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## MORTGAGE AND SECURITY AGREEMENT

from

FOREST-ATWOOD PAPER COMPANY

90511653

Mortgagor

to

THE CIT GROUP/BUSINESS CREDIT, INC. as Agent,

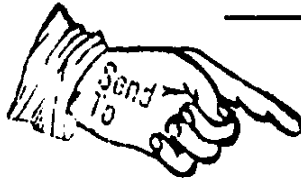
. DEPT-01 RECORDING \$57.50  
 . 15555 TRAN 7810 10/18/90 15:01:00  
 . #3992 + E \*-90-511653  
 . COOK COUNTY RECORDER

Mortgagee

in the amount of

\$90,000,000.00

Dated as of October 16, 1990



Record and Return to:

Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10153

Attn: Managing Partner-Real Estate (AAL)

This instrument was prepared by Alan A. Lascher, Esq.  
767 Fifth Avenue  
New York, New York 10153

First American Order No. 0436857

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Mail

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SCHEDULE A  
SCHEDULE B

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## MORTGAGE AND SECURITY AGREEMENT

MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage"), made as of this 16<sup>th</sup> day of October, 1990, by FOREST-ATWOOD PAPER COMPANY, a Delaware corporation having an office at 1150 Lively Blvd., Elk Grove Village, Illinois (the "Mortgagor") to THE CIT GROUP/BUSINESS CREDIT, INC., as Agent for THE CIT GROUP/BUSINESS CREDIT, INC. and THE BANK OF NEW YORK COMMERCIAL CORPORATION (hereinafter collectively referred to as the "Lenders"), a New York corporation having an office at 270 Park Avenue, New York, New York 10017 (the "Mortgagee").

### W I T N E S S E T H :

WHEREAS, the Mortgagor, WWF Paper Corporation, Royal Paper Corporation, WWF Paper Corporation-New England, WWF Paper Corporation-Atlanta, WWF-Medley, Inc., WWF Paper Corporation-West, Wilcox-Walter-Furlong Paper Company of Washington, WWF Paper National, Inc., and WWF Paper Corporation-International (collectively, the "Borrowers") have entered into a Financing Agreement with the Lenders (the "Financing Agreement") and related documents evidencing the indebtedness secured hereby, dated as of the date hereof, (hereinafter all of the foregoing are collectively referred to as the "Loan Agreement") providing for a revolving loan in the principal amount of NINETY MILLION (\$90,000,000) DOLLARS (the "Loan") to the Mortgagor in the manner and according to the terms of the Loan Agreement, all of which are incorporated herein by reference.

NOW THEREFORE, the Mortgagor, for the purpose of securing (1) the full payment and performance by the Mortgagor of all the terms, agreements, covenants and provisions of the Loan Agreement and this Mortgage and any renewal, extension, modification or replacement thereof, and (2) all other debts, obligations and liabilities of every kind and character of the Borrowers now or hereafter existing in favor of the Mortgagee and the Lenders including all indebtedness incurred or arising pursuant to the provisions of the Loan Agreement, this Mortgage or any other instrument now or hereafter evidencing or securing the above described indebtedness or any part thereof whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to the Mortgagee or to a third party and subsequently acquired by the Mortgagee, hereby gives, grants, bargains, sells, releases, transfers, aliens, enfeoffs, conveys, confirms and mortgages to the Mortgagee:

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(A) THE LAND: The following described premises situated in Elk Grove Village, Cook County, Illinois, to wit: The land described in detail in Schedule "A" (the "Land") which is attached hereto and incorporated herein and made a part of this document for all purposes.

(B) THE IMPROVEMENTS: TOGETHER WITH (1) all the buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and (2) all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever including, but without limiting the generality of the foregoing, all heating, electrical, mechanical, lighting, lifting, plumbing, ventilating, air conditioning and air-cooling fixtures, systems, machinery, apparatus and equipment, refrigerating, incinerating and power fixtures, systems, machinery, apparatus and equipment, loading and unloading fixtures, systems, machinery, apparatus and equipment, escalators, elevators, boilers, communication systems, switchboards, sprinkler systems and other fire prevention and extinguishing fixtures, systems, machinery, apparatus and equipment, and all engines, motors, dynamos, machinery, wiring, pipes, pumps, tanks, conduits and ducts constituting a part of any of the foregoing, now or hereafter owned by the Mortgagor and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by the Mortgagor, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (hereinafter called the "Improvements").

(C) EASEMENTS: TOGETHER WITH all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, drainage, mineral, oil, gas and timber rights, air rights, conduits and wires and all other facilities furnishing services to, and all appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property described in paragraphs (A) and (B) hereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor.



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(D) TOGETHER WITH (i) all the estate, right, title and interest of the Mortgagor of, in and to all judgments, insurance proceeds, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights, appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof; and the Mortgagee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor, and (if it so elects) to apply the same toward the payment of the indebtedness and other sums secured hereby, notwithstanding the fact that the amount owing thereon may not then be due and payable, subject, however, to the provisions of Paragraph 1.04.6 hereof; (ii) all contract rights, general intangibles, actions and rights in action, including without limitation all rights to insurance proceeds and unearned premiums arising from or relating to the property described in paragraphs (A), (B), and (C) above; and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the property described in paragraphs (A), (B) and (C).

(E) TOGETHER WITH all rents, income and other benefits to which the Mortgagor may now or hereafter be entitled from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby; provided, however, that permission is hereby given to the Mortgagor, so long as no Event of Default has occurred hereunder, to collect and use such rents, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically the Mortgagee shall be entitled, at its option upon the occurrence of an Event of Default, as hereinafter defined, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not the Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon the occurrence of an Event of Default, the permission hereby given to the Mortgagor to collect such rents, royalties, issues, profits, revenues, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of the default without the Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by the Mortgagor nor the application of any such rents,

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royalties, issues, profits, revenues, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any Event of Default or notice of any Event of Default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

The foregoing provisions hereof shall constitute an absolute and present assignment of the rents, income and other benefits from the property described in (A), (B) and (C) above, subject, however, to the conditional permission given to the Mortgagor to collect and use such rents, income and other benefits as hereinabove provided; and the existence or exercise of such right of the Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by the Mortgagor, and any such subsequent assignment by the Mortgagor shall be subject to the rights of the Mortgagee hereunder.

(F) TOGETHER WITH all right, title and interest of the Mortgagor in and to any and all leases, subleases, underlettings, concession agreements, licenses and other occupancy agreements (collectively, the "leases") which now or hereafter may affect the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, and all books and records which contain payments made under the leases and all security therefor, subject, however, to the conditional permission hereinabove given to the Mortgagor to collect the rents, income and other benefits arising under any of the leases. The Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of the Mortgagee as provided by this paragraph.

(G) TOGETHER WITH (i) the Mortgagor's rights further to encumber the property described in paragraphs (A), (B) and (C) above for debt and (ii) all of the Mortgagor's rights to enter into any lease or lease agreement.

All of the property described in paragraphs (A), (B), (C), (D), (E), (F) and (G) above, and each item of property therein described, is herein referred to as "THE PROPERTY".

TO HAVE AND TO HOLD THE PROPERTY unto the Mortgagee, its successors and assigns.

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UNDER, SUBJECT AND SUBORDINATE to that certain mortgage from Mortgagor to Chicago Title and Trust Company, as trustee, for the benefit of Lutheran Mutual Life Insurance Company (now known as Century Life of America) dated June 18, 1980 and recorded June 23, 1980 as Document 25494894 and rerecorded July 9, 1980 as Document 25508827, as amended October 15, 1990. *E.V. Jh*

PROVIDED HOWEVER, that if the Borrowers shall promptly pay or cause to be paid to the Lenders all sums due and payable under the Loan Agreement, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Loan Agreement, all without any deduction for taxes or other similar charges paid by the Borrowers, and shall keep, perform and observe all the covenants and promises in the Loan Agreement, this Mortgage, any renewal, extension or modification thereof, and in all other instruments securing the Loan Agreement to be kept, performed or observed by the Borrowers, then, upon complete satisfaction and payment thereof and termination of the Loan Agreement, the Mortgagees shall release and reconvey THE PROPERTY unto the parties legally entitled thereto of the cost of the Mortgagor.

## ARTICLE I

### COVENANTS OF THE MORTGAGOR

The Mortgagor covenants and agrees with the Mortgagee, or any successor to the Mortgagee under the Loan Agreement, as follows:

1.01 Performance of the Loan Agreement, Mortgage, Etc. The Mortgagor shall cause to be performed, observed and complied with all provisions hereof, of the Loan Agreement and of every other instrument securing the Loan Agreement, and will promptly pay to the Mortgagee all sums required to be paid by the Mortgagor under the Loan Agreement and pursuant to the provisions of this Mortgage and every other instrument securing the Loan Agreement when payment shall become due.

1.02 General Representations, Covenants and Warranties. The Mortgagor represents and covenants that (a) subject only to the rights of others provided in the instruments described in Schedule "B" attached hereto and incorporated herein and made a part hereof, the Mortgagor is seized of an indefeasible estate in fee simple in, and has good and absolute title to, THE PROPERTY, and has good right, full power and lawful authority to



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mortgage and pledge the same as provided herein and the Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy THE PROPERTY in accordance with the terms hereof; THE PROPERTY is free and clear of all liens, security interests, charges and encumbrances whatsoever except those described in Schedule "B" the items listed in Schedule "B" are hereinafter sometimes referred to as the "Permitted Exceptions"); (b) the Mortgagor will maintain and preserve the lien of this Mortgage until the indebtedness and other sums secured hereby have been paid in full and the Loan Agreement has been terminated; (c) the Mortgagor and each guarantor (if any) of the indebtedness evidenced by the Loan Agreement (said guarantor(s) herein referred to jointly and severally as the "Guarantor") are now able to meet their respective debts as they mature, the fair market value of their respective assets exceeds their respective liabilities and no bankruptcy or insolvency proceedings are pending or contemplated by or against the Mortgagor or the Guarantor; (d) this Mortgage is a valid and binding obligation of Mortgagor enforceable in accordance with its terms and the execution and delivery hereof does not contravene any contract or agreement to which the Mortgagor is a party or by which the Mortgagor or any of its properties may be bound and does not contravene any law, order, decree, rule or regulation to which the Mortgagor is subject; (e) there are presently no leases, subleases, underlettings, concession agreements, licenses or other occupancy agreements affecting, or any other parties' in possession other than the Mortgagor at, THE PROPERTY; (f) all costs arising from construction of any improvements and the purchase of all equipment located on THE PROPERTY have been paid; (g) THE PROPERTY has frontage on, and direct access for ingress and egress to, the street(s); and (h) electric, gas, sewer, water facilities and any other necessary utilities are at all times hereafter shall be, available in sufficient capacity to service THE PROPERTY satisfactorily, and any easements necessary to the furnishing of such utility service by the Mortgagor have been obtained and duly recorded. The Mortgagor fully warrants and will forever defend the title to THE PROPERTY against the claims of all persons whosoever claiming or to claim the same or any part thereof, other than those claims relating to the Permitted Exceptions.

1.03 Compliance with Laws. The Mortgagor covenants and warrants that THE PROPERTY presently complies with and will continue to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other applicable laws, rules and regulations. If the Mortgagor receives notice from any federal, state or other

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governmental body that it is not in compliance with any such covenant, ordinance, code, law or regulation the Mortgagor will provide the Mortgagee with a copy of such notice promptly. Notwithstanding the foregoing, the Mortgagee acknowledges the existence of an alleged fire code violation involving the addition of fire hoses to the sprinkler system for the PROPERTY. The Mortgagor shall in good faith, by appropriate proceedings diligently pursued contest the validity or applicability of the asserted fire code violation, and shall resolve the same to the Mortgagee's satisfaction within six months after the date hereof.

#### 1.04 Taxes and Other Charges.

1.04.1 Taxes and Assessments. Subject to the provisions of this paragraph 1.04, the Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against THE PROPERTY or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of the Mortgagee in THE PROPERTY, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or against the Mortgagor or in respect of THE PROPERTY or any part thereof; provided, however, that the Mortgagor may in good faith, by appropriate proceedings diligently pursued (including without limitation payment of the asserted tax or assessment under protest if such payment must be made in order to contest such tax or assessment), contest the validity, applicability or amount of any asserted tax or assessment and pending such contest the Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment the Mortgagor established an escrow acceptable to the Mortgagee in an amount estimated by the Mortgagee to be adequate to cover the payment of such tax or assessment with interest, costs and penalties and a reasonable additional sum to cover possible interest, costs and penalties; and, if the amount of such escrow is insufficient to pay any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, the Mortgagor shall pay such deficiency no later than five (5) days after the date that such judgment becomes final.

1.04.2 Discharge of Liens. The Mortgagor at all times shall keep THE PROPERTY free from the liens of mechanics, laborers, contractors, subcontractors and materialmen and free from any and all other liens, claims, charges or encumbrances of

any kind or nature whatsoever, other than the Permitted Exceptions. If any such liens, claims, charges or encumbrances shall be recorded, the Mortgagor shall forthwith deliver copies thereof to the Mortgagee and, within ten (10) days after such recording, the Mortgagor shall cause the same to be discharged of record by payment, bonding or in such other manner as shall be satisfactory to the Mortgagee, in its sole discretion, and shall exhibit to the Mortgagee, upon demand, evidence satisfactory to the Mortgagee, in its sole discretion, of such discharge.

1.04.3 Taxes Affecting the Mortgagee's Interest.

If any state, federal, municipal, or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes so as to adversely affect the Mortgagee's security in THE PROPERTY, then, after forty-five (45) days prior written notice to Mortgagor, the entire balance of the indebtedness and other sums secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lenders.

1.04.4 Tax Escrow.

In order to secure the performance and discharge of the Mortgagor's obligations under this paragraph 1.04, but not in lieu of such obligations, the Mortgagor, at the Mortgagee's request, will pay over to the Mortgagee an amount equal to one-twelfth (1/12th) of the next maturing annual ad valorem taxes, assessments and charges (which charges for purposes of this paragraph shall include without limitation water and sewer rents) of the nature described in paragraph 1.04.1 for each month that has elapsed since the last date to which such taxes, assessments and charges were paid; and the Mortgagor will, in addition, pay over to the Mortgagee on the first day of each month sufficient funds (as estimated from time to time by the Mortgagee in its sole discretion) to permit the Mortgagee to pay when due said taxes, assessments and charges. Upon demand by the Mortgagee, the Mortgagor shall deliver to the Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable the Mortgagee to pay such taxes, assessments and similar charges. Such deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of the Mortgagee, and no interest shall be payable in respect thereof. In event of a default under any of the terms, covenants and conditions in the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement to be kept, performed or observed by the Mortgagor, the Mortgagee may apply to the reduction of the sums secured hereby, in such manner as the Mortgagee shall determine, any amount under this

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paragraph 1.04.4 of Article One remaining to Mortgagor's credit. Notwithstanding the foregoing, the Mortgagee shall not be entitled to require the aforesaid monthly tax payment unless and until the Mortgagor shall have failed to make timely payments as described above; it being understood that, at any time or from time to time after any such failure on the part of the Mortgagor to make such tax payments, and whether or not the same shall have been cured, Mortgagee may require any or all such tax payments to be made.

1.04.5 No Credit Against the Indebtedness Secured Hereby. The Mortgagor shall not claim, demand or be entitled to receive any credit, against any sums due the Lenders under the Loan Agreement or on any other sums secured by this Mortgage for so much of the taxes, assessments or similar impositions assessed against THE PROPERTY or any part thereof or that are applicable to the indebtedness secured hereby or to the Mortgagee's interest in THE PROPERTY. No deduction shall be claimed from the taxable value of THE PROPERTY or any part thereof by reason of the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement.

1.04.6 Insurance.

(a) Subject to paragraph 1.04.6(d), the Mortgagor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of the Mortgagee, during the life of this Mortgage, insurance policies in such amounts as the Mortgagee may require, insuring THE PROPERTY against all insurable hazards, casualties and contingencies (including without limitation loss of rentals or business interruption and liability insurance naming the Mortgagor and the Mortgagee as named insureds), as the Lenders may require, and shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them shall be acceptable to the Lenders. All such policies and renewals thereof shall be held by the Mortgagee and shall contain an endorsement making losses payable to the Mortgagee as its interests may appear. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Mortgagee shall be delivered to the Mortgagee. Within fifteen (15) days after the anniversary or effective date of each policy, the Mortgagor shall deliver to the Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. In the event of loss of or damage to THE PROPERTY, the Mortgagor will give immediate written notice to the Mortgagee and the Mortgagee may make proof of loss if not made promptly by the Mortgagor. In the event of the foreclosure of

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this Mortgage or any other transfer of title to THE PROPERTY in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. All such policies shall provide that they shall not be cancelled or terminated without at least thirty (30) days' prior written notice to the Mortgagee.

(b) Pursuant to its rights granted hereunder in all proceeds from any insurance policies, the Mortgagee is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on THE PROPERTY and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Mortgagee alone and not to the Mortgagor and the Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by the Mortgagee in the collection or handling of such funds, the Mortgagee may apply the net proceeds, at the Lenders' option, either toward restoring THE PROPERTY or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future, or at the option of the Lenders such sums either wholly or in part may be paid over to the Mortgagor to be used to repair such improvements or to build new improvements in their place or for any other purpose or object satisfactory to the Lenders, in accordance with the terms of the Financing Agreement, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Although the Mortgagee intends to use its best efforts to collect such payments in a timely fashion, the Mortgagee and the Lenders shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy unless Mortgagee is grossly negligent or has committed willful misconduct.

(c) The Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of, the Mortgagee during the life of this Mortgage liability insurance policies relating to THE PROPERTY, in such amounts, with such companies and in such form as may be required by the Mortgagee. The Mortgagee may require such policies to contain an endorsement, in form satisfactory to the Mortgagee, naming the Mortgagee as an additional insured thereunder. The Mortgagor shall pay promptly when due any premiums on such insurance policies and renewals thereof. The Mortgagor promptly shall comply with, and shall cause THE PROPERTY to comply with, (i) all of the provisions of each such insurance policy required under this Paragraph 1.04.6, and (ii) all of the requirements of the

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insurers thereunder applicable to the Mortgagor or to any of THE PROPERTY or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of THE PROPERTY, even if such compliance would necessitate structural changes or improvements or would result in interference with the use or enjoyment of THE PROPERTY. If the Mortgagor shall use THE PROPERTY in any manner which would permit the insurer to cancel any insurance required to be provided hereunder, the Mortgagor immediately shall obtain a substitute policy which shall be satisfactory to the Mortgagee and which shall be effective on or prior to the date on which any such other insurance policy shall be cancelled.

(d) In order to secure the performance and discharge of the Mortgagor's obligations under this paragraph 1.04.6, but not in lieu of such obligations, the Mortgagor, at the Mortgagee's request, will pay over to the Mortgagee an amount equal to one-twelfth (1/12th) of the next maturing annual insurance premiums for each month that has elapsed since the last date to which such premiums were paid; and the Mortgagor will, in addition, pay over to the Mortgagee on the first day of each month sufficient funds (as estimated from time to time by the Mortgagee in its sole discretion) to permit the Mortgagee to pay said premiums when due. Such deposits shall not be, nor deemed to be, trust funds but may be commingled with the general funds of the Mortgagee, and no interest shall be payable in respect thereof. Upon demand by the Mortgagee, the Mortgagor shall deliver to the Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable the Mortgagee to pay such premiums when due.

(e) The provisions of this paragraph 1.04.6 with respect to delivery of policies to the Mortgagee and assignments thereof and the proceeds thereof to the Mortgagee and the provisions of subparagraph (d) shall be subject to the terms of any instrument referred to in Schedule "B" securing any prior lien on THE PROPERTY.

(f) To the extent that any of the provisions of paragraph 5 of the Financing Agreement are inconsistent or in conflict with the provisions of this paragraph 1.04.6, the provisions of paragraph 5 of the Financing Agreement shall govern and control.

1.04.7 Non-Impairment of the Mortgagee's Rights.  
The provisions of paragraphs 1.04.4 and 1.04.6(d) shall not be effective so long as the holder of any prior lien is an institution receiving in escrow from the Mortgagor amounts sufficient to

pay the taxes and insurance required to be paid by paragraphs 1.04.1 and 1.04.6 respectively. Nothing contained in either of said paragraphs shall be deemed to affect any right or remedy of the Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any amount required to be paid by paragraphs 1.04.1 and 1.04.6 and to add the amount so paid together with interest at the Default Rate (hereinafter defined) to the indebtedness hereby secured. Although Mortgagee intends to use its best efforts to make such payments in a timely fashion, the arrangements provided for in paragraphs 1.04.4 and 1.04.6 are solely for the added protection of the Mortgagee and entail no responsibility on the Mortgagee's part beyond the allowing of due credit, without interest, for sums actually received by it. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee and any responsibility of the Mortgagee with respect thereto shall terminate.

1.04.8 Additional Fees. The Mortgagor will pay all taxes, filing and recording fees, and all expenses incident to the execution and acknowledgment of the Loan Agreement, this Mortgage, any mortgage supplemental hereto, and any security instrument with respect to THE PROPERTY, any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Loan Agreement, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to THE PROPERTY or any instrument of further assurance, other than income, franchise or other similar taxes imposed upon the Mortgagee or the Lenders.

1.05 Condemnation. The Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of, any damage or taking through eminent domain, condemnation or any other injury to, or decrease in the value of THE PROPERTY caused in any manner by any governmental authority. The Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute in its own or the Mortgagor's name any action or proceeding relating to any condemnation and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights or action and proceeds, and any other payments or relief, and the right thereto, are included in THE PROPERTY and the Mortgagee, after deducting therefrom all its expenses including attorneys' fees, may release any monies so received by it to the Mortgagor without affecting the lien of this Mortgage or may apply the same, in such manner as the Lenders shall determine, to the reduction of the sums secured hereby. Any balance of such monies

then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as the Mortgagee may require. Notwithstanding any such condemnation, the Mortgagor shall continue to pay interest, computed at the rate provided in the Financing Agreement, on the entire unpaid principal amount thereof. The provisions of this paragraph 1.05 with respect to receipt and application of condemnation awards shall be subject to the terms of any instrument referred to in Schedule "B" securing any prior lien on THE PROPERTY.

1.05 Care of the Property.

(a) The Mortgagor shall not abandon THE PROPERTY and shall preserve and maintain THE PROPERTY in good condition and repair, reasonable wear and tear excepted. The Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of THE PROPERTY or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to THE PROPERTY or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no part of THE PROPERTY shall be removed, demolished or altered, without the prior written consent of the Mortgagee. The Mortgagor shall have the right, without such consent, to remove and dispose of free from the lien of this Mortgage any part of THE PROPERTY as from time to time may become worn out or obsolete, provided that either simultaneously with or prior to such removal, any such property shall be replaced with other property of equal utility and of a value at least equal to that of the replaced equipment when first acquired and free from any security interest of any other person or entity and by such removal and replacement the Mortgagor shall be deemed to have subjected such replacement property to the lien of this Mortgage.

(c) The Lenders may enter upon and inspect THE PROPERTY at any reasonable time during the life of this Mortgage.

(d) If any part of THE PROPERTY shall be lost, damaged or destroyed by fire or any other cause, the Mortgagor will give immediate written notice thereof to the Mortgagee and shall, at the Lenders' election, if required by the terms of the Financing Agreement, promptly restore THE PROPERTY to the equivalent of its original condition in accordance with and subject to the terms of the Financing Agreement. If a part of THE PROPERTY shall be lost, physically damaged, or destroyed through condemnation, the Mortgagor will promptly, at the Lenders' election, if required by the terms of the Financing

Agreement, restore, repair or alter the remaining property in accordance with and subject to the terms of the Financing Agreement.

(e) No work required to be performed under this paragraph shall be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to the Mortgagee, have been submitted to and approved in writing by the Mortgagee.

(f) (1) The Mortgagor represents, warrants and covenants that (i) the Environmental Reports (as defined in the Financing Agreement) are true and correct; (ii) THE PROPERTY has been at all times during the Mortgagor's ownership thereof and is presently free from the presence of any substance or material (other than any such substance or material which may appear on the Environmental Reports) presently identified to be toxic or hazardous according to any federal, state or local environmental statute, rule or regulation now in effect, or as may be enacted or amended (collectively, the "Environmental Laws"), including, without limitation, any asbestos, (it being understood that the Mortgagor is engaged in a responsible asbestos monitoring and removal program for any asbestos which may exist in THE PROPERTY), PCB, radioactive substance, volatile hydrocarbons, industrial solvents or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property; (iii) the Mortgagor has not caused or suffered to occur (other than what has been identified in the Environmental Reports) a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste or hazardous substance (a "spill") at, upon, under or within THE PROPERTY or any contiguous real estate; (iv) the Mortgagor has not been, is not and will not be involved in operations at or near THE PROPERTY which could lead to the imposition of the Mortgagor or any other owner of THE PROPERTY of liability or the creation of a lien on THE PROPERTY, under the Environmental Laws or under any criminal laws, common laws or contractual laws; and (v) the Mortgagor shall not generate, treat, store, use, dispose of or deposit in or on THE PROPERTY any solid or hazardous waste or hazardous substance as those terms are defined in the Environmental Laws or any similar applicable laws or regulations in violation of such laws or regulations and the Mortgagor has not permitted and will not permit any tenant or occupant of THE PROPERTY to engage in any activity that could lead to the imposition of liability on such tenant or occupant, the Mortgagor or

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any other owner of THE PROPERTY, or any part thereof, or the creation of a lien on THE PROPERTY, under the Environmental Laws;

(2) The Mortgagor shall comply strictly and in all respects with the requirements of the Environmental Laws applicable to the ownership of THE PROPERTY, where the failure to comply would have a material impact on the value of THE PROPERTY or any material part thereof, and shall notify the Mortgagee promptly in the event of any spill or hazardous substance upon THE PROPERTY, and shall promptly forward to the Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or hazardous substance or any other matters relating to the Environmental Laws as they may affect THE PROPERTY;

(3) If the Mortgagee reasonably deems it necessary, the Mortgagor, promptly upon the written request of the Mortgagee from time to time, shall provide the Mortgagee with an environmental site assessment or report, all in scope, form and content satisfactory to the Mortgagee;

(4) The Mortgagor shall indemnify the Mortgagee and the Lenders and hold the Mortgagee and the Lenders harmless from and against all loss, liability, damage and expense, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by the Mortgagee or the Lenders, whether as holders of this Mortgage, as mortgagees in possession or as successors in interest to the Mortgagor as owners of THE PROPERTY by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of the Environmental Laws or any criminal laws, common laws or contractual laws, including the assertion of any lien thereunder, whether or not the same shall appear in the Environmental Reports; (ii) with respect to any spill or hazardous substance affecting THE PROPERTY, whether or not the same originates or emanates from THE PROPERTY or any such contiguous real estate and whether or not the same shall appear on the Environmental Reports, including any loss of value of THE PROPERTY as a result of a spill or hazardous substance; and (iii) with respect to any other environmental matter affecting THE PROPERTY, whether or not the same shall appear on the Environmental Reports, within the jurisdiction of the Environmental Protection Agency, or their successors, or any state or local agency regulating or enforcing environmental compliance, excluding, however, any loss, liability, damage or expense caused by Mortgagee or the Lenders gross negligence or willful misconduct; and



(5) In the event of any spill or hazardous substance affecting THE PROPERTY, whether or not the same originates or emanates from THE PROPERTY or any such contiguous real estate, and/or if the Mortgagor shall fail to comply with any of the requirements of the Environmental Laws or related regulations, the Lenders may at their election, but without the obligation to do so, give such notices and/or cause such work to be performed at THE PROPERTY and/or take any and all other actions as the Lenders shall deem necessary or advisable in order to remedy said spill or hazardous substance or cure said failure of compliance, and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Mortgagee or the Lenders, shall be immediately due and payable by the Mortgagor to the Mortgagee or the Lenders and until paid shall be added to and become a part of the indebtedness secured hereby and shall have the benefit of the lien hereby created as a part thereof.

(6) The Mortgagor shall not be deemed to have breached any provision of this paragraph if (i) the failure to comply with the requirements of this paragraph resulted from good faith error or innocent omission, (ii) the Mortgagor promptly commences and diligently pursues a cure of such breach, and (iii) such failure is cured within ninety (90) business days following the Mortgagor's receipt of notice of such failure from Mortgagee, the regulatory agency or otherwise.

1.07 Transfer of the Property. There shall be no sale, conveyance, transfer, lease, pledge or further encumbrance of any interest in or any part of THE PROPERTY, without the prior written consent of the Lenders. The Lenders' consent shall be within their sole and absolute discretion. Any purchaser, transferee, lessee or pledgee shall be deemed to have agreed to be bound by the terms and conditions of this Mortgage relating to the use, care or transfer of THE PROPERTY, including the terms of this paragraph, unless the Mortgagee or the Lenders specifically agree in writing to the contrary. Any violation of this paragraph shall be an Event of Default and shall entitle the Mortgagee and the Lenders to exercise any and all remedies provided in this Mortgage, including but not limited to an acceleration of the indebtedness secured hereby. Further, there shall not be any further assignment of rents from THE PROPERTY without the prior written consent of the Lenders and any such assignment without the prior written consent of the Lenders shall be null and void. The Mortgagor agrees that in the event the ownership of THE PROPERTY or any part thereof becomes vested in a person or entity:

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other than the Mortgagor, the Lenders may, without notice to the Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage and the Loan Agreement and all obligations hereby secured without in any way vitiating or discharging the Mortgagor's liability hereunder or under the Loan Agreement and other obligations hereby secured. No transfer or encumbrance of THE PROPERTY or any interest therein and no forbearance or assumption by any person or entity with respect to this Mortgage and no extension to any person or entity of the time for payment of the Loan Agreement and other sums hereby secured given by the Mortgagee or the Lenders shall operate to release, discharge, modify, change or affect the liability of the Mortgagor either in whole or in part, unless the Lenders specifically agree in writing to the contrary.

1.08 Further Assurances. At any time and from time to time, upon the Mortgagee's request, 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 to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by the Mortgagee, any and all such further deeds of trust, instruments of further assurance, certificates and other documents as the Mortgagee may consider necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligations of the Mortgagor under the Loan Agreement and this Mortgage, and the lien of this Mortgage as a lien upon all of THE PROPERTY, whether now owned or hereafter acquired by the Mortgagor, subject only to the prior liens described in Schedule "B", and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by the Mortgagor to do so, the Mortgagee may make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee, the agent and attorney-in-fact of the Mortgagor to do so.

1.09 Security Agreement and Financing Statements. The Mortgagor (as Debtor) hereby grants to the Mortgagee (as Creditor and Secured Party) a security interest in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of THE PROPERTY, subject only to any prior security interest described in Schedule "B".

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The Mortgagor shall execute any and all such documents, including without limitation, Financing Statements pursuant to the Uniform Commercial Code of the state where THE PROPERTY is located as the Mortgagee may request, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to the Mortgagee on demand any expenses incurred by the Mortgagee or the Lenders in connection with the preparation, execution and filing of any such documents. The Mortgagor hereby authorizes and empowers the Mortgagee to execute and file, on the Mortgagor's behalf, all Financing Statements and refilings and continuations thereof as the Mortgagee deems necessary or advisable to create, preserve and protect said lien and the Mortgagor shall pay to the Mortgagee, on demand, any expenses incurred by the Mortgagee or the Lenders in connection with the preparation, execution, filing and refiling of such Financing Statements that may be filed by the Mortgagee. When and if the Mortgagor and the Mortgagee shall respectively become the Debtor and the Secured Party in any Uniform Commercial Code Financing Statement affecting THE PROPERTY, this Mortgage shall be deemed a security agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, (ii) by general law, including (without limitation) as provided in Part 5 of Article 9 of the Uniform Commercial Code and, in connection therewith, the Mortgagor agrees that five (5) business days notice of resale is reasonable notice, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at the Mortgagee's sole election.

The Mortgagor and the Mortgagee agree that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in anyway derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from THE PROPERTY and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

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Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anyway altering any of the rights of the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of the Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

1.10 Assignment of Rents. The assignment contained under the section of this mortgage entitled "THE PROPERTY", in paragraph (E) shall be fully operative without any further action on the part of either party and specifically the Lenders shall be entitled, at their option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the property described in paragraphs (A), (B), (C) and (D) hereof whether or not the Mortgagee takes possession of such property. The Mortgagor hereby further grants to the Mortgagee the right after an Event of Default has occurred (i) to enter upon and take possession of THE PROPERTY for the purpose of collecting the said rents, income and other benefits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to the Mortgagee, (iii) to let THE PROPERTY or any part thereof, and (iv) to apply said rents, income and other benefits, after payment of all necessary charges and expenses, on account of the indebtedness and other sums secured hereby. Such assignment and grant shall continue in effect until the indebtedness and other sums secured hereby are paid. The execution of this Mortgage constitutes and evidences the irrevocable consent of the Mortgagor to the entry upon and taking possession of THE PROPERTY by the Mortgagee pursuant to such grant, whether or not foreclosure has been instituted. Neither the exercise of any rights under this paragraph by the Mortgagee nor the application of any such rents, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

1.11 After Acquired Property. To the extent permitted by and subject to applicable law, the lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, THE PROPERTY or any part thereof.

1.12 Expenses. The Mortgagor will pay when due and payable all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorney's fees, court costs, fees of inspecting architect(s) and engineer(s), and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by the Mortgagee or the Lenders or any takeout lender in connection with: (i) the issuance of the commitment; (ii) the preparation and execution of loan documents; (iii) the funding of the Loan; (iv) in the event an Event of Default occurs, preparation for enforcement of loan documents, whether or not suit or other action is actually commenced or undertaken; (v) enforcement of loan documents; (vi) court or administrative proceedings of any kind to which the Mortgagee or the Lenders may be a party, either as plaintiff or defendant, by reason of the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement; (vii) preparation for and actions taken in connection with the Mortgagee's taking possession of THE PROPERTY; (viii) negotiations with the Mortgagor, its beneficiary, the Guarantor or any of their respective agents in connection with the existence or cure of any Event of Default; (ix) any proposed refinancing by the Mortgagee or the Lenders or any other person or entity of the debt secured hereby; (x) the transfer of THE PROPERTY in lieu of foreclosure; and (xi) the approval by the Mortgagee or the Lenders of actions taken or proposed to be taken by the Mortgagor, its beneficiary, the Guarantor or other person or entity which approval is required by the terms of this Mortgage or the Loan Agreement. The Mortgagor will, upon demand by the Mortgagee, reimburse the Mortgagee and the Lenders or any takeout lender for all such expenses which have been incurred or which shall be incurred by them; and will indemnify and hold harmless the Mortgagee and the Lenders from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of THE PROPERTY through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on

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account of any transaction arising out of or in any way connected with THE PROPERTY, or with this Mortgage or any of the indebtedness evidenced by the Loan Agreement, excluding, however, claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses caused by Mortgagee's or the Lender's gross negligence or willful misconduct.

1.13 The Mortgagee's or the Lenders' Performance of Defaults. If the Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder, or in the performance or observance of any other covenant, condition or term in this Mortgage, the Loan Agreement or in any other instrument securing the Loan Agreement, the Mortgagee or the Lenders may (but shall be under no obligation to), to preserve their interest in THE PROPERTY, perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by the Mortgagee or the Lenders in connection therewith shall become due and payable immediately by the Mortgagor. The amounts so incurred or paid by the Mortgagee or the Lenders, together with interest thereon at the Default Rate from the date incurred until paid by the Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. The Mortgagee and the Lenders are hereby empowered to enter and to authorize others to enter upon THE PROPERTY or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person or entity in possession holding under the Mortgagor.

1.14 Books and Records. The Mortgagor shall keep and maintain at all times complete, true and accurate books of account and records reflecting the results of the operation of THE PROPERTY. The Mortgagor shall furnish to the Mortgagee: (a) within 120 days after the end of the Mortgagor's fiscal year and within 60 days after the end of each fiscal quarter, a statement of income and expenses with respect to THE PROPERTY, in form required by the Mortgagee, (b) within 90 days after the end of the Mortgagor's fiscal year, statements of financial condition of the Mortgagor and the Guarantor, in form as required by the Mortgagee, (c) within 30 days after the end of such fiscal year, a rent schedule of THE PROPERTY, as of the end of such fiscal year certified by the Mortgagor, showing the name of each tenant and the space occupied, the lease expiration date, the rent and additional rent due and payable, the last date to which rent was paid and whether or not such tenant was then in default under any of the terms of its lease and showing all tenant space which is not occupied.



The Mortgagor shall also furnish such interim unaudited financial statements and other information as the Mortgagee may require. The Mortgagee and its designated agents shall have the right to inspect the Mortgagor's books and records with respect to THE PROPERTY at all reasonable times upon reasonable prior notice to the Mortgagor.

Should the Mortgagor fail to comply with the requirements set forth in (a), (b) and (c) above, and fail to cure such failure to comply within five (5) days after written notice from Mortgagee, it shall constitute an Event of Default and the Mortgagee may (i) pursue those remedies set forth in Article Three hereof, and (ii) direct an independent certified public accountant to audit the Mortgagor's books and records, and the cost of such audit shall be paid by the Mortgagor.

1.15 Estoppel Affidavits. The Mortgagor, within ten (10) days after written request from the Mortgagee, shall furnish a written statement, duly acknowledged, setting forth all amounts due under the Loan Agreement, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such amounts or other sums.

1.16 Prior Liens. In the event that THE PROPERTY or any part thereof is now subject to an approved prior deed of trust, mortgage, lien or other permitted encumbrance described in Schedule "B" which has priority over the lien of this Mortgage ("Approved Prior Encumbrance"), the Mortgagor shall: (i) pay the principal, interest and all other sums secured thereby on their due date or within any applicable grace period either directly to the holder of the Approved Prior Encumbrance or at the election of the Mortgagee, to the Mortgagee for remittance to the holder of the Approved Prior Encumbrance, and will comply with all of the other terms, covenants and conditions thereof; (ii) if requested hereafter by the Mortgagee, produce to the Mortgagee from time to time no less than fifteen (15) days after the due date of the installments of principal, interest and other sums payable thereon, receipts or other evidence of payment thereof satisfactory to the Mortgagee, unless the Mortgagee shall have required that such payments be made to the Mortgagee, in accordance with subparagraph (i) hereof; (iii) not enter into any modification, amendment, agreement or arrangement with respect thereto and will not obtain any additional advances thereunder, without the prior written consent of the Mortgagee, expressly including, but not in limitation of the foregoing, any such modification, amendment, agreement or arrangement pursuant to which the Mortgagor is granted any forbearance or indulgence (as to time or

amount) in the payment of any principal, interest or other sums due in accordance with the terms and provisions of the Approved Prior Encumbrance; (iv) use its best efforts to obtain the agreement of the holder from time to time of any such Approved Prior Encumbrance to send the Mortgagee copies of all notices; and (v) notify the Mortgagee promptly of the receipt of any notice given by the holder of any Approved Prior Encumbrance.

1.17 Use of the Mortgagee's or the Lenders' Names. The Mortgagor shall not use the Mortgagee's or the Lenders' names or the name of any person, firm or corporation controlling, controlled by or under common control with the Mortgagee or the Lenders in connection with any of the Mortgagor's activities, except as such use may be required by applicable law or regulation of any governmental body, or by any financing institution with which the Mortgagor may be doing business.

1.18 Future Indebtedness of the Mortgagor. This Mortgage is given in part to secure a revolving credit loan as described in the Loan Agreement and shall secure not only existing indebtedness hereby secured as of the date hereof, but also, without further act, any and all future indebtedness of the Mortgagor to the Mortgagee or the Lenders, whether such advances are obligatory or are to be made at the option of the Lenders, or otherwise, to the same extent as if such advances or future indebtedness were made as of the date hereof. Pursuant to and subject to the terms of the Loan Agreement, the Lenders have committed to advance or apply certain funds to or on behalf of the Mortgagor, and it is hereby acknowledged and intended that the lien of this Mortgage shall be valid as to all such advances (whenever hereafter made) from the time of the recording of this Mortgage in the office of the Recorder of Deeds of Cook County, Illinois. The total amount of indebtedness hereby secured may increase or decrease from time to time, but the total indebtedness hereby secured at any time shall not exceed \$180,000,000.

1.19 Additional Representations and Warranties. The Mortgagor represents and warrants that: (a) the Mortgagor is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware; (b) the Mortgagor is qualified to do business in the state in which THE PROPERTY is located; (c) the Mortgagor has the requisite power and lawful authority to execute and deliver this Mortgage, the Loan Agreement and any other loan documents securing the Loan Agreement executed and delivered by it and to perform all obligations thereunder; (d) the execution and delivery of this Mortgage, the Loan Agreement and any other loan documents securing the Loan Agreement by the Mortgagor and performance of

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its obligations under this Mortgage, the Loan Agreement and any other loan documents securing the Loan Agreement will not result in the Mortgagor being in default under any provision of its Certificate of Incorporation or By-Laws or of any mortgage, document, instrument, credit or other agreement to which it is a party or by which its assets are bound; (e) the Mortgagor has the requisite power and lawful authority to mortgage THE PROPERTY in the manner herein set forth; (f) the Board of Directors of the Mortgagor has duly authorized the execution and delivery of this Mortgage, the Loan Agreement and any other loan documents securing the Loan Agreement and there is no provision in the Mortgagor's Certificate of Incorporation or By-Laws requiring any other approvals or consents for the execution and delivery of this Mortgage, the Loan Agreement and any other loan documents securing the Loan Agreement; (g) on the date hereof, no portion of THE PROPERTY has been damaged, destroyed or injured by fire or other casualty which is not now fully restored; (h) the Mortgagor has all necessary licenses, authorizations, registrations and approvals to own, use, occupy and operate THE PROPERTY and has full power and authority to carry on its business at THE PROPERTY as currently conducted and has not received any notice of any violation; (i) as of the date hereof, the Mortgagor has not received any notice of any taking through condemnation or otherwise of THE PROPERTY or any portion thereof and the Mortgagor has no knowledge that any such taking through condemnation or otherwise is contemplated; (j) the Mortgagor is a business and commercial organization, and the transaction reflected in, and effectuated by, this Mortgage, the Loan Agreement and any other loan documents securing the Loan Agreement is made solely to carry on a business and commercial enterprise; and (k) there are no leases affecting THE PROPERTY or any portion thereof except for those leases referred to in Exhibit C hereof. The Mortgagor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state in which THE PROPERTY is located and its right to own property and transact business in such state.

## ARTICLE II

### DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Mortgagor to pay (1) any and all sums due the Lenders under the Loan Agreement within five (5)

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business days of the due date prescribed in the Loan Agreement for payment of such sums; (ii) all sums due the Lenders under the Loan Agreement upon termination of the Loan Agreement or upon prepayment of the indebtedness secured by the Loan Agreement subject, however, to any applicable grace periods provided for in the Financing Agreement; (iii) any deposits for taxes and assessments or insurance premiums within five (5) business days of the due date hereunder; or (iv) any other sums to be paid by the Mortgagor hereunder or under the Loan Agreement within five (5) business days of the due date hereunder or thereunder.

(b) Failure by the Mortgagor to duly keep, perform and observe any other representation, warranty, term, provision, covenant, condition or agreement in the Loan Agreement, this Mortgage, or any other instrument securing the Loan Agreement or executed in connection therewith, subject, however, to any applicable grace periods provided for in the Financing Agreement which grace periods, if any, shall be applicable hereunder for all similar Events of Default.

(c) If any material inaccuracy shall exist in any representation, warranty, statement, report, financial statements, certificates or in any other information furnished by or to be furnished by the Mortgagor to the Mortgagee or the Lenders pursuant to the provisions of this Mortgage or the Loan Agreement or furnished or to be furnished to the Lenders to induce the Lenders to make the loan evidenced by the Loan Agreement, subject, however, to any applicable grace periods provided for in the Financing Agreement which grace periods, if any, shall be applicable hereunder for all similar Events of Default.

(d) The occurrence of an Event of Default under the Loan Agreement, subject to any applicable grace period thereunder.

(e) Breach of any warranty or untruth of any representation of the Mortgagor or the Guarantor contained in the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement, subject, however, to any applicable grace periods provided for in the Financing Agreement, which grace periods, if any, shall be applicable hereunder for all similar Events of Default.

(f) If all or a material portion of THE PROPERTY shall be taken through condemnation or if the value of THE PROPERTY shall be materially impaired by condemnation (which term when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the

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laws of the state where the Land is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily, for a period in excess of thirty (30) days, or permanently.

(g) The entry by any court of last resort of a decision that an undertaking by the Mortgagor as herein provided to pay taxes, assessments, levies, liabilities, obligations and encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law changing in any way or respect the laws now in force for the taxation of deeds of trust or mortgages or debts secured thereby for any purpose, or the manner of collection of any such taxes, so as to affect adversely this Mortgage or the indebtedness or other sums secured hereby and the expiration of forty-five (45) days thereafter.

(h) The occurrence of a default under any Approved Prior Encumbrance or under any other approved encumbrance affecting all or any portion of THE PROPERTY, or any other event permitting acceleration of the maturity of any indebtedness secured thereby or any other such default or event with respect to any other indebtedness of the Mortgagor to the Mortgagee or the Lenders, subject, however, to any applicable grace periods thereunder. The Mortgagor shall promptly notify the Mortgagee in writing of the occurrence of any such default or event.

(i) Termination or revocation of the Guaranty executed by the Guarantor.

(j) An Event of Default shall not be deemed to have occurred under paragraphs 2.01 (b), (c) or (e) for any failure, breach or inaccuracy which is not similar to one described in the Financing Agreement unless and until such failure, breach or inaccuracy shall remain unremedied to Mortgagee's satisfaction for the lesser of (x) a period of thirty (30) days from the date of such failure, breach or inaccuracy or (y) a period of ten (10) days from the date Mortgagor acquires knowledge of such failure, breach or inaccuracy.

## ARTICLE III

### REMEDIES

3.01 Acceleration of Maturity. If an Event of Default shall have occurred, the Mortgagee may declare without demand or notice all amounts due under the Loan Agreement and all other

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sums secured hereby, to be due and payable immediately, and upon such declaration such amounts and other sums shall immediately become and be due and payable without demand or notice.

3.02 The Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment under the Loan Agreement or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, THE PROPERTY, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. The Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Lenders may determine.

3.03 The Mortgagee's Right to Enter and Take Possession, Operate and Forly Income.

(a) If an Event of Default shall have occurred, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession and, if and to the extent permitted by law, the Mortgagee itself, or by such officers or agents as it may appoint, may enter upon and take possession of THE PROPERTY and may exclude the Mortgagor and its agents and employees wholly therefrom, and may have joint access with the Mortgagor to the books, papers and accounts of the Mortgagor.

(b) If an Event of Default shall have occurred and the Mortgagor shall for any reason fail to surrender or deliver THE PROPERTY or any part thereof after the Mortgagee's demand, the Mortgagee may obtain a judgment or decree conferring on the Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession of all or part of THE PROPERTY to the Mortgagee; to the entry of which judgment or decree the Mortgagor hereby specifically consents. The Mortgagor shall pay to the Mortgagee, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to the Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage



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and control THE PROPERTY and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep THE PROPERTY insured;

(iii) manage and operate THE PROPERTY and exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine; and the Mortgagee may collect and receive all the rents, income and other benefits thereof, including those past due as well as those accruing thereafter; and shall apply the monies so received by the Mortgagee in such priority as the Mortgagee may determine to (1) amounts advanced pursuant to sub-sub-paragraph (i) of this subparagraph (c); (2) the payment of all sums due and payable under the Loan Agreement; (3) the deposits for taxes and assessments and insurance premiums due; (4) the cost of insurance, taxes, assessments and other expenses of operating, maintaining, repairing and improving THE PROPERTY, including without limitation renting commissions and rental collection commissions paid to an agent of the Mortgagee or of the receiver; and (5) the compensation, expenses and disbursements of the agents, attorneys and other representatives of the Mortgagee. All costs, expenses and liabilities of every character incurred by the Mortgagee in managing, operating and maintaining THE PROPERTY, not paid out of rent as hereinabove provided, shall constitute advances and be demand obligations owing by the Mortgagor and shall draw interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the secured indebtedness. While in possession of THE PROPERTY, the Mortgagee or the receiver shall be liable to account only for the rents, issues and profits actually received.

The Mortgagee, at Lenders' election, and without notice to the Mortgagor, may (but shall be under no obligation to), to preserve its interest in THE PROPERTY, make any payments which the Mortgagor has failed to make under any Approved Prior Encumbrance, but such payment by the Mortgagee shall not release the Mortgagor from the Mortgagor's obligations or constitute a waiver of the Mortgagor's default hereunder.

The Mortgagee shall surrender possession of THE PROPERTY to the Mortgagor only in the event the indebtedness outstanding under the Loan Agreement and this Mortgage shall have been paid in full and the Loan Agreement shall have been terminated, and all other terms, conditions and covenants of the Loan Agreement and this Mortgage shall have been performed, in accordance with the tenor thereof.

3.04 Leases. The Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of THE PROPERTY. The failure to make any such tenants parties defendant to 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 PROPERTY. Unless otherwise agreed by the Mortgagee in writing, all leases and tenancies of THE PROPERTY executed subsequent to the date hereof, or any part thereof, shall be subordinate and inferior to the lien of this Mortgage, except that from time to time the Mortgagee may execute and record among the Land Records of the jurisdiction where this Mortgage is recorded, subordination statements with respect to such leases as the Mortgagee may designate, whereby the leases so designated by the Mortgagee will be made superior to the lien of this Mortgage. From and after the recordation of such subordination statements, the leases therein referred to shall be superior to the lien of this Mortgage and shall not be affected by any foreclosure hereof. All such leases and tenancies shall contain a provision to the effect that the tenant recognizes the right of the Mortgagee to effect such subordination of this Mortgage and consents thereto.

3.05 Purchase by the Mortgagee. Upon any sale held by the Mortgagee or by any receiver or public officer, the Lenders may bid for and purchase THE PROPERTY and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in their own absolute right without further accountability.

3.06 Application of Indebtedness Toward Purchase Price. Upon any such sale, the Mortgagee may, if permitted by law, and after allowing for costs and expenses of the sale, compensation and other charges, in paying the purchase price, apply any portion of or all of the indebtedness and other sums due the Lenders under the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement, in lieu of cash, to the

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amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, to the extent of the purchase price.

3.07 Waiver by the Mortgagor. (a) The Mortgagor hereby waives all errors and imperfections in any proceedings instituted by the Mortgagee under this Mortgage, the Loan Agreement or any other loan document securing the Loan Agreement and all benefit of any present or future statute of limitations or any other present or future statute, law, stay, moratorium, appraisal or valuation law, regulation or judicial decision which, nor shall the Mortgagor at any time insist upon or plead, or in any manner whatsoever, claim or take any benefit or advantage of any such statute, law, stay, moratorium, regulation or judicial decision which (i) provides for the valuation or appraisal of THE PROPERTY prior to any sale or sales thereof which may be made pursuant to any provision herein or pursuant to any decree, judgment or order of any court of competent jurisdiction, (ii) exempts any of THE PROPERTY or any other property, real or personal, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale under execution, (iii) provides for any stay of execution, moratorium, marshalling of assets, exemption from civil process, redemption or extension of time for payment, (iv) requires the Mortgagee to institute proceedings in mortgage foreclosure against THE PROPERTY before exercising any other remedy afforded the Mortgagee hereunder in the event of a default, (v) affects any of the terms, covenants, conditions or provisions of this Mortgage, or (vi) conflicts with or may affect, in a manner which may be adverse to the Mortgagee, any provision, covenant, condition or term of this Mortgage, the Loan Agreement or any other loan document securing the Loan Agreement, nor shall the Mortgagor at any time after any sale or sales of THE PROPERTY pursuant to any provision herein, including, but without limiting the generality of the foregoing, after any sale pursuant to a judgment of foreclosure claim or exercise any right under any present or future statute, law, stay, moratorium, regulation or judicial decision to redeem THE PROPERTY or the portion thereof so sold.

(b) The Mortgagor hereby waives the right, if any, to require any sale to be made in parcels, or the right, if any, to select parcels to be sold, and there shall be no requirement for marshalling of assets.

(c) THE MORTGAGOR AND THE MORTGAGEE HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY.

3.08 Receiver. If an Event of Default shall have occurred, the Mortgagee, to the extent permitted by law and without

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regard to the value of THE PROPERTY or the security or occupancy of THE PROPERTY, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of THE PROPERTY and to collect all rents, revenues, issues, income, product and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the jurisdiction where THE PROPERTY is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate THE PROPERTY, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The Mortgagee shall be liable to account only for such rents, issues and profits actually received by the Mortgagee, whether received pursuant to this paragraph or paragraph 2.04. Notwithstanding the appointment of any receiver or other custodian, the Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, the Mortgagee.

3.09 Suits to Protect the Property. The Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as the Mortgagee may deem advisable (a) to prevent any impairment of THE PROPERTY by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in THE PROPERTY, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to the Mortgagee's interest.

3.10 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting the Mortgagor or any guarantor, co-maker or endorser of any of the Mortgagor's obligations, its creditors or its property, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by the Mortgagor under the Loan Agreement, this Mortgage and any other instrument securing the Loan Agreement, at the date of the institution of such

proceedings, and for any additional amounts which may become due and payable by the Mortgagor after such date.

3.11 The Mortgagor to Pay the Indebtedness on Any Default in Payment; Application of Monies by the Mortgagee.

(a) If default shall be made in the payment of any amount due under the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement, beyond any applicable notice and/or grace period, if any, then, upon the Mortgagee's demand, the Mortgagor will pay to the Mortgagee the whole amount due and payable under the Loan Agreement and all other sums secured hereby; and if the Mortgagor shall fail to pay the same forthwith upon such demand, the Mortgagee shall be entitled to sue for and to recover judgment against the Mortgagor for the whole amount so due and unpaid together with costs and expenses, including without limitation the reasonable compensation, expenses and disbursements of the Mortgagee's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of the Mortgagee to recover such judgment shall not be affected by any taking possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of THE PROPERTY and of the application of the proceeds of sale to the payment of the sums secured hereby, the Mortgagee shall, be entitled to enforce payment from the Mortgagor of all amounts then remaining due and unpaid and to recover judgment against the Mortgagor for any portion thereof remaining unpaid, with interest.

(c) The Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by the Mortgagee and no attachment or levy of any execution upon any of THE PROPERTY or any other property shall in any way affect the lien of this Mortgage upon THE PROPERTY or any part thereof of any lien, rights, powers or remedies of the Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by the Mortgagee under this paragraph 3.11 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of the Mortgagee, and the balance remaining shall be applied to the payment of amounts



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due and unpaid under the Loan Agreement, this Mortgage and all other instruments securing the Loan Agreement.

(e) The provisions of this paragraph shall not be deemed to limit or otherwise modify the provisions of any guaranty of the indebtedness evidenced by the Loan Agreement.

3.12 Delay or Omission; No Waiver. No delay or omission of the Mortgagee or the Lenders, or of any successor to the Mortgagee's or the Lenders' interest under the Loan Agreement, to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence thereto. Every right, power and remedy given to the Mortgagee and the Lenders may be exercised from time to time and as often as may be deemed expedient by the Mortgagee or the Lenders.

3.13 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If the Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement; (d) releases any part of THE PROPERTY from the lien of this Mortgage or the Loan Agreement; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Loan Agreement, this Mortgage or otherwise of the Mortgagor, or any subsequent purchaser of THE PROPERTY or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such act or omission shall preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee, shall the lien of this Mortgage be altered thereby, except to the extent of releases as described in subparagraph (d) above of this paragraph 3.13. In the event of the sale or transfer by operation of law or otherwise of all or any part of THE PROPERTY, the Lenders, without notice to any person, firm or corporation, are hereby authorized and empowered to deal with any

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such vendee or transferee with reference to THE PROPERTY or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as they might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

3.14 Discontinuance of Proceedings; Position of Parties Restored. If the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceedings had occurred or had been taken.

3.15 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Mortgagee or the Lenders by the Loan Agreement, this Mortgage or any other instrument securing the Loan Agreement is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Loan Agreement or any other instrument securing the Loan Agreement, or now or hereafter existing at law, in equity or by statute.

3.16 Interest After Event of Default. If an Event of Default shall have occurred, all sums outstanding and unpaid under the Loan Agreement and this Mortgage shall, at the Lenders' option, bear interest at the Default Rate.

3.17 Failure to Consent. If the Mortgagor shall seek the approval by, or the consent of, the Mortgagee or the Lenders hereunder, and the Mortgagee or the Lenders shall fail or refuse to give such consent or approval, the Mortgagor shall not be entitled to any damages for any withholding or delay of such consent by the Mortgagee or the Lenders, it being intended that the Mortgagor's sole remedy shall be to bring an action for an injunction or specific performance, which remedy of an injunction or specific performance shall be available only in those cases in which the Mortgagee or the Lenders have expressly agreed hereunder not to unreasonably withhold or delay their consent or approval.

3.18 Not Joint Venture or Partnership. The Mortgagor, the Mortgagee and the Lenders intend that the relationship

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created hereunder be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the Mortgagor and the Mortgagee or the Lenders nor to grant the Mortgagee or the Lenders any interest in THE PROPERTY other than that of mortgagee or lender.

## ARTICLE IV

### MISCELLANEOUS PROVISIONS

#### 4.01 Heirs, Successors and Assigns Included in Parties.

Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of the Mortgagor or the Mortgagee shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

#### 4.02 Addresses for Notices, Etc.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to the Mortgagor or the Mortgagee shall be deemed given or furnished (i) when addressed to the party intended to receive the same, at the address of such party set forth below, and delivered at such address, or (ii) three days after the same is deposited in the United States mail as first class mail, postage paid, whether or not the same is actually received by such party:

Mortgagee: The CIT Group/Business Credit, Inc.  
270 Park Avenue  
New York, New York 10017  
Attn: President

Copy to: Hahn & Hessen  
350 Fifth Avenue  
37th Floor  
New York, New York 10018  
Attn: Steven J. Seif, Esq.

Copy to: The Bank of New York  
Commercial Corporation  
530 Fifth Avenue  
New York, New York 10036  
Attn: Anthony Viola

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and

The Bank of New York  
Commercial Corporation  
1290 Avenue of the Americas  
New York, New York 10104  
Attn: Frank Rinaldi, Esq.

Copy to: Hahn & Hessen  
350 Fifth Avenue  
37th Floor  
New York, New York 10018  
Attn: Steven J. Seif, Esq.

Copy to: Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10153  
Attn: Managing Partner - Real Estate (A.A.L.)

Mortgagor: Forest Atwood Paper Company  
c/o WWF Paper Corporation  
Two Bala Plaza  
Bala Cynwyd, PA 19004  
Attn: President

Copy to: Duane, Morris & Heckscher  
One Liberty Place  
Philadelphia, PA 19103-7396  
Attn: Vincent F. Garricy, Jr., Esq.

(b) Either party may change the address to which and such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

4.03 Headings, Etc. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof. As used in this Mortgage, the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (a) "provisions" shall mean "provisions, terms, covenants and/or conditions"; (b) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust"; (c) "obligation" shall mean "obligation, duty, covenant and/or condition";

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and (d) "Person" shall mean "any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, but without limiting the generality of the foregoing, any instrumentality division, agency, body or department thereof)". Any act relating to the use, care or transfer of THE PROPERTY, which act the Mortgagee or the Lenders are permitted to perform under this Mortgage, the Loan Agreement or any other loan document securing the Loan Agreement may be performed at any time and from time to time by the Mortgagee or the Lenders or by any person or entity designated by the Mortgagee or the Lenders. Any act relating to the use, care or transfer of THE PROPERTY, which act is prohibited to the Mortgagor under this Mortgage, the Loan Agreement or any other loan document securing the Loan Agreement is also prohibited to all lessees of any of THE PROPERTY. Each appointment of the Mortgagee as attorney-in-fact for the Mortgagor under this Mortgage, the Loan Agreement or any other loan document securing the Loan Agreement shall be irrevocable and coupled with an interest. The Mortgagee and the Lenders shall have the right to refuse to grant their consent, approval or acceptance or to indicate their satisfaction whenever such consent, approval, acceptance or satisfaction shall be required under the Loan Agreement in accordance with and subject to the provisions of the Loan Agreement.

4.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Loan Agreement, in this Mortgage or in any other instrument securing the Loan Agreement shall be deemed invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, in the Loan Agreement or in any other instrument securing the Loan Agreement shall be in no way affected, prejudiced or disturbed thereby; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

4.05 Modifications. Neither this Mortgage nor any term hereof may be changed, modified, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, modification, waiver, discharge or termination is sought. The modification hereof or of the Loan Agreement or any other instrument securing the Loan Agreement or the release of any part

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of THE PROPERTY from the lien hereof shall not impair the priority of the lien of this Mortgage.

4.06 Required Notices. The Mortgagor shall notify the Mortgagee promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to THE PROPERTY; (ii) receipt of any notice from any tenant leasing all or any portion of THE PROPERTY; (iii) any change in the occupancy of THE PROPERTY; (iv) receipt of any notice from the holder of any other lien or security interest in THE PROPERTY; or (v) commencement of any judicial or administrative proceedings by or against or otherwise affecting the Mortgagor, the Guarantor (if any), THE PROPERTY or any entity controlled by or under common control with the Mortgagor or the Guarantor, or any other action by any creditor thereof as a result of any default under the terms of any loan.

4.07 Management. The Mortgagor covenants that at all times prior to the payment in full of the indebtedness evidenced by the Loan Agreement and other sums secured hereby, THE PROPERTY shall be managed by the Mortgagor or by a management company which shall have been approved in writing by the Mortgagee and pursuant to a management agreement which shall have been approved in writing by the Mortgagee prior to the execution thereof.

4.08 Default Rate. The Default Rate shall be the "Default Rate of Interest" as defined in the Financing Agreement.

4.09 Enforceability. This Mortgage shall be governed by, and construed in accordance with, the laws of the State in which THE PROPERTY is located without regard to principles of conflicts of laws, except that the laws of the State of New York (without regard to principles of conflicts of laws) shall govern the resolution of issues arising under the Loan Agreement to the extent that such resolution is necessary to the interpretation of this Mortgage. Nothing in this Mortgage or in the Loan Agreement shall require the Mortgagor to pay, or the Mortgagee or the Lenders to accept, interest in an amount which would subject the Mortgagee or the Lenders to penalty under applicable law. In the event that the payment of any interest due hereunder or under the Loan Agreement or a payment which is deemed interest, exceeds the maximum amount payable as interest under the applicable usury laws, such excess amount shall be applied to the reduction of the indebtedness secured hereby, and upon payment in full of the indebtedness secured hereby, shall be applied to the performance of the obligations hereunder, and upon performance in full of the obligations hereunder, shall be deemed to be a payment made by mistake and shall be refunded to the Mortgagor.

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4.10 Receipt of Copy. The Mortgagor acknowledges that it has received a true copy of this Mortgage.

4.11 Inconsistent Provisions. To the extent that any of the provisions of this Mortgage are inconsistent with the provisions of the Financing Agreement, covering the same subject matter the provisions of the Financing Agreement shall govern and control.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of this 16<sup>th</sup> day of October, 1990.

FOREST ATWOOD PAPER COMPANY

By:

Name: EDWARD V. FURLONG JR.

Title: Chairman of Board



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## SCHEDULE A

### Description of Property

LOT 233 IN CENTEX INDUSTRIAL PARK UNIT 123, BEING A SUBDIVISION  
IN SECTION 27, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD  
PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Street Address: 1150 Lively Boulevard, Elk Grove Village, IL

P.L.N.: 05-27-303-027

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## SCHEDULE B

### Prior Liens and Encumbrances

Those matters set forth on Schedule B of First American Title Insurance Company of the Mid-West Title Commitment No. CX36851.

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