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**MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
(2945 West 31st Street, Chicago, Illinois)

CERTAIN OF THE OBLIGATIONS SECURED BY THIS INSTRUMENT HAVE A VARIABLE INTEREST RATE.

THE PARTIES TO THIS MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), made as of May 19, 1998, are FAVORITE BRANDS INTERNATIONAL, INC., a Delaware corporation, having its principal address at TriState International Office Center, Suite 400, Building 25, Lincolnshire, Illinois 60069 (herein, together with its successors and assigns, the "Mortgagor"), and THE CHASE MANHATTAN BANK, in its capacity as administrative agent for the Lenders party to the Credit Agreement (each as defined below), having an office at 270 Park Avenue, New York, New York 10017 (herein, in such capacity together with its successors and assigns, called the "Mortgagee").

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RECORDING REQUESTED BY:

COMMONWEALTH LAND TITLE INSURANCE COMPANY

THIS MORTGAGE PREPARED BY, AND  
WHEN RECORDED MADE FOR:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
Attention: Daniel E. Karp, Esq.

MAILED  
COMMONWEALTH LAND  
TITLE INSURANCE COMPANY  
30 N. LA SALLE, SUITE 3900  
CHICAGO, IL. 60602



## RECITALS

A. *CREDIT AGREEMENT.* Pursuant to that certain Credit Agreement dated as of even date herewith (herein, as the same may be amended, supplemented, revised, or restated from time to time, called the "Credit Agreement") by and among Favorite Brands International, Inc., a Delaware corporation (the "Borrower"), and the financial institutions party thereto (collectively, the "Lenders"; individually, a "Lender"), Bank of America National Trust & Savings Association, as documentation agent for the Lenders and as co-syndication agent, and Mortgagee, as letter of credit issuing bank, swingline lender, and as administrative agent for the Lenders, the Lenders agreed to extend certain credit facilities to the Borrower, due and payable in full if not sooner paid on or before May 19, 2005, subject to acceleration as set forth in the Credit Agreement, in the aggregate original face principal amount of Two Hundred Twenty-Five Million Dollars (\$225,000,000) and bearing interest as provided in the Credit Agreement on the principal amount thereof from time to time outstanding. All principal and interest is payable in lawful money of the United States of America at the office of The Chase Manhattan Bank in New York, New York.

B. *RELATED AGREEMENTS.* The Credit Agreement and any and all other Loan Documents (as defined in the Credit Agreement) are hereinafter called the "Related Agreements."

C. *DEFINITIONS INCORPORATED BY REFERENCE.* As used in this Mortgage, the terms "Capital Lease", "Material Adverse Effect", "Obligations", "Operating Lease" and "Permitted Liens" shall have the respective meanings set forth for them in the Credit Agreement.

D. *SUBJECT PROPERTY.* For purposes of this Mortgage, the term "Subject Property" means and includes all right, title, and interest of Mortgagor in and to all of the following:

1. All present and future estate, right, title, and interest in and to that certain real property located in the County of Cook, State of Illinois (the "Land") and more particularly described in *Exhibit A* attached hereto and made a part hereof, together with all present and future right, title, and interest that Mortgagor now has or may hereafter acquire in:

(a) all fixtures now or hereafter affixed to the Land, including any and all buildings and improvements now or hereafter erected upon the Land (the "Improvements," the Land and the Improvements being hereinafter collectively called the "Premises"), together with all machinery, apparatus, equipment, fittings, fixtures, materials, and supplies and all other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located, placed, attached, affixed, or installed upon or in the Premises, or appurtenances thereto, and used or usable in connection with the present or future construction, operation, or occupancy of the Premises (collectively, "Equipment"); all of the property described in this paragraph (1) whether now or hereafter placed thereon being hereby defined to be real property;

(b) all deposits made with or other security given to utility companies by Mortgagor with respect to the Premises (to the extent assignable), and all advance payments of insurance premiums made by Mortgagor with respect thereto, and all claims or demands relating to such deposits, other security, and insurance;

(c) all leases, subleases, and other agreements affecting the use or occupancy of the Premises or any portion thereof now or hereafter existing or entered into (collectively, the "Leases"), and all rents, additional rents, issues, profits, royalties, income, and other benefits presently or in the future derived therefrom or otherwise from the Premises (collectively the "Rents"); subject, however, to the absolute assignment of the Rents to Mortgagee herein and to the right, power, and authority hereinafter conferred upon Mortgagor or reserved to Mortgagor to collect or apply such rents, additional rents, issues, profits, royalties, income, and other benefits;

(d) all operating, management, franchise, and use agreements, licenses, and contracts relating to the development, operation, or use of the Premises or any portion thereof, together with all permits (to the extent assignable), authorizations, or certificates required or used in connection with the ownership, operation, or maintenance of, or the construction on, the Premises;

(e) all easements, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, rights of way, strips and gores of land, vaults, streets, alleys, mineral rights, and appurtenances of any nature whatsoever, in any way belonging, relating, or pertaining to the Premises or any portion thereof;

(f) all estate, interest, right, title, claim, or demand, including claims or demands with respect to the proceeds of and any unearned premiums on any insurance policies covering the Premises or the Equipment, that Mortgagor now has or may hereafter acquire in respect of, 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 Subject Property, including, without limitation, any awards resulting from a change of grade of streets or for severance damages;

(g) all estate, right, title, claim, or demand whatsoever of Mortgagor, either in law or in equity, in possession, reversion, remainder, or expectancy, in and to the Premises or any other property described in the other clauses of this paragraph (1);

(h) all proceeds and avails of the conversion, voluntarily or involuntarily, of any of the foregoing into cash or liquidated claims, including without limitation proceeds of insurance and of any conveyance of the Premises or any part thereof; and

(i) the right, in accordance with the terms of this Mortgage, to appear in and defend any action or proceeding with respect to the Premises or any other property described in this Paragraph (1), and to commence any action or proceeding to protect the interests of Mortgagee therein.

All of the property described in Paragraph (1) and clauses (a) through (i) above is hereinafter referred to as the "Real Property."

2. All present and future right, title, and interest in and to any portion of the Real Property that may be construed to be personal property to the extent of Mortgagor's interest therein and, to the extent of Mortgagor's interest therein, in all other personal property of every kind and description, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Real Property, including without limitation:

(a) all water rights appurtenant to such Real Property, together with all pumping plants, pipes, flumes, and ditches, all rights to the use of water as well as all rights in ditches for irrigation of the Real Property, all water stock relating to the Real Property, shares of stock or other evidence of ownership of any part of the Real Property that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property;

(b) all plans and specifications prepared for construction of the Improvements, all studies, data, and drawings related thereto, and all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings, or to the construction of the Improvements;

(c) all equipment, machinery, fixtures, and all other tangible personal property of every kind and description, except for inventory;

(d) all substitutions and replacements of, and accessions and additions to, any of the foregoing;

(e) all sales agreements, deposit receipts, escrow agreements, and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Real Property or any buildings or structures on the Real Property, together with all deposits and other proceeds of the sale thereof; and

(f) all proceeds of any of the foregoing, including without limitation proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award, or otherwise) and all goods, documents, general intangibles, chattel paper, and accounts, wherever located, acquired with cash proceeds of any of the foregoing or of proceeds thereof.

All of the property described in Paragraph (2) and clauses (a) through (f) above is hereinafter collectively referred to as the "Personal Property."

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Notwithstanding anything to the contrary contained herein, the term "Subject Property" shall not include, and Mortgagor shall not be deemed to have granted a security interest in, or any rights under, any of Mortgagor's right, title or interest in, or any rights under, the property described in this Section E that is subject to a purchase money security interest permitted under Section 8.1(h) of the Credit Agreement (the "Permitted Purchase Money Security Interest") or a Capital Lease permitted under Section 8.1(i) of the Credit Agreement (the "Permitted Capital Lease") if the granting or existence of such a security interest would be a breach of any term of the documents providing for the Permitted Purchase Money Security Interest or the Permitted Capital Lease.

*F. OTHER DEFINITIONS.* As used in this Mortgage, the following terms have the following respective meanings:

*"Depository Institution":* The Chase Manhattan Bank, or such other bank or financial institution as shall be designated by Mortgagee, and approved by Mortgagor in its reasonable discretion.

*"Notice":* As used in Section 4.14 hereof, any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter, or other communication, written or oral, actual or threatened, from any federal, state or local agency or authority, or any other entity or any individual, concerning any intentional unintentional act or omission resulting or that may result in the Release of Hazardous Materials, including any lien on any real property, including but not limited to the Subject Property, or concerning any violation of Environmental Laws, or any knowledge, after due inquiry and investigation, of any facts that could give rise to any of the above.

*"Release":* As used in Section 4.14 of this Mortgage shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

## 1. GRANT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Mortgagor, and in order to secure the full, timely, and proper payment and performance of each and every one of the Obligations,

MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, TRANSFERS, AND ASSIGNS TO MORTGAGEE, AND GRANTS TO MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, FOR THE BENEFIT OF ITSELF AND THE LENDERS, A LIEN UPON AND SECURITY INTEREST IN, MORTGAGOR'S RIGHT, TITLE, INTEREST, CLAIM, AND DEMAND IN AND TO THE SUBJECT PROPERTY, FOR THE USE AND BENEFIT OF MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS AND TO SECURE THE PAYMENT AND PERFORMANCE OF ALL THE OBLIGATIONS.

## 2. ASSIGNMENT OF LEASES AND RENTS

### 2.1 Assignment



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Mortgagor hereby irrevocably assigns to Mortgagee all of Mortgagor's right, title and interest in, to and under the Leases and the Rents. The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Mortgagee's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Subject Property.

## 2.2 *Grant of License*

Mortgagee confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable and otherwise to exercise the rights and remedies of the lessor under the Leases, until the occurrence of an Event of Default (as hereinafter defined). Upon an Event of Default, the License shall be automatically revoked and Mortgagee may collect and apply the Rents without notice and without taking possession of the Subject Property in such order as Mortgagee shall determine in its sole discretion; provided, however, that Mortgagee shall have no liability for funds not actually received by Mortgagee. Mortgagor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Mortgagor hereby relieves the lessees from any liability to Mortgagor by reason of relying upon and complying with any such notice or demand by Mortgagee.

## 2.3 *Effect of Assignment*

The foregoing irrevocable Assignment shall not cause Mortgagee to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

## 2.4 *Representations and Warranties*

Mortgagor represents and warrants that: (a) all existing Leases, if any, are in full force and effect and are enforceable in accordance with their respective terms other than such Leases the failure of which to be in full force and effect and enforceable with their respective

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terms would reasonably be expected not to have a Material Adverse Effect; (b) no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party which, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect or, with respect to Mortgagor, would create an Event of Default under Section 9.1(e) of the Credit Agreement; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance except for such rents and other payments the prepayment of which would not cause a Material Adverse Effect; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned except in connection with transfers or assignments permitted under the terms of the Credit Agreement.

## 2.5 Covenants

Mortgagor covenants and agrees at Mortgagor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases except in such instances where the failure of performance or enforcement would reasonably be expected to not cause a Material Adverse Effect; (b) give Mortgagee prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor, if such default, individually or together with all such defaults, would reasonably be expected to have a Material Adverse Effect, or, with respect to lessor, would create an Event of Default under Section 9.1(e) of the Credit Agreement; (c) deliver to Mortgagee fully executed, counterpart original(s) of each and every Lease if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Mortgage, in form and substance acceptable to Mortgagee, as Mortgagee may request. Mortgagor shall not, without Mortgagee's prior written consent: (i) enter into any Leases after the date of this Assignment; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance; provided, however, that the restrictions set forth in this sentence shall not be applicable if such restricted action, individually or together with other such actions, would reasonably be expected to not have a Material Adverse Effect. Any such attempted action in violation of the provisions of this Section 2.5 shall be null and void.

## 2.6 Estoppel Certificates

Within fifteen (15) days after request by Mortgagee, Mortgagor shall use reasonable efforts to deliver to Mortgagee and to any party designated by Mortgagee estoppel certificates executed by Mortgagor and by each of the lessees, in recordable form, certifying (if such be the case): (i) that the Leases are in full force and effect; (ii) the date of each lessee's most recent payment of rent; (iii) that to the best of the knowledge of the certifying party, after due and diligent inquiry, there are no defenses or offsets outstanding, or stating those claimed by

Mortgagor or lessees under the foregoing assignment or the Leases, as the case may be; and (iv) any other information reasonably requested by Mortgagee.

### 3. SECURITY AGREEMENT AND FIXTURE FILING

#### 3.1 Creation of Security Interest

(a) This Mortgage creates a lien on the Subject Property, and, to the extent the Subject Property is not real property under applicable law (such Subject Property hereinafter referred to as the "Secured Property"), this Mortgage constitutes a security agreement under the Uniform Commercial Code of the State of Illinois and any other applicable law and is filed as a fixture filing. The grant of a security interest to Mortgagee in the granting clauses of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein that is real property or that the parties have agreed to treat as real property. The hereby stated intention of Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adopted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the land or the improvements thereon. If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee, additional security agreements, financing statements, and other instruments covering all Personal Property or fixtures of Mortgagor that may at any time be furnished, placed on, or annexed or made appurtenant to the Real Property or used, useful, or held for use in the operation of the Improvements; provided, however, that such instruments shall not impose any obligations on Mortgagor other than such obligations set forth in this Mortgage.

(b) Mortgagor hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor to execute, deliver, and file with the appropriate filing officer or office such security agreements, financing statements and other instruments as Mortgagee may reasonably request or require in order to impose and perfect the lien and security interest hereof more specifically on the Personal Property or any fixtures; provided, however, that except with respect to financing statements and renewals thereof, the appointment of the power of attorney set forth herein shall only apply if Mortgagor has failed to execute and deliver an instrument within ten (10) days of Mortgagee's written request therefor.

(c) If Mortgagor enters into a separate security agreement with Mortgagee relating to any of the Personal Property or fixtures, the terms of such security agreement shall govern the rights and remedies of Mortgagee in the event of default thereunder. Any breach of or default under any such security agreement shall constitute a default under this Mortgage.

(d) Mortgagor and Mortgagee agree, to the extent permitted by law, that this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Illinois Uniform Commercial Code. For purposes of the Uniform Commercial Code, the following information is furnished:



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(i) The name and address of the Debtor is:

Favorite Brands International, Inc.  
TriState International Office Center  
Suite 400, Building 25  
Lincolnshire, Illinois 60069  
Attn: President

(ii) The name and address of the Secured Party is:

The Chase Manhattan Bank, as Administrative Agent  
200 Jericho Quadrangle  
Jericho, New York 11753  
Attn: Lien Perfection Department

(iii) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above.

(iv) This document covers goods that are or are to become fixtures.

(e) It is understood and agreed that, in order to protect Mortgagee from the effect of Section 9-313 of the Illinois Uniform Commercial Code if (1) Mortgagor intends to purchase any goods that may become fixtures attached to the Subject Property, or any part thereof, and (2) such goods will be subject to a purchase money security interest held by a seller or any other party:

(i) Except with respect to property subject to Permitted Purchase Money Security Interest or Permitted Capital Leases, Mortgagor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Mortgagee, and all requests for such written approval shall be in writing and contain the following information:

(A) a description of the fixtures to be replaced, added to, installed, or substituted;

(B) the address at which the fixtures will be replaced, added to, installed, or substituted; and

(C) the name and address of the proposed holder and proposed amount of the security interest.

Mortgagor's execution of any such security agreement or other document evidencing such security interests without Mortgagee's prior written approval shall be a material breach of Mortgagor's covenants under this Mortgage and shall, at the option of Mortgagee, entitle Mortgagee to all rights and remedies provided for herein upon default. No consent by Mortgagee pursuant to this subparagraph shall be deemed to constitute an

agreement to subordinate any right of Mortgagee in fixtures or other property covered by this Mortgage.

(ii) Mortgagee shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or nonnegotiable instruments, or other evidence of Mortgagor's indebtedness for such Personal Property or fixtures, and, upon acquiring such interest by assignment, shall have the right to enforce the security interest as assignee thereof, in accordance with the terms and provisions of the Illinois Uniform Commercial Code then in effect and in accordance with any other provisions of law.

### **3.2 Representations, Warranties, and Covenants of Mortgagor**

Mortgagor hereby represents, warrants, and covenants as follows:

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

(b) Mortgagor will not remove any portion or item of Secured Property affixed or attached to the Premises without fifteen (15) days' prior written notice to Mortgagee, except such portions or items of Secured Property that are (i) described in Sections 8.2(b) and 8.2(c) of the Credit Agreement, (ii) being repaired, or (iii) being replaced by items of the same utility as such items that are being replaced.

(c) Mortgagor maintains its principal place of business at TriState International Office Center, Suite 400, Building 25, Lincolnshire, Illinois 60069 and Mortgagor will immediately notify Mortgagee in writing of any change in its principal place of business.

(d) 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, perfect, and secure the interests of Mortgagee in the Secured Property and shall pay all filing fees in connection therewith. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements with respect to the Secured Property, and renewals, continuation statements, and amendments thereof, pursuant to the Uniform Commercial Code of the State of Illinois in customary form, and will pay the cost of filing the same in all public offices wherever filing is necessary to the efficacy thereof.

### **3.3 Survival of Security Agreement**

Notwithstanding any release of any or all of the property included in the Subject Property that is deemed "real property," 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.

## 4. RIGHTS AND DUTIES OF THE PARTIES

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### 4.1 Title

Mortgagor represents and warrants that, except for the Permitted Liens, Mortgagor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that except for the liens of Permitted Purchase Money Security Interests and Permitted Capital Leases, this Mortgage is a first and prior lien on the Subject Property. Mortgagor shall warrant, defend and preserve such title and the lien of the Mortgage thereon against all claims of all persons and entities. Mortgagor further warrants that it has the right to mortgage the Subject Property.

### 4.2 Taxes and Assessments

Subject to Mortgagor's rights to contest payment of taxes as may be provided in the Credit Agreement, Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein.

### 4.3 Performance of Obligations

Mortgagor shall promptly pay and perform each Obligation when due.

### 4.4 Liens, Encumbrances and Charges

Mortgagor shall not make, create, incur, assume or suffer to exist any Lien on the Subject Property, or any portion thereof except as permitted under the Credit Agreement.

### 4.5 Required Insurance

Mortgagor will, at its expense, at all times provide, maintain, and keep in force the following policies of insurance:

(a) Insurance with respect to the Improvements and the Equipment incorporated therein against any peril included within the classification "All Risks of Physical Loss," including without limitation insurance against loss or damage by (i) fire, lightning, windstorm, civil commotion, smoke, hail, aircraft, vandalism, theft, explosion, riot, strike, water damage, sprinkler leakage, collapse, and malicious mischief, in amounts at all times sufficient to prevent Mortgagor from becoming a co-insurer within the terms of the applicable policies, but in any event such insurance shall be maintained in the full insurable value of the Improvements and such Equipment (the term "full insurable value" to mean one hundred percent (100%) of the full replacement cost of the Improvements and such Equipment, including the cost of debris removal but excluding any depreciation, footings, or foundations); and (ii) flood (in the event that such insurance is available pursuant to the provisions of the Flood Disaster Protection Act of 1973 or other applicable legislation) with a minimum loss

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limit of Three Million Dollars (\$3,000,000), earthquake with a minimum loss limit of Three Million Dollars (\$3,000,000), and other risks from time to time included in "difference in conditions" policies, in each case with insurers meeting the criteria set forth in Section 4.6;

(b) Comprehensive general liability insurance, including bodily injury and property damage liability, and umbrella liability insurance against any and all claims, including without limitation all legal liability (to the extent insurable) imposed upon Mortgagee and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation, or condition of the Premises, in such amounts and of such types as are usually carried by persons owning or using property similar to the Premises in the Cook County, Illinois area but in any event with a combined single limit of not less than Ten Million Dollars (\$10,000,000) for bodily injury and property damage liability with respect to any one occurrence;

(c) Statutory workers' compensation insurance with respect to any work on or about the Premises;

(d) Business income insurance covering one (1) year of loss; and

(e) Such other insurance against loss or damage with respect to the Premises and the Equipment incorporated therein of the kinds from time to time customarily insured against by persons owning or using property similar to the Premises in the Cook County, Illinois area and in such amounts as are customary.

(f) If the insurance required by this Section 4.5 is not available on a commercially reasonable basis, Mortgagor shall obtain insurance which (1) approximates as closely as possible the insurance required hereunder and (2) is reasonably approved by Mortgagee.

#### 4.6 Policy Provisions

(a) Each policy of insurance maintained by Mortgagor pursuant to Section 4.5 shall (i) name Mortgagee as an additional insured, as its interest may appear with respect to liability insurance coverage; (ii) contain a lender's loss payable endorsement in favor of Mortgagee in form reasonably acceptable to Mortgagee with respect to hazard insurance coverage; (iii) name Mortgagee as loss payee and provide that all insurance proceeds for losses be adjusted and be payable in accordance with Section 4.6 hereof with respect to hazard insurance coverage; (iv) include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and named insureds other than Mortgagor (provided that Mortgagee shall have the right to pay premiums and continue any insurance upon the failure to do so of Mortgagor) and all rights of subrogation against any named insured; (v) except in the case of public liability insurance and workers' compensation insurance, provide that any losses shall be payable notwithstanding (A) any act, failure to act, negligence of, or violation or breach of warranties, declarations, or conditions contained in such policy by Mortgagor or Mortgagee or any other named insured or loss payee, (B) the occupation or use of the insured properties for purposes more hazardous than those permitted by the terms of the policy, (C) any foreclosure

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or other proceeding or notice of sale relating to the insured properties, or (D) any change in the title to or ownership or possession of the insured properties; (vi) provide that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each named and additional insured and loss payee and that no cancellation, termination, expiration, or reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days or, in the case of cancellation for nonpayment of premiums, ten (10) days after receipt by each named and additional insured and loss payee of written notice thereof; and (vii) not be subject to a deductible in excess of Fifty Thousand Dollars (\$50,000).

(b) Mortgagor shall pay as and when the same become due and payable the premiums for all insurance policies that Mortgagor is required to maintain hereunder, and all such policies shall be non-assessable. Mortgagor will deliver to Mortgagee concurrently herewith appropriate evidence of insurance reasonably satisfactory to the Mortgagee setting forth in reasonable detail the terms (including without limitation any applicable notice requirements) of all insurance policies that Mortgagor is required to maintain hereunder. Mortgagor shall also provide to Mortgagee copies of such policies certified by the insurance companies issuing them promptly after Mortgagee's request therefor. Mortgagor will deliver to Mortgagee, concurrently with each change in any such insurance policy, a certificate with respect to such changed insurance policy certified by Mortgagor, in the same form and containing the same information as the certificates required to be delivered by Mortgagor pursuant to the first sentence of this subparagraph and with each renewal a certificate of Mortgagor certifying that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect.

(c) Not later than thirty (30) days prior to the expiration, termination, or cancellation of any insurance policy that Mortgagor is required to maintain hereunder, 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 Mortgagee a certificate and a true and complete copy of such policy or policies which comply with the requirements of Section 4.6(b), or a copy of the binding commitment for such policy or policies. Mortgagor shall also provide to Mortgagee appropriate evidence of insurance reasonably satisfactory to the Mortgagee certified by the insurance companies issuing them as soon as reasonably possible after Mortgagee's request therefor.

(d) Within thirty (30) days following the end of each policy period, and concurrently with the delivery of each replacement policy pursuant to Section 4.6(c), Mortgagor will deliver to Mortgagee a report or reports by Mortgagor setting forth the particulars as to all insurance obtained by Mortgagor pursuant to Section 4.5 or Section 4.6 and then in effect and stating that all premiums then due thereon have been paid to the applicable insurers and that the same are in full force and effect.

(e) From time to time, upon the occurrence of any material change in the use or operation of the Subject Property, or in the availability of insurance required hereunder in the area in which the Premises are located, Mortgagor will give Mortgagee prompt notice of such



change. Mortgagor will not take out separate or additional insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Mortgage unless such insurance complies with this Section 4.6.

(f) All insurers shall be authorized to issue insurance in the State of Illinois, and all insurers and reinsurers shall have the A.M. Best rating of "A" or better and a financial size rating of XII in the current edition of Best Insurance Reports.

#### 4.7 Insurance Proceeds

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(a) Mortgagor shall give prompt written notice to Mortgagee of the occurrence of any damage to or destruction of the Premises in an amount exceeding Fifty Thousand Dollars (\$50,000) to repair or replace.

(b) In the event of any damage to or destruction of the Premises or any part thereof and if an Event of Default exists, Mortgagee shall receive all insurance proceeds and shall have the right to apply such proceeds to the payment of the Obligations, in which event the following provisions shall apply:

(i) Mortgagee shall apply all of the insurance proceeds in the following order and priority: (A) first, to the payment of all reasonable costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including without limitation attorneys' fees, incurred by it in connection with the collection of such proceeds; (B) second, to the payment of all amounts of interest at the time due and payable under the Credit Agreement and the Related Agreements (whether at maturity or by declaration of acceleration or otherwise); (C) third, to the payment of all amounts of principal at the time due and payable under the Credit Agreement and the Related Agreements (whether at maturity or by declaration of acceleration or otherwise); (D) fourth, to the payment of all other Obligations then due and payable and secured hereby; and (E) fifth, the balance, if any, to Mortgagor or to the person or persons legally entitled thereto.

(ii) All insurance proceeds shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee.

(c) In the event of any damage to or destruction of the Premises, and if an Event of Default does not exist or if an Event of Default exists but Mortgagee shall not have elected to avail itself of its rights under Section 4.7(b), the following provisions shall apply:

(i) If the insurance proceeds are estimated by Mortgagee to be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) or more, Mortgagor shall, upon written request of Mortgagee, furnish to Mortgagee construction estimates and other information as Mortgagee shall reasonably request to enable Mortgagee to determine that there are sufficient funds available or committed (including without limitation funds committed by Mortgagor), including such insurance proceeds, to pay all costs and expenses

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associated with the restoration, repair, and replacement of the Premises, as such costs and expenses are incurred.

(ii) If Mortgagor has not provided the requested information set forth in subparagraph 4.7(c)(i) above within sixty (60) days after receipt of a written request therefor, or if Mortgagee determines, in its reasonable discretion, that there are not sufficient funds available or committed to pay for the items outlined in subparagraph 4.7(c)(i), Mortgagee may, at its option, require Mortgagor to deliver to the Depository Institution pursuant to Section 4.7(c)(iv) all such insurance proceeds paid to Mortgagor until such time as the requirements of subparagraph 4.7(c)(i) are satisfied and Mortgagor has established to the reasonable satisfaction of Mortgagee that there are sufficient funds available or committed to pay for the items outlined in such subparagraph.

(iii) If the insurance proceeds are estimated by Mortgagee to be in an amount less than Two Hundred Fifty Thousand Dollars (\$250,000), Mortgagor shall be entitled to receive all such proceeds and to apply such proceeds to the payment of the costs and expenses of repairing, restoring and operating the Premises.

(iv) If the insurance proceeds are in an amount of Two Hundred Fifty Thousand Dollars (\$250,000) or more, Mortgagor shall, at Mortgagee's request, deposit all such insurance proceeds with the Depository Institution. Mortgagee shall instruct the Depository Institution to disburse such proceeds to or for the account of Mortgagor, in installments, to pay the costs and expenses associated with the restoration of the Premises, as such costs and expenses are incurred, in accordance with the procedures set forth in Exhibit B attached hereto and hereby made a part hereof. If no Default or Event of Default exists, upon the payment of such costs and expenses, and any payments then due of any indebtedness then secured by the Subject Property, the balance of such proceeds, if any, shall be delivered to Mortgagor.

(d) If Section 4.7(b) shall be applicable, Mortgagee alone shall have the right to settle, adjust, or compromise any claim under any policy of insurance. In all other cases, (i) Mortgagor may settle, adjust, or compromise any claim that is in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) or less; and (ii) with respect to any claim in excess of Two Hundred Fifty Thousand Dollars (\$250,000), Mortgagee and 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. Any adjustment or settlement by Mortgagor of any claim that is in excess of Two Hundred Fifty Thousand Dollars (\$250,000) shall be subject to the approval of Mortgagee, which approval shall not be unreasonably withheld.

(e) In case of the foreclosure of the lien of this Mortgage, the court in its judgment may provide that Mortgagee, as judgment creditor, may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to it as such judgment creditor. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may

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deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies. In the event of foreclosure of the lien of this Mortgage, transfer of title or assignment of the Subject Property in extinguishment, in whole or in part, of the Obligations, all right, title, and interest of Mortgagor in and to all proceeds then payable under any policy of insurance required by this Mortgage shall inure to the benefit of and pass to the successor in interest of Mortgagor or to the purchaser or grantee of the Subject Property.

(f) All insurance proceeds and other Proceeds (as hereinafter defined) deposited with the Depository Institution shall be deposited in an interest-bearing account, and all interest earned thereon shall become a part of the principal of such proceeds and be disbursed by the Depository Institution in accordance with this Section 4.7. To the extent Mortgagee or the Depository Institution becomes liable for the payment of any taxes (including without limitation withholding taxes) in respect of interest income Mortgagee may cause such taxes to be paid from any monies held by it or the Depository Institution hereunder.

#### 4.8 Eminent Domain

(a) Should the Premises 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 Mortgagor receive any notice or other information thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

(b) In the event of a Condemnation of all or substantially all of the Premises or, without regard to the portion of the Premises subject to Condemnation, if an Event of Default exists:

(i) Mortgagee shall receive all compensation, awards, and other payments or relief therefor made or granted and shall be entitled, at Mortgagee's option, to commence, appear in, and prosecute in its own name any action or proceeding in connection therewith. All such compensation, awards, damages, and proceeds (the "Proceeds") shall be deemed assigned to Mortgagee, and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

(ii) Mortgagee shall have the right to receive and apply all such Proceeds in the manner set forth in Section 4.7(b) hereof as if the Proceeds were insurance proceeds. Such application or release shall not, by itself, cure or waive any default hereunder or notice of default under this Mortgage or invalidate any act done pursuant to such notice, but shall affect the lien of this Mortgage only to the extent of a reduction in the amount of said lien by the amount so applied.

(c) If an Event of Default does not exist or if an Event of Default exists but Mortgagee shall not have elected to avail itself of its rights under Section 4.8(b) or in the event of a Condemnation of less than all or substantially all of the Premises, the following provisions shall apply:

(i) If the parties agree, or the arbitrator determines as provided in Section 4.8(c)(iv), that after restoration or replacement the remainder of the Premises cannot be operated as an economically viable unit, the Proceeds shall be held for subsequent use by Mortgagor in acquiring substitute or replacement Premises or for such other purpose as Mortgagor and Mortgagee mutually agree, in each instance subject to such conditions and restrictions as Mortgagee may reasonably impose.

(ii) If Section 4.8(c)(i) does not apply, but subject to Section 4.8(c)(iii), Mortgagor shall be entitled to receive all such Proceeds and to apply such Proceeds to the payment of the costs and expenses of repairing, restoring, and operating the Premises.

(iii) If the Proceeds are in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) or more, Mortgagor shall, at Mortgagee's request, deposit all of such Proceeds with the Depository Institution. Mortgagee shall instruct the Depository Institution to disburse such Proceeds to Mortgagor, in installments, to pay the costs and expenses associated with restoration of the Premises, as such costs and expenses are incurred, in accordance with the requisition and disbursement procedures set forth in Exhibit B. If no Default or Event of Default exists, upon the payment of such costs and expenses, the balance of such Proceeds, if any, shall be delivered to Mortgagor.

(iv) If, pursuant to Section 4.8(c)(i), the parties do not agree on whether the remainder of the Premises can be operated as an economically viable unit following restoration or replacement, either party may elect to have such decision determined by arbitration in accordance with the rules of the American Arbitration Association. If either party shall so elect, notice of demand for arbitration shall be filed in writing with the other party. This provision shall not be deemed to be a consent by either party to arbitration of any dispute other than the dispute specifically contemplated by this Section 4.8(c)(iv). The decision of the arbitrator or arbitrators shall be final. The cost of such arbitration, including the fees and expenses of the arbitrator(s), shall be borne by both parties.

(d) If Section 4.8(b) or 4.8(c)(ii) shall govern and the Proceeds of the Condemnation are estimated by Mortgagee to be substantially less than the amount then due to Mortgagee by Mortgagor, Mortgagee alone shall have the right to settle, adjust, or compromise any claim in connection with a Condemnation of the Premises. In all other cases, (i) Mortgagor may settle, adjust, or compromise any claim that is estimated by Mortgagee to be in an amount less than Two Hundred Fifty Thousand Dollars (\$250,000); and (ii) with respect to any claim that is estimated by Mortgagee to be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) or more, Mortgagee and 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. Any adjustment or settlement by Mortgagor of any claim that is in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000) shall be subject to the approval of Mortgagee.

#### **4.9 Maintenance, Repair, Alterations**

Mortgagor will (a) maintain and preserve all its property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect or except as permitted by Section 8.2 of the Credit Agreement, (b) not construct any new Improvements or remove, demolish, change, or alter any of the existing Improvements, which construction, removal, demolition, change, or alteration would reasonably be expected to cause a Material Adverse Effect, (c) subject to Sections 4.7 and 4.8, promptly restore any Improvement that may be damaged or destroyed so that the same shall be at least equal to its value or utility in all material respects prior to the damage or destruction, (d) except for such noncompliance, individually or in the aggregate, which would reasonably be expected to not have a Material Adverse Effect, and subject to Mortgagor's right to contest or dispute in good faith the same as provided in Section 7.8 of the Credit Agreement, comply with all laws, ordinances, regulations, covenants, conditions, and restrictions (collectively, "Law") now or hereafter affecting the Subject Property or any part thereof or the use thereof or requiring any alterations or improvements, (e) comply with the material provisions of any Lease, easement, or other agreement affecting all or any part of the Property except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, and (f) not commit, suffer, or permit any action to be done in or upon the Subject Property in violation of any Law except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, and subject to Mortgagor's right to contest or dispute in good faith the same as provided in Section 7.8 of the Credit Agreement.

#### **4.10 Defense and Notice of Losses, Claims and Actions**

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At Mortgagor's sole expense, Mortgagor shall protect, preserve and defend the title to and right of possession of the Subject Property, the security hereof and the rights and powers of Mortgagee hereunder against all adverse claims. Mortgagor shall give Mortgagee prompt notice in writing of the assertion of any material claim, of the filing of any material action or proceeding, of the occurrence of any material damage to the Subject Property and of any condemnation offer or action.

#### **4.11 Releases, Extensions, Modifications and Additional Security**

Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Obligations ("Interested Parties"), Mortgagee may, from time to time, release any person or entity from liability for the payment or performance of any Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Mortgage upon the Subject Property.

#### **4.12 Subrogation**



Mortgagee shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Mortgagee pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

#### **4.13 Right Of Inspection**

Mortgagee, its agents and employees may, on the terms and conditions of Section 7.9 of the Credit Agreement, enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Mortgagor's compliance with the terms hereof.

#### **4.14 Environmental Protection Matters**

(a) The Mortgagor shall comply with any and all laws, regulations, and orders with respect to the release and removal of Hazardous Materials (as such term is defined in the Credit Agreement) on or from the Premises and shall keep the Premises free of any lien imposed pursuant to such laws, regulations, or orders. If Mortgagor fails to do so, after notice to Mortgagor and the expiration of the earlier of (i) applicable cure periods hereunder, or (ii) the cure period permitted under applicable law, regulation, or order, Mortgagee may either declare an Event of Default under this Mortgage or cause the Premises to be freed from the Hazardous Materials to the extent necessary to comply with such laws and free the Premises from any such lien, and the cost of the removal shall become due and payable upon demand and with interest thereon at the interest rate provided in Section 2.9(c) of the Credit Agreement from the date of demand until paid. Any failure by Mortgagor to reimburse Mortgagee for any amounts expended by the Mortgagor pursuant to this Section 4.14(a) within five (5) days after demand shall be an Event of Default hereunder. Mortgagor shall give to Mortgagee and its agents and its employees access to the Subject Property and hereby specifically grants to Mortgagee a license (but Mortgagee shall not be obligated) to remove the Hazardous Materials if Mortgagor fails to do so as required above.

(b) Mortgagor shall not cause or permit (or allow any tenant or other occupant of the Premises to cause or permit) the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials except in accordance with the requirements of applicable Environmental Laws. Mortgagor shall not cause or knowingly permit a Release of Hazardous Materials except in accordance with the requirements of applicable Environmental Law. Mortgagor shall notify Mortgagee in writing immediately upon the receipt of: (i) any Notice, (ii) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Subject Property that could cause the Subject Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability, or use of the Subject Property under any Environmental Law (as such term is defined in the Credit Agreement) or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability, or use of the Subject Property under any Environmental Law.

(c) Should Mortgagor or any tenant or other occupant of the Premises cause or permit any intentional or unintentional act or omission resulting in the Release of Hazardous

Materials requiring any response or cleanup action, Mortgagor shall promptly, and at Mortgagor's sole expense, clean up such Release, or cause such tenant or other occupant to clean up such Release, in accordance with the applicable federal, state, and local regulations. Mortgagor shall fully cooperate in allowing from time to time such examinations, tests (including without limitation a geohydrological survey of soil and subsurface conditions), inspections, and reviews of the Premises or any part thereof as Mortgagee, in its reasonable discretion, shall determine to be advisable in order to evaluate any potential environmental problems. The cost of any such examinations, tests, inspections, and reviews shall be paid by Mortgagor.

(d) Mortgagor shall defend, indemnify, and hold Mortgagee and its officers, directors, agents, employees, successors, and assigns harmless from and against any and all loss, claims, damages, penalties, forfeitures, suits, liabilities, and expenses (including without limitation reasonable costs of defense, settlement, investigation, and legal expenses) asserted and proven against Mortgagee by any person with respect to any claim in connection with such Hazardous Materials, including without limitation any of the same (i) arising out of the contamination of or adverse effects on the environment, including without limitation that resulting from sudden, chronic or long-term pollution, including that which is the result of activities which occurred before the date of this Mortgage or (ii) arising out of injuries to or death of persons, caused by, or resulting from, growing out of, or incidental to the operation or past, present, or future (during the term of this Mortgage) condition of the Premises. The foregoing indemnification (A) shall survive the repayment of the Obligations and (B) does not apply to any expenses arising out of the gross negligence or willful misconduct of Mortgagee.

#### *4.15 Actions by Mortgagee to Preserve Premises*

(a) Should Mortgagor fail to pay or perform any of the Obligations, after expiration of any applicable grace or notice and cure period, Mortgagee may pay or perform the same in such manner and to such extent as it may deem necessary in its sole discretion. In connection therewith, without limiting its general powers, Mortgagee shall have and is hereby given the right, but not the obligation: (a) to enter upon and take possession of the Premises; (b) to make additions, alterations, repairs, and improvements to the Premises that are reasonably necessary or proper to keep the Premises in good condition and repair; (c) to appear and participate in any action or proceeding affecting or that may affect the security

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hereof or the rights or powers of Mortgagee; (d) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien, or debt that may affect the security of this Mortgage or be prior or superior hereto, including without limitation redemption from any tax sale or forfeiture affecting the Subject Property or any portion thereof; and (e) in exercising such powers, to pay all necessary expenses, including without limitation the reasonable attorneys' fees or other necessary or desirable consultants. Mortgagor shall, on demand therefor by Mortgagee, pay or reimburse Mortgagee for all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation the cost of evidence of title, court costs, appraisal costs, surveys, and reasonable attorneys' fees, and any failure by Mortgagor to so pay Mortgagee within five (5) days after demand shall constitute an Event of Default hereunder. If this Mortgage is placed in the hands of an attorney for the collection of any sum secured hereby, Mortgagor agrees to pay on demand all reasonable costs of collection, including without limitation reasonable attorneys' fees, incurred by Mortgagee, either with or without the institution of any action or proceeding, and in addition to all costs, disbursements, and allowances provided by law, and any failure by Mortgagor to so pay Mortgagee within five (5) days shall constitute an Event of Default hereunder. All such costs so incurred shall be deemed to be secured by this Mortgage.

(b) If Mortgagee shall elect, pursuant to this Section 4.15, to undertake to perform Mortgagor's obligations for restoration or rebuilding as required of Mortgagor by Section 4.7 or Section 4.8 of this Mortgage, Mortgagee shall not be required to restore or rebuild the improvements to any greater extent than will be covered by available proceeds or estimated proceeds of insurance or condemnation award. An estimate of available proceeds may be made if at such time as Mortgagee is prepared to arrange for plans, solicit bids, let a contract, or otherwise proceed with restoration, the loss may not have been adjusted with insurers or the court may not have finally determined the amount of a condemnation award. If Mortgagee shall have expended any amount for restoration or rebuilding in excess of the actual or estimated proceeds of insurance or condemnation award for the purpose of such repair or replacement, the amount of such excess (the "Excess Restoration Cost") so expended by Mortgagee shall constitute additional indebtedness hereunder and shall be secured by the lien hereof.

(c) All advances, disbursements, and expenditures (collectively, "advances") made by Mortgagee before and during foreclosure, prior to sale, and, where applicable, after sale, for the following purposes, including without limitation interest thereon at the interest rate provided in Section 2.9(c) of the Credit Agreement, are hereinafter referred to as "Protective Advances":

(i) advances pursuant to this Section 4.15;

(ii) Excess Restoration Costs;

(iii) advances in accordance with the terms of this Mortgage to: (A) protect, preserve, or restore the Subject Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302

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of the Illinois Mortgage Foreclosure Law, 735 ILCS 5-15-1101 *et. seq.* (1996) as amended from time to time (the "Act");

(iv) payments of (A) when due installments of principal, interest, or other obligations in accordance with the terms of any prior encumbrance; (B) when due installments of real estate taxes and other taxes or assessment for the Subject Property; (C) other obligations authorized by this Mortgage; or (D) with court approval any other amounts in connection with other liens, encumbrances, or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section 4.15 of this Mortgage;

(v) reasonable attorneys' fees and other reasonable costs incurred in connection with the foreclosure of this Mortgage as referred to in Sections 15-1504(d)2 and 15-1510 of the Act, and in connection with any other litigation or administrative proceeding to which the Mortgagee may be or become or be threatened or contemplated to be a party, including bankruptcy proceedings, or in the preparation for the commencement or defense of any such suit or proceeding, including without limitation filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale that may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Subject Property;

(vi) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vii) payment by Mortgagee of taxes and assessments as required of Mortgagor by Sections 4.2 of this Mortgage;

(viii) expenses deductible from proceeds of sale referred to in Subsections (a) and (b) of Section 15-1512 of the Act; and

(ix) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (A) if any of the Subject Property consists of an interest in a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (B) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required; (C) payments reasonably required or deemed by Mortgagee to be for the benefit of the Subject Property or reasonably required to be made by the owner of the Subject Property under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners, or other instruments creating covenants or restrictions for the benefit of or affecting the Subject Property; and (D) shared or common

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expense assessments payable to any association or corporation in which the owner of the premises is a member in any way affecting the Subject Property.

(d) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Section (b)(5) of Section 15-1302 of the Act. The Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, be included in:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications, or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being hereby agreed that in any foreclosure judgment the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(iv) determination of the application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

(e) All moneys paid for Protective Advances or any of the other purposes herein authorized and all expenses paid or incurred in connection therewith, including without limitation attorneys' fees, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon as provided in Section 4.15(c). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

## 5. EVENTS OF DEFAULT AND REMEDIES

### 5.1 Events of Default

The occurrence of any of the following events shall be deemed to be an Event of Default hereunder:

(a) An Event of Default under the Credit Agreement.

### 5.2 Remedies



If an Event of Default exists, Mortgagee may, without any presentment, demand, protest, or notice of any kind to Mortgagor, declare all sums secured hereby immediately due and payable. In addition, if an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and pursue all remedies afforded to a mortgagee under and pursuant to the applicable law. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels.

### **5.3 Partial Foreclosure**

It is further agreed that, if an Event of Default shall exist with respect to the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to such portion of said indebtedness, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if a foreclosure judgment is entered pursuant to a partial foreclosure proceeding because of an Event of Default with respect to a part of the secured indebtedness, such judgment and sale pursuant thereto may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is agreed that such judgment or sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure judgment or sale had been entered or made under the provisions of this Section 5.3. Notwithstanding the filing of any partial foreclosure or entry of a judgment of foreclosure therein, Mortgagee may elect, at any time prior to a foreclosure sale pursuant to such judgment, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured indebtedness, whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

### **5.4 Personal Property**

Mortgagee may proceed as to the Personal Property in accordance with Mortgagee's rights and remedies in respect to the Subject Property or sell the Personal Property separately and without regard to the remainder of the Subject Property in accordance with Mortgagee's rights and remedies provided by the Uniform Commercial Code of the State of Illinois as well as other rights and remedies available at law or in equity.

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## 5.5 *Waiver of Marshalling*

Mortgagor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Mortgagor, including without limitation, a holder of a lien subordinate to the lien created hereby (without implying that Mortgagor has, except as expressly provided herein, a right to grant an interest in, or a subordinate lien on, the Subject Property), by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it gave the waiver itself.

## 5.6 *Waiver of Statutory Rights*

To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension, or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Subject Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor acknowledges that the Subject Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all rights of redemption on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Subject Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

## 5.7 *Application of Proceeds of Foreclosure Sale*

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The proceeds of any foreclosure sale of the Subject Property shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute secured indebtedness additional to that evidenced by the Credit Agreement and the other Related Agreements, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the loan evidenced by the Credit Agreement and the other Related Agreements.

## 5.8 *Appointment of Receiver*

Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Subject Property whenever Mortgagor, when entitled to possession, so requests pursuant to Section 15-1702(a) of the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including

the power to make leases to be binding upon all parties, including the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Subject Property after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Subject Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Subject Property during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his or her hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment; and (b) the deficiency in case of a sale and deficiency.

#### 5.9 Remedies Upon Default

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Mortgagor covenants and agrees that should Mortgagor fail or refuse to make any payment or do any act that it is obligated hereunder to make or do, at the time and in the manner herein provided, then Mortgagee may, after notice (if required) and the expiration of any applicable grace period (if any) set forth in Section 9.1 of the Credit Agreement, but without any additional notice to or demand upon Mortgagor, without releasing Mortgagor from any obligation hereunder, and without waiving its right to declare a default as herein provided or impairing any declaration of default:

(a) Make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, and any sums expended for such purposes shall become part of the Obligations secured hereby;

(b) Commence, appear in, or defend any action or proceedings purporting to affect the security hereof, or the interests, rights, powers, and duties of Mortgagee hereunder, whether brought by or against Mortgagor or Mortgagee;

(c) Pay, purchase, contest, or compromise any claim, debt, lien, charge, or encumbrance that in its judgment may affect or appear to affect the security of this Mortgage or the interests, rights, powers, or duties of Mortgagee hereunder, and any sums expended for such purposes shall become part of the Obligations secured hereby; and

(d) In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum

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secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder, and at all times until confirmation of sale, Mortgagee shall forthwith, upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, and upon Mortgagee's request to the court, Mortgagee shall be placed in, possession of the Subject Property or any part thereof, personally or by its agents or attorneys as provided in Subsections (b)(2) and (c) of Section 15-1701 of the Act. In such event, Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain or apply to the court in which a foreclosure is pending to be placed in possession of all or any part of the Subject Property, together with all documents, books, records, papers, and accounts of Mortgagor or then owner of the Subject Property relating thereto, and may exclude Mortgagor and its agents and servants wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage, and control the Subject Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including without limitation actions for the recovery of rent, actions in forcible detainer, and actions in distress for rent, and with full power: (i) to cancel or terminate any Lease for any cause or on any ground that would entitle Mortgagor to cancel the same; (ii) to elect to disaffirm any Lease that is then subordinate to the lien hereof; (iii) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Subject Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (iv) to enter into any management, leasing, or brokerage agreements covering the Subject Property; (v) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Subject Property as to it may seem judicious; (vi) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation, and management thereof; and (vii) to receive all of such avails, rents, issues, and profits, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limiting the generality of the foregoing provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by this Section 5.9, shall have full power to use and apply the avails, rents, issues, and profits of the Subject Property to the payment of or on account of the following, in such order as Mortgagee may determine: the expenses of receivership, if any; the proper costs of upkeep, maintenance, repair, and operation of the Subject Property; the repayment of any sums theretofore or thereafter advanced pursuant to the terms of this Mortgage; the interest then due or next to become due upon the indebtedness



secured hereby; the taxes and assessments upon the Subject Property then due or next to become due; and the unpaid principal of such indebtedness. The collection and receipt of income, rents, issues, profits, and proceeds from the Subject Property by Mortgagee, its agent or receiver, after declaration of default shall not affect or impair such default or declaration of default, but foreclosure proceedings may be conducted and foreclosure sales effected notwithstanding the receipt and collection of any such income, rents, issues, profits, and proceeds. Any such income, rents, issues, profits, and proceeds in the possession of Mortgagee or its agent or receiver at the time of foreclosure sale and not theretofore applied as herein provided, shall be applied in the same manner and for the same purposes as the proceeds of the foreclosure sale. Mortgagee shall be under no obligation to make any of the payments or do any of the acts referred to in this Section 5.9, and any of the actions referred to in this Section 5.9 may be taken by Mortgagee irrespective of whether any notice of default or election to sell has been given hereunder and without regard to the adequacy of the security for the Obligations.

## 6. MISCELLANEOUS PROVISIONS

### 6.1 *Future Advances*

This Mortgage is given for the purpose of securing loan advances which the Mortgagee may make to or for Mortgagor pursuant and subject to the terms and provisions of the Credit Agreement. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances made after this Mortgage is delivered to the Recorder of Deeds, Cook County, Illinois, whether made pursuant to an obligation of Mortgagee or otherwise, provided that such advances are within twenty (20) years from the date hereof and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof and although there may be no indebtedness outstanding at the time any advance is made. Such loan advances may or may not be evidenced by notes executed pursuant to the Credit Agreement.

### 6.2 *Governing Law*

This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois; provided, however, that to the extent that (a) any covenant of Mortgagor contained herein is incorporated by reference to the Credit Agreement or is substantively identical to a covenant of Mortgagor set forth in the Credit Agreement and (b) the interpretation of any such covenant under the laws of the State of Illinois differs from such interpretation under the laws of the State of New York, the interpretation of such covenant shall be governed by and construed in accordance with the laws of the State of New York; provided further, however, that the rights and remedies of Mortgagee after a violation of such covenant shall still be governed by and construed in accordance with the laws of the State of Illinois. If any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage that can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This Mortgage cannot be waived, changed, discharged or terminated orally, but



only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge, or termination is sought.

### 6.3 *Limitation Of Interest*

It is the intent of Mortgagor and 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, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained herein 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. Mortgagor or any guarantor, endorser, or other party now or hereafter becoming liable for the payment of any of the Obligations shall never be required to pay interest at a rate in excess of the maximum interest that may be lawfully charged under relevant law, and the provisions of this Section 6.2 shall control over all other provisions of any instrument executed in connection herewith that may be in apparent conflict herewith. If it is determined that any holder of any of the Obligations has collected moneys that are deemed to constitute interest and are deemed to increase the effective interest rate on the Obligations to a rate in excess of that permitted to be charged by relevant law, all such sums deemed to constitute interest in excess of such legal rate shall be applied by such holder to payment of such Obligations, as such Obligations mature, or refunded to Mortgagor. Mortgagor represents, warrants, and covenants that the proceeds of the loan evidenced by the Credit Agreement and the other Related Agreements will be used for the purposes specified in subparagraph 1(c) contained in Section 4 of The Interest Act, 815 ILCS 205.4, and that said loan constitutes a "business loan" within the meaning of that Section.

### 6.4 *Notices*

Whenever Mortgagor or Mortgagee shall desire to give or serve on the other any notice, demand, request, or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be made in accordance with the provisions of Section 11.2 of the Credit Agreement to the respective addresses set forth below or such other address as to which a party has given notice to the other party:

*IF TO MORTGAGEE:* The Chase Manhattan Bank, as Administrative Agent  
270 Park Avenue  
New York, New York 10017  
Attention: Bruce Borden  
Telephone: (212) 270-5799  
Facsimile: (212) 270-1674

*IF TO MORTGAGOR:* Favorite Brands International, Inc.  
TriState International Office Center  
Suite 400, Building 25  
Lincolnshire, Illinois 60069  
Telephone: (847) 374-0900

## **6.5 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.

## **6.6 Invalidity or Unenforceability**

If the lien of this Mortgage are invalid or unenforceable as to any part of the Obligations secured hereby, or if such lien and security interest are invalid or unenforceable as to any part of the Subject Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations that is not secured or not fully secured by the lien and security interest of this Mortgage.

## **6.7 Subrogation**

To the extent Mortgagee advances any funds under this Mortgage to pay any outstanding lien, charge, or encumbrance against the Subject Property, such proceeds or advances have been or will be advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges, and encumbrances, irrespective of whether said liens, charges, or encumbrances are released.

## **6.8 No Merger**

Upon the foreclosure of the lien created by this Mortgage on the Subject Property, any Leases then existing shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any Lease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

## **6.9 Non-Waiver**

Except as expressly provided to the contrary herein, acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt

payment, when due, of all other sums hereby secured or to declare an Event of Default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon the condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Mortgage conferred upon it upon the occurrence of a default hereunder. Consent by Mortgagee to any transaction or action of Mortgagor that is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions. No failure by Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power, or remedy consequent upon a breach thereof shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect, or the rights of Mortgagee with respect to any other then existing or subsequent breach.

#### **6.10 Further Assurances**

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 Mortgagee the lien and security interests hereof against the properties herein described and the rights intended to be provided to Mortgagee herein.

#### **6.11 Additional Security**

Without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, Mortgagee may accept from Mortgagor or from any other person additional security for the Obligations. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Mortgagee from resorting, first, to such additional security, and, second, to the security created by this Mortgage without affecting Mortgagee's lien and rights under this Mortgage.

#### **6.12 Mortgagee As Administrative Agent**

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The term "Mortgagee", as used herein with respect to the exercise of any rights or remedies or the taking of any action which the Mortgagee may take or be required to take hereunder, shall be deemed to mean the Administrative Agent with, if applicable, the consent of the requisite percentage in interest of the Lenders pursuant to the terms of the Credit Agreement.

#### **6.13 Remedies Cumulative**

No remedy herein conferred upon or reserved to 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 given by this instrument to Mortgagee or to which Mortgagee may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

#### **6.14 Release**

If Mortgagor shall fully pay and satisfy all of the Obligations, then Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of any filing fee in connection with such release. In addition, Mortgagee shall release any portion of the Subject Property which is transferred as permitted under Sections 8.2(b) or 8.2(c) of the Credit Agreement upon payment of any filing fee in connection with such release.

#### **6.15 Time of the Essence**

Time is of the essence of this Mortgage, and the performance of all provisions hereof. Nothing contained in this Section 6.14 shall be deemed to vitiate any grace periods applicable to Mortgagor provided for herein or in the Related Documents.

#### **6.16 Inconsistent Provisions**

In the event that the provisions of this Mortgage directly conflict with any provision of the Credit Agreement or Related Agreements, the provisions of the Credit Agreement and Related Agreements shall govern, except the provisions of the Mortgage with respect to the creation and perfection of a security interest or lien on the Subject Property, and the enforcement and governing law provisions of this Mortgage shall be governed by the terms and provisions hereof.

#### **6.17 Incorporation by Reference**

The terms and obligations of the Related Agreements are incorporated herein by this reference.

#### **6.18 Subordinate Lien**

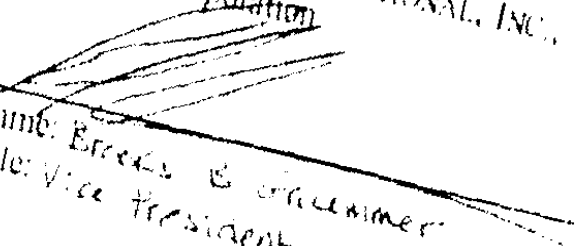
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If the documents providing for the lien of a Permitted Purchase Money Security Interest or a Permitted Capital Lease do not prohibit additional liens on the property subject to such lien, the lien of this Mortgage shall constitute (a) a subordinate lien on such property subject to such Permitted Purchase Money Security Interest and (b) a lien on Mortgagor's right, title and interest in, under and to such Permitted Capital Lease.

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...WITNESS WHEREOF, Mortgagee has caused this Mortgage with Absolute Assignment of Leases and Term, Security Agreement and Fixture Filing to be duly recorded as of the day and year first above written.

MORTGAGOR: FAVORITE BRANDS INTERNATIONAL, INC.,  
a Delaware corporation

By:   
Name: Eric S. Greener  
Title: Vice President

Property of Cook County Clerk's Office

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Sacramento & 31st  
Chicago, IL

## EXHIBIT A Legal Description

### PARCEL 1: (FEE PARCEL)

That part of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at the North East corner of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36; thence South along the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 584.42 feet to the point of beginning; thence continuing South along said East line, 365.13 feet, to the Northerly line of a 100 foot strip of land as conveyed to Chicago and Illinois Western Railroad Company by Document Number 3962480 said 100 foot strip being North and adjoining Lot 17 of the Sanitary District Trustee's Subdivision of Right of Way from North and South center line of Section 30, Township 39 North, Range 13 East of the Third Principal Meridian, to the Will County line; thence Southwesterly along said Northerly line, 353.90 feet, to the West line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36; thence North along said West line, 448.29 feet, to a point that is 592.00 feet South of the North West corner of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 76.02 feet; thence South, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 40.42 feet; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 78.00 feet; thence North, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 48.00 feet; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 179.75 feet to the point of beginning (except therefrom that part described as follows: that part of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at a point in the West line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36 that is 592.00 feet South of the North West corner of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 76.02 feet to the point of beginning; thence South, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 40.42 feet; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 78.00 feet; thence South parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 83.00 feet; thence West, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 107.00 feet; thence North, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 123.00 feet to a line 592.00 feet South of and parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 29.00 feet to the point of beginning), in Cook County, Illinois.

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## PARCEL 2: (EASEMENT PARCEL)

Easement for the benefit of Parcel 1 as created by Easement Agreement from the City of Chicago, an Illinois municipal corporation, to Farley Candy Company, a Delaware corporation, dated August 1, 1991, and recorded September 18, 1996, as Document Number 96711957 for ingress and egress over and across the following land:

That part of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, described as follows:

Commencing at a point in the West line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36 that is 592.00 feet South of the North West corner of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 76.02 feet to the point of beginning; thence South, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 40.42 feet; thence East, parallel with the North line of the East 1/2 of the East 1/2 of North West 1/4 of the North West 1/4 of said Section 36, 78.00 feet, thence South, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 83.00 feet; thence West, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 107.00 feet; thence North, parallel with the East line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 123.00 feet to a line 592.00 feet South of and parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36; thence East, parallel with the North line of the East 1/2 of the East 1/2 of the North West 1/4 of the North West 1/4 of said Section 36, 29.00 feet to the point of beginning, in Cook County, Illinois.

## PARCEL 3: (SUBLEASEHOLD PARCEL)

That part of Lot Nineteen (19), (except the North 592.00 feet thereof) of the Sanitary District Trustee's Sub-Division of Right of Way from North and South center line of Section Thirty (30), Township Thirty-Nine (39) North, Range Fourteen (14) East of the Third Principal Meridian to the Will County line, lying East of the Collateral Channel and lying North of a line described as follows:

Beginning at a point in the West line of the West half (1/2) of the East (1/2) of the Northwest quarter (1/4) of the Northwest quarter (1/4) of Section Thirty-Six (36), Township Thirty-Nine (39) North, Range Thirteen (13) East of the Third Principal Meridian One Hundred Seventy-Seven and Ninety-Three Hundredths (177.93) feet North of the Southwest corner thereof thence Northeasterly to a point on the East line of said West half (1/2) of the East half (1/2) of the Northwest Quarter (1/4) of the Northwest (1/4) Two Hundred Fifty-Three and Ninety-Six Hundredths (253.96) feet North of the Southeast corner of said West half (1/2) of the East half of the Northwest quarter (1/4) of said Northwest quarter (1/4) containing Four and Thirty-Five Hundredths (4.35) acres more or less situated in the County of Cook, State of Illinois.

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## PARCEL 4: (FEE PARCEL)

A portion of the West half (1/2) of the Northeast quarter (1/4) of the Northwest quarter (1/4) of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, lying North of a line parallel with and 100 feet distant measured at right angles and Northerly from the Northerly right of way of the Sanitary District of Chicago more particularly described as follows:

Commencing at a point in the Southerly limit of West 31st Street distant Easterly 33 feet from the intersection of the Westerly line of the said Northeast quarter (1/4) of the Northwest quarter (1/4) of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, and the said Southerly limit of West 31st Street being the Northwest corner of the property herein described; thence Southerly along the Easterly boundary of the property owned by the Illinois Central Railroad Company and leased by the City of Chicago 903.67 feet to a point at the intersection of said Easterly boundary with the Northerly right of way limits of the Illinois Central Railroad said point being 33 feet distant Easterly from and measured at right angles to the said Westerly line of the Northeast quarter (1/4) of the Northwest quarter (1/4) of said Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, and being also 100 feet Northerly from and measured at right angles to said Northerly limit of the right of way of the Sanitary District of Chicago; thence Northeasterly along the said Northerly limit of the right of way of the Illinois Central Railroad 483.84 feet more or less to a point; thence Northerly parallel to the Easterly boundary of the property owned by the Illinois Central Railroad and leased by the City of Chicago a distance of 727.29 feet more or less to the Southerly limit of West 31st Street; thence Westerly along the said Southerly limit of West 31st Street 450 feet to the point of commencement, in Cook County, Illinois.

## PARCEL 5: (EASEMENT PARCEL)

Perpetual, non-exclusive easement for the benefit of Parcels 1 and 4 created by Easement Agreement from Illinois Central Railroad Company to Farley Candy Company, a Delaware corporation, dated October 3, 1996 and recorded November 6, 1996, as Document Number 96849705 for use of railroad tracks; use, repair, maintenance and replacement of covered passageway; parking, use, repair, maintenance and replacement of overhead surface and underground utility lines, pipes and equipment; access, and ingress and egress over and across the following land:

The West 33 feet of the West half (1/2) of the Northeast quarter (1/4) of Section 36, Township 39 North, Range 13 East of the Third Principal Meridian, lying North of a line parallel with and 100 feet distant, measured at right angles and Northerly from the Northerly right of way of the Sanitary District of Chicago, except the North 33 feet thereof, in Cook County, Illinois.

Tax No. 16-36-100-056-0000  
16-36-100-057-0001  
16-36-100-057-0002  
16-36-100-058-0003  
16-36-101-005-0000

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2945 W 31st St, Chicago, IL

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## EXHIBIT B

### PROCEDURES FOR DISBURSEMENT OF PROCEEDS

Insurance proceeds under Section 4.7(e)(iv) and Proceeds under Section 4.8(c)(iii) to be used for restoration shall be disbursed to Mortgagor to be applied to pay or reimburse the restoring party for expenditures made in restoring the Premises so damaged (or restoring the portion thereof not so taken) as the work progresses, against receipt by the Depository Institution of Mortgagor's draw request and such other information as Mortgagee may reasonably request. Any such draw request shall constitute Mortgagor's certification that (i) the work, to the extent performed, has been satisfactorily accomplished, (ii) the amount requested has been paid by or on behalf of Mortgagor or is justly due to the restoring party or other persons who with the work, and (iii) no undischarged mechanic's, materialmen's or other liens or charges have been filed against the Subject Property. The Depository Institution shall not be required to apply such proceeds or awards as aforesaid unless Mortgagee certifies (and delivers such other information in support of such certification as Mortgagee may reasonably request) that the amount thereof remaining after payment of the amount requested (together with anticipated interest and investment earnings thereon), plus funds available or committed, will be sufficient to pay in full for the completion of such restoration.