89-00601

8 9 3 3 9 8 3 5

This document is intended to be recorded in Cook County in the State of Illinois

89339835

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT

from

HOMEOWNER'S WAREHOUSE, INC.,

as Mortgagor

to

CHEMICAL BANK, as Collateral Agent,

as Mortgagee

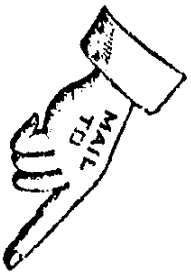
Dated: As of July 24, 1989

89-00601 BE

89339835

Document prepared by and
record and return by mail to:
MAIL TO:
Gregory M. Weston, Esq.
WHITE & CASE
1155 Avenue of the Americas
New York, New York 10036

P.I.N.
30-19-300-012
30-19-300-013
30-19-300-029



BOX 334

TABLE OF CONTENTS

Page

ARTICLE IV

ARTICLE V

ARTICLE VI

ARTICLE VII

EXHIBIT A - DESCRIPTION OF PREMISES

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "Mortgage"), made as of the 24th day of July, 1989, between HOMEOWNER'S WAREHOUSE, INC., a Florida corporation, having an office at 1283 Murfreesboro Road, P.O. Box 24600, Nashville, Tennessee 37217 (the "Mortgagor") and CHEMICAL BANK, a New York banking corporation, having an office at 277 Park Avenue, New York, New York 10172 as Collateral Agent (the "Mortgagee") for the benefit of (i) the Banks and the Agent under and as defined in the Credit Agreement hereinafter referred to (such Banks and Agent are hereinafter called the "Bank Creditors") and (ii) if any Bank in its individual capacity, or a syndicate of institutions organized by such Bank, has entered, or in the future enters, into one or more interest rate protection agreements (including, without limitation, interest rate swaps, caps, floors, collars and similar agreements) related to payment obligations under the Credit Agreement (collectively, "Interest Rate Protection Agreements"), such Bank or any institution which participates in the extension of such Interest Rate Protection Agreements (the "Interest Rate Protection Creditors" and, together with the Bank Creditors, are herein called the "Secured Creditors"). Except as otherwise defined herein, terms used herein and defined in the Credit Agreement shall be used as so defined.

W I T N E S S E T H:

WHEREAS, Service Merchandise Company, Inc., a Tennessee corporation (the "Company"), the Mortgagor, the other Subsidiary Borrowers, the Banks and Chemical Bank, as Agent, have entered into a Credit Agreement dated as of July 24, 1989 (as amended from time to time, the "Credit Agreement"), providing for the making of Loans and the issuance of Letters of Credit as contemplated therein, whereby the maximum indebtedness under the Credit Agreement is $975,000,000 and the line of credit created under the Credit Agreement is a revolving line such that the outstanding unpaid principal balance may fluctuate from time to time during the term of the Credit Agreement;

WHEREAS, Subsidiary Borrowers desire to incur Revolving Loans;

89339835

WHEREAS, the Mortgagor has guaranteed the obligations of the Borrowers pursuant to the Subsidiary Guaranty;

WHEREAS, the Company may enter into Interest Rate Protection Agreements with Interest Rate Protection Creditors;

WHEREAS, it is a condition precedent to the above-described extensions of credit that the Mortgagor shall have executed and delivered to the Mortgagee this Mortgage;

WHEREAS, the Mortgagor desires to execute this Mortgage to satisfy the conditions described in the preceding paragraph;

NOW, THEREFORE, in consideration of the benefits accruing to the Mortgagor, the receipt and sufficiency of which are hereby acknowledged and to secure the prompt and complete payment and performance when due of all of the Obligations (as hereinafter defined),

THE MORTGAGOR HEREBY GRANTS, CONVEYS, ASSIGNS, BARGAINS, SELLS, PLEDGES, GIVES, SETS OVER, TRANSFERS AND MORTGAGES TO THE MORTGAGEE, ALL OF THE FOLLOWING CONTAINED IN GRANTING CLAUSES I TO V INCLUSIVE:

I. All right, title and interest of the Mortgagor in and to those certain lots, pieces or parcels of land described in Exhibit A annexed hereto and hereby made a part hereof, including all and singular easements, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining thereto, and the reversion and remainder thereof (herein collectively called the "Land"); and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of, or adjoining or adjacent to the Land, to the center line thereof, either in law or in possession or expectancy, now or hereafter acquired (all of the foregoing collectively herein called the "Premises");

II. All right, title and interest of the Mortgagor in and to (i) all buildings and other improvements and additions thereto now erected or hereafter constructed or placed upon the Premises or any part thereof, including but not limited to site improvements and infrastructure improve-

ments (collectively, the "Improvements"); (ii) to the extent permitted by law, the name or names, if any, as may now or hereafter be used for each Improvement and the good will associated therewith; and (iii) all machinery, devices, fixtures, apparatus, interior improvements, appurtenances and equipment of every kind and nature whatsoever now or hereafter attached to or placed in or upon the Premises or the Improvements, or any part thereof (other than inventory), and used or procured for use in connection with the operation of the Premises or any business conducted thereon (except for the property, if any, of Space Tenants, as defined in Section 1.18 hereof), (collectively, the "Equipment");

III. All right, title and interest of the Mortgagor in and to all insurance or other proceeds for damage done to the Improvements or the Equipment and all awards hereafter to be made to or for the account of the Mortgagor for the permanent or temporary taking by eminent domain of the whole or any part of the Premises, the Improvements or the Equipment, or any lesser estate therein, or easement appurtenant thereto (including, without limitation, any awards for change of grade of streets), all of which proceeds and awards are hereby assigned to the Mortgagee, subject to the further provisions of this Mortgage;

IV. All of the rents, issues, benefits and profits of the Mortgaged Premises (as hereinafter defined), including all Space Leases now or hereafter entered into covering any part of the Mortgaged Premises, including all interest of the Mortgagor as landlord in and to the same, all of which are hereby assigned to the Mortgagee, subject, however, to the right of the Mortgagor to receive and use the same to the extent hereinafter set forth; and

V. All water rights, mineral rights, ditches, ditch rights, reservoirs and reservoir rights appurtenant to, located on or used in connection with the Premises or the Improvements, whether existing now or hereafter acquired (all of the foregoing Land, Premises, Improvements, Equipment, appurtenances, estates, rights, privileges, interests and franchises hereby mortgaged, or intended so to be, being hereinafter collectively referred to as the "Mortgaged Premises").

TO HAVE AND TO HOLD the Mortgaged Premises now or hereafter owned by the Mortgagor, unto the Mortgagee and its respective successors and assigns, forever for the uses set forth herein.

ARTICLE I

CERTAIN DEFINITIONS

In addition to other definitions contained herein, the following terms shall have the meanings set forth below, unless the context of this Mortgage otherwise requires.

1.1 "Credit Documents" shall mean "Credit Documents" as defined in Section 10.1 of the Credit Agreement.

1.2 "due and payable" when used with reference to the principal, premium, interest or any and all other sums secured by this Mortgage shall mean due and payable, whether at the monthly or other date of payment or at the date of maturity specified in the other Credit Documents to which the Mortgagor is a party or this Mortgage after giving effect in all cases to applicable grace periods; or by acceleration or call for payment as provided in such other Credit Documents or this Mortgage; or, in the case of Impositions, the last day upon which any charge may be paid without penalty and/or interest.

1.3 "Environmental Laws" shall mean any federal, state or local law, statute, ordinance, or regulation, whether now existing or as amended, enacted or promulgated in the future, pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Mortgaged Premises, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.

1.4 "Events of Default" shall mean the events and circumstances described as such in Section 6.1 hereof.

1.5 "Governmental Authorities" shall mean all federal, state, county, municipal and local governments and all departments, commissions, boards, bureaus and offices thereof, having or claiming jurisdiction over the Mortgaged Premises or any part thereof.

1.6 "Hazardous Substances" shall mean (i) Those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or "solid waste" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, 49 U.S.C. Sec-

tions 1801 et seq., and in the regulations promulgated pursuant to said laws;

(ii) Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto);

(iii) such other substances, materials and wastes which are or become regulated under applicable Environmental Laws or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (E) flammable, explosive, or radioactive materials.

1.7 "Impositions" shall mean all duties, taxes, water and sewer rents, rates and charges, assessments (including, but not limited to, all assessments for public improvements or benefits), charges for public utilities, excises, levies, license and permit fees and other charges, ordinary or extraordinary, whether foreseen or unforeseen, of any kind and nature whatsoever, which prior to or during the term of this Mortgage will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on the Premises, the Improvements, Equipment or any other property or rights included in the Mortgaged Premises, or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by the Mortgagor therefrom, by virtue of any present or future law, order or ordinance of the United States of America or of any state, county or local government or of any department, office or bureau thereof or of any other Governmental Authority, but shall expressly not include income or franchise taxes or similar taxes based upon or measured by income, assessed by any Governmental Authority and imposed on the Mortgagee or its successors or assigns by reason of the ownership of this Mortgage or the Obligations or the receipt of interest.

1.8 "Involuntary Rate" shall mean the lower of (a) the rate of interest per annum payable in respect of

89339835

overdue Obligations pursuant to Section 1.08(c) of the Credit Agreement, and (b) the maximum rate allowed by law.

1.9 "Legal Requirements" shall mean all present and future laws, ordinances, rules, regulations and requirements of all Governmental Authorities, and all orders, rules and regulations of any national or local board of fire underwriters or other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which are applicable to the Mortgaged Premises or any part thereof, or to the sidewalks, alleyways, passageways, curbs and vaults adjoining the same, or to the use or manner of use of any of the foregoing, or to the owners, tenants, or occupants thereof, whether or not any such law, ordinance, rule, regulation or requirement shall necessitate structural changes or improvements or shall interfere with the use or enjoyment of any of the foregoing, and shall also mean and include all requirements of the policies of public liability, fire and all other insurance at any time in force with respect to any of the foregoing.

1.10 "Mortgage" shall mean this instrument as originally executed or, if hereafter amended, modified or supplemented, as so amended, modified or supplemented.

1.11 "Mortgagee" shall mean at any given time the mortgagee herein named or the then holder or holders of this Mortgage.

1.12 "Mortgagor" shall mean at any given time the Mortgagor herein named and any subsequent owner or owners of the Mortgaged Premises, and its or their respective heirs, executors, administrators, successors and assigns.

1.13 "Notice", as used in Section 2.15 hereof, shall mean any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, from any federal, state or local agency or authority, or any other entity or any individual, relating to the Mortgaged Premises and concerning any intentional or unintentional act or omission resulting or which may result in the Release of Hazardous Substances into the "environment", as such term is defined in CERCLA, including any lien on any real property, including but not limited to the Mortgaged Premises or any part thereof, or concerning any violation of Environmental Laws, or any knowledge, after due inquiry and investigation, of any facts which could give rise to any of the above.

1.14 "Obligations" shall mean (a) (i) the full and prompt payment when due of principal, interest and other amounts owing by the Mortgagor under its Notes issued under the Credit Agreement and all other obligations and indebtedness (including, without limitation, Unpaid Drawings, indemnities, fees and interest thereon) of the Mortgagor now existing or hereafter incurred under, arising out of or in connection with the Credit Agreement and the other Credit Documents, (ii) the full and prompt payment when due of all obligations and indebtedness of the Mortgagor, now existing or hereafter incurred under, arising out of or in connection with the Guaranty executed and delivered by the Mortgagor pursuant to the Credit Agreement, and (iii) the due performance and compliance with the terms of the Credit Documents by the Mortgagor and (all such principal, interest, obligations, and liabilities described in this clause (a) being herein collectively called the "Credit Agreement Obligations"); (b) (i) all obligations of the Mortgagor to the Interest Rate Protection Creditors under the Interest Rate Protection Agreements, (ii) all guarantees by the Mortgagor of any of the obligations described in the preceding clause (b) (i), and (iii) the due performance and compliance with all of the terms, conditions and agreements contained in the documents described in preceding clauses (b) (i) and (b) (ii) (all obligations and liabilities described in this clause (b) being herein collectively called the "Interest Protection Obligations"); (c) any and all sums advanced by the Mortgagee in order to preserve the Mortgaged Premises or preserve its security interest in the Mortgaged Premises; and (d) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities referred to in clause (a), (b) or (c) after an Event of Default shall have occurred and be continuing, the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Mortgaged Premises, or of any exercise by the Mortgagee of its rights hereunder, together with reasonable attorneys' fees and court costs. In no event shall the principal indebtedness secured hereby exceed $975,000,000 at any time.

1.15 "Permitted Encumbrances" shall mean (a) those liens, encumbrances and other matters affecting title to the Mortgaged Premises listed in (i) Schedule B annexed to the title insurance policy issued as of the date hereof by Lawyers Title Insurance Corporation insuring the Mortgagee's right, title and interest in and to the Mortgaged Premises and (ii) Annex A to the Security Agreement between the Mortgagor and the Mortgagee, and (b) the state of facts shown on the survey or surveys, if any,

prepared on behalf of and certified to the Mortgagee in connection with this transaction as contemplated by the Credit Agreement.

1.16 "Person" shall mean and include any individual, corporation, partnership, unincorporated association, trust, governmental, quasi-governmental or other entity.

1.17 "Release", as used in Section 1.13 and 2.15 hereof shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

1.18 "Space Lease" shall mean any lease, sublease, license, concession agreement or any other form of agreement, however denominated, granting the right to use and occupy the whole of the Mortgaged Premises, or any portion thereof, and all renewals, extensions, modifications, amendments and other agreements affecting the same. "Space Tenant" shall mean the tenant or other user or occupant of part or all of the Mortgaged Premises under any Space Lease.

1.19 "State" shall mean the state in which the Mortgaged Premises is located.

ARTICLE II

PARTICULAR COVENANTS OF THE MORTGAGOR

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

2.1 Payment of Obligations. The Mortgagor shall pay all of the Obligations when due and without offset or counterclaim, and shall observe and comply in all respects with all of the terms, provisions, conditions, covenants and agreements to be observed and performed by it under this Mortgage and any other Credit Document to which it is a party.

2.2 Warranty of Title. The Mortgagor warrants that as of the date hereof (a) (i) it has good and marketable fee simple title to the Land and the Improvements and (ii) it is the lawful owner of and has good and marketable title to all of the Equipment, except that Equipment which is leased by the Mortgagor, in which instance it is the lawful owner of a valid leasehold interest in such Equipment, in each instance subject only to Permitted

Encumbrances; (b) the Mortgaged Premises are now free and clear of all liens and encumbrances other than Permitted Encumbrances; (c) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Premises, subject only to Permitted Encumbrances; (d) the Mortgagor has good right and lawful authority to mortgage and convey the Mortgaged Premises in the manner and form herein provided; (e) there are no defenses or offsets to this Mortgage or to the Obligations which it secures; and (f) the Mortgagor does and will forever warrant and defend unto the Mortgagee the title to the Mortgaged Premises and the validity and priority of the lien hereof thereon against all claims and demands whatsoever other than Permitted Encumbrances.

2.3 Due Authorization and Binding Effect. The execution and delivery by the Mortgagor of this Mortgage and the other Credit Documents to which it is a party and its performance hereunder and thereunder have been duly authorized by all necessary legal action and will not (a) require any consent or approval of any other party which has not already been obtained; (b) violate any applicable provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Mortgagor; or (c) result in a breach of or constitute a default under any loan or credit agreement or any other agreement, lease or instrument to which the Mortgagor is a party or by which it or its properties (including, without limitation, the Mortgaged Premises) may be bound or affected. This Mortgage, the Obligations and all other Credit Documents to which Mortgagor is a party constitute legal, valid and binding obligations of the Mortgagor, enforceable against the Mortgagor in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law).

2.4 Payment of Impositions.

2.4.1 The Mortgagor will pay or cause to be paid, as and when due and payable, all Impositions levied upon the Mortgaged Premises or any part thereof. Notwithstanding the foregoing, if any Imposition may at the option of the tax payer be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), the Mortgagor shall have the right, provided that no Event of Default shall occur and be continuing under this Mortgage, to exercise

such option and to cause to be paid or to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments prior to the imposition of any fine, penalty, further interest or cost. The Mortgagor will not claim any deduction nor shall any deduction be made from the indebtedness secured hereby by reason of the payment of taxes assessed against the Mortgaged Premises.

2.4.2 After the occurrence of an Event of Default which is continuing, at any time during the term of this Mortgage, upon demand of the Mortgagee, the Mortgagor shall deposit with the Mortgagee a sum which bears the same relation to the insurance premiums for all insurance required by the terms hereof and real estate taxes and assessments assessed against the Mortgaged Premises for the insurance period or tax year then in effect, as the case may be, as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums or taxes or assessments shall have become due and payable bears to 12. For the purpose of this computation, the month in which such last preceding installment of premiums or real estate taxes or assessments became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Mortgage, the Mortgagor shall deposit with the Mortgagee a sum equal to one-twelfth of such insurance premiums and such taxes and assessments for the then-current insurance period and tax year, so that as each installment of such premiums and taxes and assessments shall become due and payable, the Mortgagor shall have deposited with the Mortgagee a sum sufficient to pay the same. All such deposits shall be received and held by the Mortgagee in an interest bearing account, and shall be applied to the payment of each installment of such premiums and taxes and assessments as the same shall become due and payable. The Mortgagee shall promptly furnish evidence of the making of each such payment to the Mortgagor. If the amount of such premiums and taxes and assessments has not been definitely ascertained at the time when any such monthly deposits are herein required to be made, the Mortgagor shall make such deposits based upon the amount of such premiums and taxes and assessments for the preceding year, subject to adjustment as and when the amount of such premiums and taxes and assessments are ascertained. If at any time when any installment of such premiums and such taxes and assessments becomes due and payable the Mortgagor shall not have deposited a sum sufficient to pay the same, the Mortgagor shall,

within five (5) days after demand, deposit any deficiency with the Mortgagee and if the Mortgagor shall have deposited a sum more than sufficient to pay such installment, such excess shall be applied toward the deposits next required to be made hereunder. Upon payment in full of the indebtedness secured by this Mortgage, any amount on deposit with the Mortgagee shall be promptly repaid to the Mortgagor. The Mortgagor shall deliver to the Mortgagee all insurance and tax bills promptly upon receipt during any period when such monthly deposits are made with the depository.

2.4.3 The Mortgagor will pay the whole of any tax imposed directly or indirectly on this Mortgage, the Obligations or the other Credit Documents to which it is a party in lieu of a tax on the Mortgaged Premises or any part thereof, whether by reason of (a) the passage after the date of this Mortgage of any law of the State deducting from the value of real property for the purposes of taxation any lien thereon; (b) any change in the laws for the taxation of mortgages, deeds of trust or debts secured by mortgages for state or local purposes; or (c) a change in the means of collection of any such tax or otherwise. Upon request of the Mortgagee and within a reasonable time after payment of any Imposition, tax or governmental charge, the Mortgagor will deliver to the Mortgagee satisfactory proof of payment thereof, subject, however, to the right of the Mortgagor to contest Impositions as set forth herein. If the Mortgagor shall fail to pay such tax or charge within ten (10) Business Days after notice that same is past due (unless the Mortgagor is contesting same as provided herein), or if under applicable law payment or agreement to pay the same shall be unenforceable, the Mortgagee shall have the right to treat same as a Property Default under Section 6.2 hereof.

2.4.4 The Mortgagor shall have the right to contest the amount or validity, in whole or in part, of any Imposition, or to seek a reduction in the valuation of the Mortgaged Premises or any part thereof, as assessed for real estate or personal property tax purposes by appropriate proceedings diligently conducted in good faith, and upon request by the Mortgagor, the Mortgagee shall postpone or defer payment of such Imposition if:

(a) neither the Mortgaged Premises, the Equipment, nor any part thereof would by reason of such postponement or deferment be in imminent danger of being forfeited or lost;

(b) the Mortgagee shall not be in danger of being subjected to civil or criminal liability or penalty by reason of such postponement or deferment;

(c) the Mortgagor, at the Mortgagor's option, shall either have deposited with the Mortgagee the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Mortgaged Premises, or any part thereof, in such proceeding or in lieu thereof, or the Mortgagor shall have posted with the Mortgagee a bond by a surety company approved by the Mortgagee whereby such surety undertakes to pay such Imposition, interest, penalties and charges in the event that the Mortgagor shall fail to pay the same upon the final disposition of the contest (including appeals) or in the event that the Mortgaged Premises or any part thereof are in imminent danger of being forfeited or lost during the pendency of such contest or if the Mortgagor fails to increase the amount of such bond as hereinafter provided. The initial deposit or bond shall be in an amount equal to 115% of the amount so contested and unpaid. In determining the amount of such deposit or bond, the Mortgagor shall be credited with any amounts theretofore deposited with the Mortgagee in respect of the Imposition being contested. Any deposit made by the Mortgagor under the provisions of this subsection 2.4.4(c), together with any additions thereto made pursuant to this Section 2.4 earned thereon, shall be held in trust and disposed of as hereinafter provided. Upon the termination of any such proceeding (including appeals), or, if the Mortgagor should so elect, at any time prior thereto, the Mortgagor shall pay the amount of such Imposition or part thereof as finally determined in such proceeding (or appeal), the payment of which may have been deferred during the prosecution of such proceeding (or appeal), together with any costs, fees, interest, penalties or other liabilities in connection therewith. Upon such payment the Mortgagee shall return any amount deposited with it (and not previously applied by it as hereinafter provided) with respect to such Imposition. Such payment, at the request of the Mortgagor, shall be made by the Mortgagee out of the amount deposited with it with respect to such Imposition, to the extent that such amount is sufficient therefor, and any balance due shall be paid by the Mortgagor. If, at any time during the continuance of such proceeding, the Mortgagee shall deem the

amount deposited with it or provided by bond insufficient, the Mortgagor shall, upon demand, make an additional deposit of, or increase the amount of its bond by, such additional amount as the Mortgagee may request to cover payment of the items set forth in this subsection 2.4.4(c). Upon failure of the Mortgagor so to do, the Mortgagee may require the amount theretofore deposited with it to be applied (or the Mortgagee may require application of the bonded amount by the surety company, if a bond has been furnished) on account of the payment, removal or discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees or other liability accruing in any such proceeding, or any part of any of the same, regardless of the effect thereof on the Mortgagor's contest, and the balance, if any, shall be returned to the Mortgagor. If at any time during the continuance of such proceeding the Mortgaged Premises or any part thereof are, in the judgment of the Mortgagee, in substantial danger of being forfeited or lost, the Mortgagee may request that the amount theretofore deposited with it be applied to the payment of such Imposition (or the Mortgagee may require application of the bonded amount by the surety company, if a bond has been furnished) in the manner provided in the preceding sentence. Notwithstanding anything contained herein to the contrary, no such deposit held by the Mortgagee, or any part thereof, shall be returned to the Mortgagor so long as any Event of Default shall occur and be continuing; and

(d) such postponement shall not affect Mortgagor's obligation to make required deposits pursuant to subsection 2.4.2 or Mortgagee's right to require the same if such escrows are not then being maintained.

2.4.5 The certificate or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition indicating the nonpayment of such Imposition shall be prima facie evidence for the purposes hereof that such Imposition is due and payable but unpaid at the time of the making or issuance thereof.

2.5 Insurance.

2.5.1 The Mortgagor shall at its own expense at all times maintain or cause to be maintained on all of the Mortgaged Premises: (a) comprehensive general liability insurance, including umbrella liability insurance, covering

89339835

all claims for bodily injury, including death, and property damage occurring on, in or about the Mortgaged Premises in an amount not less than $5,000,000 combined single limit per person and $5,000,000 per occurrence for personal injury, bodily injury and property damage. The policy limits of such insurance shall be increased, if necessary, from time to time to reflect what a reasonably prudent owner of buildings or improvements similar in type and locality to the Mortgaged Premises would carry. During any period of substantial alterations or improvements in, on or to the Mortgaged Premises, the Mortgagor will cause the comprehensive general liability insurance, including umbrella liability insurance, to be endorsed to provide owners' and contractors' protective liability coverage, including completed operations liability coverage; (b) physical damage insurance covering the Improvements and Equipment for loss or damages resulting from the perils of fire, lightning and such other risks and hazards as are provided under the current standard "Extended Coverage Endorsement" and vandalism and malicious mischief coverage for 100% of the replacement value of the Improvements and Equipment on a stipulated and agreed-amount basis with the insurer; (c) if the Mortgaged Premises are in an area identified as a flood hazard area by the Secretary of Housing and Urban Development, flood insurance in an amount equal to the lesser of the full replacement value of the Improvements and Equipment or the maximum amount available at subsidized rates under the federal flood insurance program; (d) insurance against such other risks of damage, hazards, casualties and contingencies in such amounts as the Mortgagee shall from time to time require, provided that insurance against such other risks, hazards, casualties or contingencies shall then be commonly carried by prudent owners of buildings or improvements in the locality of the Mortgaged Premises similar in character, construction, use and occupancy to the Improvements and Equipment constituting a part of the Mortgaged Premises; all such insurance (other than that provided in clause (a) above) to be payable to the Mortgagee and to be held, applied and/or disbursed by the Mortgagee as provided in subsections 2.5.5, 2.5.6 and 2.5.7 below.

2.5.2 All insurance required in subsection 2.5.1 above shall be evidenced by valid and enforceable policies, in form and substance satisfactory to the Mortgagee, and issued by and distributed among insurers of recognized responsibility having a Best's rating of "A" or better and otherwise acceptable to the Mortgagee. Such insurers shall be authorized to do business in the State and in all other respects shall be reasonably satisfactory to the Mortgagee.

89339835

The originals of all such policies, or duplicate copies or certificates thereof, shall be delivered to the Mortgagee concurrently with the execution and delivery hereof. Mortgagor shall also deliver to Mortgagee, concurrently with the execution and delivery hereof, a letter from Mortgagor's insurance broker outlining the terms of all insurance policies relating to the Mortgaged Premises. Thereafter, all renewal or replacement policies, or duplicate copies or certificates thereof, shall, upon request, be so delivered to the Mortgagee not less than thirty (30) days prior to the expiration date of the policy or policies to be renewed or replaced, in each case accompanied by evidence reasonably satisfactory to the Mortgagee that all premiums currently payable with respect to such policies have been paid in full by or at the direction of the Mortgagor.

2.5.3 All such insurance policies shall (a) except for any liability policy required hereunder, contain a standard noncontributory form of mortgagee clause (in favor of and entitling the Mortgagee to collect all proceeds payable under such insurance) as well as a standard waiver of subrogation endorsement, all to be in form and substance satisfactory to the Mortgagee; (b) provide that such policies may not be cancelled or amended in any material respect without at least thirty (30) days prior written notice to the Mortgagee; (c) provide that no act, omission or negligence of the Mortgagor, or its agents, servants or employees, or of any tenant under any lease which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as the Mortgagee is concerned; and (d) not be subject to a deductible in excess of $200,000. The Mortgagor shall not carry separate insurance, concurrent in form or kind or contributory in the event of loss with any insurance required under this Section 2.5. Provided that all of the provisions of this Section 2.5 are complied with the insurance relating to the Mortgaged Premises may be in the form of a blanket policy insuring other properties which have been mortgaged in favor of the Mortgagee pursuant to the Credit Agreement.

2.5.4 If the Mortgagee shall by any manner acquire the title or estate of the Mortgagor in or to any portion of the Mortgaged Premises, it shall thereupon become the sole and absolute owner of all insurance policies affecting and to the extent applicable to such portion held by or required hereunder to be delivered to the Mortgagee, with the sole right to collect and retain all unearned premiums thereon; and the Mortgagor shall be entitled only to a

credit in reduction of the then outstanding indebtedness secured hereby in the amount of the short rate cancellation refund. The Mortgagor agrees, immediately upon demand, to execute and deliver such assignments or other authorizations or instruments as may be necessary or desirable to effectuate the foregoing.

2.5.5 If any of the Improvements or Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty and the reasonable estimated cost to replace shall exceed $200,000 for any property separately described in Exhibit A annexed hereto and the Improvements and Equipment located thereon (each such property and the Improvements and Equipment located thereon being hereinafter referred to as a "Property"), the Mortgagor shall give prompt notice thereof to the Mortgagee, and without regard to adequacy of insurance proceeds, if any, shall (subject to the provisions of subsection 2.5.5(a) below) promptly restore, replace, rebuild or alter the same, in either case as nearly as possible to the condition thereof existing immediately prior to such damage or destruction or with such alterations or improvements as will not decrease the value of such Improvements and Equipment below the value thereof immediately prior to such damage or destruction in the reasonable judgment of the Mortgagee. If the damage be of such nature as to require the Mortgagor to construct a replacement for, or to alter in any material or substantial way, the damaged or destroyed items, the Mortgagor shall, before commencing any such work, submit copies of the plans and specifications therefor to the Mortgagee for the Mortgagee's approval, which approval shall not be unreasonably withheld or delayed. If the Mortgagor has not received a written notice from the Mortgagee within thirty (30) days from the date of its receipt of such plans and specifications either approving or disapproving same the Mortgagor shall deliver to the Mortgagee a written notice stating that it has not received written approval or disapproval of the plans and specifications in question. If the Mortgagor does not receive a written notice from the Mortgagee approving or disapproving of such plans and specifications (and stating the reasons for such disapproval) within ten (10) days from the date of Mortgagee's receipt of the notice from the Mortgagor described in the preceding sentence then no approval of such plans and specifications shall be required by the Mortgagee. If by reason of any such damage or destruction any sums are paid under any insurance policy hereinabove mentioned or contemplated, such sums shall be paid as follows:

(a) Such insurance proceeds shall be paid over to the Mortgagor, who shall have the option to (x) hold the same as a trust fund to be used first for the payment of the entire cost of restoring, repairing, rebuilding or replacing the damaged or destroyed items as provided in subsection 2.5.5(b) below, and the balance, if any, may be used by the Mortgagor for any other purpose, (y) pay such proceeds over to the Mortgagee to be retained and applied toward the payment of the indebtedness secured hereby or (z) within thirty (30) days from the date of such damage or destruction designate additional Real Property having a then fair market value equal or greater than the fair market value of the Mortgaged Premises immediately prior to such damage or destruction and otherwise acceptable to the Mortgagee in its sole discretion as an Additional Mortgaged Property under Section 7.11 of the Credit Agreement and take all actions required thereunder with respect to such property. Notwithstanding the foregoing, however, if any Event of Default shall occur and be continuing at the time such proceeds are to be paid over to the Mortgagor, such proceeds shall be paid over to the Mortgagee to be retained and applied toward payment of the indebtedness secured hereby or applied to the repair of the damage as hereinafter provided.

(b) Should such insurance proceeds or any condemnation Award be used to restore or to repair the damaged Improvements or Equipment and the amount of such proceeds or Award is less than $200,000, the Mortgagor shall be entitled to apply such proceeds or Award to the payment of the costs and expenses of repairing and restoring the Improvements and Equipment. Should such proceeds or Award be used to restore or repair the damaged Improvements or Equipment and the amount of such insurance proceeds or Award is $200,000 or more, the insurance proceeds or Award in question shall be paid to a bank or trust company designated by the Mortgagor with the approval of the Mortgagee for the benefit of the Mortgagor and the Mortgagee, and if the then Mortgagee shall be a bank or trust company, to the Mortgagee directly if the Mortgagee so elects (such bank or trust company so designated being herein called the "Insurance Fund Depository"). All charges and expenses (including, but not limited to, counsel fees) of the Insurance Fund Depository shall be paid by the Mortgagor. All insurance proceeds paid to the Insurance Fund Depository, and any condemnation proceeds deposited with it pursuant to Section 3.3 below, shall

be held in an interest bearing account and disposed of as provided in subsection 2.5.6.

(c) If such insurance proceeds or any condemnation Awards have been applied to the indebtedness secured hereby and the Mortgagor gives written notice to the Mortgagee of its intention to sell the Mortgaged Premises, then the Mortgagee shall discharge and satisfy or assign this Mortgage pursuant to Section 7.12 hereof provided that the following conditions are met: (i) the Mortgagee shall have received payment of the Net Proceeds (as hereinafter defined) of such sale and (ii) such sale constitutes an arm's-length transaction for fair market value with a bona fide third party purchaser. As used herein "Net Proceeds" means all proceeds from the sale of the Mortgaged Premises less (x) any brokerage commissions paid to any Person who is not an Affiliate of the Mortgagor, (y) any reasonable attorneys' fees incurred by the Mortgagor in connection with such sale and (z) any recording fees, transfer or gains taxes, title insurance premiums, survey costs and environmental report costs payable by the Mortgagor in connection with such sale.

2.5.6 Upon receipt by the Insurance Fund Depository of:

(a) a certificate of the Mortgagor (i) requesting the payment of a specified amount of such insurance and/or condemnation monies; (ii) describing in reasonable detail the work and materials applied to the restoration or replacement of the damaged or destroyed Improvement and/or Equipment located therein since the date of the last such certificate; (iii) stating that such specified amount does not exceed the cost of such work and materials; and (iv) stating that such work and materials have not previously been made the basis of any request for any withdrawal of money; accompanied by

(b) a certificate of an engineer or architect designated by the Mortgagor, who in either case shall be approved by the Mortgagee, stating (i) that the work and materials described in the accompanying certificate of the Mortgagor were satisfactorily performed and furnished and were necessary, appropriate or desirable to the restoration or replacement of the damaged, destroyed or taken Improvement or Equipment; (ii) that the amount specified in such certificate of the Mortgagor is not in excess of the reasonable cost of such

work and materials; and (iii) the additional amount, if any, required to complete the restoration or replacement of the damaged, destroyed or taken Improvement and/or Equipment; accompanied by

(c) evidence satisfactory to the Mortgagee (i) that there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights or interests of the Mortgagee (other than Permitted Encumbrances); (ii) that neither the Mortgaged Premises nor any part thereof is subject to any recorded mechanic's, laborer's, materialman's or any similar lien, encumbrance or charge; and (iii) that the Equipment is not subject to any security agreement or interest except as may be permitted under this Mortgage; then, and in such event, the Insurance Fund Depository shall pay to the Mortgagor the amount of such insurance and/or condemnation monies specified in such certificate of the Mortgagor; provided, however, that the balance of insurance and/or condemnation monies deposited with the Insurance Fund Depository shall not be reduced below the amount specified in such certificate of the independent engineer or the independent architect as the amount required for the balance of the costs of replacement of the damaged, destroyed or taken Improvement or Equipment. Each such payment shall be held by the Mortgagor in trust and shall be used solely for the payment of the cost of the work and materials described in the certificate of the Mortgagor, or if such cost or any part thereof has theretofore been paid by the Mortgagor out of its own funds, then for the reimbursement to the Mortgagor of any such cost or part thereof paid by it. If there shall remain on deposit with the Insurance Fund Depository any balance of insurance or condemnation monies after the damaged or destroyed Improvements or Equipment shall have been completely restored and/or replaced, as evidenced by a certificate of such independent engineer or independent architect delivered to the Insurance Fund Depository, then, provided that no Event of Default shall exist hereunder, such balance of insurance and/or condemnation monies shall be paid to the Mortgagor. Concurrently with the Mortgagor's delivery to the Insurance Fund Depository of each of the foregoing certificates and reports of title, the Mortgagor shall deliver duplicate copies thereof to the Mortgagee.

2.5.7 If the Mortgagor elects not to provide the Mortgagee with Additional Mortgaged Property or apply the

insurance proceeds toward the payment of the indebtedness secured hereby pursuant to subsection 2.5.5(a) above then nothing herein contained shall relieve the Mortgagor of its duty to repair, restore, rebuild or replace the Improvements or Equipment following damage or destruction by fire or other casualty in the event that no or inadequate proceeds of insurance are available to defray the cost of such repairing, restoring, rebuilding or replacement. In addition, nothing contained herein shall relieve the Mortgagor of its duty to pay or cause to be paid and to make or cause to be made all payments called for or required by the Obligations, the other Credit Documents to which it is a party and this Mortgage subsequent to the occurrence of any fire or other casualty.

2.5.8 If, while any insurance proceeds or condemnation awards are being held by the Insurance Fund Depository or the Mortgagee, the Mortgagee shall be or become entitled to accelerate the indebtedness secured hereby, then and in such event the Mortgagee shall be entitled to apply all such insurance proceeds or condemnation awards in reduction of such indebtedness, and the Insurance Fund Depository shall pay to the Mortgagee all insurance proceeds or condemnation awards then held by it upon certification to it by the Mortgagee that such acceleration or exercise of the right to apply such proceeds in reduction of the Obligations has occurred. The Mortgagee shall return to the Insurance Fund Depository any excess of insurance proceeds or condemnation awards held by it over the amount of indebtedness then due and payable hereunder.

2.6 Application of Proceeds.

2.6.1 The Mortgagee shall apply all insurance proceeds, condemnation Awards (as hereinafter defined) or amounts received pursuant to Section 6.2 hereof which may be applied to the indebtedness secured hereby pursuant to the terms of this Mortgage as follows:

(i) first, to the payment of any and all expenses and fees (including reasonable attorneys' fees and expenses) incurred by the Mortgagee in the collection of such proceeds and any and all amounts incurred by the Mortgagee in connection therewith;

(ii) second, to the extent proceeds remain after the application pursuant to the preceding clause (i), an amount equal to the outstanding Credit Agreement Obligations and Interest Rate Protection Obligations of

89339835

the Mortgagor to the Secured Creditors shall be paid to the Agent (in the case of the Credit Agreement Obligations) or the Interest Rate Protection Creditors (in the case of the Interest Rate Protection Obligations) for application to the Credit Agreement Obligations or Interest Rate Protection Obligations, as the case may be, of, or guaranteed by, the Mortgagor, with each Bank Creditor and each Interest Rate Protection Creditor receiving an amount equal to its outstanding Credit Agreement Obligations or Interest Rate Protection Obligations, as the case may be, or, if the proceeds are insufficient to pay in full all such Obligations, its Pro Rata Share of the amount remaining to be distributed; and

(iii) third, if the Total Commitments and all Letters of Credit are then terminated and no other Obligation of the Mortgagor is outstanding and all Interest Rate Protection Agreements have been terminated, any surplus then remaining shall be paid to the Mortgagor, subject, however, to the rights of the holder of any then existing Lien of which the Mortgagee has actual notice (without investigation).

2.6.2 For purposes of this Mortgage, "Pro Rata Share" shall mean, when calculating a Secured Creditor's portion of any distribution or amount, the amount (expressed as a percentage) equal to a fraction the numerator of which is the amount of such Secured Creditor's Credit Agreement Obligations and Interest Rate Protection Obligations and the denominator of which is the then outstanding amount of all Credit Agreement Obligations and Interest Rate Protection Obligations. For purposes of determining the amount payable to each Secured Creditor, the Mortgagee shall be entitled to request each Secured Creditor to furnish it with written notice of the amount of Obligations then owed to it and shall be entitled to rely upon the amounts stated therein in making such distribution.

2.7 Compliance with Laws.

2.7.1 Subject to the terms and provisions of Section 7.05 of the Credit Agreement, the Mortgagor, at its own expense, will promptly cure all violations of law affecting the Mortgaged Premises and the use and operation thereof and will comply, or cause to be complied with, all present and future Legal Requirements. Notwithstanding the foregoing, the Mortgagor shall have the right, after prior notice to the Mortgagee, to contest by appropriate legal

proceedings, diligently conducted in good faith, the validity or application of any Legal Requirement (other than Environmental Laws) if and so long as the Mortgagor shall promptly furnish to the Mortgagee a certificate to such effect showing the steps taken to comply with such provisions, provided that:

(a) if by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without incurring any lien, charge or liability of any kind against the Mortgaged Premises, or any part thereof, and without subjecting the Mortgagor or the Mortgagee to any liability, civil or criminal, for failure so to comply therewith, the Mortgagor may delay compliance therewith until the final determination of any such proceeding; and

(b) if any lien, charge or civil liability would be incurred by reason of any such delay in respect of a Legal Requirement, the Mortgagor nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the Mortgagee to criminal liability and the Mortgagor (i) furnishes to the Mortgagee security satisfactory to the Mortgagee against loss or injury by reason of such contest or delay and (ii) prosecutes the contest with due diligence.

2.7.2 Notwithstanding the provisions of subsection 2.7.1, if any delay in compliance with any Legal Requirement shall, in the judgment of the Mortgagee, place all or any part of the Mortgaged Premises in imminent danger of being forfeited or lost, the Mortgagor shall, upon notice from the Mortgagee, immediately comply with such Legal Requirement.

2.7.3 The Mortgagor will use and permit the use of the Mortgaged Premises only in strict accordance with any applicable licenses and permits issued by Governmental Authorities.

2.7.4 The Mortgagor will procure, pay for and maintain all permits, licenses and other authorizations required to be procured and/or maintained by the owners and/or operators other than Space Tenants of the Mortgaged Premises for any use of the Mortgaged Premises, or any part thereof, then being made and for the lawful and proper operation and maintenance thereof.

2.8 Limitation on Alterations and Demolition.

2.8.1 No Improvement shall be altered, removed or demolished without the prior written consent of the Mortgagee if the reasonably estimated cost of such alteration, removal, or demolition exceeds $500,000 in any single case. As a condition to its granting of any consent under this subsection, the Mortgagee may require that plans and specifications for the proposed work, prepared by a reputable architect satisfactory to the Mortgagee, be submitted to the Mortgagee for approval, which approval shall not be unreasonably withheld or delayed. If the Mortgagor has not received a written notice from the Mortgagee within thirty (30) days from the date of its receipt of such plans and specifications either approving or disapproving same, the Mortgagor shall deliver to the Mortgagee a written notice stating that it has not received written approval or disapproval of the plans and specifications in question. If the Mortgagor does not receive a written notice from the Mortgagee approving or disapproving of such plans and specifications (and stating the reasons for such disapproval) within ten (10) days from the date of Mortgagee's receipt of the notice from the Mortgagor described in the preceding sentence, then no approval of such plans and specifications shall be required by the Mortgagee. In addition, the Mortgagee may require that the Mortgagor obtain a payment and/or performance bond in form and substance satisfactory to the Mortgagee from the contractor performing the work, or if the Mortgagor shall elect not to provide such bonds, such other assurances satisfactory to the Mortgagee that such work will be completed and paid for. All work performed by the Mortgagor in accordance with this subsection shall be in compliance with all applicable Legal Requirements of all Governmental Authorities. No Equipment shall be removed from the Mortgaged Premises during the course of any work performed in accordance with this subsection unless provision is made for the return or replacement thereof not later than the completion of such work, except in the case of work for which the consent of the Mortgagee is not required under subsection 2.8.2. The provisions of this subsection shall apply to any change, alteration or addition made or required to be made by the Mortgagor in the course of complying with the provisions of any other Article or Section contained herein and shall also apply to the construction of any new or additional building, structure or improvement constituting part of or situate on the Mortgaged Premises financed by the Mortgagee the cost of which is reasonably estimated to exceed $500,000 in any single case. If plans and specifications shall be required by law to be filed with any Govern-

89339835

mental Authority prior to or at any time in connection with such alterations or demolition or new construction (regardless of cost), duplicates of all sets of such plans and specifications shall be furnished to the Mortgagee.

2.8.2 In addition to the rights of the Mortgagor described in Section 8.02 of the Credit Agreement the Mortgagor shall have the right, at any time and from time to time, to remove and dispose of any item of Equipment which may have become obsolete or unfit for use, provided that the Mortgagor promptly replaces the same with other Equipment, free of superior title, liens or claims not necessarily of the same character but of at least equal quality, value and usefulness in connection with the operation and maintenance of the Mortgaged Premises. Notwithstanding the foregoing, if by reason of technological or other developments in the operation and maintenance of buildings and other improvements of the general character of the Improvements or a change in the use of the Mortgaged Premises or any part thereof, no replacement of the Equipment so removed or disposed of would be necessary or desirable for the proper operation or maintenance of the Improvements, the Mortgagor shall not be required to replace the same.

2.9 Limitation on Disposition of the Mortgaged Premises.

2.9.1 Except as otherwise permitted in the Credit Agreement the Mortgagor shall not, during the term hereof, sell, assign, mortgage, pledge or hypothecate (except as permitted in subsection 2.8.2 hereof) or otherwise transfer or dispose of the Mortgaged Premises or any part thereof or any interest therein, or any of the rents, profits and income to be generated thereby without the Mortgagee's prior written consent. The Mortgagee may not condition its consent upon payment of fees as may be specified by the Mortgagee and/or upon increasing the interest rate called for under the Obligations to an amount to be specified by the Mortgagee.

2.9.2 If the Mortgagor shall violate the terms and provisions of subsection 2.9.1 above, in addition to all other rights and remedies available to the Mortgagee under this Mortgage, the Mortgagee shall have the option, upon the giving of notice to the Mortgagor, of declaring the entire unpaid principal balance of the Obligations, together with all accrued and unpaid interest and all other sums and charges evidenced thereby, immediately due and payable and treating such violation as an Event of Default.

2.10 Priority of Lien.

2.10.1 This Mortgage is and will be maintained as a valid first and prior lien on the Mortgaged Premises subject only to Permitted Encumbrances, and the Mortgagor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Premises or any portion thereof, or against the rents, issues and profits therefrom, and will promptly discharge, any lien or charge prior to or upon a parity with or junior to the lien of this Mortgage, other than Permitted Encumbrances and those permitted with respect to new Equipment in accordance with subsection 2.8.2 hereof; provided, however, that nothing herein contained shall require the Mortgagor to pay or cause to be paid any Imposition prior to the time the same shall become due and payable or prevent the Mortgagor from contesting the validity of any such Imposition in accordance with the provisions of Section 2.4 above. The Mortgagor will keep and maintain the Mortgaged Premises, and every part thereof, free from all perfected liens of persons supplying labor and materials in connection with the construction, alteration, repair, improvement or replacement of the Improvements or of the Equipment. If any such liens shall be filed against the Mortgaged Premises, or any part thereof, the Mortgagor agrees to discharge the same of record, by bonding or otherwise, within thirty (30) days after the Mortgagor becomes aware of the filing thereof. The Mortgagor shall exhibit to the Mortgagee, upon request, all receipts or other satisfactory evidence of the payment of taxes, assessments, charges, claims, liens or any other item which may cause any such lien to be filed against the Mortgaged Premises.

2.10.2 In no event shall the Mortgagor do or permit to be done, or omit to do or permit the omission of, any act or thing which, the doing or omission of which would impair the security of this Mortgage.

2.10.3 Subject to the provisions of Sections 4.3.1 and 4.3.5, all leases of all or any portion of the Mortgaged Premises hereafter made by the Mortgagor will be subordinate to the lien created by this Mortgage.

2.11 Maintenance of Mortgaged Premises; Covenant Against Waste; Inspection by the Mortgagee. The Mortgagor will not commit or permit waste on the Mortgaged Premises and will keep and maintain at its own expense the Improvements and the Equipment in a first-class condition and state of repair so that each of the same shall meet or surpass the

normal standards in the general area of the Mortgaged Premises set by buildings of similar type, age and function for attractiveness of appearance, cleanliness and general soundness of condition but in no event less than the current standard of the Mortgaged Premises. The Mortgagor will neither do nor permit to be done anything to the Mortgaged Premises that may impair the value thereof or which may violate any covenant, condition or restriction affecting the same, or any part thereof, or any change therein or in the condition thereof which will increase the danger of fire or other hazard arising out of the operation thereof. The Mortgagee, its authorized employees and/or its agents may enter and inspect the Mortgaged Premises at any time on request during usual business hours, and the Mortgagor shall, within thirty (30) days after demand by the Mortgagee (or such longer period of time as may be reasonably necessary so long as the Mortgagor is diligently taking all actions required to comply with this Section 2.11 or immediately upon demand in case of emergency), make such repairs, replacements, renewals or additions, or perform such items of maintenance, to the Mortgaged Premises as the Mortgagee may reasonably require in order to cause the Mortgaged Premises to comply with the above standards set forth in this Section 2.11.

2.12 <u>After-Acquired Property</u>. All right, title and interest of the Mortgagor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Premises hereafter acquired, constructed, assembled or placed by the Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof, but at any time and all times the Mortgagor, on demand, will execute, acknowledge and deliver to the Mortgagee any and all such further assurance, deeds, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

2.13 <u>Further Assurances</u>. The Mortgagor shall, at its sole cost and without expense to the Mortgagee, on demand, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assign-

ments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require for better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby mortgaged or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage. In addition, the Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to the Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter re-recorded or refiled at such time and in such offices and places as shall be deemed desirable by the Mortgagee, all acts and instruments set forth in this section, together with all security agreements and financing statements as the Mortgagee may consider necessary or desirable in order to effectuate, complete, create, or perfect, or to continue and preserve unto the Mortgagee the property and rights hereby mortgaged or assigned or intended now or hereafter so to be. Upon any failure by the Mortgagor to do so, the Mortgagee may make, execute, record, file, re-record or refile any and all such instruments and take such acts, for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney-in-fact of the Mortgagor to do so. This power of attorney is coupled with an interest and is irrevocable.

2.14 Recorded Instruments. The Mortgagor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Premises. The Mortgagor shall do or cause to be done all things required to preserve intact and unimpaired and to renew any and all rights-of-way, easements, grants, appurtenances, privileges, licenses, franchises and other interests and rights in favor of or constituting any portion of the Mortgaged Premises. The Mortgagor will not, without the prior written consent of the Mortgagee, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Premises except for such private restrictive covenants entered into in the ordinary course of business which do not have a material adverse effect on the Mortgagor's use and occupancy of the Mortgaged Premises. The Mortgagor shall, however, comply with all restrictive covenants and zoning ordinances and other public or private restrictions affecting the Mortgaged Premises.

2.15 Environmental Protection Matters.

2.15.1 The Mortgagor shall not cause or permit (or allow any tenant or other occupant of the Mortgaged Premises, or any part thereof, to cause or permit) the Mortgaged Premises to be used to generate, use, collect, treat, store, handle, transfer, produce or process Hazardous Substances except where done in a manner that is in compliance with all Environmental Laws relating to the same. The Mortgagor shall not cause or permit a Release of Hazardous Substances on, in, over or under the Mortgaged Premises, or any part thereof except for any release which is not a violation of applicable Environmental Laws. The Mortgagor shall notify the Mortgagee in writing immediately upon (i) the receipt by the Mortgagor of any Notice or (ii) Mortgagor's discovery of any occurrence or condition on the Mortgaged Premises, or any part thereof, or any real property adjoining or in the immediate vicinity of the Mortgaged Premises that could cause the Mortgaged Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Premises under any Environmental Law or could cause the Mortgagor or the Mortgagee to be in violation of any Environmental Law. Should the Mortgagor or any tenant or other occupant of the Mortgaged Premises, or any part thereof, cause or permit any intentional or unintentional act or omission resulting in the Release of Hazardous Substances on, in, over or under the Mortgaged Premises, or any part thereof constituting a violation of any applicable Environmental Laws, the Mortgagor shall promptly, and at the Mortgagor's sole expense, clean-up such Release, or cause such tenant or other occupant to clean-up such Release to the Mortgagee's satisfaction. The Mortgagor shall fully cooperate in allowing from time to time such examinations, tests (including but not limited to a hydrogeological survey of soil and subsurface conditions), inspections, and reviews (collectively, "Examinations") of the Mortgaged Premises or any part thereof if it is determined (as set forth in the following sentence) that there is reasonable cause to believe that such Examinations would reveal environmental problems at the Mortgaged Premises. The Mortgagor and the Mortgagee shall cooperate with each other in making such determination. The cost of any such Examinations shall be paid by Mortgagor.

2.15.2 The Mortgagor shall comply with any and all laws, regulations and orders with respect to the removal of Hazardous Substances from the Mortgaged Premises, and shall keep the Mortgaged Premises free of any lien imposed pursuant to such laws, regulations or orders. In the event

the Mortgagor fails to do so, after notice to the Mortgagor and the expiration of the earlier of (i) applicable cure periods hereunder, or (ii) the cure period permitted under applicable law, regulation or order, the Mortgagee may either declare same to be a Property Default under this Mortgage or cause the Mortgaged Premises to be freed from the Hazardous Substances to the extent necessary to comply with such laws and free from any such lien, and the cost of the compliance shall become due and payable immediately upon demand and with interest thereon at the Default Rate from the date of demand until paid. The Mortgagor shall give to the Mortgagee and its agents and its employees access to the Mortgaged Premises and hereby specifically grants to the Mortgagee a license to remove the Hazardous Substances if the Mortgagor fails to do so as required above.

2.15.3 The Mortgagor shall defend, indemnify and hold the Mortgagee and the Secured Creditors harmless from and against any and all obligations, costs, losses, claims, damages, penalties, forfeitures, suits, liabilities, consequential damages and expenses (including, but not limited to, costs of defense, settlement, investigation and legal expenses) incurred by the Mortgagee or the Secured Creditors in connection with such Hazardous Substances or the breach of any covenant, condition or agreement contained in this Section 2.15. The foregoing indemnification shall survive the repayment of the Obligations.

2.16 Asbestos. The Mortgagor shall not install nor permit to be installed as part of the Mortgaged Premises, or any part thereof, asbestos or any substance containing asbestos and with respect to such material currently present in the Mortgaged Premises shall comply with any applicable law, regulation or order relating thereto, at the Mortgagor's expense. If the Mortgagor shall fail to do so, the Mortgagee may, after the expiration of the earlier of (i) applicable cure periods hereunder or (ii) the cure period permitted under the applicable law, regulation or order, either declare same to be a Property Default under this Mortgage or do whatever is necessary to eliminate said asbestos or substances from the Mortgaged Premises if required by, and to the extent necessary to comply with, such law, regulation or order or otherwise comply with, the applicable law, regulation or order and the cost thereof shall become due and payable immediately upon demand and with interest thereon at the Default Rate from the date of demand until paid. The Mortgagor shall give to the Mortgagee and its agents and the employees access to the Mortgaged Premises and hereby specifically grants to the Mort-

gagee a license to remove said asbestos or substances if the Mortgagor fails to do so as required above. The Mortgagor hereby agrees to defend, indemnify and hold the Mortgagee and the Secured Creditors free and harmless from and against all obligations, costs, losses, claims, damages, penalties, forfeitures, suits, liabilities, consequential damages and expenses (including, but not limited to, costs of defense, settlement, investigation and legal expenses) incurred by the Mortgagee or the Secured Creditors as a result of the presence of said asbestos or substances and any removal thereof or compliance with any law, regulation or order related thereto (but excluding any such obligations, costs, losses, claims, damages, penalties, forfeitures, suits, liabilities, consequential damages and expenses to the extent incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified). The foregoing indemnification shall survive the repayment of the Obligations.

ARTICLE III

CONDEMNATION

3.1 Notice of Taking. The Mortgagor shall promptly notify the Mortgagee of notice to it of the institution of any proceedings or negotiations for the taking of the Mortgaged Premises, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such condemnation (all the foregoing herein called a "taking"); shall keep the Mortgagee currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to the Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received or delivered by the Mortgagor therein. The Mortgagee shall have the right to appear and participate therein and may be represented by counsel. The Mortgagor will not, without the Mortgagee's consent, enter into any agreement for the taking of the Mortgaged Premises, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

3.2 Condemnation Award. If the Mortgaged Premises, or any portion thereof, shall be taken as a result of any condemnation proceeding, the Mortgagor shall be entitled to and shall receive the total of such portion of all awards made that shall be allowed or allocated to the Mortgagor

89339835

with respect to all the right, title and interest of the Mortgagor in and to the Mortgaged Premises or the portion thereof affected (herein called the "Award") and the Mortgagor shall have the option to take such action with respect to such Award as provided in subsection 2.5.5(a) with respect to insurance proceeds, provided that the obligations of the Mortgagor to perform the terms, covenants and conditions of this Mortgage, if any, affected by such taking shall continue unimpaired until the actual vesting of title in such proceeding and the actual receipt by the Mortgagee of the entire Award resulting from such taking. Notwithstanding the foregoing, however, if any Event of Default shall occur and be continuing at the time the Award is to be paid over to the Mortgagor, such Award shall be paid over to the Mortgagee to be retained and at the option of the Mortgagee applied toward the payment of the indebtedness secured hereby or deposited with the Insurance Fund Depository specified in Section 2.5 above to be used, subject to the terms and conditions of such Section, for the repairs and restoration required to be made by the Mortgagor pursuant to subsection 2.5.5 hereof.

3.3 Temporary Taking. If any Award payable to the Mortgagor on account of a taking for temporary use or occupancy is made in a lump sum or is payable other than in equal monthly installments, the Mortgagor shall pay over such award to the Mortgagee promptly upon receipt, and the Mortgagee at its option may apply such award to installments of principal and interest and all other charges secured by this Mortgage as and when the same become due and payable; provided, however, that any unapplied portion of such Award held by the Mortgagee when such taking ceases or expires, or after the indebtedness secured by this Mortgage shall have been paid in full, shall be paid to the Mortgagor.

3.4 Mortgagor's Obligation to Restore. If the Mortgagor elects not to provide the Mortgagee with Additional Mortgaged Property or apply the Award toward the payment of the indebtedness secured hereby pursuant to subsection 3.2 above then the Mortgagor shall be obligated to promptly restore, replace, rebuild or alter any Improvements or Equipment affected by a taking so as to restore the Mortgaged Premises to an economically viable whole, all without regard to the adequacy of the proceeds of an award, if any, made to the Mortgagor pursuant to Section 3.2 hereof.

89339835

ARTICLE IV

SPACE LEASES; ASSIGNMENT AS FURTHER SECURITY, ETC.

4.1 Assignment of Leases, Rents, Issues and Profits. As further security for payments of the indebtedness and performance of the Obligations secured hereby, the Mortgagor hereby transfers, assigns and sets over unto the Mortgagee all leases, if any, now or hereafter entered into by Mortgagor with respect to all or any part of the Mortgaged Premises, and all renewals, extensions, subleases or assignments thereof, and all other occupancy agreements (written or oral), by concession, license or otherwise, together with all of the rents, income, receipts, revenues, issues and profits arising therefrom.

4.2 Entry Upon Default.

4.2.1 So long as no Event of Default shall have occurred and be continuing, the Mortgagor shall have the license to collect (but not more than one month in advance) all of the rents, gross receipts and other payments, if any, from the Space Leases and from the Mortgaged Premises generally and to use and enjoy the same in the manner provided herein.

4.2.2 If an Event of Default shall have occurred and be continuing, in addition to its rights and remedies set forth in subsection 6.2.2, the Mortgagee may, as attorney-in-fact of the Mortgagor, make, enforce, or modify any of the Space Leases; obtain tenants for and evict tenants from the Mortgaged Premises; demand, fix and modify the rents, gross receipts and other charges and profits from the Mortgaged Premises; institute all legal proceedings (including summary proceedings) for collection of all rents and other charges; obtain possession of the Mortgaged Premises or any part thereof, or enforce any other rights theretofore exercisable by the Mortgagor; do any and all other acts which the Mortgagee, in its sole and absolute discretion, deems proper to protect the security hereof; and, with or without taking possession of the Mortgaged Premises, in the Mortgagor's own name, sue for or otherwise collect and receive all rents, gross receipts and other charges, including those past due and unpaid, and apply the same, less the costs and expenses of operation and collection, including attorneys' fees, to the indebtedness secured hereby, whether then matured or not, until the same shall have been paid in full; provided, however, that any balance remaining after the indebtedness secured hereby shall have been paid in full

shall be turned over to the Mortgagor or such other person as may lawfully be entitled thereto. Neither the entry upon and taking possession of the Mortgaged Premises, nor the collection and application of the rents, gross receipts or other charges thereof as aforesaid, nor any other action taken by the Mortgagee in connection therewith, shall cure or waive any default hereunder or waive or modify any notice thereof or notice of acceleration of the Obligations theretofore given by the Mortgagee.

4.2.3 If an Event of Default shall have occurred and be continuing, notice in writing by the Mortgagee to the Space Tenants under the leases advising them that the Mortgagor has defaulted hereunder and requesting that all future payments of rent, additional rent or other charges under the leases be made to the Mortgagee (or its agent) shall be construed as conclusive authority to such tenants that such payments are to be made to the Mortgagee (or its agent). Such Space Tenant shall be fully protected in making such payments to the Mortgagee (or its agent); and the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee the attorney-in-fact and agent of the Mortgagor, coupled with an interest, for the purpose of endorsing the consent of the Mortgagor on any such notice and for taking any actions provided in subsection 4.2.2.

4.3 Mortgagor's Covenants Regarding Space Leases.

4.3.1 Subject to the terms and provisions of Section 8.02 of the Credit Agreement, without the prior consent and approval of the Mortgagee in each instance, the Mortgagor covenants and agrees that it will not (a) assign, pledge, hypothecate or otherwise encumber any of the Space Leases or the rents, income, issue and profits of the Mortgaged Premises; (b) enter into any Space Leases affecting (i) more than 25% of the rentable square footage of the Mortgaged Premises or (ii) 10% of the aggregate rentable square footage of the premises and improvements subject to all Mortgages in favor of the Mortgagee entered into pursuant to the Credit Agreement unless such Space Leases are in such form as Mortgagee may approve; or (c) enter into any Space Leases affecting the Mortgaged Premises or any part thereof unless such Space Leases are expressly subordinate to the lien of this Mortgage and to any consolidation, extension, renewal, recasting or refinancing thereof, are with credit-worthy tenants, and are for rents substantially at market rates.

4.3.2 Subject to the terms and provisions of Section 8.02 of the Credit Agreement, the Mortgagor will enforce the terms, covenants and conditions to be performed by all Space Tenants and other parties to any Space Lease or other agreement pertaining to the Mortgaged Premises and will not, without the prior consent of the Mortgagee, cancel, abridge or otherwise modify, or terminate or accept a voluntary surrender of, any Space Lease now or hereafter existing, or receive or (except with respect any Space Lease under which rent is payable quarterly, semi-annually or annually) collect rent from any Space Tenant for a period of more than one month in advance. Any such action in violation of this subsection 4.3.2 shall be voidable at the option of the Mortgagee.

4.3.3 At any time, and from time to time, on notice from the Mortgagee, the Mortgagor shall deliver to the Mortgagee a schedule of all Space Leases then in effect, which schedule shall include the following: (a) the name of the Space Tenant; (b) a description of the leased space in form satisfactory to the Mortgagee, including but not limited to the approximate number of square feet so leased and the type of activity performed under such lease; (c) the rental rate, including escalations, if any; (d) the term of the Space Lease; and (e) such other information as the Mortgagee may reasonably request. If requested by the Mortgagee, the Mortgagor shall also deliver photocopies of all Space Leases accompanied by the certificate of the Mortgagor that such copies are true, complete and accurate.

4.3.4 In the event of enforcement by the Mortgagee of the remedies provided for by law or by this Mortgage, each Space Tenant shall, at the option of the Mortgagee, attorn to any Person succeeding to the interest of the Mortgagor as a result of such enforcement and shall recognize such successor in interest as landlord (or sublandlord, as the case may be) under such Space Lease without change in the terms or other provision thereof (or with respect to Space Leases in effect as of the date hereof the Mortgagor shall use best efforts to cause the Space Tenants thereunder to so attorn and recognize such successor); provided, however, that such successor shall not be bound by any payment of rent or additional rent for more than one month in advance (except with respect to Space Leases under which rent is payable quarterly, semi-annually or annually) or any amendment or modification of any such Space Lease made without the Mortgagee's consent (to the extent such consent is required under subsection 4.3.2 above) or that of such successor in interest. Each such Space Tenant shall, upon

request of such successor in interest, execute and deliver instrument(s) confirming such attornment.

4.3.5 Rights of Space Tenants. The Mortgagee, at its option, is authorized to foreclose this Mortgage in accordance with the provisions of Article VI hereof, such foreclosure to be subject to the rights of any Space Tenants, and the failure to make any such Space Tenants parties defendant in any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor to be, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Premises.

ARTICLE V

SECURITY AGREEMENT UNDER UNIFORM COMMERCIAL CODE

It is the intent of the parties hereto that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State (the "Code") with respect to (a) the leases and rents assigned by the Mortgagor to the Mortgagee hereunder, (b) so much of the Equipment as are considered or as shall be determined to be personal property or "fixtures" (as defined in the Code), together with all replacements thereof, substitutions therefor or additions thereto and (c) so much of the remainder of the Mortgaged Premises as is considered or shall be determined to be personal property (said property being sometimes hereinafter referred to as the "Collateral"), and that a security interest shall attach thereto for the benefit of the Mortgagee to secure the indebtedness evidenced by the Obligations and the other Credit Documents to which the Mortgagor is a party and secured by this Mortgage and all other sums and charges which may become due hereunder or thereunder. The Mortgagor hereby authorizes the Mortgagee to file financing and continuation statements with respect to the Collateral without the signature of the Mortgagor, if same is lawful, provided that notice of and a copy of such filing is delivered to the Mortgagor within a reasonable period of time thereafter; otherwise the Mortgagor agrees to execute such financing and continuation statements as the Mortgagee may request. If there shall exist an Event of Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code and to the extent permitted by applicable law, shall have the option of proceeding as to both real and personal property in

accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Code shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, unless a greater period shall then be mandated by the Code, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall be assessed against the Mortgagor and shall include, but not be limited to the legal expenses incurred by the Mortgagee. The Mortgagor agrees that it will not remove or permit to be removed from the Mortgaged Premises any of the Collateral without the prior written consent of the Mortgagee except as hereinabove provided. All replacements, renewals and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and the provisions of this Article V. The Mortgagor warrants and represents that the Collateral now is free and clear of all liens and encumbrances or security interests, other than Permitted Encumbrances, and that all replacements of the Collateral, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be, free and clear of liens, encumbrances or security interests of others created after the date hereof, except for Liens permitted under the Credit Agreement.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

6.1 "Events of Default" Defined. Subject to the provisions of Section 6.2 below, the whole of the indebtedness secured by this Mortgage, shall become due, at the option of the Mortgagee, upon the happening of any of the following events (hereinabove and hereinafter referred to as "Events of Default" and in the singular as an "Event of Default"):

6.1.1 (i) if a default shall have occurred in the due performance or observance by the Mortgagor of any term obligation, covenant, condition or agreement contained in the first clause of Section 2.1 or Sections 2.8, 2.9, 2.10.1, 2.11, or 4.3.1 or (ii) if a default shall have occurred in the due performance or observance by the Mortgagor of any term, obligation, covenant, condition or agreement (other than those referred to in clause (i) of this Section 6.1.1) contained in this Mortgage and such

default shall continue unremedied for a period of thirty (30) days after written notice to the Mortgagor by the Mortgagee; or

6.1.2 if an Event of Default (as such term is defined in the Credit Agreement) which is not an Event of Default under section 6.1.1 shall have occurred under any of the other Credit Documents.

6.2 Remedies. If a Property Default (as hereinafter defined) has occurred and is continuing under this Mortgage, but no Event of Default under 6.1.2 above has occurred and is continuing, then as its sole remedy hereunder the Mortgagee may demand payment by the Mortgagor of the Release Price for the Mortgaged Premises pursuant to Section 8.19 of the Credit Agreement and upon payment in full of such Release Price this Mortgage shall be discharged and satisfied or assigned as provided in Section 7.12 hereof. As used herein, a "Property Default" means an Event of Default described in Section 6.1.1 above with respect to any Property. Except as otherwise provided in the immediately preceding sentences, during the continuance of any Event of Default hereunder, the Mortgagee, at his option may:

6.2.1 by notice to the Mortgagor, declare all of the indebtedness secured hereby to be immediately due and payable, and upon such declaration all of such indebtedness shall become and be immediately due and payable, anything in this Mortgage or the other Credit Documents to the contrary notwithstanding;

6.2.2 after such proceedings as may be required by any applicable law or ordinance, either in person, or by its agents or attorneys, or by a court-appointed receiver, enter into and upon all or any part of the Mortgaged Premises and each and every part thereof and exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, use, operate, manage and control the Mortgaged Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or the receiver; and upon every such entry, at the expense of the Mortgagor, from time to time, either by purchase, repairs or construction, maintain and restore the Mortgaged Premises and, likewise make all necessary or proper repairs, renewals and replacements and such alterations, betterments, additions and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall have the right to manage and operate the Mortgaged Premises and to carry on the business

thereof and exercise all rights and powers of the Mortgagor as its attorney-in-fact, or otherwise, as it shall deem best; and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Premises and after deducting the expenses of conducting the business thereof and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Mortgaged Premises or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees engaged or employed by it. The Mortgagee shall apply the monies arising as aforesaid, first to the payment of the indebtedness secured hereby, whether or not then matured; then to the payment of any other sums required to be paid by the Mortgagor under this Mortgage; and the balance, if any, shall thereafter be turned over to the Mortgagor or such other person as may be lawfully entitled thereto;

6.2.3 with or without entry, personally or by its agents or attorneys insofar as applicable:

(a) foreclose this Mortgage in accordance with the laws of the State and the provisions hereof (including, without limitation, any power of sale contained herein), for the entire indebtedness secured hereby or for any portion of such indebtedness or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance of the indebtedness not then due; or

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

6.3 Sale; No Marshalling of Assets; Appointment of Receiver.

6.3.1 In case of a foreclosure, all of the Mortgaged Premises may be sold in one parcel notwithstanding that the proceeds of such sale exceed or may exceed the

89339835

indebtedness secured hereby. Moreover, the Mortgagee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time.

6.3.2 The Mortgagee, in any action to foreclose this Mortgage, shall be entitled (and, to the extent permitted under the laws of the State, without notice, without regard to the adequacy of any security for the debt and without regard to the solvency of any person, partnership or entity liable for the payment thereof) to the appointment of a receiver of the rents and profits of the Mortgaged Premises.

6.3.3 The Mortgagor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by the Mortgagee hereunder, it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Mortgage or any rights or remedies the Mortgagee may have hereunder or by law. The Mortgagor, on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any sale pursuant to any statute, order, decree or judgment of any court.

6.3.4 If an Event of Default shall occur and be continuing hereunder and the Mortgagee shall elect to accelerate the indebtedness secured hereby, the Mortgagor, within fifteen (15) days after demand will pay over to the Mortgagee, or any receiver appointed in connection with the foreclosure of this Mortgage, any and all amounts then held as security deposits under all Space Leases; provided, however, that the Mortgagee shall thereupon indemnify the Mortgagor against all claims of tenants for the deposits so paid over.

6.3.5 Upon the happening of any Event of Default hereunder, and in addition to all other rights of the Mortgagee provided herein or by law, the Mortgagor shall, on demand, surrender possession of the Mortgaged Premises to the Mortgagee, and the Mortgagor hereby consents that the Mortgagee may exercise any or all of the rights specified in

89339835

subsection 6.2.2 above, and the Mortgagor hereby irrevocably appoints the Mortgagee its attorney-in-fact, coupled with an interest, of the Mortgagor for such purposes. In the event that the Mortgagor is an occupant of the Mortgaged Premises, it agrees to surrender possession of that part of the Mortgaged Premises which it occupies to the Mortgagee immediately upon any acceleration event or Event of Default hereunder, and if the Mortgagor remains in possession, such possession shall be as tenant of the Mortgagee, and the Mortgagor agrees to pay monthly in advance to the Mortgagee such rent for the premises so occupied as the Mortgagee may demand, and in default of so doing, the Mortgagor may also be dispossessed by summary proceedings or otherwise. In case of the appointment of a receiver of the rents and profits of the Mortgaged Premises, the covenants of this subsection 6.3.5 may be enforced by such receiver. The Mortgagor for itself and for all persons claiming under it or who may become holders of liens junior to the lien hereof hereby waives and releases, to the extent permitted by applicable law, all rights to direct the order in which any of the Mortgaged Premises can be sold at any sale or sales pursuant hereto.

6.3.6 Any court-appointed receiver of all or any part of the Mortgaged Premises shall be an agent of the court appointing such receiver and not an agent of the Mortgagee, and no acts of such receiver shall be deemed to be acts of the Mortgagee.

6.3.7 Upon any foreclosure sale, the Mortgagee may, after allowing for the portion of the total purchase price to be paid in cash and for the cost and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums secured hereby, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon. All proceeds of any sale pursuant to this Article 6 shall be applied in the manner specified in Section 2.6 hereof.

6.3.8 The Mortgagor agrees that the Mortgagee or any court having jurisdiction to foreclose the lien of this Mortgage may sell the Mortgaged Premises in part or as an entirety.

6.4 <u>Legal Expenses of Mortgage</u>.

6.4.1 The Mortgagor will pay to the Mortgagee, on demand, all costs, charges and expenses (including, without

limitation, reasonable attorneys' fees) incurred or paid at any time by the Mortgagee because of the failure of the Mortgagor to perform, comply with or abide by any of the stipulations, agreements, conditions or covenants contained herein or in the Obligations secured hereby, together with interest on each such payment made by the Mortgagee at the Involuntary Rate from the date each such payment is made.

6.4.2 If any action or proceeding be commenced in which the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the title, rights and lien created by this Mortgage (including, without limitation, reasonable attorneys' fees) shall be paid by the Mortgagor to the Mortgagee on demand, together with interest thereon at the Involuntary Rate from the date each such payment is made, and all such sums and the interest thereon shall be a lien on the Mortgaged Premises, prior to any right, title or interest in or claim upon the Mortgaged Premises attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the indebtedness secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances, if inconsistent with the foregoing, shall prevail unaffected by this covenant.

6.5 Remedies Cumulative; Etc.

6.5.1 No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee.

6.5.2 A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof or of any of the other Credit Documents shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and

89339535

other provisions of this Mortgage and of the other Credit Documents shall survive and continue to remain in full force and effect.

6.5.3 To the extent permitted by applicable law the Mortgagor hereby waives and renounces all homestead and similar exemption rights with respect to the Mortgaged Premises provided for by the Constitution and Laws of the United States and/or the State as against the collection of any of the Obligations; and Mortgagor agrees that where, by the terms of this Mortgage or the other Credit Documents secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between the Mortgagor and the Mortgagee. This Section 6.5.3 shall not limit, however, the applicability of grace periods provided for.

6.6 No Merger. It is the intention of the parties hereto that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Premises, then, and until the indebtedness secured hereby has been paid in full, the interest of the Mortgagee hereunder and the lien of this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Premises and that, until such payment, the estate of the Mortgagee in the Mortgaged Premises and the lien of this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Premises.

ARTICLE VII

PROVISIONS OF GENERAL APPLICATION

7.1 Waiver; Amendment. (a) None of the terms and conditions of this Mortgage may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Mortgagor and the Mortgagee (with the consent of the Required Banks); provided, however, that any change, waiver, modification or variance affecting the rights and benefits of a single Class of Secured Creditors (and not all Secured Creditors in a like or similar manner) shall require the written consent of the Requisite Creditors of such Class of Secured Creditors. For the purpose of this Agreement,

the term "Class" shall mean each class of Secured Creditors, i.e., whether (x) the Bank Creditors as holders of the Credit Agreement Obligations or (y) the Interest Rate Creditors as holders of the Interest Rate Protection Obligations. For the purpose of this Agreement, the term "Requisite Creditors" of any Class shall mean each of (x) with respect to the Credit Agreement Obligations, the Required Banks and (y) with respect to the Interest Rate Protection Obligations, the holders of at least 50.1% of all obligations outstanding from time to time under the Interest Rate Protection Agreements.

(b) No delay on the part of the Mortgagee in exercising any of its rights, remedies, powers and privileges hereunder or partial or single exercise thereof, shall constitute a waiver thereof. No notice to or demand on the Mortgagor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Mortgagee to any other or further action in any circumstances without notice or demand.

7.2 Notices. Except as otherwise specified herein, all notices, requests, demands or other communications hereunder shall be deemed to have been duly given or made when delivered in person or sent by registered or certified mail, postage prepaid, return receipt requested, or by recognized overnight delivery service to the party to which such notice, request, demand or other communication is required or permitted to be given or made hereunder, addressed to such party at its address hereinabove set forth, or at such other address as such party may hereafter notify the other in writing.

7.3 Mortgagee's Rights to Perform Mortgagor's Covenants. If the Mortgagor shall fail to pay or cause payment to be made to the Mortgagee in accordance with the terms of this Mortgage, or to perform or observe any other term, covenant, condition or obligation required to be performed or observed by the Mortgagor under this Mortgage without limiting any other provision of this Mortgage, and without waiving or releasing the Mortgagor from any obligation or default hereunder, upon five (5) days' notice after the expiration of any applicable notice period as provided in Section 6.1.1 hereof to the Mortgagor (or without notice in case of emergency) the Mortgagee (or any receiver of the Mortgaged Premises) shall have the right, but not the obligation, to make any such payment, or to perform any other act or take any appropriate action, including, without lim-

itation, entry on the Mortgaged Premises and performance of work thereat, as it, in its sole discretion, may deem necessary to cause such other term, covenant, condition or obligation to be promptly performed or observed on behalf of the Mortgagor or to protect the security of this Mortgage. All monies expended by the Mortgagee in exercising its rights under this Section 7.3 (including, but not limited to, legal expenses and disbursements), together with interest thereon at the Involuntary Rate from the date of each such expenditure, shall be paid by the Mortgagor to the Mortgagee forthwith upon demand by the Mortgagee and shall be secured by this Mortgage.

7.4 Additional Sums Payable by the Mortgagor. All sums which, by the terms of this Mortgage, are payable by the Mortgagor to the Mortgagee shall, together with the interest thereon provided for herein, be secured by this Mortgage and added to and deemed part of the indebtedness secured hereby whether or not the provision which obligates the Mortgagor to make any such payment to the Mortgagee specifically so states.

7.5 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of this Mortgage nor in any way shall affect this Mortgage or the construction of any provision hereof.

7.6 Successors and Assigns. The covenants and agreements contained in this Mortgage shall run with the land and bind the Mortgagor, the heirs, executors, administrators, principals, legal representatives, successors and assigns of the Mortgagor and each person constituting the Mortgagor and all subsequent owners, encumbrancers and Space Tenants of the Mortgaged Premises, or any part thereof, and shall inure to the benefit of the Mortgagee, its successors and assigns and all subsequent beneficial owners of this Mortgage.

7.7 Gender and Number. Wherever the context of this Mortgage so requires, the neuter gender includes the masculine and/or feminine gender and the singular number includes the plural.

7.8 Severability. In case any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Mort-

89339635

gage shall be construed as if such invalid, illegal or unenforceable provision had never been included.

7.9 Usury. The Mortgagor and the Mortgagee agree that the total interest for the use, forbearance or detention of the sums owing on the Obligations from time to time and any other sums payable under the other Credit Documents to which the Mortgagor is a party or this Mortgage shall never exceed the amount then allowed by law for loans secured by mortgages to persons or entities such as the Mortgagor then is and in the amounts, for the purposes and otherwise of the type hereby contemplated, evidenced and secured, and the Mortgagor shall not be bound or obligated to pay any interest which is in excess of such amount, and in the event Mortgagee receives, collects or applies as interest any sums in excess of such amounts allowed by law, such excess sums shall be applied to the reduction of the principal debt, and if the principal debt is paid in full, such excess sums shall forthwith be paid to Mortgagor.

7.10 CONTROLLING LAW. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE.

7.11 Entire Agreement. This Mortgage along with the Credit Agreement embodies the entire agreement and understanding between the parties relating to the subject matter hereof.

7.12 Release. (a) After the Termination Date, this Mortgage shall be discharged and satisfied or assigned at the Mortgagor's option, by the Mortgagee at the expense of the Mortgagor upon its written request. Concurrently with such satisfaction and discharge or assignment of this Mortgage, the Mortgagee, on written request and at the expense of the Mortgagor will execute and deliver such proper instruments of release and satisfaction or assignment as may reasonably be requested to evidence such release or assignment and any such instrument when duly executed by the Mortgagee and duly recorded by the Mortgagor in the places where this Mortgage is recorded shall conclusively evidence the release or assignment of this Mortgage. As used in this Mortgage, "Termination Date" shall mean the earlier of (w) the date of the closing of the Permanent Mortgage Financing if such financing is to be secured in whole or in part by a Mortgage encumbering the Mortgaged Premises, (x) the date upon which the total Commitments and all Letters of Credit issued under the Credit Agreement are terminated, all Interest Rate Protection Agreements are terminated and when all

89339835

Obligations have been paid in full, (y) the date of receipt by the Mortgagee of the Net Proceeds of the Mortgaged Premises as provided in Section 2.5.5(b) hereof and (z) the date of receipt by the Mortgagee of the Release Price for the Mortgaged Premises as provided in Section 6.2 hereof.

(b) The Mortgagee shall, at the request of the Mortgagor, release (without recourse and without any representation or warranty) the Mortgaged Premises, or any part thereof, provided that (x) either the sale of all or part of the Mortgaged Premises is permitted under Section 8.02 of the Credit Agreement or such release has been approved in writing by the Required Banks (or all Banks if required by Section 13.12 of the Credit Agreement) and (y) the proceeds of such sale of the Mortgaged Premises or portion thereof are applied as, and to the extent, required pursuant to the Credit Agreement.

7.13 Secured Creditor Acknowledgment. By accepting the benefits of this Mortgage, each Secured Creditor acknowledges and agrees that the rights and obligations of the Collateral Agent shall be as set forth in Section 11 of the Credit Agreement.

7.14 Future Advances. This Mortgage is given to secure not only existing indebtedness, but also such future advances made to Mortgagor, or its successors in title to the Mortgaged Premises, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed $975,000,000, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Premises, of such $975,000,000, the outstanding principal balance of the revolving line of credit shall not exceed $475,000,000 at any time.