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Attn: Terry Wilson  
Lawyers Title Insurance Corp.  
950 E. Paces Ferry Rd.  
Suite 2850  
Atlanta, GA 30326

97406290

**MAIL TO:**

This document is intended to be recorded in Cook County, Illinois

Prepared by and upon recording  
return by mail

Jeffrey J. Temple, Esq.  
WHITE & CASE  
1155 Avenue of the Americas  
New York, New York 10036

Property of Cook County Clerk

MORTGAGE AND SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES, RENTS AND PROFITS,  
FINANCING STATEMENT AND FIXTURE FILING

787-01 451001.0 5139.56  
1997 05/19/97 12:42:00  
JW \*97-406290

Made by  
SERVICE MERCHANDISE COMPANY, INC.  
as Mortgagor,

to

THE CHASE MANHATTAN BANK  
as Agent,  
as Mortgagee

13950  
13600

ATTENTION: FILING OFFICER-INSTRUMENT COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS INSTRUMENT SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING AND FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE MORTGAGOR (DEBTOR) AND MORTGAGEE (SECURED PARTY) ARE SET FORTH IN THIS INSTRUMENT.

THIS MORTGAGE SECURES FUTURE ADVANCES

LAWYERS TITLE INSURANCE CORPORATION  
17 SOUTH LASALLE STREET 25th FLOOR

THIS IS A MULTI-STATE MORTGAGE.

CH-CASO ILLNO S00603  
CASE NO. \_\_\_\_\_

ADDRESS: 16795 So Toulece Ave  
Lansing, IL 60438

PERMANENT INDEX TAX NO.: 30-19-30-019  
30-19-30-020  
30-19-30-029

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EXHIBIT A - Description of Land  
EXHIBIT B - Leasehold Mortgage Provisions

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## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS AND PROFITS, FINANCING STATEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES, RENTS AND PROFITS, FINANCING STATEMENT AND FIXTURE FILING, dated as of May 28, 1997 (as amended, modified or supplemented from time to time, this "Mortgage") made by SERVICE MERCHANDISE COMPANY, INC., a corporation organized and existing under the laws of the State of Tennessee with an office for the transaction of business located at 7100 Service Merchandise Drive, Brentwood, Tennessee 37027, as mortgagor (the "Mortgagor") to THE CHASE MANHATTAN BANK, a New York banking corporation with an office for the transaction of business located at 270 Park Avenue, New York, New York 10017, as Collateral Agent, as mortgagee (the "Mortgagee") for its own benefit and for the benefit of (x) the Banks and the Administrative Agent under, and any other lenders from time to time party to, the Credit Agreement hereinafter referred to (such banks, the Administrative Agent and other lenders, if any, are hereinafter called the "Bank Creditors") and (y) if one or more Banks (or any affiliate thereof) enter into one or more interest rate protection agreements (including, without limitation, interest rate swaps, caps, floors, collars and similar agreements), (collectively, the "Interest Rate Protection Agreements") with, the Mortgagor, any such Bank or Banks or any affiliate of such Bank or Banks (even if any such Bank subsequently ceases to be a Bank under the Credit Agreement for any reason) so long as any such Bank or affiliate thereof participates in the extension of such Interest Rate Protection Agreements and their subsequent assigns, if any (collectively, the "Interest Rate Protection Creditors" and, together with the Bank Creditors and the Mortgagee, are hereinafter called the "Secured Creditors"). Except as otherwise defined herein, capitalized terms used herein and defined in the Credit Agreement shall be used herein as so defined.

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

WHEREAS, Service Merchandise Company, Inc. ("Service"), various lenders from time to time party thereto (the "Banks"), and The Chase Manhattan Bank, as Collateral Agent and Administrative Agent (the "Agent"), have entered into a Credit Agreement, dated as of June 8, 1994, and amended by the First Amendment, dated as of April 13, 1995, the Second Amendment, dated as of May 23, 1996, the Third Amendment, dated as of September 16, 1996, the Fourth Amendment, dated as of January 15, 1997 and the Fifth Amendment, dated as of March 25, 1997, providing for the making of revolving loans to the Mortgagor and the issuance of, and participation in, Letters of Credit, as contemplated therein whereby the maximum indebtedness under the Credit Agreement (hereafter defined) is \$525,000,000.00 and the line of credit created under the Credit Agreement is a revolving line such that the outstanding unpaid principal balance may fluctuate from time to time during the term of Credit Agreement (as used herein, the term "Credit Agreement" means the Credit Agreement described above in this paragraph, as the same may be amended, modified, extended, renewed, replaced, restated, supplemented or refinanced from time to time, and including any agreement extending the maturity of, refinancing or restructuring (including, but not limited to, the inclusion of additional borrowers or guarantors thereunder or any increase in the amount borrowed) all or any portion of the indebtedness under such agreement or any successor agreements, whether or not with the same agent, trustee, representative lenders or holders; provided that with respect to any agreement providing for the refinancing of indebtedness under the Credit Agreement, such agreement shall only be treated as, or as part of, the Credit Agreement hereunder if (i) either (A) all obligations under the Credit Agreement being refinanced shall be paid in full at the time of such refinancing, and all commitments and letters of credit issued pursuant to the refinanced Credit Agreement shall have terminated in accordance with their terms or (B) the Required Banks shall have consented in writing to the refinancing Indebtedness being treated along with their Indebtedness, as Indebtedness pursuant to the Credit Agreement, (ii) the refinancing indebtedness shall be permitted to be incurred under the Credit Agreement being refinanced (if such Credit Agreement is to remain outstanding) and (iii) a notice stating that the refinancing indebtedness shall be treated as issued under the Credit Agreement shall be delivered by the Mortgagor to the Collateral Agent);

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WHEREAS, it is a condition precedent to the effectiveness of the Fifth Amendment that the Mortgagor shall have executed and delivered to the Mortgagee this Mortgage;

WHEREAS, the Mortgagor desires to enter into this Mortgage to satisfy the condition in the preceding paragraph and to secure (and this Mortgage shall secure) the following:

(i) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations and liabilities (including, without limitation, the principal of and interest on the notes issued, and loans made, under the Credit Agreement, all reimbursement obligations and unpaid drawings with respect to letters of credit issued under the Credit Agreement, and all indemnities, fees and interest thereon or owed thereunder at the rate set forth in the Credit Agreement) of the Mortgagor to the Bank Creditors, whether now existing or hereafter incurred under, arising out of or in connection with the Credit Agreement and the other Credit Documents to which the Mortgagor is a party and the due performance and compliance by the Mortgagor with all of the terms, conditions and agreements contained in the Credit Agreement and such other Credit Documents;

(ii) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations and liabilities of the Mortgagor to the Interest Rate Protection Creditors, whether now existing or hereafter incurred under, arising out of or in connection with any Interest Rate Protection Agreement or and the due performance and compliance by the Mortgagor with all the terms, conditions and agreements contained in such Interest Rate Protection Agreements;

(iii) any and all sums advanced by the Mortgagee in order to preserve or protect the Mortgaged Property (as hereinafter defined) or preserve or protect its security title and interest in the Mortgaged Property;

(iv) in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities of the Mortgagor referred to in clauses (i), (ii) and (iii) above after an Event of Default (as hereinafter defined) shall have occurred and be continuing, the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Mortgaged Property, or of any exercise

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by the Mortgagee of its rights hereunder, together with reasonable attorneys' fees (as set forth in Section 4.08 hereof) and court costs;

(v) all amounts paid by any Indemnitee (as hereinafter defined) as to which such Indemnitee has the right to reimbursement under Section 1.08 of this Mortgage; and

(vi) any and all renewals, extensions and modifications of any of the obligations and liabilities referred to in clauses (i) and (v) above;

all such obligations, liabilities, sums and expenses set forth in clauses (i) through (vi) above being herein collectively called the "Obligations". The maximum amount of the principal indebtedness secured by this Mortgage is \$525,000,000.

NOW, THEREFORE, as security for the Obligations and in consideration of the sum of ten dollars (\$10.00) and the benefits accruing to the Mortgagor, the receipt and sufficiency of which are hereby acknowledged, THE MORTGAGOR HEREBY MORTGAGES, WARRANTS, GIVES, GRANTS, BARGAINS, SELLS AND CONFIRMS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, all of Mortgagor's estate, right, title and interest, whether now owned or hereafter acquired, whether as lessor or otherwise and whether vested or contingent, in and to all of the following described land and interests in land, estates, easements, tenements, rights, improvements, property, fixtures, machinery and equipment:

A. The land described in Exhibit A hereto (the "Land");

B. The buildings and improvements now or hereafter erected on the Land (collectively, the "Improvements");

C. All fixtures, attachments, appliances, equipment, machinery, building materials and supplies, and other tangible personal property, now or hereafter attached to said Improvements or now or at any time hereafter located on the Land and/or Improvements including, but not limited to, furnaces, boilers, oil burners, piping, plumbing, refrigeration, air conditioning and sprinkler systems, elevators, motors, dynamos and all other equipment and machinery, appliances, fittings and fixtures of every kind located in or used in the operation of the Improvements, structures or

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buildings located on the Land, together with any and all replacements or substitutions thereof and additions thereto (hereinafter sometimes collectively referred to as the "Equipment");

TOGETHER with all appurtenant rights and easements, rights of way, and other rights appurtenant to the use and enjoyment of or used in connection with the Land and/or the Improvements;

TOGETHER with (1) all streets, roads and public places (whether open or proposed) now or hereafter adjoining or otherwise providing access to the Land, (2) the land lying in the bed of such streets, roads and public places, and (3) all other sidewalks, alleys, ways, passages, vaults, water courses, strips and gores of land now or hereafter adjoining or used or intended to be used in connection with all or any part of the Land;

TOGETHER with all of the Mortgagor's right, title and interest in, to and under leasehold estates, including, without limitation any lease(s) described in Exhibit A annexed hereto (collectively the "Ground Lease"), and in any or other agreements, relating to the use and occupancy of the Land and/or the Improvements or any portion thereof;

TOGETHER with all rents, issues and profits of this Property (collectively, "Rents");

TOGETHER with all the right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which the Mortgagor now has or may hereafter acquire in the Property (as defined below), and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of the whole or any part of the Property;

TOGETHER with all of the Mortgagor's right, title and interest and estate in and to any zoning lot agreements and air rights and development rights which may be vested in the Mortgagor under or pursuant thereto, together with any additional air rights or development rights which have been or may hereafter be conveyed to or become vested in the Mortgagor (collectively, the "Air Rights") (the Land, the Improvements, the Air Rights, the Equipment and all other property and interests and appurtenant rights and easements described above as being subject to this Mortgage are herein referred to collectively as "the Property");

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The entire estate, right, property and interest hereby conveyed to the Mortgagee may be referred to herein as the "Mortgaged Property" as well as "the Property".

AND without limiting any of the other provisions of this Mortgage, the Mortgagor expressly grants to the Mortgagee, as secured party, a security interest in the portion of the Mortgaged Property which is or may be subject to the provisions of the Illinois Uniform Commercial Code, for Mortgaged Property located in the State of Illinois (the "Uniform Commercial Code"), applicable to secured transactions to secure the Obligations, and the Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements made by the Mortgagor to the Mortgagee, all of the rights and remedies of a "secured party" under said Uniform Commercial Code; it being understood and agreed that the Improvements and Equipment constituting fixtures are part and parcel of the Property appropriated to the use thereof and, while affixed or annexed to the Land or the buildings and structures thereon, shall for the purposes of this Mortgage be deemed conclusively to be real estate and transferred and conveyed hereby; and the Mortgagor agrees to execute and deliver from time to time, such further instruments (including security agreements) as may be reasonably requested by the Mortgagee to confirm the lien of this Mortgage on any improvements.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto the Mortgagee and to its successors and assigns forever, and the Mortgagor hereby binds itself and its successors and assigns to warrant and defend the Mortgaged Property unto the Mortgagee, its successors and assigns against the claim or claims of all persons claiming or to claim the same, or any part thereof.

AND TO PROTECT THE SECURITY OF THIS MORTGAGE, the Mortgagor covenants and agrees as follows:

## ARTICLE I.

### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF THE MORTGAGOR

1.01 Title to this Property. The Mortgagor represents and warrants (a) that it has good fee or leasehold title to the Property, free and clear of any liens and encumbrances (except Permitted Encumbrances and Permitted

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Liens), and is lawfully seized and possessed of the Property; (b) that this Mortgage is a valid first priority lien upon the Property (subject to Permitted Encumbrances and Permitted Liens); (c) that the Mortgagor has full power and authority to encumber the Property in the manner set forth herein; and (d) that there are no defenses or offsets to this Mortgage or to the Obligations which it secures. The Mortgagor shall, subject to Permitted Encumbrances and Permitted Liens, preserve such title and the validity and priority of this Mortgage and shall forever warrant and defend the same to the Mortgagee against the claims of all persons and parties whatsoever.

1.02 (a) Compliance with Law. The Mortgagor represents that it possesses all certificates, licenses, authorizations, registrations, permits and/or approvals (including, without limitation, a certificate of occupancy) necessary for the ownership, operation, leasing and management of the Property and the other portions of the Mortgaged Property, including, without limitation, all required environmental permits, all of which are in full force and effect and not the subject of any revocation proceeding, undisclosed amendment, release, suspension, forfeiture or the like. The present and contemplated use and occupancy of the Property does not conflict with or violate any such certificate, license, authorization, registration, permit or approval, including, without limitation, the certificate of occupancy for the Property.

(b) Agreements. Except for Permitted Encumbrances and Permitted Liens, the Mortgagor has not entered into any contract or other agreement providing for the transfer, conveyance or encumbrance of the Property or any part thereof or interest therein.

1.03 Payment and Performance of Obligations. The Mortgagor shall pay all of the Obligations when due and without offset or counterclaim, and shall observe and comply in all respects with all of the terms, provisions, conditions, covenants and agreements to be observed and performed by it under this Mortgage, the Credit Agreement, the other Credit Documents to which it is a party and the Interest Rate Protection Agreements to which it is a party (collectively, the "Financing Documents").

1.04 Maintenance, Repair, Alterations, Etc. The Mortgagor will, to the extent not prohibited by the Credit Agreement: keep and maintain the Property in good condition and repair (normal wear and tear excepted); make or cause to

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be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen which are necessary to so maintain the Property; except as otherwise provided in Sections 1.07 or 1.12 hereof, restore any Improvement which may be damaged or destroyed so that the same shall, to the extent permitted by applicable law be at least substantially equal to its value, condition and character immediately prior to the damage or destruction, and promptly pay when due, subject to the provisions of Section 1.20 hereof, all claims for labor performed and materials furnished therefor; comply with all applicable statutes, regulations and orders of and all applicable restrictions imposed by, all governmental bodies, domestic and foreign (collectively, a "Law") now or hereafter affecting this Property or any part thereof or the use thereof or requiring any alterations or improvements; not commit or permit any waste or deterioration (normal wear and tear excepted) of the Property; not permit the Improvements to be demolished or substantially altered; comply with the provisions of any lease, easement or other agreement affecting all or any part of the Property; and not permit the Improvements or any part thereof to become abandoned.

**1.05 Required Insurance.** The Mortgagor will, at its expense, at all times provide, maintain and keep in force policies of property, hazard and liability insurance in accordance with Section 9.03 of the Credit Agreement and with respect to the Property, together with statutory workers' compensation insurance with respect to any work to be performed on or about the Property.

**1.06 Policy Provisions, Etc.** (a) Each policy of insurance maintained by the Mortgagor pursuant to Section 1.05 hereof with respect to the Property shall contain the respective provisions set forth in Section 9.03 of the Credit Agreement.

(b) The Mortgagor shall pay as and when the same become due and payable the premiums for all insurance policies that the Mortgagor is required to maintain hereunder, and all such policies shall be nonassessable. The Mortgagor will deliver to the Mortgagee concurrently herewith original certificates or certified copies setting forth in reasonable detail the terms (including, without limitation, any applicable notice requirements) of all insurance policies that the Mortgagor is required to maintain hereunder.

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(c) Prior to the expiration, termination or cancellation of any insurance policy which the Mortgagor is required to maintain hereunder, the Mortgagor shall obtain a replacement policy or policies (or a binding commitment for such replacement policy or policies), which shall be effective no later than the date of the expiration, termination or cancellation of the previous policy, and shall deliver to the Mortgagee an original certificate or certified copy which complies with the requirements of Section 1.06(a) hereof, or a copy of a binding commitment for such policy or policies. The Mortgagor shall also provide to the Mortgagee originals of such policies as soon as reasonably possible after the Mortgagee's request therefor.

(d) At time of issuance of insurance, all insurers shall be authorized to issue insurance in the State in which this Property is located, and all insurers and reinsurers shall be reputable and solvent insurers, as required by Section 9.03 of the Credit Agreement.

**1.07 Insurance Proceeds.** (a) The Mortgagor shall give prompt written notice to the Mortgagee of the occurrence of any damage to or destruction of the Improvements (which term as used in this Section 1.07 shall include Equipment) in excess of \$200,000.

(b) If the Mortgagee shall by any manner acquire the title or estate of the Mortgagor in or to any portion of the Mortgaged Property, it shall thereupon become the sole and absolute owner of all insurance policies affecting and to the extent applicable to such portion held by or required hereunder to be delivered to the Mortgagee, with the sole right to collect and retain all unearned premiums thereon; and the Mortgagor shall be entitled only to a credit in reduction of the then outstanding indebtedness secured hereby in the amount of the short rate cancellation refund. The Mortgagor agrees, immediately upon demand, to execute and deliver such assignments or other authorizations or instruments as may be necessary or desirable to effectuate the foregoing.

(c) If any of the Improvements or Equipment shall be damaged or destroyed, in whole or in part, by fire or other casualty and the reasonable estimated cost to replace same shall exceed \$200,000 for any property separately described in Exhibit A annexed hereto and the Improvements and Equipment located thereon (each such property and the Improvements and Equipment located thereon being hereinafter referred to as a "Property"), the Mortgagor shall give prompt

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notice thereof to the Mortgagee, and without regard to adequacy of insurance proceeds, if any, shall (subject to the provisions of any applicable Ground Lease and the provisions of subsection 1.07(c)(i) below) promptly restore, replace, rebuild or alter the same, in either case as nearly as possible to the condition thereof existing immediately prior to such damage or destruction or with such alterations or improvements as will not decrease the value of such Improvements and Equipment below the value thereof immediately prior to such damage or destruction in the reasonable judgment of the Mortgagee. If the damage be of such nature as to require the Mortgagor to construct a replacement for, or to alter in any material or substantial way, the damaged or destroyed items, the Mortgagor shall, before commencing any such work, submit copies of the plans and specifications therefor to the Mortgagee for the Mortgagee's approval, which approval shall not be unreasonably withheld or delayed. If the Mortgagor has not received a written notice from the Mortgagee within thirty (30) days from the date of its receipt of such plans and specifications either approving or disapproving same the Mortgagor shall deliver to the Mortgagee a written notice stating that it has not received written approval or disapproval of the plans and specifications in question. If the Mortgagor does not receive a written notice from the Mortgagee approving or disapproving of such plans and specifications (and stating the reasons for such disapproval) within ten (10) days from the date of Mortgagee's receipt of the notice from the Mortgagor described in the preceding sentence then no approval of such plans and specifications shall be required by the Mortgagee. Subject to the provisions of any applicable Ground Lease, if by reason of any such damage or destruction any sums are paid under any insurance policy hereinabove mentioned or contemplated, such sums shall be paid as follows:

(i) Such insurance proceeds shall be paid over to the Mortgagor, who shall have the option to (x) hold the same as a trust fund to be used first for the payment of the entire cost of restoring, repairing, rebuilding or replacing the damaged or destroyed items as provided in subsection (ii) below, and the balance, if any, may be used by the Mortgagor for any other purpose, (y) pay such proceeds over to the Mortgagee to be retained and applied toward the payment of the indebtedness secured hereby or (z) within thirty (30) days from the date of such damage or destruction designate additional Real Property having a then fair market value equal or greater than the fair market value of the damaged

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Property immediately prior to such damage or destruction and otherwise acceptable to the Mortgagee in its sole discretion as an Additional Mortgaged Property under Section 9.09 of the Credit Agreement and take all actions required thereunder with respect to such property and upon completion of such actions this Mortgage shall be discharged and satisfied or assigned, pursuant to Section 6.14 hereof but only with respect to the damaged Property. Notwithstanding the foregoing, however, if any Event of Default shall occur and be continuing at the time such proceeds are to be paid over to the Mortgagor, such proceeds shall be paid over to the Mortgagee to be retained and applied toward payment of the indebtedness secured hereby or applied to the repair of the damage as hereinafter provided.

(ii) Should such insurance proceeds or any condemnation Award be used to restore or to repair the damaged Improvements or Equipment and the amount of such proceeds or Award is less than \$200,000, the Mortgagor shall be entitled to apply such proceeds or Award to the payment of the costs and expenses of repairing and restoring the Improvements and Equipment. Should such proceeds or Award be used to restore or repair the damaged Improvements or Equipment and the amount of such insurance proceeds or Award is \$200,000 or more, the insurance proceeds or Award in question shall be paid to a bank or trust company designated by the Mortgagor with the approval of the Mortgagee for the benefit of the Mortgagor and the Mortgagee, and if the then Mortgagee shall be a bank or trust company, to the Mortgagee directly if the Mortgagee so elects (such bank or trust company so designated being herein called the "Insurance Fund Depository"). All charges and expenses (including, but not limited to, counsel fees) of the Insurance Fund Depository shall be paid by the Mortgagor. All insurance proceeds paid to the Insurance Fund Depository, and any condemnation proceeds deposited with it pursuant to Section 1.12 below, shall be held in an interest bearing account and disposed of as provided in subsection 1.07(c)(iii)

(iii) If such insurance proceeds or any condemnation Awards have been applied to the indebtedness secured hereby and the Mortgagor gives written notice to the Mortgagee of its intention to sell the Mortgaged Property or any portion thereof, then the Mortgagee shall discharge and satisfy or assign this Mortgage pursuant to Section 6.14 hereof but only with respect to

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the portion of the Mortgaged Property to be sold provided that the following conditions are met: (i) the Mortgagee shall have received payment of the Net Proceeds (as hereinafter defined) of such sale and (ii) such sale constitutes an arm's length transaction for fair market value with a bona fide third party purchaser. As used herein "Net Proceeds" means all proceeds from the sale of the Mortgaged Property less (x) any brokerage commissions paid to any Person who is not an Affiliate of the Mortgagor, (y) any reasonable attorneys' fees incurred by the Mortgagor in connection with such sale and (z) any recording fees, transfer or gains taxes, title insurance premiums, survey costs and environmental report costs payable by the Mortgagor in connection with such sale.

(d) Upon receipt by the Insurance Fund Depository of:

(i) a certificate of the Mortgagor (1) requesting the payment of a specified amount of such insurance and/or condemnation monies; (2) describing in reasonable detail the work and materials applied to the restoration or replacement of the damaged or destroyed Improvement and/or Equipment located therein since the date of the last such certificate; (3) stating that such specified amount does not exceed the cost of such work and materials; and (4) stating that such work and materials have not previously been made the basis of any request for any withdrawal of money; accompanied by

(ii) a certificate of an engineer or architect designated by the Mortgagor, who in either case shall be approved by the Mortgagee, stating (1) that the work and materials described in the accompanying certificate of the Mortgagor were satisfactorily performed and furnished and were necessary, appropriate or desirable to the restoration or replacement of the damaged, destroyed or taken Improvement or Equipment; (2) that the amount specified in such certificate of the Mortgagor is not in excess of the reasonable cost of such work and materials; and (3) the additional amount, if any, required to complete the restoration or replacement of the damaged, destroyed or taken Improvement and/or Equipment; accompanied by

(iii) evidence satisfactory to the Mortgagee (1) that there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights or interests of the Mortgagee (other than

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Permitted Encumbrances and Permitted Liens); (2) that neither the Mortgaged Property nor any part thereof is subject to any recorded mechanic's, laborer's, materialman's or any similar lien, encumbrance or charge; and (3) that the Equipment is not subject to any security agreement or interest except as may be permitted under this Mortgage; then, and in such event, the Insurance Fund Depository shall pay to the Mortgagor the amount of such insurance and/or condemnation monies specified in such certificate of the Mortgagor; provided, however, that the balance of insurance and/or condemnation monies deposited with the Insurance Fund Depository shall not be reduced below the amount specified in such certificate of the independent engineer or the independent architect as the amount required for the balance of the costs of replacement of the damaged, destroyed or taken Improvement or Equipment. Each such payment shall be held by the Mortgagor in trust and shall be used solely for the payment of the cost of the work and materials described in the certificate of the Mortgagor, or if such cost or any part thereof has theretofore been paid by the Mortgagor out of its own funds, then for the reimbursement to the Mortgagor of any such cost or part thereof paid by it. If there shall remain on deposit with the Insurance Fund Depository any balance of insurance or condemnation monies after the damaged or destroyed Improvements or Equipment shall have been completely restored and/or replaced, as evidenced by a certificate of such independent engineer or independent architect delivered to the Insurance Fund Depository, then, provided that no Event of Default shall exist hereunder, such balance of insurance and/or condemnation monies shall be paid to the Mortgagor. Concurrently with the Mortgagor's delivery to the Insurance Fund Depository of each of the foregoing certificates and reports of title, the Mortgagor shall deliver duplicate copies thereof to the Mortgagor.

(e) If the Mortgagor elects not to provide the Mortgagee with Additional Mortgaged Property or apply the insurance proceeds toward the payment of the indebtedness secured hereby pursuant to subsection 1.07(c) above then nothing herein contained shall relieve the Mortgagor of its duty to repair, restore, rebuild or replace the Improvements or Equipment following damage or destruction by fire or other casualty in the event that no or inadequate proceeds of insurance are available to defray the cost of such repairing, restoring, rebuilding or replacement. In addition, nothing

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contained herein shall relieve the Mortgagor of its duty to pay or cause to be paid and to make or cause to be made all payments called for or required by the Obligations, the other Credit Documents to which it is a party and this Mortgage subsequent to the occurrence of any fire or other casualty.

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

(g) Subject to the provisions of any applicable Ground Lease and Prior Mortgage (as hereinafter defined), the Mortgagee shall apply all insurance proceeds or condemnation Awards (as hereinafter defined) as follows:

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

(ii) second, to the extent proceeds remain after the application pursuant to the preceding clause (i) an amount equal to the outstanding Obligations with respect to the Credit Agreement and the Interest Rate Protection Agreements of the Mortgagor to the Secured Creditors shall be paid to the Agent (in the case of Obligations with respect to the Credit Agreement) or the Interest Rate Protection Creditors (in the case of the Interest Rate Protection Agreements) for the application to the Obligations with respect to the Credit Agreement or the Interest Rate Protection Agreements, as the case may be, of, or guaranteed by, the Mortgagor, with each Bank Creditor and each other Secured Creditor receiving an amount equal to its outstanding Obligations with respect to the Credit Agreement or Interest Rate Protection

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Agreements, as the case may be, or, if the proceeds are insufficient to pay in full all such Obligations, its Pro Rata Share of the amount remaining to be distributed; and

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

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

(i) If there shall have occurred and be continuing an Event of Default, the Mortgagee shall have the right to settle, adjust or compromise any claim under any policy of insurance. In all other cases, the Mortgagor may settle, adjust or compromise any claim.

(j) The foregoing agreements in this Section 1.07 as subject to the terms and provisions of the Prior Mortgage.

1.08 Indemnification; Subrogation; Waiver of Offset. (a) The Mortgagor agrees to indemnify, reimburse and hold the Mortgagee, each other Secured Creditor and their respective successors, assigns, employees, agents and servants (hereinafter in this Section 1.08 referred to individually as "Indemnitee," and collectively as "Indemnitees") harmless from any and all liabilities, obligations, damages, injuries, penalties, claims, demands, actions, suits, judgments and any and all costs, expenses or disbursements (including reasonable attorneys' fees and expenses)

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(for the purposes of this Section 1.08 the foregoing are collectively called "expenses") of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees in any way relating to or arising out of this Mortgage, or any other document executed in connection herewith or in any other way connected with the enforcement of any of the terms of, or the preservation of any rights hereunder, or in any way relating to or arising out of the manufacture, ownership, ordering, purchase, delivery, control, acceptance, lease, financing, possession, operation, condition, sale, return or other disposition, or use of the Property (including, without limitation, latent or other defects, whether or not discoverable), any contract claim or, to the maximum extent permitted under applicable law, the violation of the laws of any country, state or other governmental body or unit by Mortgagor, its Affiliates and third parties other than Indemnitees, or any tort (including, without limitation, claims arising or imposed under the doctrine of strict liability, or for or on account of injury to or the death of any Person (including any Indemnitee), or property damage); provided that no Indemnitee shall be indemnified pursuant to this Section 1.08(a) for expenses to the extent caused by the gross negligence or willful misconduct of such Indemnitee. The Mortgagor agrees that upon written notice by any Indemnitee of the assertion of such a liability, obligation, damage, injury, penalty, claim, demand, action, suit or judgment, the Mortgagor shall have the right to, and at the request of such Indemnitee shall, assume full responsibility for the defense thereof. Each Indemnitee agrees to use its best efforts to promptly notify the Mortgagor of any such assertion of which such Indemnitee has knowledge.

(b) Without limiting the application of Section 1.08(a) hereof, the Mortgagor agrees to pay, or reimburse the Mortgagee for, any and all fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Mortgagee's Liens and security interest in, the Property, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge after reasonable notice to the Mortgagor of its intent so to do of any taxes or Liens upon or in respect of the Property, premiums for insurance with respect to the Property and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Property and the Mortgagee's interest therein, whether through judicial proceedings or otherwise, or in defending or

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prosecuting any actions, suits or proceedings arising out of or relating to the Property.

(c) Without limiting the application of Section 1.08(a) or (b) hereof, the Mortgagor agrees to pay, indemnify and hold each Indemnitee harmless from and against any loss, costs, damages and expenses which such Indemnitees may suffer, expend or incur in consequence of or growing out of any misrepresentation by the Mortgagor in this Mortgage or in any writing contemplated by or made or delivered pursuant to or in connection with this Mortgage.

(d) If and to the extent that the obligations of the Mortgagor under this Section 1.08 are unenforceable for any reason, the Mortgagor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

(e) All sums payable by the Mortgagor hereunder shall be paid without counterclaim, set-off, or deduction and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage or any condemnation of the Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Mortgagee, or the Mortgagor, or any action taken with respect to this Mortgage by any agent or receiver of the Mortgagee; (v) any claim which the Mortgagor has or might have against the Mortgagee; (vi) any default or failure on the part of the Mortgagee to perform or comply with any of the terms hereof or of any other Credit Documents; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Mortgagor shall have notice or knowledge of any of the foregoing. The Mortgagor waives, to the extent permitted by law, all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any of the obligations.

(f) Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Obligations secured by the Property. The indemnity

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obligations of the Mortgagor contained in this Section 1.08 shall continue in full force and effect notwithstanding the full payment of all the Notes issued under the Credit Agreement, the termination of all Interest Rate Protection Agreements and the payment of all other Obligations and notwithstanding the discharge thereof.

**1.09 Impositions.** (a) Subject to the provisions of Section 1.20 hereof, the Mortgagor will pay or cause to be paid prior to the date on which penalties would otherwise attach thereto all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon any of the Property, or arising in respect of the operation, occupancy, use or possession thereof (all of which taxes, assessments and other governmental or nongovernmental charges of like or different nature are hereinafter referred to as "Impositions"); provided, however, that if, by Law, any such Imposition is payable, or may at the option of the payer be paid, in installments, the Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same may become due.

(b) If under the provisions of any Law now or hereafter in effect there shall be assessed or imposed: (i) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by the Mortgagor pursuant to subparagraph (a) of this Section 1.09, or (ii) a license fee, tax or assessment imposed on the Mortgagee and measured by or based in whole or in part upon the amount of the outstanding Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) of this Section 1.09, and the Mortgagor shall pay and discharge or cause to be paid and discharged the same as herein provided or shall reimburse or otherwise compensate the Mortgagee for the payment thereof.

(c) The Mortgagor covenants to furnish to the Mortgagee, promptly following the Mortgagee's request, official receipts of the appropriate taxing or other authority, or other proof reasonably satisfactory to the Mortgagee, evidencing the payment of Impositions.

(d) The Mortgagor will pay all taxes, charges, filing, recording taxes, registration and recording fees, excises and levies imposed in connection with the recording of this Mortgage or imposed upon the Mortgagee by reason of its ownership of this Mortgage, and shall pay any and all stamp taxes and other taxes required to be paid on any of the

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Obligations. In the event the Mortgagor fails to make any such payment within thirty (30) days after written notice thereof from the Mortgagee, then the Mortgagee shall have the right, but shall not be obligated to, pay the amount due and the Mortgagor shall, on demand, reimburse the Mortgagee for said amount. If the Mortgagor shall fail to reimburse any amounts paid by the Mortgagee within five (5) Business Days of the payment thereof, all such amounts shall thereafter bear interest at the default rate set forth in Section 1.09(e) of the Credit Agreement and shall constitute obligations hereunder and be secured hereby.

(e) The Mortgagor covenants to furnish to the Mortgagee, within twenty (20) days after Mortgagor's receipt of a written request by Mortgagee, official receipts of the appropriate taxing or other authority, or other proof reasonably satisfactory to the Mortgagee, evidencing the payment of the applicable item described in subsection 1.09(d) hereinabove.

1.10 Utilities. Subject to Section 1.20 hereof, the Mortgagor will pay when due all utility charges which are incurred by the Mortgagor for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, steam, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property whether or not such taxes, assessments or charges are liens thereon.

1.11 Actions Affecting this Property. The Mortgagor will appear in and contest any action or proceeding brought by any third parties unrelated to Mortgagee purporting to affect the security hereof or the rights or powers of the Mortgagee hereunder; and the Mortgagor will pay all costs and expenses incurred by the Mortgagor, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding. The Mortgagor shall give the Mortgagee prompt notice in writing of any such action or proceeding.

1.12 Condemnation. (a) Should the Property or any part thereof or interest therein be taken or damaged by reason of any public improvements or condemnation proceeding or in any other similar manner ("Condemnation"), or should the Mortgagor receive any notice thereof, the Mortgagor shall give prompt written notice thereof to the Mortgagee.

(b) Subject to the provisions of any applicable Ground Lease and Prior Mortgage, if the Mortgaged Property,

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or any portion thereof, shall be taken as a result of any condemnation proceeding, the Mortgagor shall be entitled to and shall receive the total of such portion of all awards made that shall be allowed or allocated to the Mortgagor with respect to all the right, title and interest of the Mortgagor in and to the Mortgaged Property or the portion thereof affected (herein called the "Award") and the Mortgagor shall have the option to take such action with respect to such Award as provided in Section 1.07 with respect to insurance proceeds, provided that the obligations of the Mortgagor to perform the terms, covenants and conditions of this Mortgage, if any, affected by such taking shall continue unimpaired until the actual vesting of title in such proceeding and the actual receipt by the Mortgagee of the entire Award resulting from such taking. Notwithstanding the foregoing, however, subject to the provisions of any applicable Ground Lease, if any Event of Default shall occur and be continuing at the time the Award is to be paid over to the Mortgagor, such Award shall be paid over to the Mortgagee to be retained and at the option of the Mortgagee applied toward the payment of the indebtedness secured hereby or deposited with the Insurance Fund Depository specified in Section 1.07 above to be used, subject to the terms and conditions of such Section, for the repairs and restoration required to be made by the Mortgagor pursuant to subsection 1.07(c) hereof.

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

(d) If the Mortgagor elects not to provide the Mortgagee with Additional Mortgaged Property or apply the Award toward the payment of the indebtedness secured hereby pursuant to subsection (b) above, then the Mortgagor shall be obligated to promptly restore, replace, rebuild or alter any Improvements or Equipment affected by a taking so as to restore the Mortgaged Property to an economically viable whole, all without regard to the adequacy of the proceeds of

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an Award, if any, made to the Mortgagor pursuant to Subsection (b) above.

(e) If there shall have occurred, and be continuing, an Event of Default, the Mortgagee alone shall have the right to settle, adjust or compromise any claim in connection with a Condemnation of the Property. In all other cases, the Mortgagee and the Mortgagor shall consult and cooperate with each other and each shall be entitled to participate in all meetings and negotiations with respect to the settlement of such claim.

(f) The foregoing agreements in this Section 1.12 are subject to the terms and provisions of the Prior Mortgage.

**1.12 Additional Security.** In the event the Mortgagee at any time holds additional security for any of the Obligations, it may enforce, sell or otherwise realize upon the same, at its option, either before or concurrently herewith or after enforcing its remedies hereunder.

**1.14 Successors and Assigns.** This Mortgage applies to, inures to the benefit of and binds the parties hereto, the Secured Creditors and their respective successors and assigns.

**1.15 Inspections.** The Mortgagor hereby authorizes the Mortgagee, its agents, representatives or workmen, upon reasonable prior notice to Mortgagor, to visit and inspect any of the Property or any portion(s) thereof, at such reasonable times and intervals to such reasonable extent as the Mortgagee may reasonably request.

**1.16 Transfers.** Except as otherwise permitted in accordance with the terms of the Credit Agreement, no part of the Property or of any legal or beneficial interest in the Property shall be sold, assigned, conveyed, leased, transferred or otherwise disposed of (whether voluntarily or involuntarily, directly or indirectly, by sale of stock or any interest in the Mortgagor, or by operation of law or otherwise).

**1.17 Secured by Liens.** Except as otherwise provided in the Credit Agreement, the Mortgagor shall not create, incur or suffer to exist, or cause to be created, incurred or suffered to exist, directly or indirectly Liens (other than Permitted Liens and Permitted Encumbrances)

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against the Property or any part thereof or any rents or income arising therefrom.

**1.18 Environmental Protection Matters.** The Mortgagor shall comply with the provisions of the Credit Agreement relating to environmental matters, including, but not limited to, Sections 8.19 and 9.07 of the Credit Agreement, which provisions are incorporated herein by reference.

**1.19 Actions by the Mortgagee to Preserve this Property.** If an Event of Default shall have occurred and be continuing, the Mortgagee may pay or perform the Obligations of Mortgagor hereunder after ten (10) Business Days' notice to Mortgagor of its intent to perform any such Obligation, in the manner and to such extent as it may deem necessary in its sole discretion. In connection therewith, without limiting its general powers, the Mortgagee shall have and is hereby given the right, but not the obligation: (a) to enter upon and take possession of the Property; (b) to make additions, alterations, repairs and improvements to the Property which are reasonably necessary or proper to keep the Property in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of the Mortgagee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which may affect the security of this Mortgage or be prior or superior hereto; and (e) in exercising such powers, to pay all necessary expenses, including the reasonable fees and expenses of counsel or other necessary or desirable consultants. The Mortgagor shall, promptly after written demand therefor by the Mortgagee, pay or reimburse the Mortgagee for all reasonable costs and expenses incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including, without limitation, cost of evidence of title, court costs, appraisal costs, surveys and reasonable attorneys' fees. In the event this Mortgage is placed in the hands of an attorney for the collection of any sum secured hereby, the Mortgagor agrees to pay promptly after written demand all reasonable costs of collection, including attorneys' fees, incurred by the Mortgagee, either with or without the institution of any action or proceeding, and in addition to all costs, disbursements and allowances provided by law. If the Mortgagor shall fail to reimburse any amounts paid by the Mortgagee within five (5) Business Days after notice of payment thereof to the Mortgagor, all such amounts shall thereafter bear interest at the default rate set forth in Section 1.09(e) of the Credit Agreement and shall constitute Obligations hereunder and be secured hereby.

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**1.20 Permitted Contests.** Notwithstanding anything to the contrary contained in this Mortgage, the Mortgagor at its expense may contest (after prior written notice to the Mortgagee if the contested amount is in excess of \$250,000) by appropriate legal, administrative or other proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition or lien therefor or any Law or the application of any instrument of record affecting the Property or any part thereof or any claims of mechanics, materialmen, suppliers or vendors and liens therefor, or any utility charges and liens therefor, and may withhold payment of the same pending such proceedings if permitted by Law; provided that (a) in the case of any Impositions or liens therefor or any claims of mechanics, materialmen, suppliers or vendors and liens therefor, such proceedings shall suspend the collection therefor from the Mortgagee and the Property, (b) neither the Property nor any part thereof or interest therein will be sold, forfeited or lost if the Mortgagor pays the amount or satisfies the condition being contested, and the Mortgagor would have the opportunity to do so in the event of the Mortgagor's failure to prevail in the contest, (c) the Mortgagee shall not, by virtue of such permitted contest, be in any danger of any criminal liability, or any civil liability for which the Mortgagor has not furnished security as provided in clause (d) below, and neither the Property nor any interest therein would be subject to the imposition of any lien which would have priority over the lien of this Mortgage for which the Mortgagor has not furnished security as provided in clause (d) below, and (d) the Mortgagor shall have established on its books, in accordance with and to the extent required under United States generally accepted accounting principles, a sufficient reserve to discharge such Imposition or lien or claim or other security as reasonably requested by and reasonably satisfactory to the Mortgagee if so required pursuant to clause (c) above or if the failure to comply with such Imposition or Law will result in a lien or charge against the Property in excess of \$100,000 or the Mortgagee would be in danger of any civil liability.

**1.21 Continued Occupancy.** If at any time the then existing use or occupancy of any part of the Property shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Mortgagor will not cause or permit such use or occupancy to be discontinued without giving ten (10) Business Days' prior written notice to the Mortgagee. The Mortgagor shall promptly notify the Mortgagee of any proposed material change in the zoning for the Property or any portion thereof

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or any other property with respect to which a change in zoning would materially affect the zoning of, or the Mortgagor's use and enjoyment of, the Property or any material part thereof. During the continuance of an Event of Default, the Mortgagee shall have the right to participate in any judicial, administrative or other proceeding with respect to or in any way affecting the Property (including, without limitation, any proceeding relating to zoning or environmental matters).

**1.22 The Credit Agreement.** This Mortgage is made pursuant to the Credit Agreement, and this Mortgage is subject to all of the provisions of the Credit Agreement including, without limitation, the provisions of the Credit Agreement entitling the Mortgagee, the Banks and/or the Secured Creditors to declare the respective indebtedness secured hereby to be immediately due and payable, as the case may be, all of which provisions are incorporated herein with the same force and with like effect as if they were fully set forth herein at length and made a part hereof. In the event of a conflict between any of the provisions of the Credit Agreement and any of the provisions of this Mortgage, the provisions of the Credit Agreement shall control.

**1.23 Brokers.** The Mortgagor represents and warrants that it has not dealt with any broker in connection with the Loans and that it knows of no other Person who is entitled to a commission in connection with obtaining the Loans. The Mortgagor hereby agrees to indemnify, defend and hold the Indemnitees harmless from and against any and all claims, liabilities, damages, demands, costs, expenses (including, without limitation, the costs and expenses of defending or settling any such claims and all attorneys' fees and disbursements) or causes of action arising out of a breach of the representations, warranties or agreements contained in this Section 1.23. The representations, warranties and agreements contained in this Section 1.23 shall survive repayment of the Obligations and discharge of this Mortgage.

**1.24 Recordation of Mortgage and Financing Statements.** Mortgagor will execute, acknowledge and deliver any financing statements, continuation statements and other instruments in addition or supplemental hereto, including, without limitation, contracts, licenses and permits affecting the Property, which may be necessary or reasonably requested by Mortgagee from time to time in order to perfect and maintain the validity and effectiveness of this Mortgage and the lien and security thereof to Mortgagee and in such manner

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and places and within such times, in each case as is commercially reasonable and as may be necessary or appropriate to accomplish such purposes and to preserve and protect the rights and remedies of Mortgagee. Mortgagor or its agents will furnish reasonably satisfactory evidence of every such recording, filing and registration to Mortgagee. Mortgagor hereby appoints Mortgagee as its true and lawful attorney-in-fact to file, with Mortgagor's signature, or without Mortgagor's signature in the state and county where the Property is located and any other jurisdiction in which such filing may lawfully and effectively be made without Mortgagor's signature, any and all Uniform Commercial Code financing and continuation statements which Mortgagee may reasonably deem necessary or appropriate to file with respect to this Mortgage. Mortgagee shall exercise its rights as attorney-in-fact under this Section 1.24 only after Mortgagee has given Mortgagor ten (10) Business Days' notice during which Mortgagor has failed to take the action requested by Mortgagee.

**1.25 After-Acquired Property Interests.** 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, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Land, 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 all times Mortgagor shall execute and deliver to Mortgagee all such other 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. Mortgagor hereby irrevocably authorizes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to execute all such documents and instruments on behalf of Mortgagor, which appointment shall be deemed to be coupled with an interest, if Mortgagor fails or refuses to do so within ten (10) Business Days after a request therefor by Mortgagee.

**1.26 Zoning and Title Matters.** Mortgagor will not, without the prior written consent of Mortgagee, which will not be unreasonably withheld so long as the Property is

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not adversely affected, (a) initiate, join in, consent to or support any zoning reclassification of the Property, seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances, (b) modify, amend or supplement any of the Permitted Encumbrances in a manner that has a material adverse effect on the Property, (c) impose any restrictive covenant or encumbrance upon the Property which has a material adverse effect on the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality, or (d) permit or allow the Property to be used by the public or any person in such manner which serves as the basis for a claim of adverse usage or possession or of any implied dedication or easement by prescription.

**1.27 Changes to Mortgage or Related Loan Documents.** If the Obligations or any part thereof are extended or varied or if any part of the security is released, all persons now or at any time hereafter liable therefor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Property or any interest therein, shall take said lien subject to the rights of Mortgagee to amend, modify, and supplement, restate and consolidate this Mortgage and/or the other Credit Documents and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

**1.28 The Prior Mortgage** (a) This Mortgage shall be a first lien against the Mortgaged Property except to the extent that portions thereof continue to be encumbered by that certain Mortgage and Security Agreement from Service Merchandise Company, Inc. to Sovran Bank/Central South as Trustee and P. Williams as Co-Trustee dated June 28, 1990 (the "Prior Mortgage") and such other matters as to which the Prior Mortgage is subject and subordinate.

(b) The Mortgagor covenants and agrees to (i) pay or cause to be paid each installment of principal and

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interest due under each promissory note which is secured by the Prior Mortgage not later than the date such installment is due thereunder, irrespective of any notice or applicable grace period under the Prior Mortgage which would allow the Mortgagor to make an installment payment later than the due date, (ii) promptly and faithfully observe, abide by, discharge and perform all of the other covenants and conditions contained in the Prior Mortgage which are required to be observed or performed by the Mortgagor and (iii) do all things necessary to preserve and keep unimpaired its rights thereunder.

(c) The Mortgagee acknowledges and agrees that its rights under this Mortgage are subject to the operation and effect of the Prior Mortgage and such other matters as to which the Prior Mortgage is subject and subordinate. If the Mortgagor fails to make any payment when due under the Prior Mortgage, or otherwise default thereunder (such default being deemed to include any event under the Prior Mortgage which, with notice of the passage of time or both, would constitute an "Event of Default" as defined in the Prior Mortgage), the Mortgagee shall, as the Mortgagor's true and lawful attorney-in-fact, have the right, but shall not be obligated, to make such payment directly to the holder of the Prior Mortgage or to otherwise cure such default, and all sums expended by Mortgagee in order to make such payment or otherwise to cure a default under the Prior Mortgage (i) shall bear interest from the date advanced until paid at the Default Rate; (ii) shall be immediately due and payable by the Mortgagor to Mortgagee; and (iii) shall be and become a part of the Obligations. Mortgagee agrees to notify the Mortgagor prior to curing such default, but failure to provide such notice shall not affect Mortgagee's right to cure such default. Further, in curing such default, the Mortgagee shall not be obligated to make a prior demand that the Mortgagor cure such default and any action on the part of the Mortgagee shall not be deemed to relieve the Mortgagor from any obligation under the Prior Mortgage. The right of the Mortgagee to take such action as it deems necessary shall exist even though the existence of such default or the nature thereof may be questioned or denied by the Mortgagor or by any party on behalf of the Mortgagor. The Mortgagor hereby expressly grants to the Mortgagee, and agrees that the Mortgagee shall have, the absolute and immediate right to enter upon the Mortgaged Property to such extent and as often as Mortgagee deems necessary or desirable in order to cure such default of the Mortgagor. The curing by the Mortgagee of any default under the Prior Mortgage shall not constitute a curing or waiver of the Event of Default under this Mortgage which

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results from the Mortgagor being in breach of this subsection (c), and Mortgagee shall remain entitled to exercise all of the rights and remedies to which it is entitled by virtue of such Event of Default.

(d) Any act or omission by the Mortgagor which, with notice or the passage of time, or both, would constitute a default under the Prior Mortgage shall constitute an Event of Default hereunder.

(e) The Mortgagor shall notify the Mortgagee promptly of (i) the occurrence of any default under the Prior Mortgage or of any event which, with the passage of time or service of notice, or both, would constitute a default thereunder and (ii) the receipt by the Mortgagor of any notice (written or oral) from the holder or trustee under the Prior Mortgage noting or claiming the occurrence of any default by the Mortgagor under the Prior Mortgage.

(f) The occurrence of any renewal, extension, restructuring or refinancing of the indebtedness evidenced by the notes secured by the Prior Mortgage, or any modification of or amendment to such notes or to the Prior Mortgage without the prior written consent of Mortgagee, shall constitute an Event of Default hereunder and shall entitle the Mortgagee to declare the Obligations to be immediately due and payable. No release or forbearance of any of the Mortgagor's obligations under the Prior Mortgage, whether pursuant to the Prior Mortgage or otherwise, shall release the Mortgagor from any of its obligations under this Mortgage.

## ARTICLE II.

### SECURITY AGREEMENT

2.01 Creation of Security Interest. The Mortgagor, as debtor, hereby grants to the Mortgagee, as secured party, a security interest in, and lien on, all of the Mortgagor's right, title and interest in and to the following property whether now owned or hereafter acquired (collectively, the "Secured Property"):

(a) All general intangibles, contract rights, accounts and proceeds arising from all insurance policies required to be maintained by the Mortgagor hereunder;

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(b) All proceeds of any judgment, award or settlement in any condemnation or eminent domain proceeding, together with all general intangibles, contract rights and accounts arising therefrom;

(c) All of the Equipment which constitutes personal property and all other personal property described in the granting clauses hereof and all replacements, substitutes and additions thereto and any proceeds therefrom;

(d) All service contracts now or hereafter in effect relating to the operation of the Property;

(e) Any other agreements now or hereafter in effect relating to the construction, repair, alteration or leasing of the Improvements or operation of the Property, including any distributions, damages and amounts payable to the Mortgagor thereunder;

(f) All amendments, supplements, additions, substitutions, replacements and renewals to any of the aforesaid agreements;

(g) All permits, consents and other governmental approvals in connection with the construction of the Improvements or the operation of the Property, to the extent any of the same may be assigned, transferred, pledged or subjected to a security interest;

(h) All plans and specifications, studies, tests or design materials relating to the design, construction, repair, alteration or leasing of this Property, to the extent any of the same may be assigned, transferred, pledged or subjected to a security interest;

(i) All tangible personal property of the Mortgagor, whether now owned or existing or hereafter acquired or arising, in which the Mortgagor may have an interest and which is used or is intended to be used in the construction, repair, alteration or leasing of the Improvements or operation of the Property and which is of a type which may be subjected to a security interest under the Uniform Commercial Code;

(j) Proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property or any portion thereof (including any claims or demands of

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the Mortgagor with respect to the same) , which the Mortgagor has or may hereafter acquire, and any and all awards made for the taking by eminent domain or condemnation, 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 or for severance damage;

(k) Any fixture which constitutes a part of the Property, and all replacements, substitutions and additions thereto; and

(l) All cash and non-cash proceeds of the above-mentioned items.

The security interests and liens described in clauses (a) through (l) above also shall secure all of the Obligations.

**2.02 Representations, Warranties and Covenants of the Mortgagor.** The Mortgagor hereby warrants, represents and covenants as follows:

(a) The Mortgagor's interest in the Secured Property is, and as to all the Secured Property acquired after the date hereof, will be, free from any lien, security interest, encumbrance or claim thereon of any kind whatsoever (other than Permitted Encumbrances and Permitted Liens). The Mortgagor will notify the Mortgagee of, and will defend the Secured Property against, all claims and demands of all persons at any time claiming the Secured Property or any interest therein other than such interests as are permitted herein, or in the Credit Agreement.

(b) The Secured Property is not used or sought for personal, family or household purposes.

(c) The Mortgagor maintains a place of business at the address of the Mortgagor set forth on the first page of this Mortgage and the Mortgagor will promptly notify the Mortgagee in writing of any change in its place of business.

(d) The Mortgagor shall cause all financing and continuation statements and other instruments with respect to the Secured Property at all times to be kept recorded, filed or registered in such manner and in such places as may be required by law fully to evidence,

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perfect, secure and preserve the interests of the Mortgagee in the Secured Property, and shall pay all recording, filing or registration fees in connection therewith. At the request of the Mortgagee, the Mortgagor will join the Mortgagee in executing one or more financing statements and renewals, continuation statements and amendments thereof pursuant to the Uniform Commercial Code in form reasonably satisfactory to the Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Mortgagee to be necessary or desirable. Without limiting the foregoing, the Mortgagor hereby irrevocably appoints the Mortgagee its attorney-in-fact only after Mortgagee has given Mortgagor ten (10) Business Days' notice during which Mortgagor has failed to take the action requested by Mortgagee, to execute, deliver and file such instruments for or on behalf of the Mortgagor upon the failure of the Mortgagor to do so within a reasonable time after demand, and the Mortgagor will pay the cost of any such filing.

(e) This Mortgage constitutes a Security Agreement, Fixture Filing and Financing Statement as those terms are used in the Uniform Commercial Code.

**2.03 Survival of Security Agreement.** Notwithstanding any release of any or all of the property included in the Mortgaged Property which is deemed "real property", or any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the Obligations.

**2.04 Election of Remedies.** If any Event of Default occurs hereunder and is continuing, Mortgagee, pursuant to the appropriate provisions of the Uniform Commercial Code, shall have an option to proceed with respect to both the real property included in the Mortgaged Property and the Secured Property in accordance with its rights, powers and remedies with respect to such real property. In which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that if Mortgagee shall elect to proceed with respect to the Secured Property separately from such real property, Mortgagee shall have all remedies available to a secured party under the Uniform Commercial Code and ten (10) days' notice of the sale shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by

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Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee.

## 2.05 Conflict with the Security Agreement.

Notwithstanding anything to the contrary contained herein, if any provision of this Mortgage relating to the Collateral or grant of the security interest is inconsistent with, conflicts with, or is more onerous or broader than the provisions of the Security Agreement, the terms of the Security Agreement shall control.

2.06 IRPTA. The Mortgagor represents and warrants that to the best of its knowledge there are no "facilities" at, on or under the Property, which are subject to reporting under Section 312 of the Federal Emergency Planning Community Right-to-Know Act of 1986, and federal regulations promulgated thereunder and there are no underground storage tanks at, on or under the Property which require notification under Section 9002 of the Solid Waste Solid Disposal Act, as now or hereafter amended (42 U.S.C. 6991) and the Responsible Property Transfer Act of 1988 (Chapter 765 of the Illinois Compiled Statutes, Section 90/1 et seq.) is not applicable to the Mortgagor's borrowing of the indebtedness secured by this Mortgage.

## ARTICLE III.

### ASSIGNMENT OF LEASES, RENTS AND PROFITS

3.01 Assignment. To further secure the Obligations, the Mortgagor hereby sells, assigns and transfers unto the Mortgagee all of its right, title and interest in and to all Leases (as hereinafter defined), and the Rents now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Mortgagor or by the Mortgagee under the powers herein granted (collectively, the "Leases"), it being the intention hereby to establish an absolute transfer and assignment of all such Leases and agreements, and all the avails thereunder, to the Mortgagee and not merely the passing of a security interest. The Mortgagor hereby irrevocably appoints the Mortgagee its true and lawful attorney in its name, place and stead (with or without taking possession of the Property as provided in Section 4.02(a) hereof) to rent, lease or let all or any portion of the Property to any party or parties at

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such rental and upon such terms as the Mortgagee shall, in its discretion, determine, and to collect all of said Rents arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Mortgagee would have upon taking possession pursuant to the provisions of Section 4.02(a) hereof. The Mortgagor represents and agrees that except with the prior written approval of the Mortgagee, no Rent has been or will be paid by any person in possession of any portion of the Property for more than one installment in advance and that no payment of any of the Rents to accrue for any portion of the Property (other than a de minimis amount) will be waived, released, reduced, discounted or otherwise discharged or compromised by the Mortgagor, except as may be approved in writing by the Mortgagee. As between the Mortgagor and the Mortgagee, the Mortgagor waives any rights of set-off against any person in possession of any portion of the Property. The Mortgagor agrees that it will not assign any of the Rents of the Property to any other Person. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee or trustee in possession in the absence of the taking of actual possession of the Property by the Mortgagee pursuant to Section 4.02(a) hereof. In the exercise of the powers herein granted to the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by the Mortgagor. The Mortgagor further agrees to assign and transfer to the Mortgagee all specific future leases upon all or any part of the Property and to execute and deliver, at the request of the Mortgagee, all such further assurances and assignments in the Property as the Mortgagee shall from time to time reasonably require. Although it is the intention of the parties that the assignment contained in this Section 3.01 shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section 3.01 until an Event of Default shall have occurred and be continuing under this Mortgage.

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## ARTICLE IV.

### EVENTS OF DEFAULT AND REMEDIES

**4.01 Events of Default.** The occurrence of any of the following specified events shall constitute an "Event of Default" hereunder:

(a) An "Event of Default" under and as defined in the Credit Agreement which is not an Event of Default under Section 4.01(b), (c) or (d) below;

(b) The Mortgagor shall default in the payment when due of any amounts owed by it hereunder to the Mortgagee or any other Person and such default shall continue unremedied for a period of ten (10) or more Business Days after receipt of written demand for payment thereof;

(c) Except as otherwise provided in Section 4.01(a) and (b), the Mortgagor shall default in the due performance by it of any term, covenant or agreement contained in this Mortgage, and such default shall continue unremedied for a period of thirty (30) days after written notice to the Mortgagor by the Mortgagee; provided, however, that if such default is not susceptible of complete cure within such thirty (30) day period and the Mortgagor has commenced to cure within such period, no Event of Default shall be deemed to have occurred if the Mortgagor diligently and continuously prosecutes such cure to completion and (i) if in the Mortgagee's sole reasonable judgment such failure is material, such cure is completed within ninety (90) days after notice to the Mortgagor that the Mortgagee deems such failure to be material or (ii) if such cure or a partial cure is required by Law within a certain time period, such cure or such partial cure is completed within such time period or any period during which the Mortgagor in good faith contests such Law, and the Mortgagor provides the Mortgagee with a bond, if required by law or requested by the Mortgagee, or other collateral in an amount sufficient to assure the cure and to pay any damages resulting from the delay caused by such contest, or (iii) if in the Mortgagee's reasonable judgment such cure or a partial cure may be required to be completed in a shorter period in order to prevent imminent risk of material damage to property or imminent risk of danger to health and safety as specified in a notice from the Mortgagee to the Mortgagor,

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solely that portion of such cure necessary to eliminate such risks is completed within such shorter period; or

(d) An event of default shall have occurred under any applicable Ground Lease or Prior Mortgage.

**4.02 Remedies Upon Default.** If a Property Default (as hereinafter defined) has occurred and is continuing under this Mortgage, but no Event of Default under 4.01(a) above has occurred and is continuing, then as its sole remedy hereunder the Mortgagee may demand reduction of the Total Commitment by the Mortgagor in an amount equal to the Release Price for the Mortgaged Property pursuant to Section 3.03(b) of the Credit Agreement and upon reduction of the Total Commitment in the amount of such Release Price this Mortgage shall be discharged and satisfied or assigned as provided in Section 6.14 hereof. As used herein, a "Property Default" means an Event of Default described in Section 4.01(b) or (c) above with respect to any Property. Except as otherwise provided in the immediately preceding sentences, if an Event of Default shall occur and be continuing, the Mortgagee may:

(a) either in person or by agent with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, with reasonable advance written notice to Mortgagor, enter upon and take possession of the Property or any part thereof, in its own name or in the name of the Mortgagor, and do or cause to be done any acts which it deems necessary or desirable to preserve the value of the Property or any part thereof or interest therein, or protect the security hereof and, with or without taking possession of the Property, make, cancel or modify leases and sue for or otherwise collect the Rents thereof, including those past due and unpaid, and apply the same, less costs of operation and collection, including reasonable attorney's fees, to the payment of the Obligations in accordance with the Security Agreement. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid, shall not, by itself, cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Property or the collection, receipt and application of Rents, the Mortgagee shall be entitled to exercise every right provided for herein or

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in the Credit Agreement, or at law or in equity upon the occurrence of any Event of Default;

(b) commence and maintain one or more actions at law or in equity or by any other appropriate remedy (i) to protect and enforce the Mortgagee's rights, whether for the specific performance of any covenant or agreement herein contained (which covenants and agreements the Mortgagor agrees shall be specifically enforceable by injunctive or other appropriate equitable remedy), (ii) to collect any sum then due hereunder, (iii) to aid the execution of any power herein granted, or (iv) to foreclose this Mortgage, without prejudice to the right of the Mortgagee thereafter to pursue and enforce any other appropriate remedy against the Mortgagor;

(c) exercise any or all of the remedies available to a secured party under the Uniform Commercial Code;

(d) accelerate payment of and declare all obligations to be immediately due and payable; and

(e) exercise any other right or remedy available to the Mortgagee under the Credit Agreement, the other Credit Documents or otherwise available at law or in equity.

**4.03 Right of Foreclosure.** If an Event of Default shall occur and be continuing, the Mortgagee shall have the right, at its option, to proceed at law or in equity to foreclose this Mortgage with respect to all or any portion of the Property, any statute or rule of law to the contrary notwithstanding. The Mortgagee may, to the extent permitted by law, 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 an applicable provision of law, the Mortgagee may make such sale at the time and place to which the same shall be so adjourned. With respect to all components of the Mortgaged Property, except the Land and the Improvements, the Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor (coupled with an interest), during the continuance of an Event of Default, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property, exclusive of the Land and the Improvements, and for that purpose the Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may

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substitute one or more persons with such power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Notwithstanding the foregoing, the Mortgagor, if so requested by the Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to the Mortgagee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Mortgagee, for such purpose, and as may be designated in such request. To the extent permitted by law, any such sale or sales made under or by virtue of this Article IV shall operate to divest all the estate right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under the Mortgagor. Upon any sale made under or by virtue of this Article IV, the Mortgagee may, to the extent permitted by law, bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations secured hereby the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Mortgagee is authorized to deduct by Law or under this Mortgage.

**4.04 Sale of Premises Pursuant to Foreclosure.** In case of a sale pursuant to a foreclosure of this Mortgage, the Mortgaged Property, whether real, personal or mixed, may be sold for cash or credit as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as the Mortgagee, in its unrestricted discretion, may elect, and the Mortgagor, for and on behalf of itself and all persons claiming by, through or under the Mortgagor, waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure sale. Any such sale shall bind the Mortgagor, shall operate to divest all right, title and interest whatsoever, either at law or in equity, of the Mortgagor in and to the property sold, and shall be a perpetual bar, both at law and in equity, against the Mortgagor and its successors and assigns, and against any and all persons claiming through or under the Mortgagor. The proceeds of any sale made under or by virtue of this Article IV, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Article or otherwise, shall be applied to the payment of the Obligations in accordance with Section 7.4 of the Security Agreements.

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**4.05 Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, the Mortgagee as a matter of strict right and without notice to the Mortgagor or anyone claiming under the Mortgagor, and without regard to the adequacy or the then value of the Property or the interest of the Mortgagor therein or the solvency of any party bound for payment of the Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and the Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual rights, powers and duties of receivers in like or similar cases and all the rights, powers and duties of the Mortgagee in case of entry as provided in subparagraph 4.02(a) hereof and shall continue as such and exercise all such powers until the date of confirmation of sale of this Property unless such receivership is sooner terminated.

**4.06 Remedies Not Exclusive.** The Mortgagee shall be entitled to enforce payment and performance of any Obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said Obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, security deed, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy to which the Mortgagee is entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Mortgagee, and the Mortgagee may pursue inconsistent remedies.

**4.07 Waiver of Redemption, Notice, Marshalling, Etc.** Notwithstanding anything herein contained to the contrary, to the extent permitted by law, the Mortgagor: (a)

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hereby waives trial by jury; (b) will not (i) at any time insist upon, or plead, or in any manner whatever, claim or take any benefit or advantage of any stay or extension or moratorium law, homestead and all other exemptions from execution or sale of the 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, nor (ii) claim, take or insist upon any benefit or advantage or any law now or hereafter in force providing for the valuation or appraisal of the Property or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor (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; (c) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshalled upon any foreclosure hereof; and (d) acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq., herein the "Act"), or residential real estate (as defined in the Act).

**4.08 Expenses of Enforcement.** In connection with any action to enforce any remedy of the Mortgagee under this Mortgage during the continuance of an Event of Default, the Mortgagor agrees to pay all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee including, without limitation, reasonable attorneys' fees, receiver's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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 and value as the Mortgagee may deem reasonably necessary, and neither the Mortgagee nor any other person shall be required to accept tender of any portion of the indebtedness then secured hereby unless the same be accompanied by a tender of all such expenses, costs and commissions. All expenditures and expenses of the nature in this Section 4.08 mentioned, and such expenses and fees as

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may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding, including appellate proceedings, affecting this Mortgage or the Property (including, without limitation, the occupancy thereof or any construction work performed thereon), including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding whether or not an action is actually commenced, shall be immediately due and payable by the Mortgagor, with interest thereon at the default rate set forth in Section 1.09(e) of the Credit Agreement and shall be part of the indebtedness secured by this Mortgage.

## ARTICLE V.

### ADDITIONAL COLLATERAL

5.01 Additional Collateral. (a) Mortgagor acknowledges and agrees that the Obligations are secured by the Property and various other collateral including, without limitation, at the time of execution of this Mortgage certain personal property of Mortgagor and other parties described in the Credit Documents. Mortgagor specifically acknowledges and agrees that the Property, in and of itself, if foreclosed or realized upon would not be sufficient to satisfy the outstanding amount of the Obligations. Accordingly, Mortgagor acknowledges that it is in Mortgagor's contemplation that the other collateral pledged to secure the Obligations may be pursued by Mortgagee in separate proceedings in the various states and counties where such collateral may be located and additionally that Mortgagor and other parties liable for payment of the Obligations will remain liable for any deficiency judgments in addition to any amounts Mortgagee may realize on sales of other property or any other collateral given as security for the Obligations. Specifically, and without limitation of the foregoing, it is agreed that it is the intent of the parties hereto that in the event of a foreclosure of this Mortgage, that the Indebtedness evidencing the Obligations shall not be deemed merged into any judgment of foreclosure, but shall rather remain outstanding.

(b) Mortgagor acknowledges and agrees that the Property and the property which may from time to time be encumbered by the Mortgages are located in more than one state and therefore Mortgagor waives and relinquishes any and

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all rights it may have, whether at law or equity, to require Mortgagee to proceed to enforce or exercise any rights, powers and remedies it may have under the Security Documents, the Credit Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. Furthermore, Mortgagor acknowledges and agrees that Mortgagee shall be allowed to enforce payment and performance of the Obligations and to exercise all rights and powers provided under this Mortgage, the other Security Documents, the Credit Documents or any of them or under any provision of law, by one or more proceedings, whether contemporaneous, consecutive or both in any one or more States in which the security is located. Neither the acceptance of this Mortgage, or any other Security Document, any Credit Document, nor its enforcement in one State, whether by court action, power of sale, or otherwise, shall prejudice or in any way limit or preclude enforcement of the Security Documents or any of them, through one or more additional proceedings, in that state or in any other State.

(c) Mortgagor further agrees that any particular proceeding, including, without limitation, foreclosure through court action (in a state or federal court) or power of sale, may be brought and prosecuted in the local or federal courts of any one or more States as to all or any part of the Property or the property encumbered by the Mortgages, wherever located, without regard to the fact that any one or more prior or contemporaneous proceedings have been situated elsewhere with respect to the same or any other part of the Property and the property encumbered by the Mortgages.

(d) Mortgagee may resort to any other security held by Mortgagee for the payment of the Obligations in such order and manner as Mortgagee may elect.

(e) Notwithstanding anything contained herein to the contrary, Mortgagee shall be under no duty to Mortgagor or others, including, without limitation, the holder of any junior, senior or subordinate mortgage on the Property or any part thereof or on any other security held by Mortgagee, to exercise or exhaust all or any of the rights, powers and remedies available to Mortgagee.

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## ARTICLE VI.

### MISCELLANEOUS

**6.01 Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois, with respect to Mortgaged Property located in Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable.

**6.02 Limitation on Interest.** It is the intent of the Mortgagor and the Mortgagee in the execution of this Mortgage and all other instruments evidencing or securing the Obligations to contract in strict compliance with the relevant usury laws. In furtherance thereof, the Mortgagee and the Mortgagor stipulate and agree that none of the terms and provisions contained in this Mortgage shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by relevant law. The Mortgagor stipulates, represents, warrants, affirms, and agrees that the loans secured by this Mortgage are each a "business loan" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.

**6.03 Notices.** Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, facsimile or cable communications) and mailed, telegraphed, telexed, transmitted via facsimile, cabled or delivered: if to the Mortgagor, at 1100 Service Merchandise Drive, Brentwood, Tennessee 37027, Attention: Treasurer, facsimile # (615) 660-3667; if to the Mortgagee, at 270 Park Avenue, New York, New York 10017, Attention: William P. Rindfuss, facsimile # 212 270-1474, or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective as provided in Section 14.03 of the Credit Agreement.

**6.04 Captions.** The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

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6.05 Waiver; Amendment. (a) None of the terms and conditions of this Mortgage may be changed, waived, modified or varied in any manner whatsoever except in accordance with the terms of the Credit Agreement and the Security Agreement.

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

6.06 Obligations Absolute. The obligations of the Mortgagor hereunder shall remain in full force and effect without regard to, and shall not be impaired by, (a) any bankruptcy, insolvency, reorganization, arrangement, re-adjustment, composition, liquidation or the like of the Mortgagor; (b) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Mortgage or any other Credit Document; or (c) any amendment to or modification of any Credit Document or any security for any of the Obligations; whether or not the Mortgagor shall have notice or knowledge of any of the foregoing.

6.07 Further Assurances. The Mortgagor, at its own expense, will execute, acknowledge and deliver all such instruments and take all such action as may be necessary to assure to the Mortgagee the interest in the Mortgaged Property herein described and the rights intended to be provided to the Mortgagee herein.

6.08 Remedies Cumulative. Each and every right, power and remedy hereby specifically given to the Mortgagee shall be in addition to every other right, power and remedy specifically given under this Mortgage or now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Mortgagee. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of the Mortgagee in the exercise of any such right,

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power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any default or Event of Default or an acquiescence therein. In the event Mortgagee shall seek to enforce its rights hereunder and shall be entitled to judgment, then in such suit the Mortgagee may recover reasonable expenses, including attorneys' fees, and the amounts thereof shall be included in such judgment.

**6.09 Partial Invalidity.** If any of the provisions of this Mortgage or the application thereof to any person, party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such provision or provisions to persons, parties or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

**6.10 Priority.** This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate and Permitted Liens, to the extent of the maximum amount secured hereby.

**6.11 The Mortgagee as Agent for Secured Creditors.**  
(a) It is expressly understood and agreed that the rights and obligations of the Mortgagee as holder of this Mortgage and as collateral agent of the Secured Creditors and otherwise under this Mortgage are only those expressly set forth in this Mortgage and in the Credit Agreement. The Mortgagee shall act hereunder on the terms and conditions set forth herein and in the Credit Agreement. All proceeds received by the Mortgagee for application to the Obligations secured hereby shall be applied, except as otherwise provided herein, as set forth in the Credit Agreement and the Security Agreement.

(b) The Secured Creditors agree that this Mortgage may be enforced only by the action of the Mortgagee acting upon the instructions of the Required Banks and that no other Secured Creditor shall have any right individually to seek to enforce this Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Mortgagee for the benefit of the Secured Creditors only upon the terms of this Mortgage and the Credit Agreement.

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6.12 Full Recourse. This Mortgage is made with full recourse to the Mortgagor (including as to all assets of the Mortgagor, including the Secured Property) and pursuant to and upon the representations, warranties, covenants and the agreements on the part of the Mortgagor contained herein, in the other Financing Documents and otherwise in writing in connection herewith or therewith.

6.13 Acknowledgment of Receipt. The Mortgagor hereby acknowledges receipt of a true copy of this Mortgage.

6.14 Release. (a) After the Termination Date, this Mortgage shall be discharged and satisfied or assigned at the Mortgagor's option, by the Mortgagee at the expense of the Mortgagor upon its written request. Concurrently with such satisfaction and discharge or assignment of this Mortgage, the Mortgagee, on written request and at the expense of the Mortgagor will execute and deliver such proper instruments of release and satisfaction or assignment as may reasonably be requested to evidence such release or assignment and any such instrument when duly executed by the Mortgagee and duly recorded shall conclusively evidence the release or assignment of this Mortgage. As used in this Mortgage, "Termination Date" shall mean the earlier of (x) the date upon which the Total Commitment and all Letters of Credit issued under the Credit Agreement are terminated, all Interest Rate Protection Agreements are terminated and when all Obligations have been paid in full, (y) the date of receipt by the Mortgagee of the Net Proceeds of the Mortgaged Property as provided in Section 1.07(c) hereof and (z) the date of reduction by the Mortgagee of the Total Commitment in an amount equal to the Release Price for the Mortgaged Property as provided in Section 4.02 hereof.

(b) The Mortgagee shall, at the request of the Mortgagor, release (without recourse and without any representation or warranty) the Mortgaged Property, or any part thereof, provided that (x) either the sale of all or part of the Mortgaged Property is permitted under Section 10.02 of the Credit Agreement or such release has been approved in writing by the Required Banks and (y) the proceeds of such sale of the Mortgaged Property or portion thereof are applied as, and to the extent, required pursuant to the Credit Agreement.

6.15 Time of the Essence. Time is of the essence of this Mortgage.

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6.16 Additional Advances. This Mortgage is given to secure the Mortgagor's obligations under the Credit Documents and the Interest Rate Protection Agreements to which the Mortgagor is "party" and shall secure not only obligations with respect to presently existing indebtedness under the foregoing documents and agreements but also any and all other indebtedness now owing or which may hereafter be owing by the Mortgagor to the Secured Creditors, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and readvances, pursuant to the Credit Agreement made within six (6) years of the date of this Mortgage, whether such advances are obligatory or to be made at the option of the Banks, or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage; provided, that the total amount of indebtedness that may be secured at any one time will not exceed \$525,000,000, plus interest thereon. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Property is located. This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

6.17 Leases. Any foreclosure of this Mortgage and any other transfer of all or any part of the Property in extinguishment of all or any part of the Obligations may, at Mortgagee's option, be subject to any or all leases of all or any part of the Property and the rights of tenants under such leases. No failure to make any such tenant a defendant in any foreclosure proceedings or to foreclose or otherwise terminate any such lease and the rights of any such tenant in connection with any such foreclosure or transfer shall be, or be asserted to be, a defense or hindrance to any such foreclosure or transfer or to any proceedings seeking collection of all or any part of the Obligations (including, without limitation, any deficiency remaining unpaid after completion of any such foreclosure or transfer).

6.18 Rules of Usage. The following rules of usage shall apply to this Mortgage unless otherwise required by the context:

(a) Singular words shall connote the plural as well as the singular, and vice versa, as may be appropriate.

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