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[67006216/17/CV03:WFF/4454/9M/148A]

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COOK COUNTY RECORDER

#9457 # JJ * 94-570178

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DEPT-01 RECORDING \$117.50



This instrument prepared by and, after recording, please return to:
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Attention: James D. Cooper, Esq.

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TERM LOAN AND REVOLVING CREDIT MORTGAGE,
ASSIGNMENT OF RENTS, SECURITY
AGREEMENT AND FIXTURE FILING
by
JOHN M. SMYTH COMPANY,
Mortgagor,
to
CHEMICAL BANK, as collateral agent,
Mortgagee,
Relating to Premises in:
Cook County, Illinois
Dated as of: June 28, 1994

Q 74567

Property Address: 1733 East Woodland Street
Permanent Real Estate Tax No. 07.13.100-007
Cook County, Illinois
Property No. 18
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[6700-2216/II/MG01:WPE/7N/4454/9M/148A]

TERM LOAN AND REVOLVING CREDIT MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage"), dated as of June 28, 1994, made by JOHN M. SMYTH COMPANY, an Illinois corporation, having a mailing address in care of Levitz Furniture Corporation, 611 Broken Sound Parkway, N.W., Boca Raton, Florida 33487, as mortgagor, assignor and guarantor (together with any successors and assigns, "Mortgagor"), in favor of CHEMICAL BANK, a New York banking corporation ("Chemical Bank"), having an office at 270 Park Avenue, New York, New York 10017, as mortgagee, assignee and secured party, in its capacity as collateral agent (together with any successors or assigns in such capacity, "Collateral Agent" or "Mortgagee") for the Lenders referred to in the Credit Agreement (as hereinafter defined).

A. Mortgagor is the owner in fee simple of the Mortgaged Property (as hereinafter defined).
B. Levitz Furniture Corporation, as Borrower (such term and each other capitalized term used herein but not defined herein having the meaning given to it in the Credit Agreement referred to below), has entered into a certain Second Amended and Restated Credit Agreement dated as of the date hereof (as amended, restated, supplemented, modified or waived from time to time, the "Credit Agreement"), with the financial institutions party thereto, as Lenders (the "Lenders"), Chemical Bank, as Fronting Bank, Swingline Lender, Administrative Agent and Collateral Agent, and Wells Fargo Bank, National Association, as co-agent. C. The Lenders and the Swingline Lender have agreed to extend credit in order to enable, on the terms and subject to the conditions of the Credit Agreement, the Borrower (i) to borrow on a term basis Tranche A Term Loans in an aggregate principal amount not to exceed \$40,000,000, (ii) to borrow on a term basis Tranche B Term Loans in an aggregate principal amount not to exceed \$35,000,000, (iii) to borrow on a revolving basis, at any time and from time to time prior to the Maturity Date, an aggregate principal amount at any time outstanding not to exceed the excess of \$40,000,000 over the sum of (A) the aggregate

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G. Pursuant to the requirements of the credit Agreement, Mortgagor is entering into this Mortgage to grant to Mortgagee a lien against and create a security interest in the Mortgaged Property to secure the performance and payment by Mortgagor of the Secured Obligations. The Credit Agreement also requires the granting by Loan Parties other than Mortgagor of mortgages (the "Other Mortgages") that create security interests in certain properties other than

F. The obligations of the Lenders to make Loans, of the Swingline Lender to make Swingline Loans and of the Fronting Bank to issue Letters of Credit are conditioned upon, among other things, the execution and delivery by Mortgagor of this Mortgage, in the form hereof, to secure the Secured Obligations.

E. Mortgagor is a wholly owned subsidiary of the Borrower and will derive substantial benefit from the making of the Loans by the Lenders, the making of the Swingline Loans by the Swingline Lender and the issuance of Letters of Credit by the Fronting Bank. Accordingly, Mortgagor has agreed to guarantee the obligations of the Borrower under the Credit Agreement and the other Loan Documents pursuant to the subsidiary guarantee (the "Guarantee") attached hereto as Exhibit A (the due and punctual payment and performance of the covenants, agreements, obligations and liabilities of Mortgagor under the Guarantee, this Mortgage and the other Loan Documents are herein referred to as the "Secured Obligations").

D. The Fronting Bank has agreed to issue Letters of Credit for the account of the Borrower, on the terms and subject to the conditions specified in, the Credit Agreement, in an aggregate face amount at any time outstanding not in excess of \$15,000,000 (subject to reduction as set forth in the Credit Agreement).

principal amount of the Swingline Loans outstanding at such time and (B) the LC Exposure at such time, (iv) to borrow on a revolving basis, at any time and from time to time on or prior to April 15, 1997, Note Repurchase Loans in an aggregate principal amount at any time outstanding not to exceed \$45,000,000 and (v) to borrow on a revolving basis, at any time and from time to time prior to the Maturity Date, Swingline Loans in an aggregate principal amount at any time outstanding not to exceed \$15,000,000 (subject to reduction as set forth in the Credit Agreement).

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3. To the extent assignable, any and all permits, certificates, approvals and authorizations however characterized, issued or in any way furnished, whether with the land, the "Premises").

2. The store building, structures and other improvements and any and all alterations (as hereinafter defined) now or hereafter located or erected on the land, including, without limitation, attachments, landscaping and walks and ways (collectively, the "Improvements"; together

thereto, and all reversions, remainders, income, rents, issues, revenues and profits thereof (collectively, the "Land").

apertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, and all reversions, remainders, income, rents, issues, revenues and profits thereof (collectively, the "Land").

servitude, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, and all reversions, remainders, income, rents, issues, revenues and profits thereof (collectively, the "Land").

1. The fee simple estate in the land described in Schedule A, together with any and all easements, rights-of-way, sidewalks, gores of land, streets, ways, alleys, passages, passageways, sewer rights, waters, water courses, water and mineral rights and powers, air, light and other rights, estates, titles, interests, privileges, liberties, servitude, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, and all reversions, remainders, income, rents, issues, revenues and profits thereof (collectively, the "Land").

and in order to secure (a) the due and punctual payment and performance of the Secured Obligations by Mortgagor and (b) all taxes, common area charges and insurance premiums relating to the Mortgaged Property, all disbursements made by Mortgagor for the payment of taxes, common area charges or insurance premiums, all fees, expenses or advances in connection with or relating to the Mortgaged Property, and interest on such disbursements and other amounts not timely paid in accordance with the terms of this Mortgage, and the other Loan Documents, Mortgagor does hereby mortgage, pledge, give, grant, sell, convey and transfer unto Mortgagee and create a security interest in and first mortgage lien upon all Mortgagor's right, title and interest in and to the following property whether now owned or held or hereafter acquired (collectively, the "Mortgaged Property"):

G R A N T I N G C L A U S E S

the Mortgaged Property to secure the performance by the Loan Parties of the obligations.

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5. Mortgagor's interest, as landlord, franchisor, licensor or grantor, in all leases of space, franchise agreements, licenses, occupancy or concession agreements (collectively, "Leases"; each, a "Lease") now existing or hereafter entered into relating in any manner to the premises or equipment, including, without limitation, any and all amendments, modifications, supplements and renewals of leases, whether now in effect or hereafter coming into effect and all rents, additional rents, cash or securities deposited thereunder to secure performance of the lessee's, franchisee's, licensee's or obligee's obligations thereunder, revenues, earnings, profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any lease.

4. All movable appliances, machinery, apparatus, equipment, building materials, furniture, fittings, fixtures, improvements and articles of personal property of every kind and nature whatsoever now or hereafter attached or affixed to the premises or used in connection with the use and enjoyment of the premises or the maintenance or preservation thereof, including, without limitation, tools, utility systems, fire sprinkler and alarm systems, HVAC equipment, boiler, electronic data processing, refrigeration, electronic monitoring, water, lighting, power, sanitation, waste removal, window cleaning, maintenance of other systems or equipment, all indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, racks, shelves, lockers and cabinets), furnishings, appliances, supplies, rugs, carpets and other floor coverings, draperies, drapey rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other apparatus, equipment, furniture, furnishings, holiday decorations, and all other articles used or useful in connection with the use or operation of any part of the premises and further including Mortgagor's rights as lessee under any lease of any of the foregoing (to the extent the same may be assigned) (collectively, the "Equipment").

necessary or not for the operation and use of the premises, including, without limitation, permits, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation (collectively, "Permits").

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(a) It has good and marketable title to an indefeasible fee simple estate in the premises and such of the equipment as may constitute fixtures and good and marketable title to the rest of the Mortgaged property, in each case subject to no lien other than (1) those liens existing as of the date hereof as identified on the ALTA (or CLTA, as applicable) title insurance policy issued to Mortgagee by First American

SECTION 1.01. Good Title: Priority. Mortgagee represents, warrants and covenants that:

Warranties, Representations and Covenants of Mortgagee

ARTICLE I

NOW, THEREFORE, Mortgagee warrants, represents and covenants as follows:

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and Mortgagee's successors and assigns forever, for the purpose of securing payment and performance of the Secured Obligations.

8. All real estate tax refunds and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation or other awards or payments with respect thereto, including interest thereon.

7. All drawings, plans, specifications, file materials, operating and maintenance records, catalogs, tenant lists, correspondences, advertising materials, operating manuals, warranties, guarantees, appraisals, studies and data relating to the premises or the equipment of the construction of any Alteration or the maintenance of any permit.

6. All general intangibles and contract rights relating to the premises and the equipment, and all reserves, deferred payments, deposits, refunds and claims of every kind or character relating thereto.

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(b) Mortgagor shall pay all filing, registration or recording fees and all expenses incident to the execution and delivery of this Mortgage, any mortgage instrument supplemental hereto, any security instrument with respect to

Mortgage. Mortgagor shall pay all filing, registration or recording of this Mortgage, or the filing, registering or recording of this Mortgage, which may facilitate the performance of the terms of this hereafter become bound to convey or assign to Mortgagee or conveyed or assigned, or which Mortgagor may be or may and confirm unto Mortgagee the property and rights hereby time to time to assure, perfect, convey, assign, transfer which may be necessary in the judgment of Mortgagee from assurances as Mortgagee shall from time to time request, mortgages, assignments, notices of assignment, transfers and deliver all and every such further acts, deeds, conveyances, cost and expense of Mortgagor, do, execute, acknowledge and Lien; Fees and Expenses. (a) Mortgagor shall, at the sole SECTION 1.02. Further Documentation to Assure

(d) It is duly authorized and has full power to execute this Mortgage and enter into the transaction described herein.

(i) Mortgagor shall (i) keep in effect all rights and appurtenances to or that constitute a part of, the Mortgage property and (ii) comply with each of the terms, conditions and provisions of any obligation of Mortgage which is secured by the Mortgaged Property, the noncompliance with which may result in the imposition of a lien on the Mortgaged Property, other than a Permitted Lien.

(b) This Mortgage creates and constitutes a valid and enforceable first priority Lien on the Mortgaged Property, subject only to the Liens described in subsections 1.01(a)(i) and (ii) (but not to extensions, amendments, supplements or replacements thereof, except as permitted by the Credit Agreement). Mortgagor does now and will forever warrant and defend to Mortgagee and all its successors and assigns such title and the validity and priority of the Lien hereby created and evidenced against the claims of all persons and parties whomsoever.

(ii) Permitted Liens. Title Insurance Company (the "Title Company") on the date hereof insuring the Lien of this Mortgage and

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the Personal Property (as hereinafter defined), any uniform commercial code financing statements and continuation statements, and any instrument of further assurance required by Mortgagee to be filed, registered or recorded pursuant to this Mortgage or the Credit Agreement.

SECTION 1.03. Payment of Taxes, Assessments, Compliance with Law and Insurance Requirements. (a) Unless contested in accordance with the provisions of subsection 1.03(c), Mortgagee shall pay and discharge, from time to time when the same shall become due, all real estate and other taxes, special assessments, levies, permits, and other taxes, all license fees, all water and sewer rents and charges and all other public charges, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property, including, without limitation, those arising in respect of the occupancy, use or possession thereof.

(b) Mortgagee shall maintain in full force and effect all permits now or hereafter required by any governmental Authority to operate or use and occupy the premises and the equipment, in each case, for its intended uses. Unless contested in accordance with the provisions of subsection 1.03(c), Mortgagee shall promptly with all requirements set forth in the permits and all requirements of any law, ordinance, rule, regulation or requirement of any governmental Authority applicable to all or any part of the Mortgaged Property or the condition, use or occupancy of all or any part thereof or any recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force. Mortgagee shall not initiate or consent to any change in the zoning or any other permitted use classification of the land except in connection with an anticipated sale or exchange thereof consented to by Mortgagee or otherwise permitted hereby and by the Credit Agreement.

(c) Mortgagee may at its own expense contest the amount or applicability of any of the obligations described in subsections 1.03(a) or 1.03(b) by appropriate legal proceedings, prosecution of which operates to prevent the collection thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided, however, that in connection with such contest, Mortgagee shall notify Mortgagee of its intention to pursue such contest and at the option of Mortgagee (1) have made

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provision for the payment of such contested amount on Mortgagor's books if and to the extent required by GAAP or (ii) deposited with Mortgagee a sum sufficient to pay and discharge such obligation and Mortgagee's estimate of all interest and penalties related thereto. Notwithstanding the foregoing provisions of this subsection 1.03(c), (x) no contest of any such obligation may be pursued by Mortgagor if such contest would expose Mortgagee or any Lender to any possible criminal liability or, unless Mortgagor shall have furnished a bond or other security therefor satisfactory to Mortgagee, any additional civil liability for failure to comply with such obligation and (y) if at any time payment of any obligation imposed upon Mortgagor by this Section 1.03 shall become necessary to prevent the delivery of a tax deed conveying the Mortgaged Property or any portion thereof because of nonpayment, Mortgagor shall pay the same in sufficient time to prevent the delivery of such tax deed.

(d) Mortgagor shall not in its use and occupancy of the Premises or the Equipment (including, without limitation, in the making of any Alteration) take any action that could be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that could be the basis for a defense to any claim under any insurance policy maintained in respect of the Premises or the Equipment and Mortgagor shall otherwise comply in all respects with the requirements of any insurer that issues a policy of insurance in respect of the Premises or the Equipment.

(e) Mortgagor shall, immediately upon receipt of any written notice regarding any failure by Mortgagor to pay or discharge any of the obligations described in subsection 1.03(a), 1.03(b) or 1.03(d), furnish a copy of such notice to Mortgagee.

(f) If the United States, the state in which the Land is located or any political subdivision thereof shall levy, assess or charge any tax, imposition or assessment upon this Mortgage, the Credit Agreement or any Loan Document relating to the Secured Obligations or the interest of Mortgagee in any of the Mortgaged Property (other than income, franchise or doing business taxes imposed on Mortgagee or any Secured Party), Mortgagor shall pay when due and payable all such taxes, assessments and impositions to, for, or on account of Mortgagee and shall furnish to Mortgagee proof of such payment satisfactory to Mortgagee.

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SECTION 1.04. Required Insurance Policies.

(a) Mortgagor shall pay all premiums for and maintain in full force the following insurance coverage in respect of the Premises and the Equipment:

(i) physical hazard insurance on an "all risk" basis covering fire and extended coverage in respect of the Improvements and Equipment in an amount equal to the full replacement cost of the Improvements and Equipment with such deductibles as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, with such deductibles as would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located. "Full replacement cost" means the cost to replace the Improvements and the Equipment, exclusive of excavation, foundation and footings, as determined from time to time (but not less frequently than once each year) by a person satisfactory to Mortgagee;

(ii) liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and any adjoining streets, sidewalks and passageways, with policy limits and deductibles in such amounts as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, in such amounts as from time to time would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located;

(iii) worker's compensation insurance as required by the laws of the state where the Premises are located, to protect Mortgagor, Mortgagee and the Lenders against claims for injuries sustained in the course of employment at the Premises;

(iv) explosion insurance in respect of any boilers and similar apparatus located on the Premises, with policy limits and deductibles in such amounts as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a prudent operator of property similar in use and

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configuration to the Premises and located in the locality where the Premises are located;

(v) business interruption insurance with policy limits and deductibles in such amounts as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises and any Equipment are located; and

(vi) if the Premises are located in an area designated by the Secretary of Housing and Urban Development as an area having special flood hazards, flood insurance in such amounts as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located.

(b) All insurance policies required by this Section 1.04 shall be in form and substance and issued by companies reasonably satisfactory to Mortgagee. Mortgagor may maintain the coverage required by this Section 1.04 under blanket policies covering the Premises and other locations owned or operated by Mortgagor if the terms of such blanket policies otherwise comply with the provisions of this Section 1.04 and contain specific coverage allocations in respect of the Premises determined in accordance with the provisions of this Section 1.04. All insurance policies in respect of the coverage required by subsections 1.04(a)(i), 1.04(a)(iv), 1.04(a)(v) and 1.04(a)(vi) shall be in amounts at least sufficient to prevent coinsurance liability and all losses thereunder shall be payable to Mortgagee (as Collateral Agent for the benefit of the Lenders), as sole loss payee, pursuant to a standard noncontributory New York mortgagee endorsement. All insurance policies in respect of the coverage required by subsections 1.04(a)(ii) and 1.04(a)(iii) shall name Mortgagee (as Collateral Agent for the benefit of the Lenders), as an additional insured. Each policy of insurance required under this Section 1.04 shall provide that it may not be canceled or otherwise terminated without at least 30 days' prior written notice to Mortgagee and shall permit Mortgagee to pay any premium therefor within 30

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days after receipt of any notice stating that such premium has not been paid when due. The policy or policies of such insurance or certificates of insurance evidencing the required coverage shall be delivered to Mortgagee. Settlement of any claim under any of the insurance policies referred to in this Section 1.04 involving a loss of \$500,000 or more, shall require the prior approval of Mortgagee which approval shall not be unreasonably withheld.

(c) Prior to the expiration of any insurance policy, a policy or policies renewing or extending such expiring policy or renewal or extension certificates shall be delivered to Mortgagee.

(d) Mortgagor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those policies required to be maintained under this Section 1.04, unless Mortgagee is included thereon as a named insured and, if applicable, with loss payable to Mortgagee under a standard endorsement of the character described in subsection 1.04(b) and the policy evidencing such insurance otherwise complies with the requirements of subsection 1.04(b). Mortgagor shall immediately notify Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to Mortgagee the policy or certificate evidencing such insurance.

(e) Mortgagor shall, immediately upon receipt of any written notice of any failure by Mortgagor to pay any insurance premium in respect of any insurance required to be maintained under this Section 1.04, furnish a copy of such notice to Mortgagee.

SECTION 1.05. Failure to Make Certain Payments.
If Mortgagor shall fail to perform any of the covenants contained in this Mortgage, including, without limitation, Mortgagor's covenants to pay taxes as set forth in Section 1.03(a) or the premiums in respect of all required insurance coverage as set forth in Section 1.04, Mortgagee may make advances to perform any such covenant on Mortgagor's behalf, and all sums so advanced shall be secured by this Mortgage, immediately due and payable by Mortgagor and shall bear interest at a rate equal to the Default Rate. Neither the provisions of this Section 1.05 nor any action taken by Mortgagee pursuant to the provisions of this Section 1.05 shall prevent any such failure to

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observe any covenant contained in this Mortgage from constituting an Event of Default.

SECTION 1.06. Inspection. Mortgagor shall permit Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Mortgaged Property at such times and upon such prior notice as may be reasonably requested by Mortgagee.

SECTION 1.07. Use and Configuration; Maintenance of Improvements. (a) Mortgagor represents, warrants and covenants that (i) the Premises are and will be served by all utilities required or necessary for the current use thereof, (ii) Mortgagor has and will have access to the Premises from public roads sufficient to allow Mortgagor to conduct its business at the Premises in accordance with reasonable retail practice and (iii) Mortgagor currently operates and intends to continue to operate at the Premises a retail furniture business under the trade name Levitz Furniture, Levitz or John M. Smyth's Homemakers, and it does not operate the Premises or any business located thereon under any other names, trade names or fictitious business names. Mortgagor shall immediately notify Lender in writing of any change in the operation of such business or said trade names.

(b) Mortgagor shall, at all times, maintain the Premises in compliance with law and in good operating order, condition and repair and shall not commit any waste on or with respect to the Premises. Mortgagor (i) shall not materially alter the occupancy or use of all or any part of the Premises without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld), and (ii) shall do all other acts which from the character or use of the Premises may be necessary or appropriate to maintain and preserve its value.

SECTION 1.08. Restrictions on Transfers and Encumbrances. Except as permitted by Section 7.05 of the Credit Agreement, Mortgagor shall not directly or indirectly sell, convey, alienate, assign, lease, sublease, license, mortgage, pledge, encumber or otherwise transfer, create, consent to or suffer the creation of any Lien, charges or any form of encumbrance upon any interest in or any part of the Mortgaged Property, or be divested of its title to the Mortgaged Property or any interest therein in any manner or way, whether voluntarily or involuntarily (other than resulting from a taking), or engage in any common,

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cooperative, joint, time-sharing or other congregate ownership of all or part thereof; provided, however, that Mortgagor may in the ordinary course of business within reasonable commercial standards, enter into easement or covenant agreements which relate to and benefit the operation of Mortgagor's business at the Mortgaged Property.

SECTION 1.09. Destruction; Condemnation.

(a) Destruction; Insurance Proceeds. If there shall occur any damage to, or loss or destruction of, the Land, Improvements or Equipment or any part of any thereof (each, a "Destruction"), Mortgagor shall promptly send to Mortgagee a notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of any such Destruction are hereby assigned and shall be paid to Mortgagee. All such proceeds, together with any interest earned thereon, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction (the "Net Proceeds"), shall be applied in accordance with the provisions of subsections 1.09(c), 1.09(d) and 1.09(e).

(b) Condemnation; Assignment of Award. If there shall occur any taking of the Mortgaged Property or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property or any part hereof, by any Governmental Authority, civil or military (each, a "Taking"), Mortgagor shall immediately notify Mortgagee upon receiving notice of such Taking or commencement of proceedings therefor. Any proceeds, award or payment in respect of any Taking are hereby assigned and shall be paid to Mortgagee. Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such proceeds, award or payment, together with any interest earned thereon, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking (the "Net Award"), shall be applied in accordance with the provisions of subsections 1.09(c), 1.09(d) and 1.09(e).

(c) Restoration. So long as no Event of Default shall have occurred, in the event there is likely to be, or shall be, a Net Award or Net Proceeds in an amount less than or equal to \$3,000,000, Mortgagor shall have the right, at Mortgagor's option, to (i) apply such Net Award or Net Proceeds to payment of amounts outstanding in respect of the

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Obligations or (ii) perform a restoration (a "Restoration") of the Premises and the Equipment. In the event Mortgagor elects to perform a Restoration, Mortgagor shall give written notice (a "Restoration Election Notice") of such election to Mortgagee within 30 days after the date that Mortgagor receives notice of collection by Mortgagee of the applicable Net Proceeds or Net Award, as the case may be; provided, however, that Mortgagor in its sole discretion may provide Mortgagee with a Restoration Election Notice at any time prior to such 30 day period if Mortgagor has elected to commence the Restoration pending the receipt of any Net Proceeds or Net Award by Mortgagee (an "Early Restoration Election Notice"). In the event Mortgagor makes the election as provided in Section 1.09(c)(i) or Mortgagee does not receive a Restoration Election Notice prior to or within such 30 day period, Mortgagee may apply any such Net Proceeds or Net Award held by Mortgagee to the prepayment of the Obligations in the manner set forth in Sections 2.13(g) and (h) of the Credit Agreement. In the event Mortgagor elects to perform any Restoration contemplated by this subsection 1.09(c), Mortgagee shall release such Net Award or Net Proceeds to Mortgagor as soon as practicable following receipt of a Restoration Election Notice, except, that in the case of an Early Restoration Election Notice, Mortgagee shall release such Net Award or Net Proceeds to Mortgagor upon receipt by it of such monies, but in either event, no more than 60 days following such receipt. Following the date of its receipt of any proceeds in respect of a Destruction or Taking or its delivery to Mortgagee of an Early Restoration Election Notice, as the case may be, Mortgagor shall promptly (and in all events within 60 days) commence and diligently continue to perform the Restoration of that portion or portions of the Improvements and Equipment subject to such Destruction or affected by such Taking so that, upon the completion of the Restoration, the Mortgaged Property will be in substantially the same condition and shall be of at least equal value and utility for its intended purposes as the Mortgaged Property was immediately prior to such Destruction or Taking (in the case of a Taking, after taking into consideration the effect of such Taking) and otherwise in compliance with the provisions of this Mortgage. Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Award or Net Proceeds is insufficient for such purpose or in the case of a Restoration performed pursuant to an Early Restoration Election Notice, to the extent any such amounts may yet to be available, if at all.

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(d) Major Restoration. So long as no Event of Default shall have occurred, in the event there is likely to be, or shall be, a Net Award or Net Proceeds in an amount greater than \$3,000,000, Mortgagor shall have the option to apply such Net Award or Net Proceeds, as the case may be, to prepayment of the Obligations, in accordance with the provisions of Sections 2.13(g) and (h) of the Credit Agreement or to perform a Restoration of the Mortgaged Property. In the event Restoration is to be performed under this subsection 1.09(d), Mortgagee shall not release any part of the Net Award or the Net Proceeds except in accordance with the provisions of subsection 1.09(e), and Mortgagor shall, prior to commencing any work to effect a Restoration of the Premises and the Equipment, promptly (but in no event later than 120 days following any Destruction or Taking) furnish to Mortgagee:

(i) complete plans and specifications ("Plans and Specifications") for the Restoration;

(ii) an opinion of counsel to Mortgagor, which shall be independent counsel reasonably acceptable to Mortgagee ("Opinion of Counsel"), (a) listing all permits and approvals required by law in connection with the Restoration and (b) stating that all permits and approvals required by law to commence work in connection with the Restoration have been obtained;

(iii) a certificate ("Architect's Certificate") of an independent, reputable architect or engineer reasonably acceptable to Mortgagee and licensed in the state where the Premises are located stating (a) that the Plans and Specifications have been reviewed and approved by the signatory thereto, and (b) such signatory's estimate ("Estimate") of the costs of completing the Restoration, and (c) that upon completion of such Restoration in accordance with the Plans and Specifications, the value and utility of the Premises and the Equipment will be equal to or greater than the value and utility thereof immediately prior to the Destruction or Taking relating to such Restoration (in the case of a Taking, after taking into consideration the effect of such Taking); and

(iv) if the Estimate exceeds the Net Proceeds or the Net Award, (a) a surety bond, guarantee of, or irrevocable letter of credit ("Letter of Credit") or other irrevocable and unconditional commitment to

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provide funds ("Commitment") for the payment of the cost of such Restoration, payable to or in favor of Mortgagee, as Collateral Agent, which bond, guarantee, Letter of Credit or Commitment (A) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to Mortgagee, and, in the case of a Letter of Credit or Commitment, shall be provided by a bank or other financial institution having capital and surplus in excess of \$500,000,000 as shown in its most recent available statement of financial condition, and (B) shall be in an amount not less than the Estimate less the amount of the Net Proceeds or the Net Award, as the case may be, then held by Mortgagee for application toward the cost of such Restoration or (b) adequate proof and security reasonably acceptable to Mortgagee that Mortgagor has either set aside or made adequate provisions on its books for reserves for the payment of the cost of such Restoration.

Mortgagee shall have the right to review and approve the Plans and Specifications. Promptly upon any approval of the Plans and Specifications by Mortgagee, Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Award or Net Proceeds is insufficient for such purpose.

(e) Restoration Advances Following Destruction or Taking of Mortgaged Property. In the event Mortgagor shall elect to perform a Restoration of the Premises and Equipment as provided in subsection 1.09(d), Mortgagee shall apply any Net Proceeds or the Net Award held by Mortgagee on account of the Destruction or Taking to the payment of the cost of performing such Restoration and shall pay portions of the same, from time to time, to Mortgagor or, at Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other persons rendering services or material for such Restoration, subject to the following conditions:

(i) each request for payment shall be made on 10 Business Days' prior notice to Mortgagee and shall be accompanied by an Architect's Certificate stating (a) that all the Restoration work then completed has been done in compliance with the approved Plans and

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Specifications and in accordance with all provisions of law, (b) the sums requested are required to reimburse Mortgagor for payments by Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (c) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be, and (d) unless Mortgagee received a surety, guarantee, Letter of Credit or Commitment, as referred to in subsection 1.09(d), that the amount of the Net Proceeds or Net Award, as the case may be, remaining after giving effect to such payment will be sufficient on completion of the Restoration to pay for the same in full (including, in detail, an estimate by trade of the remaining costs of completion);

(ii) each request for payment shall be accompanied by an Opinion of Counsel or a title insurance policy, binder or endorsement satisfactory to Mortgagee confirming that (a) all Liens covering that part of the Restoration previously paid for, if any, have been waived and (b) there has not been filed with respect to all or any part of the Mortgaged Property any Lien which is not either (A) discharged of record or (B) insured over by the Title Company, which could have priority over the Lien of this Mortgage in respect of any part of the Secured Obligations; and

(iii) the final request for any payment after the Restoration has been completed shall be accompanied by an Opinion of Counsel listing all certificates, permits, licenses, waivers, other documents, or any combination of the foregoing required by law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event there shall be any surplus after application of the Net Award or the Net Proceeds to Restoration of the Premises and the Equipment, such surplus shall be credited against the amounts outstanding in respect of the Obligations in accordance with the provisions of Sections 2.13(g) and (h) of the Credit Agreement.

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(f) Net Proceeds or Net Award After Event of Default. In the event that there is likely to be, or shall be, a Net Award or Net Proceeds after the occurrence of an Event of Default, Mortgagee shall have the option to apply such Net Award or Net Proceeds, as the case may be, to prepayment of the Obligations in accordance with Sections 2.13(g) and (h) of the Credit Agreement or to require a Restoration of the Mortgaged Property pursuant to subsection 1.09(d).

SECTION 1.10. Alterations. Mortgagor shall not, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, make any structural addition, modification or change (each, an "Alteration") to the Premises or the Equipment that costs more to effect than \$2,000,000. Whether or not Mortgagee has consented to the making of any Alteration, Mortgagor shall (a) complete each Alteration promptly, in a good and workmanlike manner and in compliance with all applicable laws, ordinances and requirements and (b) pay when due all claims for labor performed and materials furnished in connection with such Alteration, unless contested in accordance with the provisions of subsection 1.03(c).

ARTICLE VI

Assignment of Rents; Security Agreement

SECTION 2.01. Assignment of Leases, Rents, Issues and Profits. (a) Mortgagor hereby irrevocably grants, transfers and assigns to Mortgagee, and grants to Mortgagee a security interest in, all Mortgagor's right, title and interest, whether now existing or hereafter acquired, in the Leases, including, without limitation, the right, power and authority to collect the rents, issues, income and profits of the Mortgaged Property. The assignment set forth in the foregoing sentence shall be absolute, unconditional and irrevocable.

(b) Notwithstanding the provisions of subsection 2.01(a), Mortgagor shall have the right, so long as no Event of Default shall have occurred and is continuing, to collect and retain all rents, issues and profits relating to the Mortgaged Property as the same become due and payable. Upon the occurrence of any Event of Default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and

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without regard to the adequacy of any security for the Secured Obligations, (i) enter upon and take possession of the Premises and Equipment or any part thereof, and/or (ii) in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees), to all or any part of the Secured Obligations, and in such order as Mortgagee may determine in accordance with the terms of the Credit Agreement.

(c) Mortgagee's right to collect the rents, issues and profits upon default by Mortgagor pursuant to this Section 2.01 is in no manner conditional upon Mortgagee first taking possession of the Premises. Should Mortgagee enter and take possession of the Premises, or collect the rents, issues and profits and apply the same as provided for herein, such act shall not cure or waive any Event of Default or notice thereof hereunder or invalidate any act done pursuant to such notice. Nothing contained herein, nor any collection of rents, issues and profits by Mortgagee or a receiver, shall be construed to make Mortgagee a "mortgagee-in-possession" so long as Mortgagee has not itself entered into actual possession of the Premises.

(d) Nothing herein shall be construed to impose any liability or obligation on Mortgagee under or with respect to any Lease. Mortgagor shall indemnify and hold Mortgagee and each Lender harmless from and against any and all liabilities, losses and damages (including, without limitation, reasonable attorneys' fees and the allocated costs of staff counsel) incurred under any Lease or by reason of the provisions of this Section 2.01, except to the extent that said liability, losses and damages are caused as a direct result of Mortgagee's gross negligence or willful failure to comply with all applicable laws governing Mortgagee's exercise of the remedies set forth in this Section 2.01.

SECTION 2.02. Security Interest in Personal Property. (a) This Mortgage shall constitute a security agreement and shall create and evidence a security interest in all the Equipment and in all the other items of property comprising the Mortgaged Property in which a security interest or lien may be granted or a common law pledge created pursuant to the uniform commercial code as in effect in the state in which the Premises are located ("Uniform

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Commercial Code") or under common law in such state (collectively, "Personal Property").

(b) Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security instrument creating or evidencing the Lien hereof in the Personal Property, and each instrument of further assurance, including, without limitation, Uniform Commercial Code financing statements and continuation statements, to be filed, registered or recorded in such manner and in such places as may be required by any current or future law in order to publish notice of and fully to perfect, preserve and protect the Lien hereof upon the Personal Property. Mortgagor hereby appoints and authorizes Mortgagee to act on behalf of Mortgagor upon Mortgagor's failure to comply with the provisions of this subsection 2.02(b).

(c) Upon the occurrence of any Event of Default, in addition to the remedies set forth in Article III, Mortgagee shall have the power to foreclose Mortgagor's right of redemption in the Personal Property by sale of the Personal Property in accordance with the Uniform Commercial Code or under other applicable law in such state. It shall not be necessary that any Personal Property offered be physically present at any such sale or constructively in the possession of Mortgagee or the person conducting the sale.

(d) Upon the occurrence of any Event of Default, Mortgagee may sell the Personal Property or any part thereof at public or private sale with notice to Mortgagor as hereinafter provided. The proceeds of any such sale, after deducting all expenses of Mortgagee in taking, storing, repairing and selling the Personal Property (including, without limitation, reasonable attorneys' fees) shall be applied in the manner set forth in subsection 3.03(c). At any sale, public or private, of the Personal Property or any part thereof, Mortgagee or any Lender may purchase any or all of the Personal Property offered at such sale.

(e) Mortgagee shall give Mortgagor notice of any sale of any of the Personal Property pursuant to the provisions of this Section 2.02. Notwithstanding the provisions of Section 4.02, any such notice shall conclusively be deemed to be received and shall be effective if such notice is mailed at least 10 days prior to any sale, by first-class or certified mail, postage prepaid, to

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Mortgagor at its address determined in accordance with the provisions of Section 4.02.

ARTICLE III

Events of Default and Remedies

SECTION 3.01. Events of Default. It shall be an Event of Default hereunder if there shall occur under the Credit Agreement an "Event of Default" (as such term is defined in the Credit Agreement).

SECTION 3.02. Remedies in Case of an Event of Default. If any Event of Default shall have occurred, Mortgagee may, in addition to any other action permitted by law, take one or more of the following actions:

(a) by written notice to Mortgagor, declare the entire unpaid amount of the Secured Obligations to be due and payable immediately;

(b) personally, or by its agents or attorneys, (i) enter into and upon all or any part of the Mortgaged Property and exclude Mortgagor, its agents and servants wholly therefrom, (ii) use, operate, manage and control the Premises and the Equipment and conduct the business thereof, (iii) maintain and restore the Mortgaged Property, (iv) make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as Mortgagee may deem advisable, (v) manage, lease and operate the Mortgaged Property and carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise, or (vi) collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and any or every part thereof;

(c) with or without entry, personally or by its agents or attorneys, (i) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales as an entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law, (ii) institute and prosecute proceedings for the complete or partial foreclosure of the Lien of this Mortgage and/or (iii) pursue all

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remedies afforded to a mortgagee under and pursuant to the Illinois Mortgage Foreclosure Law (735 ILC § 5/15-1101 et seq. (1992 State Bar Edition), as amended from time to time;

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

(e) take any of the above-mentioned actions in respect of any or a number of individual parcels in the event that the Mortgaged Property is comprised of more than one parcel of land.

SECTION 3.03. Sale of Mortgaged Property if Event of Default Occurs; Proceeds of Sale. (a) On the completion of any sale or sales by Mortgagee made under or by virtue of this Article III, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful agent and attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, and Mortgagor hereby ratifies and confirms all that Mortgagee or any such substitute shall lawfully do by virtue hereof. This power of attorney is coupled with the interest of Mortgagee created by this Mortgage. Mortgagor shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or such purchaser or purchasers all instruments as may be requested for such purpose. Any such sale or sales made under or by virtue of this Article III shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against

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Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(b) In the event of any sale made under or by virtue of this Article III, the entire principal of, and interest in respect of the Secured Obligations, if not previously due and payable, shall, at the option of Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

(c) Except as otherwise provided by applicable law, the proceeds of any sale made under or by virtue of this Article III, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied as follows:

FIRST, to the payment of all costs and expenses incurred by the Mortgagee in connection with such collection or sale or otherwise in connection with this Mortgage, any other Loan Document or any of the Secured Obligations, including all court costs and the reasonable fees, other charges and disbursements of its agents and legal counsel, the repayment of all advances made by the Mortgagee or under any other Loan Document and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or thereunder;

SECOND, to the payment in full of the Secured Obligations owed to the Lenders, the Swingline Lender and the Fronting Bank in respect of the Loans and Swingline Loans made by them and outstanding and the amounts owing in respect of any LC Disbursement, pro rata as among the Lenders, the Swingline Lender and the Fronting Bank in accordance with the amount of such Secured Obligations owed to them;

THIRD, to the payment and discharge in full of the Secured Obligations (other than those referred to above) pro rata as among the Lenders in accordance with the amount of Secured Obligations owed to them; and

FOURTH, to the Mortgagor, its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

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The Mortgagee shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Mortgage. Upon any sale of the Mortgaged Property by the Mortgagee (including pursuant to a power of sale or under a judicial proceeding), the receipt by the Mortgagee or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Mortgaged Property so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Mortgagee or such officer or be answerable in any way for the misapplication thereof.

(d) Mortgagee on behalf of any Lender or on its own behalf may bid for and acquire the Mortgaged Property or any part thereof at any sale made under or by virtue of this Article III and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts whether or not then due and owing in respect of the Secured Obligations, after deducting from the sales price the expenses of the sale and the costs of the action or proceedings and any other sums that Mortgagee or such Lender is authorized to deduct under this Mortgage.

(e) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(f) If the Mortgaged Property is comprised of more than one parcel of land, Mortgagee may take any of the actions authorized by this Section 3.03 in respect of any or a number of individual parcels.

SECTION 3.04. Additional Remedies in Case of an Event of Default. (a) Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the Lien of, or absolute

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conveyance pursuant to, this Mortgage. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, Mortgagee shall be entitled to prove the whole amount of principal and interest due in respect of the Secured Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property or from the sale of any or a number of parcels in the event that the Mortgaged Property is comprised of more than one parcel of land; provided, however, that in no case shall Mortgagee receive a greater amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor.

(b) Any recovery of any judgment by Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien of this Mortgage upon the Mortgaged Property or any part thereof, or any Liens, conveyances, powers, rights and remedies of Mortgagee hereunder, but such Liens, conveyances, powers, rights and remedies shall continue unimpaired as before.

(c) Any moneys collected by Mortgagee under this Section 3.04 shall be applied in accordance with the provisions of subsection 3.03(c).

SECTION 3.05. Legal Proceedings After an Event of Default. (a) After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Secured Obligations or any part thereof, or of any proceedings to foreclose the Lien of or otherwise enforce the provisions of this Mortgage or of any other proceedings in aid of the enforcement of this Mortgage, Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(b) Upon the occurrence of an Event of Default, Mortgagee shall be entitled forthwith as a matter of right, either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a receiver without regard to the adequacy or inadequacy of any security for the Secured Obligations, provided, that Mortgagee shall provide notice of such receivership proceedings either (i) as required under applicable local

law or (ii) in the event that notice is not required under applicable local law, within 30 days after the conclusion of any receivership proceeding.

(c) Mortgagor shall not (i) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (ii) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or order of any court of competent jurisdiction, or (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, including, without limitation, any and all rights to trial by jury in any action or proceeding related to the enforcement of this Mortgage, and covenants not to hinder, delay or impede the execution of any power granted or delegated to Mortgagee by this Mortgage, but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives all right to have the Mortgaged Property, or any part thereof, marshaled on any foreclosure of this Mortgage.

SECTION 3.06. Remedies Not Exclusive. No remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time as often as may be deemed expedient by Mortgagee. If Mortgagee or any Lender accepts any moneys required to be paid by Mortgagor under this Mortgage after the same becomes due, such acceptance shall

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not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If Mortgagee accepts any moneys required to be paid by Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay the entire sum then due shall be and continue to be an Event of Default notwithstanding acceptance of such amount on account.

ARTICLE IV

Miscellaneous

SECTION 4.01. Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The invalidity or unenforceability of this Mortgage with respect to any item of or any portion of the Secured Obligations which it secures shall not invalidate or render unenforceable this Mortgage or the Lien hereof with respect to any other item or portion of the Secured Obligations.

SECTION 4.02. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be pursuant to and in accordance with the provisions of Section 10.01 of the Credit Agreement.

SECTION 4.03. Covenants To Run with the Land. All of the grants, covenants, terms, provisions and conditions in this Mortgage shall run with the land and shall apply to and bind the successors and assigns of Mortgagor.

SECTION 4.04. Captions; Gender and Number. The captions and section headings of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof. All terms contained herein

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shall be construed, whenever the context of this Mortgage so requires, so that the singular includes the plural and so that the masculine includes the feminine.

SECTION 4.05. Choice of Law. This Mortgage shall be construed under and governed by the laws of the State of New York, except that matters affecting title to the Mortgaged Property, the creation of estates or interests in the Mortgaged Property and the creation, perfection, priority and foreclosure of liens on, and security interests in, the Mortgaged Property shall be governed and construed in accordance with the laws of the state in which the Mortgaged Property is located.

SECTION 4.06. No Merger. The rights and estate created by this Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest in the Premises now owned or hereafter acquired by Mortgagee unless Mortgagee shall have consented to such merger in writing.

SECTION 4.07. Changes in Writing. This Mortgage may not be modified, amended, discharged or waived in whole or in part except by an instrument in writing signed by (i) Mortgagor, to the extent any modification, amendment, discharge or waiver is sought to be enforced against Mortgagor, and (ii) Mortgagee, to the extent any modification, amendment, discharge or waiver is sought to be enforced against Mortgagee or any Lender.

SECTION 4.08. Credit Agreement. Mortgagor acknowledges that (i) the actions of Mortgagee, in its capacity as Collateral Agent hereunder, are subject to the provisions of the Credit Agreement, and (ii) Mortgagee is acting solely as agent for the Lenders and no provision set forth in Article IX of the Credit Agreement is intended to benefit in any manner Mortgagor or to limit to any extent the rights and remedies herein set forth of Mortgagee.

SECTION 4.09. Concerning Mortgagee. (a) Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

(b) With respect to any of its rights and obligations as a Lender, Mortgagee shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The term "Lenders", "Lender", "Swingline Lender", "Fronting Bank" or any similar terms shall, unless the context clearly otherwise indicates, include Mortgagee in its individual capacity as a Lender, the Swingline Lender or the Fronting Bank. Mortgagee may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with Mortgagor or any entity related to or affiliated with Mortgagor to the same extent as if Mortgagee were not acting as Collateral Agent.

(c) Mortgagor shall recognize as the mortgagee under this instrument any party who has succeeded to the interest of Mortgagee or Collateral Agent under the Credit Agreement.

SECTION 4.10. Multisite Real Estate Transaction. Mortgagor acknowledges that this Mortgage is one of a number of Other Mortgages and Loan Documents which secure the Secured Obligations. Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Mortgagee of any security for or guaranties of any of the Obligations hereby secured, or by any failure, neglect or omission on the part of Mortgagee to realize upon or protect any Obligations or indebtedness hereby secured or any collateral security therefor including the Other Mortgages and other Loan Documents. The lien hereof shall not in any manner be impaired or affected by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Obligations secured or of any of the collateral security therefor, including the Other Mortgages and other Loan Documents or of any guarantee thereof, and Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages and other Loan Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of Mortgagee's rights and remedies under any or all of the Other Mortgages and other Loan

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Documents shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of Mortgagee hereunder shall not impair the lien of any of the Other Mortgages and other Loan Documents or any of Mortgagee's rights and remedies thereunder. The undersigned specifically consents and agrees that Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages and other Loan Documents separately or concurrently and in any order that it may deem appropriate.

SECTION 4.11. Satisfaction and Cancellation.

(a) The conveyance to Mortgagee created and consummated by this Mortgage shall be null and void when all the Obligations have been indefeasibly paid in full in accordance with the terms of the Credit Agreement and the Loan Documents and the Lenders and the Swingline Lender have no further commitment to lend under the Credit Agreement, no Letters of Credit are outstanding and the Fronting Bank has no further obligation to issue Letters of Credit under the Credit Agreement.

(b) The lien of this conveyance shall be released from the Mortgaged Property in connection with any transfer permitted by Section 7.05 of the Credit Agreement.

(c) In connection with any termination or release pursuant to paragraph (a) or (b), the Mortgage shall be marked "satisfied" by the Mortgagee, and this Mortgage may be canceled of record at the request and at the expense of the Mortgagor. Mortgagee shall execute any documents reasonably requested by Mortgagor to accomplish the foregoing or to accomplish any release contemplated by paragraph (a) or (b) and Mortgagor will pay all costs and expenses, including attorneys' fees and disbursements, incurred by Mortgagee in connection with the preparation and execution of such documents.

SECTION 4.12. Mortgagee's Right to Sever

Indebtedness. (a) Mortgagor acknowledges that (i) the Mortgaged Property does not constitute the sole source of security for the payment and performance of the Obligations and that the Obligations are also secured by property of Mortgagor and its affiliates in other jurisdictions (collectively, the "Collateral"), (ii) the number of such jurisdictions and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of

Collateral a specific loan amount and to execute in respect of such item a separate credit agreement and (iii) Mortgagor intends that Mortgagee have the same rights with respect to the Mortgaged Property, in foreclosure or otherwise, that Mortgagee would have had if each item of Collateral had been mortgaged or pledged pursuant to a separate credit agreement and mortgage or security document. In furtherance of such intent, Mortgagor agrees that Mortgagee may at any time by notice (the "Allocation Notice") to Mortgagor allocate a portion (the "Allocated Indebtedness") of the Obligations to the Mortgaged Property and sever from the remaining Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Mortgaged Property, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of Mortgagor unrelated to the other transactions contemplated by the Credit Agreement, any Interest Rate Agreement or any document related to any thereof. To the extent that the proceeds on any foreclosure of the Mortgaged Property shall exceed the Allocated Indebtedness, such proceeds shall belong to Mortgagor and shall not be available hereunder to satisfy any Obligations of Mortgagor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien of this Mortgage or in connection with any power of sale foreclosure or other remedy exercised under this Mortgage commenced after the giving by Mortgagee of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations, and Mortgagor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding.

(b) Mortgagor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien of this Mortgage or other remedy exercised under this Mortgage constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because Mortgagee elected to proceed with a power of sale foreclosure or such other remedy or because of any failure by Mortgagee to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that Mortgagee is not entitled to a deficiency judgment, Mortgagor shall not (i) introduce in

any other jurisdiction such judgment as a defense to enforcement against Mortgagor of any remedy in the Credit Agreement or any security document related to or executed in connection with any thereof or (ii) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

(c) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 4.12 including, without limitation, any amendment to this Mortgage or affidavit or certificate of any kind, Mortgagee may execute, deliver or record such instrument as the attorney-in-fact of Mortgagor. Such power of attorney is coupled with an interest and is irrevocable.

SECTION 4.13. Future Advances. This Mortgage secures future advances, if any, whether obligatory or advanced at the option of Mortgagee. The maximum aggregate principal amount of all advances under the Credit Agreement (exclusive of amounts that may be advanced hereunder in accordance with the provisions hereof) that may be outstanding at any time is \$15,000,000 plus any amounts outstanding from time to time in respect of any Interest Rate Agreements entered into with a Lender and secured hereby.

SECTION 4.14. Purpose of Loan. The Loan evidenced by the Credit Agreement and secured hereby is a business loan within the purview of paragraph 4 of Article 205 of Chapter 815 Revised Statutes of the State of Illinois (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor.

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the date first written above.

JOHN M. SMYTH COMPANY,

by

Edward P. Zimmmer

Name: EDWARD P. ZIMMER

Title: Vice President

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STATE OF *New York*)
) SS.:
COUNTY OF *New York*)

On the *28th* day of *June* 1994, before me personally came *Edward P. Zimmer* to me known, who, being by me duly sworn, did depose and say that he resides at *4500 NW, 25th Ave* that he is the *Vice Pres* of JOHN M. SMYTH COMPANY, the corporation described in and which executed the foregoing instrument; and that *he* signed his name thereto by order of the board of directors of said corporation.

*Boca
Raton
FL
33434*

Bertha P. Magnus
Notary Public

BERTHA P. MAGNUS
Notary Public, State of New York
No. 01MA5023818
Qualified in Queens County
Certificate Filed in New York County
Commission Expires February 14, 1996

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COOK COUNTY CLERK'S OFFICE
100 N. LAUREL ST. CHICAGO, IL 60602
TEL: 312.603.4000 FAX: 312.603.4001
WWW.COOKCOUNTYCLERK.COM

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Site No. 18
Schalumburg, Illinois
Cook County

SCHEDULE A

THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WOODFIELD ROAD AS DEDICATED PER DOCUMENT 20944554 WITH THE EAST LINE OF SAID WEST 1/2 OF THE SOUTHEAST 1/4; THENCE SOUTH 0 DEGREES 33 MINUTES 31.5 SECONDS WEST ALONG SAID EAST LINE 700 FEET; THENCE NORTH 89 DEGREES 26 MINUTES 28.5 SECONDS WEST 450 FEET ALONG A LINE DRAWN PERPENDICULARLY TO SAID EAST LINE; THENCE NORTH 0 DEGREES 33 MINUTES 31.5 SECONDS EAST 694.283 FEET ALONG A LINE PARALLEL WITH SAID EAST LINE TO A POINT IN SAID SOUTH LINE OF WOODFIELD ROAD, THENCE EASTERLY 445.846 FEET ALONG SAID SOUTH LINE OF WOODFIELD ROAD BEING THE ARC OF A CIRCLE OF 1859.86 FEET RADIUS CONVEX TO THE NORTH WHOSE CHORD BEARS NORTH 89 DEGREES 45 MINUTES 1 SECOND EAST TO A POINT OF TANGENCY, THENCE SOUTH 83 DEGREES 22 MINUTES 56 SECONDS EAST 5.294 FEET ALONG SAID SOUTH LINE OF WOODFIELD ROAD TO HEREIN DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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SECOND AMENDED AND RESTATED SUBSIDIARY GUARANTEE AGREEMENT dated as of June 28, 1994, among each of the undersigned subsidiaries of Levitz Furniture Corporation (each such subsidiary individually, a "Guarantor" and collectively, the "Guarantors"), and CHEMICAL BANK, a New York banking corporation ("Chemical Bank"), as collateral agent (the "Collateral Agent") for the Secured Parties (as defined in the Credit Agreement referred to below).

Reference is made to (a) the Amended and Restated Subsidiary Guarantee Agreement entered into as of December 10, 1992 (the "Original Subsidiary Guarantee"), by each of the Guarantors (other than Levitz Shopping Service, Inc. and John M. Smyth Company) in favor of and for the benefit of Wells Fargo Bank, National Association ("Wells Fargo"), as agent for and representative of the banks party to the Amended and Restated Credit Agreement dated as of December 10, 1992, among Levitz Furniture Corporation, a Florida corporation (the "Borrower"), the banks party thereto and Wells Fargo, as agent (the "Original Credit Agreement"), and (b) the Second Amended and Restated Credit Agreement dated as of June 28, 1994 (as amended, restated, supplemented, modified or waived from time to time, the "Credit Agreement") among the Borrower, the financial institutions party thereto, as lenders (the "Lenders"), Chemical Bank, as administrative agent, Collateral Agent, fronting bank (in such capacity, the "Fronting Bank"), and swingline lender (in such capacity, the "Swingline Lender"), and Wells Fargo, as co-agent.

In accordance with the Amendment Agreement (such term and each other capitalized term used but not defined herein having the meaning assigned to it in the Credit Agreement), (i) the Original Credit Agreement is being amended and restated in its entirety in the form of the Credit Agreement and (ii) the Lenders are agreeing to make Tranche B Loans to the Borrower to enable the Borrower to consummate the Acquisition. The Lenders and the Swingline Lender have agreed to make Loans and Swingline Loans, respectively, to the Borrower, and the Fronting Bank has agreed to issue Letters of Credit for the account of the Borrower, pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement. Each of the Guarantors is a wholly owned Subsidiary of the Borrower and will derive substantial benefit from the making of the Loans by the Lenders, the making of the Swingline Loans by the Swingline Lender and the issuance of the Letters of Credit by the Fronting Bank. The obligations of the Lenders to make Loans, of the Swingline Lender to make Swingline Loans and of the Fronting Bank to issue Letters of Credit are conditioned on, among other things, the execution and delivery by the Guarantors of an amendment and restatement of the Original Subsidiary Guarantee in the form hereof.

Accordingly, the parties hereto agree as follows:

SECTION 1. *Guarantee.* Each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, (a) the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans and the Swingline Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by Borrower under the Credit Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or

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otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower to the Secured Parties under the Credit Agreement and the other Loan Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Borrower under or pursuant to the Credit Agreement and the other Loan Documents (all the obligations referred to in the preceding clauses (a) and (b) being collectively called the "Obligations"). Each Guarantor further agrees that the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Obligation.

Anything contained in this Agreement to the contrary notwithstanding, the obligations of each Guarantor hereunder shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the "Fraudulent Transfer Laws"), in each case after giving effect to all other liabilities of such Guarantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Guarantor (a) in respect of intercompany indebtedness to the Borrower or Affiliates of the Borrower to the extent that such indebtedness would be discharged in an amount equal to the amount paid by such Guarantor hereunder and (b) under any guarantee of Subordinated Indebtedness which guarantee contains a limitation as to maximum amount similar to that set forth in this paragraph 2, pursuant to which the liability of such Guarantor hereunder is included in the liabilities taken into account in determining such maximum amount) and after giving effect as assets to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, contribution, reimbursement, indemnity or similar rights of such Guarantor pursuant to (i) applicable law or (ii) any agreement providing for an equitable allocation among such Guarantor and other Affiliates of the Borrower of obligations arising under guarantees by such parties (including the Indemnity, Subrogation and Contribution Agreement).

SECTION 2. *Obligations Not Waived.* To the fullest extent permitted by applicable law, each Guarantor waives presentment to, demand of payment from and protest to the Borrower of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the obligations of each Guarantor hereunder shall not be affected by (a) the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Guarantor under the provisions of this Agreement, any Loan Document or otherwise; (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of this Agreement, any other Loan Document, any guarantee or any other agreement, including with respect to any other Guarantor under this Agreement; (c) the release of any security held by the Collateral Agent or any other Secured Party for the Obligations; (d) the failure to perfect any security interest in, or the release of, any of the security held by or on behalf of the Collateral Agent; or (e) the failure of the Collateral Agent or any other Secured Party to exercise any right or remedy against any other Guarantor or guarantor of the Obligations.

SECTION 3. *Security.* Each of the Guarantors authorizes the Collateral Agent and each of the other Secured Parties to (a) take and hold security for the payment of this guarantee or the Obligations and exchange, enforce, waive and release any such security, (b) apply such security and direct the order or manner of sale thereof as they in their sole discretion may determine and (c) release or substitute any one or more endorsees, other guarantors or other obligors.

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SECTION 4. *Guarantee of Payment.* Each Guarantor further agrees that its guarantee constitutes a guarantee of payment when due and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any of the security held for payment of the Obligations or to any balance of any deposit account or credit on the books of the Collateral Agent or any other Secured Party in favor of the Borrower or any other Person.

SECTION 5. *No Discharge or Diminishment of Guarantee.* The obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Collateral Agent or any other Secured Party to assert any claim or demand or to enforce any remedy under the Credit Agreement, any other Loan Document, any other guarantee or any other agreement, by any waiver or modification of any provision of any thereof, by any default, failure or delay, wilful or otherwise, in the performance of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations).

SECTION 6. *Defenses of Borrowers Waived.* To the extent permitted by applicable law, each of the Guarantors waives any defense based on or arising out of any defense of the Borrower or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower, other than final and indefeasible payment in full in cash of the Obligations. The Collateral Agent and the other Secured Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, or exercise any other right or remedy available to them against the Borrower or any Guarantor, or any security, without affecting or impairing in any way the liability of any other Guarantor hereunder except to the extent the Obligations have been fully, finally and indefeasibly paid in cash. Each of the Guarantors waives any defense arising out of any such election even though such election operates to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Borrower or any other Guarantor, as the case may be, or any security.

SECTION 7. *Subordination.* In furtherance of the foregoing and not in limitation of any other right that the Collateral Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Borrower to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will upon demand forthwith pay, or cause to be paid, to the Collateral Agent or such other Secured Party as is designated thereby in cash the amount of such unpaid Obligations. Upon payment by any Guarantor of any sums to the Collateral Agent or any Secured Party as provided above, all rights of such Guarantor against the Borrower arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise, shall in all respects be subordinate and junior in right of payments to the prior indefeasible payment in full in cash of all the Obligations. In addition, any indebtedness of the Borrower now or hereafter held by any Guarantor is hereby subordinated in right of payment to the Obligations. If any amount shall erroneously be paid to any Guarantor (i) on account of such subrogation, contribution, reimbursement, indemnity or similar right or (ii) after the occurrence and during the continuance of an Event of Default, on account of any such indebtedness of the Borrower, such amount shall be held in trust for

the benefit of the Secured Parties and shall forthwith be paid to the Collateral Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

SECTION 8. Information. Each of the Guarantors assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Collateral Agent or the other Secured Parties will have any duty to advise any of the Guarantors of information known to it or any of them regarding such circumstances or risks.

SECTION 9. Representations and Warranties. Each of the Guarantors represents and warrants as to itself that all representations and warranties relating to it contained in the Credit Agreement are true and correct.

SECTION 10. Termination. The guarantees made hereunder shall terminate when all the Obligations have been indefeasibly paid in full and the Lenders and the Swingline Lender have no further commitment to lend under the Credit Agreement, the LC Exposure has been reduced to zero and the Fronting Bank has no further obligation to issue Letters of Credit under the Credit Agreement and shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Secured Party or any Guarantor upon the bankruptcy or reorganization of the Borrower, any Guarantor or otherwise.

SECTION 11. Binding Agreement; Assignments. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Guarantors that are contained in this Agreement shall bind and inure to the benefit of each party hereto and their respective successors and assigns. This Agreement shall become effective as to any Guarantor when a counterpart hereof executed on behalf of such Guarantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Guarantor and the Collateral Agent and their respective successors and assigns, and shall inure to the benefit of such Guarantor, the Collateral Agent and the other Secured Parties, and their respective successors and assigns, except that no Guarantor shall have the right to assign its rights hereunder or any interest herein or in the Collateral (and any such attempted assignment shall be void), except as expressly permitted by this Agreement or the other Loan Documents.

SECTION 12. Waivers; Amendment. (a) No failure or delay of the Collateral Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent hereunder and of the other Secured Parties under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provisions of this Agreement or consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in similar or other circumstances.

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(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Guarantors and the Collateral Agent, with the prior written consent of the Required Lenders (except as otherwise provided in the Credit Agreement).

SECTION 13. *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 14. *Notices.* All communications and notices hereunder shall be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to each Guarantor shall be given to it at its address set forth on Schedule I hereto with a copy to the Borrower.

SECTION 15. *Survival of Agreement; Severability.* (a) All covenants, agreements, representations and warranties made by the Guarantors herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Collateral Agent and the other Secured Parties and shall survive the making by the Lenders of the Loans, the making by the Swingline Lender of the Swingline Loans and the issuance of the Letters of Credit by the Fronting Bank, regardless of any investigation made by the Secured Parties or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or Swingline Loan or any other fee or amount payable under this Agreement or any other Loan Document is outstanding and unpaid or the LC Exposure does not equal zero and as long as the Commitments and the LC Commitment have not been terminated.

(b) In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 16. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument, and shall become effective as provided in Section 11.

SECTION 17. *Rules of Interpretation.* The rules of interpretation specified in Section 1.02 of the Credit Agreement shall be applicable to this Agreement.

SECTION 18. *Jurisdiction; Consent to Service of Process.* (a) Each Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted

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by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Collateral Agent or any other Secured Party may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against any Guarantor or its properties in the courts of any jurisdiction.

(b) Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 14. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 19. Waiver of Jury Trial. Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

SECTION 20. Additional Guarantors. Pursuant to Section 6.10(c) of the Credit Agreement, each Subsidiary of the Borrower that was not in existence or not such a Subsidiary on the date of the Credit Agreement is required to enter into this Agreement as a Guarantor upon becoming such a Subsidiary. Upon execution and delivery after the date hereof by the Collateral Agent and such a Subsidiary of an instrument in the form of Annex 1, such Subsidiary shall become a Guarantor hereunder with the same force and effect as if originally named as a Guarantor herein. The execution and delivery of any instrument adding an additional Guarantor as a party to this Agreement shall not require the consent of any Guarantor hereunder. The rights and obligations of each Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor as a party to this Agreement.

SECTION 21. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Secured Party hereunder is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Secured Party to or for the credit or the account of any Guarantor against any such amount, irrespective of whether or not such Secured Party shall have made any demand under the Credit Agreement or any other Loan Document and although such obligations may be unmaturing. The rights of each Secured Party under this Section are in addition to other rights and remedies (including other rights of setoff) that such Secured Party may have.

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SECTION 22. Enforcement of Security. Upon the occurrence and during the continuance of an Event of Default the Collateral Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Obligations or any part thereof, or accept an assignment of any such security in lieu of foreclosure or compromise or adjust any part of the Obligations, or make any other accommodation with the Borrower or any Guarantor, or exercise any other remedy against the Borrower or any Guarantor or any security, in accordance with and subject to the provisions of the Security Documents. No such action by the Collateral Agent will release or limit the liability of any Guarantor to the Collateral Agent.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LEVITZ FURNITURE COMPANY OF THE
MIDWEST, INC.,

by

Name:

Title:

LEVITZ FURNITURE COMPANY OF THE
PACIFIC, INC.,

by

Name:

Title:

LEVITZ FURNITURE COMPANY OF
WASHINGTON, INC.,

by

Name:

Title:

LEVITZ SHOPPING SERVICE, INC.,

by

Name:

Title:

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JOHN M. SMYTH COMPANY,

by

Name:

Title:

CHEMICAL BANK, as Collateral Agent,

by

Name:

Title:

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Schedule I
to the Guarantee
Agreement

Guarantor
Address

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SUPPLEMENT NO. _____ dated as of _____, to the Second Amended and Restated Subsidiary Guarantee Agreement dated as of June 28, 1994 (as the same may be amended, restated, supplemented, modified or waived from time to time, the "Subsidiary Guarantee Agreement"), among each subsidiary of Levitz Furniture Corporation party thereto (individually, a "Guarantor" and collectively, the "Guarantors"), and CHEMICAL BANK, a New York banking corporation ("Chemical Bank"), as collateral agent (the "Collateral Agent") for the Secured Parties (as defined in the Credit Agreement referred to below).

A. Reference is made to the Second Amended and Restated Credit Agreement dated as of June 28, 1994 (as amended, restated, supplemented, modified or waived from time to time, the "Credit Agreement"), among Levitz Furniture Corporation, a Florida corporation (the "Borrower"), the financial institutions party thereto, as lenders (the "Lenders"), Chemical Bank, as administrative agent, Collateral Agent, swingline lender (in such capacity, the "Swingline Lender"), and fronting bank (in such capacity, the "Fronting Bank"), and Wells Fargo Bank, National Association, as co-agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Subsidiary Guarantee Agreement and the Credit Agreement.

C. The Guarantors have entered into the Subsidiary Guarantee Agreement in order to induce the Lenders to make Loans, the Swingline Lender to make Swingline Loans and the Fronting Bank to issue Letters of Credit. Pursuant to Section 6.10 of the Credit Agreement, each Subsidiary of the Borrower that was not in existence or not such a Subsidiary on the date of the Credit Agreement is required to enter into the Subsidiary Guarantee Agreement as a Guarantor upon becoming a Subsidiary. Section 20 of the Subsidiary Guarantee Agreement provides that additional Subsidiaries of the Borrower may become Guarantors under the Subsidiary Guarantee Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary of the Borrower (the "New Guarantor") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Guarantor under the Subsidiary Guarantee Agreement in order to induce the Lenders to make additional Loans, the Swingline Lender to make additional Swingline Loans and the Fronting Bank to issue additional Letters of Credit and as consideration for Loans and Swingline Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Guarantor agree as follows:

SECTION 1. In accordance with Section 20 of the Subsidiary Guarantee Agreement, the New Guarantor by its signature below becomes a Guarantor under the Subsidiary Guarantee Agreement with the same force and effect as if originally named therein as a Guarantor and the New Guarantor hereby (a) agrees to all the terms and provisions of the Subsidiary Guarantee Agreement applicable to it as a Guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Guarantor thereunder are true and correct on and as of the date hereof. Each reference to a "Guarantor" in the Subsidiary Guarantee Agreement shall be deemed to include the New Guarantor. The Subsidiary Guarantee Agreement is hereby incorporated herein by reference.

SECTION 2. The New Guarantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms,

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except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally or equitable principles relating to or limiting creditors' rights generally.

SECTION 3. This Supplement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Guarantor and the Collateral Agent.

SECTION 4. Except as expressly supplemented hereby, the Subsidiary Guarantee Agreement shall remain in full force and effect.

SECTION 5. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, neither party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable, but the validity, legality and enforceability of the remaining provisions contained herein and in the Subsidiary Guarantee Agreement shall not in any way be affected or impaired. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder shall be in writing and given as provided in Section 15 of the Subsidiary Guarantee Agreement. All communications and notices hereunder to the New Guarantor shall be given to it at the address set forth under its signature below, which supplements Schedule 1 to the Subsidiary Guarantee Agreement, with a copy to the Borrower.

SECTION 8. The New Guarantor agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

IN WITNESS WHEREOF, the New Guarantor and the Collateral Agent have duly executed this Supplement to the Subsidiary Guarantee Agreement as of the day and year first above written.

[NAME OF NEW GUARANTOR],

by

Name: _____

Title: _____

Address: _____

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CHEMICAL BANK, as Collateral Agent.

by _____

Name:
Title:

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