor grant this Mortgage and grant to the Collateral Agent, for the benefit of the Secured Parties, the liens and security interests referred to herein to secure (i) prompt and complete payment and performance of all of the Benefited Obligations; (ii) all other payment and performance obligations provided by this Mortgage; and (iii) any future advances made by the Collateral Agent or any of the other Secured Parties in connection with the Mortgaged Property (as defined below), whenever incurred (all of the aforesaid obligations of Mortgagor to any of the Secured Parties, together with the other payment and performance

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obligations and liabilities described herein, being hereinafter referred to collectively as the "Obligations Secured"; and

WHEREAS, the Obligations Secured hereby shall not exceed an aggregate principal amount, at any one time outstanding, of \$750,000,000.00 not including Other Advances (as provided in Section 10(b) below), or the Secured Parties' Costs, Fees and Expenses (as provided in Section 10(c) below), provided that the foregoing limitation shall apply only to the lien upon the real property created by this Mortgage, and it shall not in any manner limit, affect or impair any grant of a security interest or other right in favor of the Collateral Agent under the provisions of any other mortgage, deed of trust, security agreement, pledge agreement or other document at any time executed by Mortgagor;

NOW, THEREFORE, in consideration of the foregoing Recitals and to secure the complete and timely performance and payment of the Obligations Secured and in consideration of One Dollar (\$1.00) in hand paid, the receipt and sufficiency whereof are hereby acknowledged, Mortgagor does hereby grant, remise, release, alien, convey, mortgage and warrant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, that certain real estate legally described in Exhibit A hereto (the "Land") in Cook County, Illinois (the "State"); together with all right, title and interest, if any, which Mortgagor may now have or hereafter acquire in and to all improvements, buildings and structures now or hereafter located thereon of every nature whatsoever and together with all air rights, development rights or credits, zoning rights or other similar rights or interests which benefit or are appurtenant to the Land (which, together with the Land, is herein called the "Premises").

TOGETHER WITH all right, title and interest, if any, including any after-acquired right, title and interest, and including any right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to (a) all easements, rights of way, gores of land or any lands occupied by streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and public places adjoining said Land, and any other interests in property constituting appurtenances to the Premises, or which hereafter shall in any way belong, relate or be appurtenant thereto, (b) all licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter relating to the Real Property (collectively the "Permits"), excluding from the grant under this granting clause (but not from the definitions of "Permits" for the other purposes hereof) Permits that cannot be transferred or encumbered by Mortgagor without causing a default thereunder or a termination thereof and (c) all hereditaments, gas, oil, minerals (with the right to extract, sever and remove such gas, oil and minerals), and easements, of every nature whatsoever, located in or on the Premises and all other rights and privileges thereunto belonging or appertaining and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or of any of the rights and interests described in subparagraphs (a), (b) and (c) above (hereinafter the "Property Rights").

TOGETHER WITH all right, title and interest, if any, including any after-acquired right, title and interest, and including any right of use or occupancy, which Mortgagor may now or hereafter acquire in and to all fixtures and appurtenances of every nature whatsoever now or hereafter located in, on or attached to, or used or intended to be used in connection with, or with the operation of, the Premises, including, but not limited to (a) all apparatus, inventory, machinery and equipment of Mortgagor (the "Equipment"); and (b) all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or of any of the foregoing (the "Fixtures"). It is mutually agreed, intended and declared that the Premises and all of the Property Rights, Equipment and Fixtures owned by Mortgagor (referred to collectively herein as the "Real Property") shall, so far as permitted by law, be deemed to form a part and parcel of the Land and for the purpose of this Mortgage to be real estate and covered by this Mortgage.

TOGETHER WITH all the estate, right, title and interest of Mortgagor in and to (i) all judgments, insurance proceeds, awards of damages and settlements resulting from condemnation proceedings or the taking of the Real Property, or any part thereof, under the power of eminent domain or for any damage (whether caused by such taking or otherwise) to the Real Property, or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the Real Property or any part thereof; and (except as otherwise provided herein or in the Intercreditor Agreement) the Collateral Agent is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittance therefor, and to apply the same as provided in the Intercreditor Agreement; and (ii) all contract rights, general intangibles, actions and rights in action relating to the Real Property including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Real Property; (iii) all plans and specifications, designs, drawings and other information, materials and matters heretofore or hereafter prepared relating to the Real Property and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Real Property. (The rights and interests described in this paragraph shall hereinafter be called the "Intangibles.")

Mortgagor (i) does hereby pledge and assign to the Collateral Agent from and after the date hereof (including any period of redemption), primarily and on a parity with the Real Property, and not secondarily, all the rents, issues and profits of the Real Property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Real Property) (the "Rents") under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the Real Property, and (ii) except to the extent such a transfer or assignment is not permitted by the terms thereof, does hereby transfer and assign to the Collateral Agent all such leases and agreements (including all Mortgagor's rights under any contracts for the sale of any portion of the Mortgaged Property and all revenues and royalties under any oil, gas and mineral leases relating to the Real Property) (the "Leases").

All of the property described above, and each item of property therein described, not limited to but including the Land, the Premises, the Property Rights, the Equipment, the Fixtures, the Real Property, the Intangibles, the Rents and the Leases, is herein referred to as the "Mortgaged Property."

Nothing herein contained shall be construed as constituting the Collateral Agent a mortgagee-in-possession in the absence of the taking of actual possession of the Mortgaged Property by the Collateral Agent. Nothing contained in this Mortgage shall be construed as imposing on the Collateral Agent any of the obligations of the lessor under any Lease of the Mortgaged Property in the absence of an explicit assumption thereof by the Collateral Agent. In the exercise of the powers herein granted the Collateral Agent, no liability shall be asserted or enforced against the Collateral Agent, all such liability being waived and released by Mortgagor.

TO HAVE AND TO HOLD the Mortgaged Property, properties, rights and privileges hereby conveyed or assigned, or intended so to be, unto the Collateral Agent, its beneficiaries, successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all rights of redemption under and by virtue of any of the laws, if any, of the State, and Mortgagor hereby covenants, represents and warrants that, at the time of the execution and delivery of these presents, Mortgagor is well seised of the Mortgaged Property in fee simple and with lawful authority to sell, assign, convey and mortgage the Mortgaged Property, and that the title to the Mortgaged Property is free and clear of all encumbrances other than the security interest hereunder and liens and claims expressly permitted by each of the Financing Agreements ("Permitted Encumbrances"), and that, except for the Permitted Encumbrances, Mortgagor will forever defend the same against all claims in derogation of the foregoing.

It is also agreed that if any of the Mortgaged Property is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code in effect in the State (the "Code"), then in addition to the foregoing grant of mortgage, Mortgagor hereby grants a continuing security interest to the Collateral Agent for the benefit of the Secured Parties in that portion of the Mortgaged Property with respect to which the creation and perfection of a security interest is governed by the Code, and this instrument shall constitute a security agreement, fixture filing and financing statement. For that purpose, the following information is set forth:

- (a) The "Debtor" is Mortgagor and the "Secured Party" is the Collateral Agent for the benefit of itself and the other Secured Parties.
- (b) Name and address of Debtor are as set forth in the Preamble to this document.
- (c) Name and address of the Secured Party are as set forth in the Preamble to this document.

(d) Description of the types or items of property covered by this financing statement:
All of the property described or referred to above in which a security interest may be perfected pursuant to the Code and all other personal property of the Debtor.

(e) Description of real estate to which collateral is attached or upon which it is located: Described in Exhibit A.

(f) The taxpayer identification number of the Debtor is: 36-2990896

The Collateral Agent may file this Mortgage or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified herein as part of the Mortgaged Property. Any reproduction of this Mortgage or of any other security agreement or financing statement is sufficient as a financing statement.

Mortgagor agrees to execute, deliver and file any financing statement, continuation statement or other instrument the Collateral Agent may reasonably require from time to time to perfect or renew the security interest granted above under the Code. To the extent permitted by law, (i) all of the Fixtures are or are to become fixtures on the Land and (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture-filing" within the meaning of Sections 9-313 and 9-402 of the Code. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein, in any Financing Agreement (as defined in the Intercreditor Agreement) or by general law, or, as to that part of the security in which a security interest may be perfected under the Code, by the Security Agreement (as defined in the Intercreditor Agreement) or by the specific statutory consequences now or hereafter enacted and specified in the Code, all at the Collateral Agent's sole election.

THE FOLLOWING PROVISIONS SHALL ALSO CONSTITUTE AN INTEGRAL PART OF THIS MORTGAGE:

SECTION 1. Payment of Taxes on the Mortgage. Without limiting any of the provisions of any Financing Agreement, Mortgagor agrees that, if the government of the United States or any department, agency or bureau thereof or if the State or any of its subdivisions having jurisdiction shall at any time require documentary stamps to be affixed to this Mortgage or shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of any Secured Party in the Premises or upon any Secured Party by reason of or as holder of any of the foregoing then, Mortgagor shall pay for such documentary stamps in the required amount and deliver them to the Collateral Agent or pay (or reimburse the Collateral Agent for) such taxes, assessments or impositions. Mortgagor agrees to exhibit to the Collateral Agent, at any time upon request, official receipts showing payment of all taxes, assessments and charges which Mortgagor is required or elects to pay under this paragraph. Mortgagor agrees to indemnify each Secured Party against liability on account of

such documentary stamps, taxes, assessments or impositions, whether such liability arises before or after payment of the Obligations Secured and regardless of whether this Mortgage shall have been released.

SECTION 2. Leases Affecting the Real Property. All future lessees under any Lease made after the date of recording of this Mortgage shall, at the Collateral Agent's option and without any further documentation, attorn to the Collateral Agent as lessor if for any reason the Collateral Agent becomes lessor thereunder, and, upon demand whenever a Default (as defined below) exists, pay rent to the Collateral Agent, and the Collateral Agent shall not be responsible under such Lease for matters arising prior to the Collateral Agent becoming lessor thereunder; provided, however, the Collateral Agent shall not become lessor or obligated as lessor under any such Leases unless or until it shall elect in writing to do so.

SECTION 3. Use of the Real Property. Mortgagor further covenants that it shall not institute or acquiesce in any proceeding to change the zoning classification of the Real Property, nor shall Mortgagor change the use of the Mortgaged Property without the consent of the Collateral Agent, which shall not be unreasonably withheld.

Mortgagor represents and warrants to the Collateral Agent as of the date hereof and as to the present use of the Mortgaged Property, and covenants to the Collateral Agent so long as this Mortgage shall be in effect, that (i) all material permits and licenses required for the use and operation of the Mortgaged Property have been obtained and are in full force and effect, (ii) all utility services necessary for the use and operation of the Mortgaged Property are in place, (iii) there is vehicular and pedestrian access to the Mortgaged Property from public thoroughfares appropriate to the use of the Mortgaged Property, (iv) except as disclosed to the Collateral Agent in writing, the Mortgaged Property is free from loss or damage due to the effect of casualty or, to Mortgagor's knowledge, condemnation and (v) there are no hazardous materials present on the Mortgaged Property, except materials that are stored, transported and used in accordance with applicable federal, state and local laws and regulations. Mortgagor shall not permit any waste to occur with respect to the Mortgaged Property.

SECTION 4. Indemnity. Mortgagor shall not use or permit the use of any part of the Real Property for an illegal purpose, including, without limitation, the violation of any applicable environmental laws, statutes, codes or regulations. Without limiting, but in addition to and in furtherance of, any indemnification Mortgagor has granted in any Financing Agreement, Mortgagor agrees to indemnify, defend (with counsel reasonably acceptable to the Collateral Agent) and hold harmless the Collateral Agent and each other Secured Party from and against any and all losses, suits, Obligations Secured, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' and paralegals' fees, court costs and disbursements) which may be imposed on, incurred or paid by or asserted against the Real Property, the Collateral Agent or any other Secured Party by reason or on account of or in connection with any of the following events which occur prior to the date upon which the

Collateral Agent causes Mortgagor to be removed from possession of the Real Property and (a) the Collateral Agent takes possession of the Real Property for the account of the Secured Parties or (b) the Collateral Agent causes possession of the Real Property to be delivered to a third party, either through a mortgage foreclosure action or otherwise: (i) the construction, reconstruction or alteration of the Real Property, (ii) any act or omission of Mortgagor, any lessee of the Real Property, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (iii) any accident, injury, death or damage to any person or property occurring in, on or about the Real Property or any street, drive, sidewalk, curb or passageway adjacent thereto, or (iv) any other transaction or matter arising out of or in any way connected with the Mortgaged Property, other than losses, suits, Obligations Secured, fines, damages, judgments, penalties, claims, charges, costs and expenses to the extent arising from the gross negligence or willful misconduct of the Collateral Agent or such other Secured Party.

SECTION 5. Insurance. Mortgagor shall, at its sole expense, obtain for, deliver to, assign and maintain for the benefit of the Collateral Agent, until the Obligations Secured are paid in full, insurance policies as specified in any Financing Agreement. Each such policy shall name the Collateral Agent as additional insured and loss payee under a standard mortgage endorsement. In the event of a casualty loss, the net insurance proceeds from such insurance policies shall be paid and applied as specified in the Intercreditor Agreement. During the existence of a Default, the Collateral Agent shall be entitled to adjust any casualty loss and the Collateral Agent shall be entitled to apply the proceeds thereof as provided in Section 10 of this Mortgage.

SECTION 6. Real Property Taxes. Mortgagor covenants and agrees to pay before due all real property taxes, assessments, ground rent, if any, water and sewer rents, fees and charges, levies, permit, inspection and license fees and other dues, charges or impositions, including all charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, maintenance and similar charges and charges for utility services, in each instance whether now or in the future, directly or indirectly, levied, assessed or imposed on the Mortgaged Property or Mortgagor and whether levied, assessed or imposed as excise, privilege or property taxes ("Property Taxes").

SECTION 7. Condemnation Awards. Mortgagor hereby assigns to the Collateral Agent, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or injury to the Real Property for public use, and Mortgagor agrees that the proceeds of all such awards shall be paid and applied as specified in the Intercreditor Agreement. During the existence of a Default, the Collateral Agent shall be entitled to direct any condemnation proceeding and the Collateral Agent shall be entitled to apply the proceeds thereof as provided in Section 10 of this Mortgage.

SECTION 8. Ground Lease. [Intentionally Omitted]

SECTION 9. Remedies. During the existence of a Default (which shall mean any Event of Default or any failure by Mortgagor to perform or observe any covenant set forth in this Mortgage that is not cured within any applicable cure period), in addition to any rights and remedies provided for in any Financing Agreement, and to the extent permitted by applicable law, the following provisions shall apply:

(a) Collateral Agent's Power of Enforcement. The Collateral Agent shall have the right to (i) immediately sell the Mortgaged Property either in whole or in separate parcels, as prescribed by the State law, under power of sale, which power is hereby granted to the Collateral Agent to the full extent permitted by the State law, and thereupon, to make and execute to any purchaser thereof deeds of conveyance pursuant to applicable law or (ii) immediately foreclose this Mortgage by judicial action. The court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the Obligations Secured hereby, and without regard to the then value of the Mortgaged Property or the occupancy thereof as a homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loans and other financial accommodations hereby secured are made) for the benefit of the Secured Parties, with power to collect the Rents, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver, out of the Rents when collected, may pay costs incurred in the management and operation of the Real Property, prior and subordinate liens, if any, and taxes, assessments, water and other utilities and insurance, then due or thereafter accruing, and may make and pay for any necessary repairs to the Real Property, and may pay all or any part of the Obligations Secured or other sums secured hereby in accordance with the Intercreditor Agreement or any deficiency decree entered in such foreclosure proceedings. Upon or at any time after the filing of a suit to foreclose this Mortgage, the court in which such suit is filed shall have full power to enter an order placing the Collateral Agent in possession of the Real Property with the same power granted to a receiver pursuant to this subparagraph and with all other rights and privileges of a mortgagee-in possession under applicable law.

(b) Mortgagee's Right to Enter and Take Possession, Operate and Apply Income. The Collateral Agent shall, at its option, have the right, acting through its agents or attorneys or a receiver, with process of law, to enter upon and take possession of the Real Property, expel and remove any persons, goods, or chattels occupying or upon the same, to collect or receive all the Rents, and to manage and control the same, and to lease the same or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the Real Property, distribute and apply the remaining net income in such order and to such of the Obligations Secured in accordance

with the Intercreditor Agreement or any deficiency decree entered in any foreclosure proceedings.

SECTION 10. Application of the Rents or Proceeds from Foreclosure or Sale. In any foreclosure of this Mortgage by judicial action, or any sale of the Mortgaged Property by advertisement, in addition to any of the terms and provisions of the Intercreditor Agreement, there shall be allowed (and included in the decree for sale in the event of a foreclosure by judicial action) to be paid out of the Rents or the proceeds of such foreclosure proceeding and/or sale:

(a) Obligations Secured. All of the Obligations Secured and other sums secured hereby which then remain unpaid; and

(b) Other Advances. All other items advanced or paid by the Collateral Agent pursuant to this Mortgage; and

(c) Costs, Fees and Other Expenses. All court costs, reasonable attorneys' and paralegals' fees and expenses, appraiser's fees, environmental audit, testing and survey fees, advertising costs, filing fees and transfer taxes, notice expenses, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies, Torrens certificates and similar data with respect to title which the Collateral Agent in the reasonable exercise of its judgment may deem necessary. All such expenses shall become additional Obligations Secured hereby when paid or incurred by the Collateral Agent in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which any Secured Party shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosure, whether or not actually commenced, or sale by advertisement. The proceeds of any sale (whether through a foreclosure proceeding or the Collateral Agent's exercise of the power of sale) shall be distributed and applied in such order and to such of the Obligations Secured as set forth in the Intercreditor Agreement. Mortgagor shall remain liable for any deficiency.

SECTION 11. Cumulative Remedies; Delay or Omission Not a Waiver. Each remedy or right of the Collateral Agent shall not be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing upon the occurrence or during the existence of any Default shall impair any such remedy or right or be construed to be a waiver of any such Default or acquiescence therein, nor shall it affect any subsequent Default of the same or different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by the Collateral Agent.

SECTION 12. Collateral Agent's Remedies against Multiple Parcels. If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any Obligations Secured hereby, or if the Collateral Agent exercises its power of sale, execution may be made upon or the Collateral Agent may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at the Collateral Agent's election.

SECTION 13. No Merger. In the event of a foreclosure of this Mortgage or any other mortgage or trust deed securing the Obligations Secured, the Obligations Secured then due the Collateral Agent shall, at the Collateral Agent's option, not be merged into any decree of foreclosure entered by the court, and the Collateral Agent may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations Secured.

SECTION 14. Notices. All notices and other communications provided to any party hereto under this Mortgage shall be in writing and shall be given in the manner, within the time periods and to the addressees identified in the Intercreditor Agreement.

SECTION 15. Extension of Payments. Mortgagor agrees that, without affecting the liability of any person for payment of the Obligations Secured hereby or affecting the lien of this Mortgage upon the Mortgaged Property or any part thereof (other than persons or property explicitly released as a result of the exercise by the Collateral Agent of its rights and privileges hereunder), the Collateral Agent may at any time and from time to time, on request of Mortgagor, without notice to any person liable for payment of any Obligations Secured, but otherwise subject to the provisions of the Intercreditor Agreement, extend the time, or agree to alter or amend the terms of payment of such Obligations Secured. Mortgagor further agrees that any part of the security herein described may be released with or without consideration without affecting the remainder of the Obligations Secured or the remainder of the security.

SECTION 16. Governing Law. Mortgagor agrees that this Mortgage is to be construed, governed and enforced in accordance with the laws of the State.

SECTION 17. Satisfaction of Mortgage. Upon full payment and performance of all the Obligations Secured, at the time and in the manner provided in the applicable Financing Agreement, or upon satisfaction of the conditions set forth in the Intercreditor Agreement for release of the Mortgaged Property from this Mortgage, then upon demand therefor following such payment or satisfaction of the conditions set forth in the Intercreditor Agreement for release of the Mortgaged Property, as the case may be, a satisfaction of mortgage or reconveyance of the Mortgaged Property shall promptly be provided by the Collateral Agent to Mortgagor.

SECTION 18. Successors and Assigns Included in Parties; Third Party Beneficiaries.

This Mortgage shall be binding upon Mortgagor and upon the successors, assigns and vendees of Mortgagor and shall inure to the benefit of the Secured Parties' respective successors and assigns; all references herein to Mortgagor and to the Collateral Agent shall be deemed to include their respective successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for Mortgagor. Wherever used, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. The Secured Parties shall be third party beneficiaries of the Mortgagor's representations, warranties, covenants and agreements hereunder.

SECTION 19. WAIVER OF APPRAISEMENT, VALUATION, STAY, EXTENSION AND REDEMPTION LAWS. Mortgagor hereby agrees, to the full extent permitted by law, that after the occurrence of any Default, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, homestead or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof; and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that the Collateral Agent or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. To the full extent permitted by law, Mortgagor hereby irrevocably waives any and all statutory or other rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof. Mortgagor further waives, to the full extent it may lawfully do so, all statutory or other rights in its favor, limiting concurrent actions to foreclose this Mortgage and exercising other rights with respect to the Obligations Secured, including, without limitation, any right vested in Mortgagor or any affiliate to limit the right of the Collateral Agent to pursue or commence concurrent actions against Mortgagor or any such affiliate or any property owned by any one or more of them.

SECTION 20. Savings Clause. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction, will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 21. Future Advances. This Mortgage is given for the purpose of securing loan advances which any of the Benefited Parties may make to or for the benefit of Mortgagor pursuant and subject to the terms and provisions of the Financing Agreements. The parties

hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loans and other financial accommodations arising under the Financing Agreements made after this Mortgage is delivered to the office in which mortgages are recorded in Cook County, Illinois, whether made pursuant to an obligation of the Collateral Agent or the other Benefited Parties or otherwise, and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof, although there may be no indebtedness outstanding at the time any advance is made and although such advances may from time to time be repaid to a zero balance and thereafter are advanced. Such loans or other financial accommodations may or may not be evidenced by guarantees or notes executed pursuant to the Financing Agreements. The parties acknowledge and agree that all future advances shall be a lien from the time this Mortgage is recorded, as provided in 735 ILCS 5/15-1302 (b)(1).

SECTION 22. Invalid Provisions to Affect No Others. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but in the event that any of the covenants, agreements, terms or provisions contained in this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, in the Intercreditor Agreement or in any Financing Agreement shall not be in any way affected, prejudiced or disturbed thereby. In the event that the application of any of the covenants, agreements, terms or provisions of this Mortgage is held to be invalid, illegal or unenforceable, those covenants, agreements, terms and provisions shall not be in any way affected, prejudiced or disturbed when otherwise applied.

SECTION 23. Changes. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and the Collateral Agent relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

SECTION 24. CONSENT TO JURISDICTION; WAIVER OF IMMUNITIES.
Mortgagor hereby acknowledges and agrees that:

(a) It irrevocably submits to the jurisdiction of any state or federal court sitting in the State, in any action or proceeding arising out of or relating to this Mortgage, and Mortgagor hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such State's state or federal court. Mortgagor hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Mortgagor hereby irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Mortgagor at its address provided in Section 14 of this Mortgage along with a copy to the

addressees provided in such Section (if any). Mortgagor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Nothing in this Section shall affect the right of the Collateral Agent to serve legal process in any other manner permitted by law or affect the right of the Collateral Agent to bring any action or proceeding against Mortgagor or its property in the courts of any other jurisdiction.

(c) To the extent that Mortgagor has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Mortgagor hereby irrevocably waives such immunity in respect of its obligations under this Mortgage.

SECTION 25. Time of Essence. Time is of the essence with respect to the provisions of this Mortgage.

SECTION 26. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Mortgage. In the event an ambiguity or question of intent or interpretation arises, this Mortgage shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Mortgage.

SECTION 27. Collateral Agent's Right to Appear. The Collateral Agent shall have the right to appear in and defend any legal proceeding brought regarding the Mortgaged Property and to bring any legal proceeding, in the name and on behalf of Mortgagor or in the Collateral Agent's name, that the Collateral Agent, in its sole discretion, determines should be brought to protect the Collateral Agent's or the Secured Parties' interest in the Mortgaged Property.

SECTION 28. Inconsistency with Security Agreement. Mortgagor and the Collateral Agent are parties to the Security Agreement dated as of the date hereof with various other subsidiaries of Mortgagor (the "Security Agreement"). If any term or provision hereof with respect to any Mortgaged Property hereunder which is personal property and which is the subject of and covered by the Security Agreement is inconsistent with any term or provision of the Security Agreement, then such term or provision of the Security Agreement shall cover and control with respect to such personal property to the extent of such inconsistency.

SECTION 29. No Liability of Secured Parties. Notwithstanding anything contained in this Mortgage, this Mortgage is only intended as security for the Obligations Secured and the Secured Parties shall not be obligated to perform or discharge, and do not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor with respect to any of the Mortgaged Property. Unless and until a Secured Party takes actual possession of the Mortgaged

Property, either through foreclosure, the taking of a deed in lieu thereof or otherwise, the Secured Parties shall not have responsibility for the control, care, management or repair of the Mortgaged Property nor shall such Secured Party be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any licensee, employee, tenant or stranger or other Person. Mortgagor shall indemnify and hold harmless the Secured Parties from and against any and all loss, cost and liability incurred by Mortgagor in connection with any of the foregoing that are not the responsibility of the Secured Parties in accordance with this Section; provided, however, that the Mortgagor shall not be liable for such indemnification to any Secured Party to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results from such Secured Party's gross negligence or willful misconduct.

SECTION 30. Illinois Specific Provisions.

(a) If Mortgagor does not provide Collateral Agent at the signing of this Mortgage with a copy of the "disclosure document" required by the Illinois Responsible Property Transfer Act of 1988 (765 ILCS 90/1 et seq.) as amended ("IRPTA"), Mortgagor represents and warrants that the disclosure and other requirements of IRPTA do not apply to this transaction.

(b) Pursuant to the provisions of 765 ILCS 5/31.5, the mere recordation of this Mortgage entitles Collateral Agent immediately to collect and receive Rents upon the occurrence of a Default, as defined in Section 9, without first taking any acts of enforcement under applicable law, including providing notice to Mortgagor, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Collateral Agent's right to the Rents does not depend on whether or not Lender takes possession of the Mortgaged Property as permitted under Section 9. In Collateral Agent's sole discretion, Collateral Agent may choose to collect Rents either with or without taking possession of the Mortgaged Property.

(c) The powers of a receiver listed in 735 ILCS 5/15-1704 shall be added to all the powers of a receiver listed in the Mortgage subject to any express limitations on such powers in the Mortgage.

(d) (i) If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq. (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(ii) Without in any way limiting any of Collateral Agent's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Collateral Agent shall also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Collateral Agent any rights, remedies, powers or authorities upon default of the Mortgagor which are more limited than what would be vested in Collateral Agent under the Act in the absence of said provision, Collateral Agent shall have what would be vested under the Act.

(iii) Without limitation, all expenses (including attorneys' fees and expenses) incurred by Collateral Agent, to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

(e) ILLINOIS STATUTORY WAIVERS. THE MORTGAGOR, ON BEHALF OF ITSELF AND ALL PERSONS NOW OR HEREAFTER INTERESTED IN THE MORTGAGED PROPERTY, VOLUNTARILY AND KNOWINGLY HEREBY ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ACT), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15-1602) OR REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15-1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

(f) Any property management agreement for or relating to all or any part of the Mortgaged Property, whether now in effect or entered into hereafter by Mortgagor or any agent of the Mortgagor, with a property manager shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Financing Agreements any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, 770 ILCS 60/0.01). Such property management agreement or a short form thereof including such subordination shall, at the Collateral Agent's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. Mortgagor's failure to cause any of the foregoing to occur shall constitute a default under Section 9 of this Mortgage.

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00542847

IN WITNESS WHEREOF, this instrument is executed as of the day and year first above written by the person or persons identified below on behalf of Mortgagor (and said person or persons hereby represent that they possess full power and authority to execute and deliver this instrument).

MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE.

MORTGAGOR:

TRUSERV CORPORATION,
a Delaware corporation

By Michael T. Moore
Its: Treasurer

This document was prepared by
~~and after recording should be~~
~~returned to:~~

Jack Edelbrock
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603-3441

AFTER RECORDING RETURN TO:
CHARLES J. VACHOUT
CHICAGO TITLE INSURANCE
171 N. CLARK ST., MLC 04ND
CHICAGO, IL 60601

UNOFFICIAL COPY

00542847

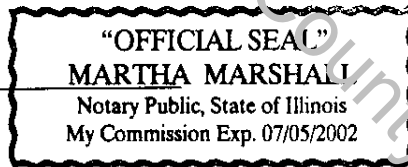
STATE OF)
) SS.
COUNTY OF)

On this 14th day of April __, 2000, before me appeared Michael T. Quank and _____ to me personally known, who, being by me duly sworn, did say that he is the Treasurer of TruServ Corporation, a Delaware corporation, and that said instrument was signed in behalf of said corporation, pursuant to due authority, properly exercised, and said _____ acknowledged said instrument to be the free act and deed of said _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Martha Marshall
Notary Public

My term expires: _____



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Exhibit A

Legal Description

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1007683

96243688

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Chicago, Cook County, Illinois

Parcel: 1

The West 66 feet of Lots 14 and 15 (except the South 2 feet 6 inches of the East 6 feet thereof) the West 60 feet of Lots 16, 17, 18, 19, 20, 21, and 22 and the North 2 feet 11 inches of the West 60 feet of Lot 23 in J. A. Yales Resubdivision of block 59 in Elstons Addition to Chicago in the North East quarter of Section 5, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

ALSO

Parcel: 2

Lots 1 to 8 both inclusive, the North Half of Lot 9, that portion of the vacated alley West of and adjoining said Lots 1 to 8, both inclusive and the North Half of Lot 9, and East of and adjoining Lots 14 to 21, both inclusive, and the North Half of Lot 22, Lots 14 and 15, except the West 66 feet thereof, the South 2 feet 6 inches of the East 6 feet of the West 66 feet of Lot 15, Lots 16 to 21, both inclusive, except the West 60 feet thereof, and the North Half of Lot 22, except the West 60 feet thereof, all in J. A. Yale's Resubdivision of Block 59 in Elston's Addition to Chicago (heretofore vacated as to said Lots and said Block 59) in the North East quarter of Section 5, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Tax Nos. 17-05-219-003, Parcel 1; 17-05-219-005, Parcel 2.