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LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (#103) (Fixture Financing Statement)

[Some of the goods herein described are, or are to become, fixtures on the property described in Exhibit A hereto. The names of the Debtor ("Mortgagor" herein) and the Secured Party ("Mortgagee" herein), the mailing address of the Secured Party from which information concerning the security interest it holds may be obtained, the mailing address of the Debtor, and a statement indicating the types, or describing the items of collateral, are stated herein in compliance with Illinois law.]

THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT is made as of October 1, 1993, by and between PSI JOINT VENTURE, a Kentucky general partnership, Suite 200, Thornton Park Plaza, 10101 Linn Station Road, Louisville, Jefferson County, Kentucky 40223 ("Mortgagor"), and THORNTON OIL CORPORATION, a Delaware corporation, Suite 200, Thornton Park Plaza, 10101 Linn Station Road, Louisville, Jefferson County, Kentucky 40223 ("Mortgagee").

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby irrevocably grants, remises, aliens, releases, transfers, conveys, and mortgages to Mortgagee and its successors and assigns, with covenant of General Warranty, under and subject to the terms and conditions hereinafter set forth, all of its leasehold interests and estates arising under the lease documents listed in Exhibit A attached hereto and by this reference incorporated herein (the "Lease") in the real property located in the County of Cook, State of Illinois, described in Exhibit A and all buildings and improvements (the "Improvements") now or hereafter erected thereon (such real property and the Improvements being hereinafter referred to together as the "Property");

Together with all rents, issues, profits, royalties, income, and other benefits derived from the Property; and all interests, estates, and other claims, both in law and in equity, that Mortgagor now has or may hereafter acquire in the Property; and all easements, rights-of-way, and rights used in connection with the Property or as a means of access thereto; and all tenements, hereditaments, and appurtenances thereof and thereto;

Together with a continuing security interest in all right, title, and interest of Mortgagor in and to all fixtures (the "Fixtures") now owned or hereafter acquired by Mortgagor and now or at anytime hereafter located on or at the Property or used or arising in connection therewith. The term "Fixtures" shall include but not be limited to canopies and underground storage tanks and lines, together with accessions, additions, and substitutions thereto and therefor; and

Together with all the estate, interest, right, title, and other claim or demand, including claims or demands with respect to the proceeds of insurance with respect thereto, that Mortgagor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property, and interest hereby conveyed to Mortgagee may hereinafter be referred to as the "Premises."

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FOR THE PURPOSE OF SECURING PERFORMANCE OF, PAYMENT OF THE PRINCIPAL AMOUNT OF, AND PAYMENT OF INTEREST ON:

A. The obligations of Mortgagor as maker of the Promissory Note in the face principal amount of \$859,912.65 payable to the order of Mortgagee dated as of October 1, 1993, having a final maturity date, if not sooner paid, of January 31, 2000 (the "Note") issued pursuant to the Purchase and Financing Agreement (the "Purchase Agreement") dated as of even date herewith by and between Mortgagor and Mortgagee, and any and all amendments, modifications, extensions and renewals of the Note;

B. All other obligations of Mortgagor under the Purchase Agreement and each agreement of Mortgagor incorporated by reference therein or herein or contained therein or herein; and

C. All sums advanced by Mortgagee to protect the Premises, with interest thereon at the rate set forth in the Note or at the maximum rate of interest permitted by law from time to time, whichever shall be less.

This Mortgage, the Note, the Purchase Agreement, and any other instrument given further to evidence or secure the payment and performance of any obligation secured hereby, and any and all amendments, modifications, extensions, and renewals thereof, may hereafter be referred to as the "Loan Instruments" and are incorporated herein by this reference.

Mortgagor warrants that it has good and marketable title in and indefeasible fee simple estate in the Property subject to no liens, charges or encumbrances, that it has good right and lawful authority to convey the Property in the manner and form herein provided; that Mortgagor has full power and authority to mortgage the Property in the manner and form herein done; that this Mortgage is and shall remain a valid and enforceable first lien in the Property subject only to those exceptions acceptable to Mortgagee; that Mortgagor and its successors and assigns shall warrant and defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the land.

Mortgagor shall, at the cost of Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall from time to time require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention of facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage.

Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, shall cause this Mortgage, and any security instruments creating a lien upon Mortgagor's personal property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of all and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Property.

Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to Mortgagor's personal property, and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, assessments and charges arising out of or in connection with the execution and delivery of the Note, this Mortgage, any mortgage supplemental hereto, any security instrument with respect to Mortgagor's personal property or any instrument of further assurance.

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All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Property and Improvements, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

1. ADDITIONAL COVENANTS, WARRANTIES, AND AGREEMENTS OF MORTGAGOR

To protect the security of this Mortgage, Mortgagor further covenants, warrants, and agrees with Mortgagee as follows:

1.1 Payment of Secured Obligations.

A. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Instruments, and the principal of, and interest on, any future advances secured by this Mortgage.

B. To pay or cause to be paid all rents and additional sums payable under the Lease as and when the same shall become due and payable; at all times to keep, observe, and perform or cause to be kept, observed, and performed all of the terms, covenants, and conditions of the Lease on the part of the lessee thereunder to be kept, observed, and performed; to do all things necessary to keep unimpaired Mortgagor's rights in and to the Lease; not to commit or permit to be committed or to occur any event of default or default under the Lease; not to modify, amend, supplement, or terminate the Lease without having first obtained the written consent of Mortgagee; not in any way to release the lessor under the Lease of or from the obligations, covenants, conditions, and agreements by the lessor to be done and performed; to exercise any and all renewal rights that it has under the Lease; upon receiving any notice of default from the lessor under the Lease, or when any state of fact exists that, with the giving of notice, the lapse of time, or both, would constitute a default under the Lease, immediately to notify Mortgagee and forward to Mortgagee a copy of any written notice of the same; and to consent to and cooperate with all actions Mortgagee may elect to undertake to preserve the rights of Mortgagor and Mortgagee under the terms of the Lease and hereunder, including all things that Mortgagor has undertaken to do in this Section.

1.2 Maintenance, Repair, Alterations. To keep the Premises in good condition and repair; not to remove, demolish, or alter substantially any of the Improvements; to complete promptly and in good and workmanlike manner the Improvements and promptly restore in like manner any improvement that may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Premises; to keep and maintain abutting grounds, sidewalks, roads, parking, and landscape areas in good and neat order and repair; and not to commit, suffer or permit any act to be done in or upon the Premises in violation of any law, ordinance or regulation.

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1.3 Indemnification: Waiver of Offset.

A. That if Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Premises or any part thereof or therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend, and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, then to the extent allowed by law Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses actually incurred, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder; and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses actually incurred by Mortgagee, to the extent allowed by law, whether or not an action is actually commenced against Mortgagor by reason of breach.

B. That all sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Premises or any part thereof; (ii) any restriction or prevention of or interference with any use of the Premises or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim that Mortgagor have or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; and whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Mortgagor.

1.4 Taxes and Impositions.

A. That Mortgagor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind whatsoever, including without limitation non-governmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions, and restrictions affecting the Premises, that are assessed or imposed upon the Premises, or become due and payable, and that create, may create, or appear to create a lien upon the Premises or any part thereof (all of which are hereinafter referred to as "Impositions").

B. To deposit with Mortgagee, if it shall so request, each month, an amount equal to one-twelfth (1/12th) of the estimated annual Impositions and in that case to cause all bills, statements, or other documents relating to such Impositions to be sent or mailed directly to Mortgagee for payment, to the extent of such deposits, and to deposit with Mortgagee immediately the amount of any deficiency.

C. That should Mortgagor fail to pay or provide for the payment of the Impositions, Mortgagee may pay the same and Mortgagor will reimburse all amounts paid thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor such amounts, together with interest

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thereon at the rate set forth in the Note or at the maximum rate of interest permitted by law from time to time, whichever shall be less, shall be secured by this Mortgage.

1.5 Utilities. To pay when due all utility charges that are incurred for the benefit of the Premises or that may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other taxes, assessments, or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such taxes, assessments, or charges are liens thereon.

1.6 Actions Affecting Premises. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which Mortgagee may appear.

1.7 Insurance Policies, Premiums, and Proceeds.

A. To provide, maintain and keep in force at all times the policies of insurance required by the Purchase Agreement, to deliver certificates thereof to Mortgagee, and at least ten (10) days prior to the expiration of any thereof, to deliver certificates of reissuance thereof together with evidence of payment of premiums thereon acceptable to Mortgagee.

B. To deposit with Mortgagee, if it shall so request, each month, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual premiums on all policies of insurance required by the Purchase Agreement and in that case to cause all bills, statements, or other documents relating to such premiums to be sent or mailed directly to Mortgagee for payment, to the extent of such deposits, of such premiums, and to deposit with Mortgagee immediately the amount of any deficiency.

C. That should Mortgagor fail to provide, maintain, keep in force, or deliver and furnish to Mortgagee the policies of insurance required by the Purchase Agreement, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the rate set forth in the Note or at the maximum rate of interest permitted by law from time to time, whichever shall be less, shall be secured by this Mortgage.

D. That after the happening of any casualty to the Premises or any part thereof, Mortgagor shall give prompt written notice to Mortgagee. In the event of any damage or destruction of the Improvements, Mortgagee shall have the option, in its sole discretion, of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine or (ii) to the restoration of the Improvements or (iii) to Mortgagor. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee; and Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust, or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

E. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Premises in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by the Purchase Agreement shall inure to the benefit of and pass to the successor in interest of Mortgagor or the purchaser or grantee of the Premises.

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1.8 Actions by Mortgagee to Preserve Premises. That should Mortgagor fail to make any payment or to do any act as and in the manner provided in any of the Loan Instruments, Mortgagee in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs, and improvements to the Premises that it may consider necessary or proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or that may affect the security hereof or the rights or powers of Mortgagee; (iv) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien, or debt that in the judgment of Mortgagee may affect or appears to affect the security of this Mortgage or be prior or superior hereto; (v) to cure any default under the Lease or take or perform any action or pay any amount required by the Lease; and (vi) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys, and reasonable attorneys' fees, all of which, together with interest at the rate set forth in the Note or at the maximum rate permitted by law, whichever shall be less, shall be secured by this Mortgage.

1.9 Performance of Obligations; Survival of Warranties. To satisfy and perform fully and faithfully the obligations of Mortgagor contained in each agreement of Mortgagor incorporated by reference herein and any modification or amendment thereof. All representations, warranties, and covenants of Mortgagor contained herein or incorporated by reference herein shall survive and shall remain continuing representations, warranties, and covenants of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

1.10 Eminent Domain. That should the Premises, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee and:

A. Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in, and prosecute in its own name any action or proceeding therefor. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, right of action, and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee, and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

B. In the event any portion of the Premises is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Mortgagee may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Premises upon such conditions as Mortgagee may determine. Such application shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.11 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale is made hereunder.

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1.12 Liens. To pay and discharge in accordance with their terms, at Mortgagor's cost and expense, all other liens, encumbrances, and charges upon the Premises, or any part thereof or interest therein. If Mortgagor shall fail to discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such other manner as is or may be prescribed by law, all of which, together with interest at the rate set forth in the Note or at the maximum rate permitted by law, whichever shall be less, shall be secured by this Mortgage.

1.13 Inspections. That Mortgagee, or its agents, representatives, or workmen, are authorized to enter at any reasonable time upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts that it is authorized to perform under the terms of any of the Loan Instruments.

1.14 Mortgagee's Powers. That without affecting the lien or charge of this Mortgage upon any portion of the Premises not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time and without notice, (i) extend the maturity or alter any of the terms of any such obligation; (ii) grant other indulgences; (iii) release or reconvey, or cause to be released or reconveyed, at any time at Mortgagee's option, any parcel, portion, or all of the Premises; (iv) take or release any other or additional security for any obligation herein mentioned; or (v) make compositions or other arrangements with debtors in relation thereto.

1.15 Environmental Matters. Mortgagor warrants that the Property is now and so long as the indebtedness secured hereby remains outstanding will remain in compliance in all material respects with all applicable environmental law, regulation, and requirements except for instances of inadvertent, accidental, or unauthorized non-compliance arising in the ordinary course of operations (i) for which remediation is promptly commenced and diligently pursued to conclusion as soon as possible and (ii) for which the costs of remediation (net of insurance proceeds) and/or the penalties imposed are immaterial in amount. Mortgagor hereby indemnifies and holds Mortgagee harmless from any expense, loss, claim, suit, or fee arising out of any contamination of the Property by hazardous, dangerous, contaminating, noxious or unsafe materials or non-compliance with or breach of the above warranty.

2. SECURITY INTEREST

2.1 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Fixtures (as defined hereinabove) including without limitation any and all property of similar type or kind hereafter located on or at the Property or used or arising in connection therewith for the purpose of securing all obligations of Mortgagor contained in any of the Loan Instruments.

2.2 Warranties, Representations, and Covenants. Mortgagor warrants, represents, and covenants as follows:

A. Except for the security interest granted hereby, Mortgagor is, and as to any portion of the Fixtures to be acquired after the date hereof will be, the sole owner of the Fixtures, free from any adverse lien, security interest, encumbrance, or adverse claim thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Fixtures against, all claims and demands of all persons at any time claiming the same or any material interest therein.

B. Mortgagor will not sell, convey, or in any manner transfer the Fixtures without the prior written consent of Mortgagee, except such portions or items of Fixtures that are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.

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- C. The Fixtures are not used or bought for personal, family, or household purposes.
- D. The Fixtures will be kept on or at the Property and Mortgagor will not remove the Fixtures from the Property without the prior written consent of Mortgagee, except such portions or items of Fixtures that are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.
- E. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee and will pay the cost of filing the same in all public offices where filing is deemed by Mortgagee to be necessary or desirable.
- F. All covenants and obligations of Mortgagor contained herein and in the Purchase Agreement relating to the Premises shall be deemed to apply to the Fixtures whether or not expressly referred to herein.
- G. This Mortgage constitutes a Security Agreement as that term is used in the Uniform Commercial Code.

3. REMEDIES UPON DEFAULT

3.1 Events of Default. Any of the following events shall be deemed an event of default hereunder.

- A. Default shall be made in the payment when due of any installment of principal or interest on the Note or any other sum secured hereby; or
- B. Mortgagor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of itself or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues, or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or
- C. A court of competent jurisdiction shall enter an order, judgment, or decree approving a petition filed against Mortgagor seeking any reorganization, dissolution, or similar relief under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors; or any trustee, receiver, or liquidator of Mortgagor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues, or profits thereof, shall be appointed without its consent or acquiescence; or
- D. A writ of execution or attachment or any similar process involving a material monetary amount shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving a material monetary sum shall be entered against Mortgagor that shall become a lien on the Premises or any portion thereof or interest therein; or
- E. There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation, or warranty contained in any of the Loan Instruments or any part thereof, not referred to in this Section 3.1.

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3.2 Acceleration upon Default: Additional Remedies. Upon the occurrence of any event of default referred to in Section 3.1 hereof, Mortgagee may, subject to its compliance with any notice requirements, and any rights of Mortgagor to cure such event of default, as provided in the Purchase Agreement, declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest, or notice of any kind. Thereafter Mortgagee may commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.

3.3 Foreclosure: Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree to the extent allowed by law all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale that may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate provided in the Note or at the maximum rate of interest permitted by law from time to time, whichever shall be less, and shall be secured by this Mortgage.

3.4 Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such allowable items as are mentioned in the preceding section hereof; second, on account of all interest and all principal remaining unpaid on the Note and all other items of secured indebtedness under the Loan Instruments; and third, any balance to Mortgagor, its successors or assigns, as their rights may appear.

3.5 Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or adequacy of the security for the indebtedness secured hereby, and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have all powers that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in hand in payment in whole or in part of: (i) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien that may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (ii) any and all rents due or that may become due under underlying leases; and (iii) the deficiency in case of a sale and deficiency.

3.6 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the Loan Instruments or other agreement or any laws now or hereafter in force, notwith-

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standing some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to Mortgagee or to which it may be otherwise entitled may be exercised concurrently or independently from time to time and as often as it may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

4. MISCELLANEOUS

4.1 Governing Law. This Mortgage shall be governed by the laws of the state in which the Property is located. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments that can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

4.2 Giving of Notice. Any notice that either party hereto may desire or be required to give to the other party shall be in writing and the delivery thereof by hand, or the mailing thereof by certified mail addressed, to such party at its address stated in the preamble hereto or at such other place as either party hereto may by notice in writing designate as a place for service of notice shall constitute service of notice hereunder.

4.3 Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Mortgage.

4.4 No Merger. If both the lessor's and lessee's estates under any lease or any portion thereof that constitutes a part of the Premises shall at any time become vested in one owner, this Mortgage and lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Premises pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

4.5 Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt that is not secured or fully secured by the lien of this Mortgage.

94019081

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4.6 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Note, whether or not named as Mortgagee herein.

IN TESTIMONY WHEREOF, WITNESS the signature of Mortgagor acting by and through a duly authorized officer of its Managing Partner hereunto duly authorized and delivered at Louisville, Kentucky, as of the date first above written.

In the presence of:

H. Alexander Campbell
(Signature)

H. Alexander Campbell
(Printed Name)

Carol P. ...
(Signature)

Carole A. ...
(Printed Name)

PBS I JOINT VENTURE,

By TOSC I CORP., a Kentucky corporation

By: James H. Thornton
James H. Thornton
President

STATE OF KENTUCKY)
 :SS
COUNTY OF JEFFERSON)

Before the undersigned, a Notary Public in and for said State and County, this ___ day of December, 1993, personally appeared James H. Thornton, known to me to be President of TOSC I Corp., a Kentucky corporation, the Managing Partner of PBS I Joint Venture, a Kentucky general partnership, the Mortgagor aforesaid, and signed and acknowledged the execution of the foregoing Mortgage in the name of and on behalf of the corporation in behalf of the partnership as his free act and deed and the free act and deed of the corporation, by authority of a resolution of its Board of Directors.

Witness my hand and Notarial Seal.

My commission expires: June 19, 1995

[Signature]
Notary Public

[SEAL]

Exhibits

A -- Legal Description of the Property

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This Instrument Prepared By: *A Mail To.*



H. Alexander Campbell
WYATT, TARRANT & COMBS
Citizens Plaza
Louisville, Kentucky 40202
(502) 589-5235

G:\HAWL\MORT103.P85
12/22/93 9:51 am

F:\LOUCOMH\MORT103.C-H
12/22/93 9:51 am

Property of Cook County Clerk's Office

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#103
Dolton, Illinois

EXHIBIT A to Leasehold Mortgage and Security Agreement

Source of Leasehold Interest

(1984) dated Dec 31, 1993 between Kmart Corporation and Thornton Oil Corporation recorded 1-6, 1994 as Document No. 94019079 in Cook County, Illinois and the Sub-Ground Lease dated July 23, 1993 between the same parties referred to therein.

Legal Description of the Property

The following described property situated in Cook County, Illinois and more particularly described as follows:

Part of the South 1/2 of the East 1/2 of the Northwest 1/4 of Section 11, Township 36 North, Range 14 East of the third principal meridian, more particularly described as follows:

Commencing at the South West corner of the South 1/2 of the East 1/2 of the Northwest 1/4 of said Section 11, thence North along the West line of the South 1/2 of the East 1/2 of the Northwest 1/4 50.80 feet to the North line of Sibley Boulevard as occupied and dedicated by document 25081157, thence East along said North line 86.91 feet to the point of beginning, thence North perpendicular to said North line of Sibley Boulevard 155.00 feet, thence East parallel with the North line of Sibley Boulevard 150.00 feet, thence South perpendicular to the previously described course 155.00 feet to North line of Sibley Boulevard, thence West along said North line 150.00 feet to the point of beginning, all in Cook County, containing 0.5165 acres, more or less.

29-11-930-025

ADDRESS of
PARTY: 1008 E. Sibley Blvd
DOLTON

94019081