

Illinois Anti-Predatory
Lending Database
Program

Doc#: 1826006154 Fee: \$118.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/17/2018 11:58 AM Pg: 1 of 36

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 19-22-417-014-0000**

Address:

Street: 7050 South Pulaski Road

Street line 2:

City: Chicago

State: IL

ZIP Code: 60629

Lender: JPP, LLC

Borrower: Kmart Corporation

Loan / Mortgage Amount: \$3,220,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: A58FE250-94BF-4EB8-A43A-AC7EE3556B41

Execution date: 9/12/2018

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PREPARED BY AND MAIL TO:

John V. Harrison, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006

COLLATERAL IS OR INCLUDES FIXTURES

1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154
Cook County, IL

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing (as amended from time to time, this "Mortgage") is made, and is executed as of September 2nd, 2018, by Kmart Corporation, a Michigan corporation (together with its permitted successors and permitted assigns, "Mortgagor"), whose address for all purposes hereunder is 3333 Beverly Road, Hoffman Estates, IL 60179, for the benefit of JPP, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for the benefit of the Lenders from time to time under the Loan Agreement (collectively, together with all their successors and assigns, the "Mortgagee"), whose address for all purposes hereunder is c/o ESL Investments, Inc., 1170 Kane Concourse, Suite 200, Bay Harbor Islands, FL 33154.

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ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

“Borrower” means, collectively, the Persons identified as “Borrower” or “Borrowers” in the Loan Agreement.

“Excluded Collateral” has the meaning set forth on Exhibit C hereto.

“Indebtedness”: The sum of all principal, interest and other amounts due from Borrower under, or secured by, the Loan Documents.

“Loan Agreement”: The Third Amended and Restated Loan Agreement, dated as of June 4, 2018, by and between Mortgagee, as lender, the other Lenders party thereto, as lenders, Mortgagor, as borrower, and the other Borrowers party thereto, as borrowers, as amended by that certain First Amendment to Third Amended and Restated Loan Agreement, dated as of the date hereof, by and between Mortgagee, as lender, the other Lenders party thereto, as lenders, Mortgagor, as borrower, and the other Borrowers party thereto, as borrowers, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

“Loan Documents”: The (1) Loan Agreement, (2) the Notes (as defined in the Loan Agreement), (3) this Mortgage and the other mortgages and deeds of trust executed by Borrower pursuant to the Loan Agreement, (4) all other documents now or hereafter executed by Mortgagor or any other person or entity to evidence or secure the payment of the Indebtedness, and (5) all modifications, restatements, extensions, consolidations, renewals and replacements of the foregoing.

“Obligations”: All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower under the Loan Documents.

“Property”: All of Mortgagor’s right, title and interest in and to each of the following which specifically and directly relate to or arise from the Land and Improvements as hereinafter defined (whether now owned or hereafter acquired):

- (1) the real property described in Exhibit A attached hereto and made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the “Land”),

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(2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the "Improvements"),

(3) all materials, machinery, supplies, equipment, fixtures (including "fixtures" as defined in the UCC), apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to or installed in any of the Improvements or the Land, including any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, security systems, artwork, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements, betterments and substitutions for any of the foregoing, in each case now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or that may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, but expressly excluding all trade fixtures and tenant improvements owned by lessees, sublessees or licensees of Mortgagor (the "Fixtures"),

(4) all reserves, escrows or impounds required under the Loan Agreement and all security deposits held by Mortgagor in connection with any Lease of the Land and/or Improvements,

(5) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Plans"),

(6) all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) that grant a possessory interest in, or the right to use or occupy, all or any part of the Land and/or Improvements, together with all related security and other deposits (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Leases"), but specifically excluding (a) all Leases under which Mortgagor is not the landlord, sub-landlord or licensor thereunder, (b) national, multi-site or master leases, licenses, or concession or department agreements with tenants or licensees that operate within and as a part of Mortgagor's store, or that operate kiosks, ATM or vending

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machines or drive-through facilities located on the Land or Improvements, in each case, solely to the extent any such leases, licenses, concessions or agreements terminate with respect to the Property upon the cessation of Mortgagor's operations at the Property (c) any existing reciprocal access, easement, construction and/or operating or similar agreements (collectively "REA's") that expressly prohibit the encumbrance of Mortgagor's interests, rights and obligations thereunder (collectively, "Excluded Leases").

(7) all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Land and/or Improvements (the "Rents"),

(8) all contracts and agreements with respect to the Land and Improvements not otherwise specified herein, including all right, title and interest of Mortgagor in, to and under (a) all construction contracts, architects' agreements, engineers' contracts, utility contracts, letters of credit, escrow agreements, maintenance agreements, management, leasing and related agreements, parking agreements, equipment leases, service contracts, operating leases, catering and restaurant leases and agreements, agreements for the sale, lease or exchange of goods or other property, agreements for the performance of services, permits, variances, licenses, certificates and entitlements, (b) all material agreements and instruments under which Mortgagor has remaining rights or obligations in respect of Mortgagor's acquisition of the Property or equity interests therein, (c) applicable business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority or private Person, (d) all rights of Mortgagor to receive monies due and to become due under or pursuant to the Property Agreements, (e) all claims of Mortgagor for damages arising out of or for breach of or default under the Property Agreements, (f) all rights of Mortgagor to terminate, amend, supplement, modify or waive performance under the Property Agreements, to compel performance and otherwise to exercise all remedies thereunder, and, with respect to Property Agreements that are letters of credit, to make any draws thereon, and (g) to the extent not included in the foregoing, all cash and non-cash proceeds, products, offspring, rents, revenues, issues, profits, royalties, income, benefits, additions, renewals, extensions, substitutions, replacements and accessions of and to any and all of the foregoing, in each case pursuant to the foregoing clauses (a) through (g) relating to, executed in connection with, or used in, the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition, management or ownership of the Land and/or Improvements (together with any and all modifications, renewals, extensions and substitutions of the foregoing, the "Property Agreements"), if and to the extent the same are permitted to be encumbered, and expressly excluding Excluded Leases and all national, multi-site or master

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agreements, licenses or contracts for fire, safety, security, maintenance, landscaping and/or snow removal, or other matters that cover properties in addition to the Property.

(9) all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, underground vaults, passages, strips or gores of land adjoining the Land or any part thereof, subject to any express limitation in any REA on the encumbrance of Mortgagor's interests, rights and obligations thereunder,

(10) all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

(11) all insurance policies, unearned premiums therefor and proceeds from such policies, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Mortgagor, provided, however, where Mortgagor is self-insured or insured through an affiliated entity, only the actual insurance proceeds payable to Mortgagor in respect of property damage or personal injury with respect to the Improvements and Fixtures shall constitute a part of the Property,

(12) all mineral, riparian, littoral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Land and/or Improvements, provided that Mortgagor makes no warranty or representation as to the extent of its right, title or ownership (if any) in, to or of any oil, gas, mineral, water, littoral, riparian or other rights,

(13) any condemnation awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to a taking or condemnation of the Land, Improvements or Fixtures, and

(14) all after acquired title to or remainder or reversion in any of the property (or any portion thereof) described herein.

Notwithstanding the foregoing, and for the avoidance of doubt, Property shall not include (i) any right, title or interest of Mortgagor in any Excluded Collateral or intellectual property, (ii) any Fixtures that are subject to a financing lease or similar Permitted Encumbrance that expressly prohibits any further encumbrance thereof, (iii) proceeds or consideration for the grant of easements, restrictions, covenants, reservations and rights of way in the ordinary course of business for traffic circulation, ingress, egress, parking, access, utilities lines or for other similar purposes, in each case, solely to the extent that the same does not result in a Material Adverse Effect, nor (iv) assets or property of Mortgagor related to the general business of Mortgagor (including without

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limitation all Excluded Collateral) or to the extent that they relate to or serve properties of Mortgagor other than the Property (it being agreed that no portion of the Land, the Improvements or the Fixtures shall be construed as being excluded from the definition of "Property" by virtue of this clause (iv)).

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the jurisdiction in which the Land is located.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

Section 1.2 Maturity Date. The Indebtedness under the Notes shall mature on July 20, 2020, or the same may be extended pursuant to the Loan Agreement, or such earlier date as may result from acceleration of the Loan in accordance with the Loan Agreement.

ARTICLE 2

HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor HAS MORTGAGED, GIVEN, GRANTED, BARGAINED, SOLD, TRANSFERRED, WARRANTED, PLEDGED, ASSIGNED and CONVEYED, and does hereby MORTGAGE, GIVE, GRANT, BARGAIN, SELL, TRANSFER, WARRANT, PLEDGE, ASSIGN and CONVEY to Mortgagee, its heirs, successors and assigns, the Property, TO HAVE AND TO HOLD all of the Property unto and, for the use and benefit of Mortgagee, its heirs, successors and assigns in fee simple forever, and Mortgagor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND (i) the title to the Property unto Mortgagee and its heirs, successors and assigns, subject only to Permitted Encumbrances and (ii) the validity and priority of the Liens of this Mortgage, subject only to Permitted Encumbrances, in each case (including the obligation to warrant or defend) against the claims of all Persons whomsoever to the extent claiming by, through or under Mortgagor or any affiliate thereof, and no other Persons.

ARTICLE 3

DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default is continuing, Mortgagee may, at Mortgagee's election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement, including all cure periods), as it deems advisable to protect and enforce its rights against Mortgagor and to the Property, including but not limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine,

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in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor (except as any such notice is required pursuant to the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. Subject to the rights of lessees, tenants, licensees and other parties that occupy the Property pursuant to a written agreement, enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Property after the occurrence and during the continuance of an Event of Default, and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems reasonably necessary or desirable), exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents, and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage, in which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner in accordance with applicable law governing foreclosures. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) Business Days' prior written notice shall be deemed commercially reasonable. Notwithstanding the foregoing, Mortgagees shall give Mortgagor 30 days' notice of any foreclosure sale, so that Mortgagor can windup its business at the Property, and in the event that Mortgagee has taken possession or

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control of the Property prior to any foreclosure sale, Mortgagee shall reasonably cooperate for a period of up to 30 days to permit Mortgagor to windup its business at the Property.

(c) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Mortgagor or anyone claiming under Mortgagor or regard to the value of the Property or the solvency or insolvency of Mortgagor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of Mortgagor therein, the appointment of a receiver or receivers of the Property, and Mortgagor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Mortgage).

Section 3.2 Separate Sales. In connection with the exercise by Mortgagee of its rights and remedies hereunder, the Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion, may elect, subject to applicable law; the right of foreclosure arising out of any Event of Default shall not be exhausted by any one or more prior foreclosures or sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Mortgagor, or against the Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in

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and to the Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or "moratorium law" or other law or judicial decision exempting the Property or any part thereof, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption reinstatement (to the extent permitted by law) or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, and (c) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default that may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order or in such other order as Mortgagee shall determine in its sole discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including (1) receiver's fees and expenses, (2) court costs, (3) reasonable attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, (6) the payment of all applicable transfer taxes and mortgage recording taxes, and (7) the payment of all ground rent, real estate taxes and assessments;

(b) to the payment of all amounts, other than the unpaid principal balance of the Notes and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

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(d) the balance, if any, to the payment of the Persons legally entitled thereto.

If Mortgagee shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Mortgagor, to restore or repay to or for the account of Mortgagor or its creditors any amount theretofore received under this Section, the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place Mortgagee in the same position it would have been in had such amount never been received by Mortgagee.

Section 3.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Property. All occupants of the Property shall deliver possession thereof immediately to the purchaser upon demand, subject to the rights of Tenants under Third-Party Leases. Subject to Legal Requirements, it shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any court having jurisdiction over the Property.

Section 3.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default is continuing, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate, and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Mortgage and Mortgagor covenants and agrees to pay them to the order of Mortgagee promptly upon demand.

Section 3.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the collateral assignment of the Property Agreements under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee, as the case may be, solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent of Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee, as the case may be, therefor immediately upon demand.

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ARTICLE 4

ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Mortgagor does hereby presently, absolutely and unconditionally assign to Mortgagee, Mortgagor's right, title and interest in all current and future Leases and the absolute, unconditional and continuing right to receive and collect all Rents, it being intended by Mortgagor that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee, but Mortgagee's right to collect Rents may be subject to landlord's compliance with any applicable Lease. Mortgagee shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Mortgagor hereby presently grants to Mortgagee an outright, immediate, continuing and absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in, the Rents and Leases, Mortgagee hereby grants to Mortgagor and its successors a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, in each case subject to the terms hereof and of the Loan Agreement. Upon the occurrence and during the continuance of any Event of Default, (i) the license granted herein to Mortgagor shall immediately and automatically cease and terminate and shall be void and of no further force or effect, (ii) Mortgagee shall immediately be entitled to possession of all Rents (whether or not Mortgagee enters upon or takes control of the Property) and (iii) at the request of Mortgagee, Mortgagor shall notify in writing all tenants (and, to the extent Mortgagor is entitled to do so, all subtenants) under any of the Leases that all Rent due thereunder should be paid to Mortgagee at its address set forth in the Loan Agreement, or at such other place as Mortgagee shall notify Mortgagor in writing; provided that, Mortgagee covenants and agrees that if such Event of Default ceases to exist, the license described in the foregoing clause (i) shall automatically be reinstated in full without further action by Mortgagee and Mortgagor shall be entitled to so advise all tenants and subtenants. Notwithstanding said license, Mortgagor agrees that Mortgagee, and not Mortgagor, shall be deemed to be the creditor of each tenant (or subtenant, to the extent Mortgagor would otherwise be so entitled) under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of Mortgagee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option to apply in accordance with the Loan Documents any money received from such tenant or subtenant in reduction of any amounts due under the Loan Documents. Upon the occurrence and during the continuance of an Event of

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Default, any portion of the Rents held by Mortgagor shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness.

Section 4.3 Certain Rights of Mortgagee. Subject to the revocable license granted above, and the automatic reinstatement provisions related thereto, upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Mortgagor or Mortgagee, in addition to and without limiting any of Mortgagee's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any tenant or other person that the Leases have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has commenced or completed foreclosure or taken possession of the Property; (b) to settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for, collect, receive and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) to enter upon, take possession of and operate the Property whether or not foreclosure under this Mortgage has been instituted and without applying for a receiver; (e) to lease all or any part of the Property; and/or (f) to perform any and all obligations of Mortgagor under the Leases and exercise any and all rights of Mortgagor therein contained to the full extent of Mortgagor's rights and obligations thereunder.

Section 4.4 Irrevocable Instructions to Tenants. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each tenant under a Lease and to each third-party manager and managing agent or operator of the Property, and Mortgagee shall have the continuing right to do so. Mortgagor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Mortgagor, to comply with all demands of Mortgagee under this Article 4 and to turn over to Mortgagee on demand all Rents that it receives; provided, that Mortgagee hereby covenants to Mortgagor that it will not make any such demand except upon the occurrence and during the continuance of an Event of Default. Mortgagor hereby acknowledges and agrees that payment of any Rents by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Mortgagee. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Mortgagee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or

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liability whatsoever under any of the Leases or otherwise. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within 10 Business Days after demand.

Section 4.5 Unilateral Subordination. Mortgagee may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Mortgagor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 4.6 Automatic Reinstatement; Termination. Notwithstanding any of the foregoing provisions to the contrary, (a) all of Mortgagee's rights and remedies in this Article 4 are subject to the revocable license and automatic reinstatement of Mortgagor's rights to collect all Rents and deal with all Leases as provided in Section 4.2, and (b) upon release of this Mortgage, the foregoing assignment of rents and all of Mortgagee's rights and remedies in this Article 4 shall automatically terminate.

ARTICLE 5

COLLATERAL ASSIGNMENT OF PROPERTY AGREEMENTS

Section 5.1 Collateral Assignment. Mortgagor does hereby collaterally assign and pledge to Mortgagee, Mortgagor's right, title and interest in, to and under all current and future Property Agreements as security for the performance of Mortgagor's Obligations. Such collateral assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Property Agreement or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be reasonably requested by Mortgagee to further evidence and confirm such collateral assignment.

Section 5.2 Retained Rights of Mortgagor. Subject to the other provisions of this Article 5 and the provisions of the other Loan Documents, for so long as no Event of Default shall have occurred and be continuing, Mortgagor may exercise all of its rights and privileges under the Property Agreements and shall have the exclusive right and authority to deal with, enjoy the benefit under, grant any consents and approvals under, and amend, modify or

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terminate, such Property Agreements, collect, receive and retain for its own benefit all monies due or to become due under such Property Agreements, sue and enforce all claims of Mortgagor for damages arising under such Property Agreements, and retain for its own benefit all items described in clause (g) of paragraph (8) of the definition of "Property" above, if and to the extent not prohibited by the Loan Agreement or the other Loan Documents. Upon the occurrence and during the continuance of any Event of Default, the rights of Mortgagor described in this Section shall immediately and automatically cease and terminate and shall be void and of no further force or effect. Upon the occurrence and during the continuance of an Event of Default, any amounts held by Mortgagor as a party to the Property Agreements shall be held in trust for the benefit of Mortgagee for use in the payment of the Indebtedness. If Mortgagee, in its sole discretion, shall waive an Event of Default, all rights of Mortgagor in such Property Agreements shall automatically be reinstated in full without further action by Mortgagee, and Mortgagor shall be entitled to so advise all grantors, licensors, vendors, contractors, and other counter-parties to any and all Property Agreements of same.

Section 5.3 Exercise of Assigned Rights. Mortgagor hereby irrevocably directs the grantor or licensor of, or the contracting party to, any Property Agreement, upon demand from Mortgagee, to recognize and accept Mortgagee as the party to such Property Agreement for any and all purposes as fully as it would recognize and accept Mortgagor and the performance of Mortgagor thereunder; provided, that Mortgagee hereby covenants to Mortgagor that it will not make such demand except upon the occurrence and during the continuance of an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, without further notice or demand and at Mortgagor's sole cost and expense, Mortgagee shall be entitled to exercise all rights of Mortgagor arising under the Property Agreements. Mortgagor hereby acknowledges and agrees that payment of any amounts owing under any Property Agreement by a person to Mortgagee as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such amounts had been paid to Mortgagor. Any amounts collected after the occurrence and during the continuance of an Event of Default shall be applied in accordance with the provisions of the Loan Agreement. At Mortgagee's request, Mortgagor shall deliver a copy of this Mortgage to each grantor or licensor of or the contracting party to a Property Agreement, and Mortgagee shall have the continuing right to do so.

Section 5.4 Indemnity. Mortgagor shall, and hereby agrees to indemnify Mortgagee for, and to hold Mortgagee harmless from and against, any and all claims, liability, expenses, losses or damages that may or might be asserted against or incurred by Mortgagee solely by reason of Mortgagee's status as an assignee pursuant to the collateral assignment of Property Agreements contained herein, but excluding any claim to the extent caused by Mortgagee's gross negligence or willful misconduct, or any claim arising as a result of an act or omission of Mortgagee after the date on which Mortgagee has taken actual possession of the Property pursuant to an exercise of its rights and remedies hereunder. Should Mortgagee incur any such claim, liability, expense, loss or damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Mortgagor shall reimburse Mortgagee therefor within 10 Business Days after demand.

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Section 5.5 Property Agreement Covenants. (a) Mortgagor shall perform and observe, in a timely manner, all of the material covenants, conditions, obligations and agreements of Mortgagor under the Property Agreements to be performed or observed by Mortgagor, provided Mortgagor may suffer or permit a delinquency or non-performance on its part to exist thereunder if such action is not prohibited by the Loan Agreement and would not have a Material Adverse Effect.

(b) Mortgagor shall not (i) sell, assign, transfer, mortgage or pledge any Property Agreement or any such right or interest under any Property Agreement, or (ii) cancel, terminate, amend, supplement or modify any Property Agreement, in either case, if such action is prohibited by the Loan Agreement or would have a Material Adverse Effect.

(c) Mortgagor shall exercise all reasonable efforts in accordance with its usual and customary past practices to enforce or secure the performance of each and every material obligation, covenant, condition and agreement to be performed by the franchisor, manager, licensor, grantor or other contracting party under the Property Agreements, if the failure to take such action would have a Material Adverse Effect.

ARTICLE 6

SECURITY AGREEMENT

Section 6.1 Security Interest. This Mortgage constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Fixtures, Plans, Leases, Rents and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. Mortgagor by executing and delivering this Mortgage, hereby grants to Mortgagee a security interest in the Fixtures, Plans, Leases, Rents and Property Agreements and all other Property that is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee during the continuance of an Event of Default, Mortgagor shall at its expense assemble the respective Collateral and make it available to Mortgagee at the respective Land and Improvements to which it relates. Mortgagor shall pay to Mortgagee on demand any and all expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least 10 Business Days prior to such action, shall constitute commercially reasonable notice to

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Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by Mortgagee in accordance with Section 3.7 hereof.

Section 6.2 Further Assurances. Mortgagor shall execute and deliver to Mortgagee and/or file, in form and substance reasonably satisfactory to Mortgagee, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as Mortgagee may, from time to time, reasonably consider necessary, desirable or proper to create, perfect and preserve Mortgagee's security interest hereunder and to carry out the intents and the purposes of this Mortgage, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Mortgagor from those provided for in the Loan Documents, including this Mortgage. Mortgagor hereby irrevocably authorizes Mortgagee to file UCC financing statements in each jurisdiction that Mortgagee deems necessary or desirable in its sole discretion in order to perfect the security interests in all or any portion of the Collateral. Such financing statements may indicate or describe the Collateral in any reasonable manner Mortgagee chooses, but may not describe such collateral as "all assets of debtor, whether now owned or hereafter acquired," "all personal property of debtor, whether now owned or hereafter acquired" or using words of similar import. As of the date hereof, Mortgagor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Mortgage, and Mortgagor shall promptly notify Mortgagee of any change in such address.

Section 6.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property that is or is to become "fixtures" (as that term is defined in the UCC), upon being filed for record in the real estate records of the city or county wherein such fixtures are located. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

ARTICLE 7

MISCELLANEOUS

Section 7.1 Notices. Any notice required or permitted to be given under this Mortgage shall be given in the manner described in the Loan Agreement.

Section 7.2 Covenant Running with the Land. All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Land or Improvements, are intended by the parties to be, and shall be construed as, covenants running with the land. All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by,

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the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after the occurrence and during the continuance of an Event of Default, upon notice to Mortgagor (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within 10 days after written request by Mortgagee, (b) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Mortgage or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed or the assignee of any such assignment of lease and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Collateral, and (d) to perform any obligation of Mortgagor hereunder; however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums reasonably advanced by Mortgagee in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action that it is empowered to take under this Section except for Mortgagee's willful malfeasance or gross negligence.

Section 7.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns.

Section 7.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.6 Reserved.

Section 7.7 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall govern.

Section 7.8 Release. Upon payment in full of the Indebtedness and performance in full of all of the outstanding Obligations (other than contingent obligations such as environmental or other indemnities under the Loan Agreement that have not matured at the time of payment in full of the Indebtedness), the estate hereby granted shall cease, terminate and be void and Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or assign this Mortgage, in each case in accordance with the Loan Agreement.

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Section 7.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of, and hereby waives, any appraisement, valuation, stay, marshaling of assets, exemption, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 7.10 Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS MORTGAGE. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS MORTGAGE. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER WARRANT AND REPRESENT THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS MORTGAGE. IN THE EVENT OF LITIGATION, THIS MORTGAGE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY CONSENT FOR THEMSELVES AND MORTGAGOR HEREBY CONSENTS IN RESPECT OF ITS PROPERTIES, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY. MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE

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STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. MORTGAGOR AND MORTGAGEE FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY MAIL, PERSONAL SERVICE OR IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN SECTION 7.4 OF THE LOAN AGREEMENT IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND, BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY IRREVOCABLY WAIVE ANY OBJECTION THAT THEY MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST MORTGAGOR IN ANY JURISDICTION.

Section 7.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

Section 7.12 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED, HOWEVER, AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO (OTHER THAN WITH RESPECT TO LIENS AND SECURITY INTERESTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC, WHICH SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION APPLICABLE THERETO IN ACCORDANCE WITH THE UCC AS IN EFFECT IN THE STATE OF NEW YORK) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL OTHERWISE GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS MORTGAGE.

Section 7.13 General Indemnity; Payment of Expenses. Section 7.17 of the Loan Agreement is incorporated by this reference, as if fully set forth herein.

Section 7.14 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor pertaining to

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the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Mortgage and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.15 Severability. If any provision of this Mortgage is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Mortgage shall remain in full force and effect and shall be binding on the parties hereto.

Section 7.16 Reserved.

Section 7.17 Lien Absolute. Mortgagor acknowledges that this Mortgage and a number of other Loan Documents and those documents required by the Loan Documents together secure the Indebtedness. Mortgagor agrees that, to the extent permitted by law, the lien of this Mortgage and all obligations of Mortgagor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by Mortgagee of any security for or guarantees of any of the Indebtedness;

(c) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any of the Indebtedness or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance that might otherwise constitute a defense available to, or a discharge of, Mortgagor in respect of the Indebtedness or Obligations or this Mortgage (other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and Mortgagee may

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in its discretion foreclose or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of Mortgagee hereunder or under any or all of the Loan Documents.

Section 7.18 Real Estate Taxes. Mortgagor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law or regulation applicable to Mortgagee, any Note, any of the Property or this Mortgage is enacted that deducts from the value of property for the purpose of taxation any Lien thereon, or imposes upon Mortgagee the payment of the whole or any portion of the taxes or assessments or charges or Liens required by any of the Loan Documents to be paid by Mortgagor, or changes in any way the laws or regulations relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect the Mortgage, the Indebtedness or Mortgagee, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or Liens, or reimburse Mortgagee for any amounts paid by Mortgagee.

Section 7.19 Incorporation by Reference. The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the sale, transfer and encumbrance of the Property and the ownership interests of Mortgagor.

Section 7.20 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 7.21 Last Dollars Secured. The parties agree that any payments or repayments of the Indebtedness shall be and be deemed to be applied first to the portion of the Indebtedness that is not secured hereby, if any, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured hereby.

Section 7.22 Mortgage Recording Taxes. Mortgagor hereby covenants to pay any and all mortgage recording or other taxes or fees due in connection with this Mortgage.

Section 7.23 Multiple Exercise of Remedies. To the extent permitted by law, Mortgagor specifically consents and agrees that Mortgagee may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that Mortgagee may deem appropriate.

Section 7.24 Rules of Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons referred to may require. All references to sections, schedules and exhibits are to sections, schedules and exhibits in or to this Mortgage unless otherwise specified. Unless otherwise specified: (i) all meanings attributed to defined terms in this Mortgage shall be equally

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applicable to both the singular and plural forms of the terms so defined, (ii) "including" means "including, but not limited to" and "including, without limitation" and (iii) the words "hereof," "herein," "hereby," "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision, article, section or other subdivision of this Mortgage.

Section 7.25 Counterparts: Facsimile Signatures. This Mortgage may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf or other electronic means shall have the same import and effect as original counterparts and shall be valid, enforceable and binding for the purposes of this Mortgage.

Mortgagor hereby acknowledges receipt of a true copy of the within Mortgage.


[No further text on this page; Signature page follows]

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EXECUTED as of the date first above written.

MORTGAGOR:

KMART CORPORATION,
a Michigan Corporation

By: 
Name: Robert A. Riecker
Title: Chief Financial Officer

Property of Cook County Clerk's Office

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

On the 5th day of September in the year 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Robert A. Riecker, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the person(s), or the entity, in its capacity(ies) above noted, upon behalf of which the person(s) acted, executed the instrument.

Signature: _____

Cheryl Paspargelis
 Name: Cheryl Paspargelis

Official Seal



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EXHIBIT A

Legal Description

PARCEL 1:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 22 AND THE NORTHEAST 1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 89 DEGREES, 48 MINUTES, 53 SECONDS WEST, 67.00 FEET ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4 TO A POINT ON THE WEST LINE OF SOUTH PULASKI ROAD AS WIDENED PER ORDINANCE PASSED BY THE CITY COUNCIL OF CHICAGO, ON SEPTEMBER 12, 1928, SAID POINT BEING THE PLACE OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE SOUTH 0 DEGREES, 13 MINUTES, 21 SECONDS EAST, ALONG THE SOUTHERLY EXTENSION OF SAID WEST LINE OF SOUTH PULASKI ROAD AS WIDENED, 30.00 FEET; THENCE NORTH 73 DEGREES, 29 MINUTES, 19 SECONDS WEST, 104.42 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTH EAST 1/4, SAID POINT BEING 100.00 FEET WEST OF SAID POINT OF BEGINNING; THENCE SOUTH 89 DEGREES, 48 MINUTES, 53 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SOUTH EAST 1/4, 169.50 FEET; THENCE NORTH 0 DEGREES, 11 MINUTES, 07 SECONDS WEST, 22.00 FEET ALONG A LINE DRAWN PERPENDICULARLY TO SAID SOUTH LINE OF THE SOUTHEAST 1/4; THENCE SOUTH 89 DEGREES, 48 MINUTES, 53 SECONDS WEST 589.68 FEET ALONG A LINE 22.00 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE OF THE SOUTHEAST 1/4, TO THE POINT OF INTERSECTION WITH A LINE DRAWN AT A POINT ON THE SOUTH LINE OF SAID SOUTH 1/4, 102.20 FEET EAST OF THE SOUTHWEST CORNER OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SOUTHEAST 1/4 OF SECTION 22 TO A POINT ON THE WEST LINE OF SAID EAST HALF, 71.30 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 55 DEGREES, 18 MINUTES, 07 SECONDS WEST, 112.511 FEET ALONG THE LAST DESCRIBED INTERSECTING LINE AND ITS NORTH WESTERLY EXTENSION TO A POINT ON A LINE DRAWN 21.564 FEET WEST OF AND PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE NORTH 0 DEGREES, 14 MINUTES, 30 SECONDS WEST 577.7 FEET, ALONG SAID PARALLEL LINE TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE NORTH 89 DEGREES, 51 MINUTES, 40 SECONDS EAST, 544.614 FEET ALONG SAID NORTH LINE TO A POINT, SAID POINT BEING 474.00 FEET (AS MEASURED ALONG SAID NORTH LINE) WEST OF THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE SOUTH 0 DEGREES, 08 MINUTES, 20 SECONDS EAST ALONG A LINE DRAWN PERPENDICULARLY TO SAID NORTH LINE, 263.00 FEET; THENCE NORTH 89 DEGREES, 51 MINUTES, 40 SECONDS EAST, 17.20 FEET; THENCE SOUTH 0 DEGREES, 08 MINUTES, 20 SECONDS EAST, 338.36 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 62.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE NORTH 89 DEGREES, 48 MINUTES, 53 SECONDS EAST, 121.22 FEET ALONG SAID PARALLEL LINE TO THE POINT OF INTERSECTION WITH A LINE DRAWN PERPENDICULARLY TO SAID SOUTH LINE AT A POINT ON SAID SOUTH LINE, 336.50 FEET (AS MEASURED ALONG SAID SOUTH LINE) WEST OF THE SOUTHEAST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 82 DEGREES, 47 MINUTES, 20 SECONDS EAST, 170.90 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 40.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST 1/4; THENCE NORTH 89 DEGREES, 48 MINUTES, 53 SECONDS EAST, 100.20 FEET ALONG SAID PARALLEL LINE TO THE WEST LINE OF SOUTH PULASKI ROAD AS WIDENED PER ORDINANCE PASSED BY THE CITY COUNCIL OF CHICAGO, ON SEPTEMBER 12, 1928; THENCE SOUTH 1 DEGREE, 19 MINUTES, 19 SECONDS WEST, 7.50 FEET

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ALONG SAID WEST LINE OF SOUTH PULASKI ROAD AS WIDENED TO AN ANGLE POINT ON SAID WEST LINE, SAID ANGLE POINT BEING 67.00 FEET WEST OF THE EAST LINE AND 33.00 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 22; THENCE SOUTH 0 DEGREES, 13 MINUTES, 21 SECONDS EAST, ALONG SAID WEST LINE OF SOUTH PULASKI ROAD AS WIDENED, 33.00 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCLUDING FROM THE FOREGOING DESCRIPTION OF SAID PARCEL 1, THE PARCEL OF REAL ESTATE DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHEAST 1/4; THENCE SOUTH 89 DEGREES, 48 MINUTES, 53 SECONDS WEST, 67.00 FEET ALONG THE NORTH LINE THEREOF TO A POINT ON THE WEST LINE OF SOUTH PULASKI ROAD AS WIDENED PER ORDINANCE PASSED BY THE CITY COUNCIL OF CHICAGO, ON SEPTEMBER 12, 1928, SAID POINT BEING THE PLACE OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE SOUTH 0 DEGREES, 13 MINUTES, 21 SECONDS EAST, ALONG THE SOUTHERLY EXTENSION OF SAID WEST LINE OF SOUTH PULASKI ROAD AS WIDENED, 30.00 FEET; THENCE NORTH 73 DEGREES, 29 MINUTES, 19 SECONDS WEST, 104.42 FEET TO A POINT ON THE NORTH LINE OF SAID NORTH EAST 1/4, SAID POINT BEING 100.00 FEET WEST OF THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES, 48 MINUTES, 53 SECONDS EAST, 100.00 FEET ALONG SAID NORTH LINE TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS AND NON-EXCLUSIVE RIGHTS CREATED BY A CERTAIN "EASEMENT, CONSTRUCTION AND MAINTENANCE AGREEMENT" DATED JUNE 30, 1977 BY AND BETWEEN LA SALLE AND DOMINICK'S FINER ROADS INC., AN ILLINOIS CORPORATION AND RECORDED WITH THE RECORDER OF DEEDS FOR COOK COUNTY, ILLINOIS, AS DOCUMENT 24061884 AND AMENDMENTS RECORDED AUGUST 8, 1986 AS DOCUMENT 86343420 AND RECORDED SEPTEMBER 3, 1999 AS DOCUMENT 99843419 AS AN APPURTENANT TO SAID PARCEL 1 OVER AND THROUGH THAT SUB-PARCEL OF REAL ESTATE DESCRIBED AS FOLLOWS:

SUBPARCEL A:

THAT PART OF THE SOUTH EAST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH EAST CORNER OF SAID SOUTH EAST 1/4; THENCE NORTH 0 DEGREES, 13 MINUTES, 21 SECONDS WEST, ALONG THE EAST LINE THEREOF, 663.49 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SAID SOUTH EAST 1/4; THENCE SOUTH 89 DEGREES, 51 MINUTES, 40 SECONDS WEST ALONG SAID NORTH LINE, 50.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND, SAID POINT OF BEGINNING BEING ON THE WEST LINE OF SOUTH PULASKI ROAD AS WIDENED PER ORDINANCE PASSED BY THE CITY COUNCIL OF CHICAGO ON SEPTEMBER 12, 1928; THENCE SOUTH 89 DEGREES, 51 MINUTES, 40 SECONDS WEST ALONG SAID NORTH LINE, 424.00 FEET; THENCE SOUTH 0 DEGREES, 08 MINUTES, 20 SECONDS EAST ALONG A LINE DRAWN PERPENDICULARLY TO SAID NORTH LINE, 263.00 FEET; THENCE NORTH 89 DEGREES, 51 MINUTES, 40 SECONDS EAST, 17.20 FEET; THENCE SOUTH 00 DEGREES, 08 MINUTES, 20 SECONDS EAST, 338.36 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 62.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTH EAST 1/4 OF SAID

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SECTION 22: THENCE NORTH 89 DEGREES, 48 MINUTES, 53 SECONDS EAST, 121.22 FEET ALONG SAID PARALLEL LINE TO THE POINT OF INTERSECTION WITH A LINE DRAWN PERPENDICULARLY TO SAID SOUTH LINE AT A POINT OF SAID SOUTH LINE 336.50 FEET (AS MEASURED ALONG SAID SOUTH LINE) WEST OF THE SOUTH EAST CORNER OF SAID SOUTH EAST 1/4; THENCE SOUTH 82 DEGREES, 47 MINUTES, 20 SECONDS EAST, 170.90 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN 40.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTH EAST 1/4; THENCE NORTH 89 DEGREES, 48 MINUTES, 53 SECONDS EAST, 100.20 FEET ALONG SAID PARALLEL LINE TO THE WEST LINE OF SOUTH PULASKI ROAD AS WIDENED PER ORDINANCE PASSED BY THE CITY COUNCIL OF CHICAGO, ON SEPTEMBER 12, 1928; THENCE NORTH 1 DEGREE, 19 MINUTES, 19 SECONDS EAST, 623.25 FEET ALONG SAID WEST LINE OF SOUTH PULASKI ROAD AS WIDENED TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

EXCLUDING FROM THE FOREGOING SUBPARCEL A, THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTH EAST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH EAST CORNER OF SAID SOUTH EAST 1/4; THENCE NORTH 0 DEGREES, 13 MINUTES, 21 SECONDS WEST ALONG THE EAST LINE THEREOF, 663.49 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SAID SOUTH EAST 1/4; THENCE SOUTH 89 DEGREES, 51 MINUTES, 40 SECONDS WEST ALONG SAID NORTH LINE 474.00 FEET; THENCE SOUTH 0 DEGREES, 08 MINUTES, 20 SECONDS EAST ALONG A LINE DRAWN PERPENDICULARLY TO SAID NORTH LINE, 40.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE CONTINUING SOUTH 0 DEGREES, 08 MINUTES, 20 SECONDS EAST ALONG SAID PERPENDICULAR LINE, 223.00 FEET; THENCE NORTH 89 DEGREES, 51 MINUTES, 40 SECONDS EAST, 411.49 FEET; THENCE NORTH 0 DEGREES, 08 MINUTES, 20 SECONDS WEST, 223.00 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN, 40.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTH EAST 1/4 OF SAID SECTION 22; THENCE SOUTH 89 DEGREES, 51 MINUTES, 40 SECONDS WEST, 411.49 FEET ALONG SAID PARALLEL LINE TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THOSE NON-EXCLUSIVE EASEMENTS AND NON-EXCLUSIVE RIGHTS APPURTENANT TO AND FOR THE BENEFIT OF SAID PARCEL 1 AS CREATED BY THAT CERTAIN AGREEMENT DATED AUGUST 31, 1976 MADE BY LA SALLE, NALCO CHEMICAL COMPANY AND KATALCO CORPORATION RECORDED WITH THE RECORDER OF DEEDS FOR COOK COUNTY, ILLINOIS ON NOVEMBER 3, 1976 AS DOCUMENT NUMBER 23696846 AND AMENDMENT RECORDED SEPTEMBER 3, 1999 AS DOCUMENT 99843419 OVER THE REAL ESTATE DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTH EAST 1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH EAST CORNER OF SAID NORTH EAST 1/4; THENCE SOUTH 89 DEGREES, 48 MINUTES, 53 SECONDS WEST, 67.00 FEET, ALONG THE NORTH LINE THEREOF TO A POINT ON THE WEST LINE OF SOUTH PULASKI ROAD AS WIDENED PER ORDINANCE PASSED BY THE CITY COUNCIL OF CHICAGO, ON SEPTEMBER 12, 1928, SAID POINT BEING THE PLACE OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE SOUTH 0 DEGREES, 13 MINUTES, 21 SECONDS EAST, ALONG THE SOUTHERLY EXTENSION OF SAID WEST LINE OF SOUTH PULASKI ROAD AS WIDENED, 30.00 FEET; THENCE NORTH 73 DEGREES, 29 MINUTES, 19 SECONDS WEST, 104.42 FEET TO A POINT ON THE NORTH LINE OF SAID NORTH EAST 1/4, SAID POINT BEING 100.00 FEET WEST OF

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THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES, 48 MINUTES, 53 SECONDS EAST, 100.00 FEET
ALONG SAID NORTH LINE TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ADDRESS: 7050 SOUTH PULASKI ROAD, CHICAGO, IL 60629

PIN: 19 22 417 014 0000

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EXHIBIT B

Special Provisions for the State of Illinois

The following provisions are incorporated by reference into Section 7.20 of the attached Mortgage. If any conflict or inconsistency exists between this Exhibit B and the remainder of the attached Mortgage, this Exhibit B shall govern.

(a) ILLINOIS MORTGAGE FORECLOSURE LAW.

(i) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. herein called 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 be construed in a manner consistent with the Act.

(ii) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the occurrence and during the continuation of an Event of Default of Mortgagor, which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(iii) Without limiting the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1511 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness.

(iv) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1610(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

(v) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto that may become effective from time to time after the date hereof. In the event any provision of the Act that is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

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(b) WAIVERS.

(i) Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor and any of Mortgagor's successors or assigns, so long as permitted by law now or hereafter, hereby waive the benefit of all such laws. Mortgagor, to the extent permitted by law, hereby waives any and all right to have the Property marshalled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this Paragraph of which Mortgagor or Mortgagor's successors or assigns might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, and such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Paragraph.

(ii) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagor, its successors and assigns, and each and every person or entity they may legally bind, acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (a) expressly waives any and all rights of appraisement, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (b), to the extent permitted by applicable law, agrees that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

(c) MAXIMUM AMOUNT SECURED. The maximum principal indebtedness secured by this Mortgage shall not exceed \$1,662,857,447.20.

(d) NO LIEN MANAGEMENT AGREEMENTS. Mortgagor shall include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Kankakee County, Illinois, as appropriate.

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(e) COLLATERAL PROTECTION ACT. Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the Indebtedness secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under by this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Property or any other collateral for the Indebtedness secured hereby, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(f) FIXTURE FILING. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Property that is or is to become Fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) as set forth in the first paragraph of this Mortgage.

(g) FUTURE ADVANCES. This Mortgage secures not only present Indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Mortgagee, or otherwise. The amount of Indebtedness secured hereby may increase or decrease from time to time, and the rate or rates of interest payable may vary from time to time. Notwithstanding the foregoing, in no event shall the total amount of the Loan proceeds disbursed plus any such additional amounts exceed \$1,662,857,447.20.

(h) MATURITY DATE. The maturity date of the Indebtedness secured by this Mortgage, assuming exercise of all extension options under terms of the Loan Agreement, is July 20, 2020.

(i) LOAN MADE FOR BUSINESS PURPOSES. Grantor acknowledges and agrees that (a) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (b) the Indebtedness secured hereby has been incurred by Grantor solely for business purposes of Grantor and for Grantor's investment or profit, as contemplated by said Section 4; (c) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (d) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. seq. has been entered into solely for business purposes of Grantor and for Grantor's investment or profit, as contemplated by said section.

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(j) PROTECTIVE ADVANCES. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the “Act”), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, “Protective Advances”):

(1) all advances by Mortgagee in accordance with the terms of this Mortgage to:
 (A) preserve or maintain, repair, restore or rebuild any improvements upon the Property;
 (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(2) payments by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part hereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(3) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

(4) reasonable attorneys’ fees and other expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(5) Mortgagee’s fees and costs, including reasonable attorneys’ fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

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

(7) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C)

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premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member if in any way affecting the Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Property.

All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Mortgage at any time; (B) the amount of the Indebtedness found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b) (2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

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EXHIBIT C

Excluded Collateral

"Excluded Collateral" means:

- (a) all Credit Card Accounts Receivable;
- (b) all Pharmacy Receivables;
- (c) all Inventory;
- (d) all Chattel Paper relating to Credit Card Accounts Receivable and Pharmacy Receivables;
- (e) all Instruments relating to Credit Card Accounts Receivable and Pharmacy Receivables;
- (f) all Prescription Lists;
- (g) all Documents relating to any Inventory;
- (h) all Deposit Accounts;
- (i) all cash and cash equivalents;
- (j) all books and records pertaining to the any of the foregoing; and
- (k) to the extent not otherwise included, all Proceeds, insurance claims, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person or entity with respect to any of the foregoing.

"Credit Card Accounts Receivable" means each Account together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to a Borrower resulting from charges by a customer of a Group Member (other than Sears Canada) on credit cards issued by such issuer in connection with the sale of goods by a Group Member (other than Sears Canada), or services performed by a Group Member (other than Sears Canada), in each case in the ordinary course of its business.

"Chattel Paper" as defined in the New York Uniform Commercial Code ("UCC").

"Group Members" as defined in in that certain Second Amended and Restated Credit Agreement, dated as of April 8, 2011, as amended October 2, 2013, among inter alia Guarantor, certain affiliates of Guarantor, Bank of America, N.A., as Administrative Agent, and the lenders party thereto.

"Deposit Accounts" as defined in the UCC.

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"Documents" as defined in the UCC.

"Instruments" as defined in the UCC.

"Inventory" as defined in the UCC.

"Pharmacy Receivables" means Accounts (as defined in the UCC) arising from the sale of prescription drugs or other Inventory which can be dispensed only through an order of a licensed professional.

"Proceeds" as defined in the UCC.

"Prescription List" means all right, title and interest of any Borrower in and to all prescription files maintained by it or on its behalf, including without limitation, all patient profiles, customer lists, customer information, and other records of prescriptions filled by it, in whatever form and wherever maintained by it or on its behalf, and all goodwill and other intangible assets arising from the maintenance of such records and the possession of the information contained therein.

"Supporting Obligations" as defined in the UCC.

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