

THIS INSTRUMENT WAS PREPARED BY:

Michael H. Delauter  
MILES & STOCKBRIDGE P.C.  
30 West Patrick Street, Suite 600  
P.O. Box 688  
Frederick, Maryland 21705-0688

STATE OF ALABAMA  
SHELBY COUNTY

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(COLLATERAL INCLUDES FIXTURES)

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AND  
FIXTURE FILING is made this 3rd day of ~~November~~<sup>December</sup>, 2007, by SUBURBAN GAS  
PROPANE PARTNERS, LLC, a Maryland limited liability company (herein referred to as the  
"Mortgagor"), to BANK OF AMERICA, N. A., a national banking association (herein referred  
to as the "Lender").

RECITALS

A. Pursuant to a certain Amended and Restated Financing and Security Agreement dated as of October 24, 2007, by and among the Lender and the hereinafter described Existing Borrowers (the "Financing Agreement"), the Lender is providing certain Credit Facilities to the Mortgagor and Mortgagor's affiliates, THOMPSON'S GAS & ELECTRIC SERVICE, INC., a Maryland corporation ("TG&E"), RAMEY'S INC., a West Virginia corporation ("RAMEY"), TGENERGY, INC., a Maryland corporation ("TGEI"), NICHOLS APPLIANCE CENTER, INC., a Virginia corporation ("NACI"), THOMPSON DISTRIBUTION, INC., a Maryland corporation ("TDI"), THOMPSON DISTRIBUTION PARTNERS, LLC, a Maryland limited liability company ("TDP"), REGIONS PROPANE—ALABAMA, L.L.C., an Alabama limited liability company ("RPA"), and THOMPSONGAS PROPANE PARTNERS, LLC, a Delaware limited liability company ("TGPP") (with Mortgagor, TG&E, RAMEY, TGEI, NACI, TDI, TDP, RPA and TGPP being hereinafter collectively referred to as the "Existing Borrowers").

B. The aforesaid Credit Facilities consist of (i) a term loan to Mortgagor in the original principal amount of \$6,500,000.00 (the "Term Loan"), which is evidenced by a certain Promissory Note dated June 30, 2006, by Mortgagor in favor of the Lender in the original principal amount of \$6,500,000.00 (as the same may be from time to time extended, amended, restated, supplemented or otherwise modified, the "Term Note"); (ii) a certain revolving line of credit facility being provided by the Lender to the Existing Borrowers for working capital in the current maximum principal amount permitted outstanding at any one time of \$7,000,000.00 (herein referred to as the "WC Revolving Credit Facility"), with principal amounts outstanding thereunder being evidenced by a certain Substituted Promissory Note (Working Capital

M. Atchison



Revolving Credit Facility) dated October 24, 2007, by the Existing Borrowers in favor of the Lender, in the face amount of \$7,000,000.00 (as the same may be from time to time extended, amended, restated, supplemented or otherwise modified, the "WC Revolving Credit Note"); (iii) a certain revolving line of credit facility for equipment being provided by the Lender to the Existing Borrowers in the maximum principal amount permitted outstanding at any one time of \$16,000,000.00 (herein referred to as the "Equipment Revolving Credit Facility"), with principal amounts outstanding thereunder being evidenced by a certain Promissory Note (Equipment Revolving Credit Facility) dated February 21, 2007, by the Existing Borrowers in favor of the Lender, in the face amount of \$16,000,000.00 (as the same may be from time to time extended, amended, restated, supplemented or otherwise modified, the "Equipment Revolving Credit Note"); and (iv) a certain term loan facility being provided by the Lender to the Existing Borrowers in the maximum principal amount of \$6,000,000.00 for financing the Existing Borrowers' purchase of various propane dealer and distribution centers (herein referred to as the "Dealer Acquisition Loan"), with principal amounts outstanding thereunder being evidenced by a certain Promissory Note (Dealer Acquisition Loan) dated October 24, 2007, by the Existing Borrowers in favor of the Lender, in the face amount of \$6,000,000.00 (as the same may be from time to time extended, amended, restated, supplemented or otherwise modified, the "Dealer Acquisition Note").

C. Hereinafter, the Term Note, the WC Revolving Credit Note, the Equipment Revolving Credit Note and the Dealer Acquisition Note shall be collectively referred to herein as the "Notes". Furthermore, any capitalized terms used herein, which are not otherwise defined herein, shall have the same meanings as set forth in the Financing Agreement.

D. Pursuant to a certain Assumption Agreement of even date herewith by and among the Existing Borrowers, ThompsonGas Propane Holdings, LLC, a Delaware limited liability company ("TGPH"), J. Randall Thompson, an individual, and the Lender (the "Assumption Agreement"), the Lender has agreed to add TGPH as a borrower under the Credit Facilities and TGPH has (i) assumed, jointly and severally with the Existing Borrowers, all liabilities and obligations of the Existing Borrowers owing to the Lender under the Notes, the Financing Agreement and the other Financing Documents and (ii) guaranteed the obligations of Mortgagor under the Term Note. TGPH and the Existing Borrowers being hereinafter collectively referred to as the "Borrowers".

E. The Mortgagor has requested that the Lender make an Advance of proceeds of the Dealer Acquisition Loan for the purpose of financing, among other things, the Mortgagor's acquisition of the Property described herein. As a condition precedent to making such Advance, the Lender is requiring that the Mortgagor secure the payment and performance of all obligations of the Borrowers arising out of, or in connection with, the Credit Facilities by the execution of this Mortgage.

F. THIS MORTGAGE SECURES PRINCIPAL INDEBTEDNESS EVIDENCED UNDER THE NOTES IN THE MAXIMUM AMOUNT OF ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000.00), NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS MORTGAGE.

NOW THEREFORE, in order to induce the Lender to make the aforesaid Advance to the





Mortgagor and to otherwise provide the Credit Facilities to the Borrowers, the Mortgagor agrees as follows:

ARTICLE I  
DEFINITIONS, RULES OF CONSTRUCTION.

Section 1.1      Definitions.

As used in this Mortgage, the terms defined in the Preamble and Recitals hereto shall have the respective meanings specified therein, and the following terms shall have the meanings indicated:

“Accounts” means all accounts of the Mortgagor within the meaning of the Uniform Commercial Code of the State derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

“Additions” means any and all alterations, additions, accessions and improvements to the Land or any Improvements, substitutions therefor, and renewals and replacements thereof.

“Assumption Agreement” means the Assumption Agreement as described in the Recitals to this Mortgage, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Borrowers” means collectively, the Borrowers described in the Recitals to this Mortgage.

“Casualty” means any act or occurrence of any kind or nature that results in damage, loss or destruction to the Property.

“Claim” means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including without limitation, fees, costs and expenses of attorneys, consultants, contractors and experts.

“Condemnation” means any taking of title, of use, or of any other property interest under the exercise of the power of eminent domain, whether temporarily or permanently, by any Governmental Authority or by any Person acting under Governmental Authority.

“Condemnation Awards” means any and all judgments, awards of damages (including, but not limited to, severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

“Contracts of Sale” means any contracts for the sale of all or any part of the Property or any interest therein, whether now or hereafter executed, including, without limitation, all of the Proceeds thereof, any funds deposited thereunder to secure performance by the purchasers of their obligations and the right, after the occurrence of an Event of Default, to receive and collect all payments due under any contracts of sale.



"Credit Facilities" means, collectively, the Credit Facilities described in the Financing Agreement and in the Recitals to this Mortgage.

"Default" means an event which, with the giving of Notice or lapse of time, or both, could or would constitute an Event of Default under the provisions of this Mortgage.

"Encumbrance" means any Lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that would affect title to the Property.

"Environmental Assessment" means a report of an environmental assessment of the Property of such scope (including but not limited to the taking of soil borings and air and groundwater samples and other above and below ground testing) as the Mortgagee may request, prepared by a recognized environmental consulting firm acceptable to the Mortgagee in all respects and sufficient in detail to comply with the Mortgagee's established guidelines and the guidelines of any appropriate Governmental Authority.

"Environmental Requirement" means any Law or other agreement or restriction, whether public or private (including but not limited to any condition or requirement imposed by any insurer or surety company), now existing or hereafter created, issued or enacted and all amendments thereto, modifications thereof and substitutions therefor, which in any way pertains to human health, safety or welfare, Hazardous Materials, Hazardous Materials Contamination or the environment (including but not limited to ground, air, water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Resource Conservation and Recovery Act (the Solid Waste Disposal Act), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

"Equipment" means all building materials, fixtures, equipment and other tangible personal property of every kind and nature whatsoever (other than consumable goods, and trade fixtures or other personal property owned by tenants occupying the Improvements), now or hereafter located or contained in or upon, or attached to, the Real Property, whether now owned or hereafter acquired by the Mortgagor; together with all Additions to the Equipment and Proceeds thereof.

"Event of Default" means the occurrence of any one or more of the events specified in ARTICLE VI (Events of Default) and the continuance of such event beyond the applicable cure periods, if any, set forth in ARTICLE VI (Events of Default).

"Existing Borrowers" means collectively, the Existing Borrowers described in the Recitals to this Mortgage.

"Expenses" means all costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by the Mortgagee in



exercising or enforcing any rights, powers and remedies provided in this Mortgage or any of the other Financing Documents, including, without limitation, attorney's fees, court costs, receiver's fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

"Financing Agreement" means the Financing Agreement as described in the Recitals to this Mortgage, which sets forth, among other things, the terms and conditions upon which the proceeds of the Credit Facilities will be disbursed, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Financing Documents" means this Mortgage, the Notes, the Financing Agreement, the Assumption Agreement, any Hedge Agreement and any and all other documents which the Borrowers (or any of them) or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Governmental Authority" means any governmental or quasi-governmental entity, including, without limitation, any department, commission, board, bureau, agency, administration, service or other instrumentality of any governmental entity.

"Hazardous Materials" means any and all hazardous or toxic substances, wastes or materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard or nuisance to human health, safety or welfare or to the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled, including without limitation, any substance, waste or material which is or contains asbestos, radon, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials or petroleum products.

"Hazardous Materials Contamination" means the contamination (whether presently existing or occurring after the date of this Mortgage) of the Improvements, facilities, soil, ground water, air or other elements on, in or constituting a part of, the Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on, in or constituting a part of, any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Property.

"Hedge Agreement" means any and all transactions, agreements or documents now existing or hereafter entered into, that provide for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging exposure to fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices.

"Improvements" means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land.

"Land" means the land described in Exhibit "A" attached hereto, together with (a) all



estates, title interests, title reversion rights, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements and other rights, now or hereafter owned by the Mortgagor and belonging or appertaining to the Land, (b) all Claims whatsoever of the Mortgagor with respect to the Land, either at law or in equity, in possession or in expectancy, and (c) all estate, right, title and interest of the Mortgagor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to, the Land.

“Laws” means federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

“Leases” means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, including, without limitation, any cash or securities deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

“Lien” means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Mortgage” means this Mortgage, Assignment of Leases and Rents, Security Agreement and Fixtures Filing executed by the Mortgagor for the benefit of the Mortgagee, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

“Mortgagee” means the Lender and its successors and assigns.

“Net Proceeds”, when used with respect to any Condemnation Awards or insurance proceeds allocable to the Property, means the gross proceeds from any Casualty or Condemnation remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such gross proceeds.

“Notice” means a written communication delivered by hand, or sent by overnight courier, or by certified or registered mail, postage prepaid, return receipt requested, to the Person to whom such communication is to be given, at the following addresses:



Mortgagor: c/o Thompson's Gas & Electric Service, Inc.  
6708 Old National Pike  
Boonsboro, Maryland 21713-0158  
Attention: J. Randall Thompson

Lender: Bank of America, N.A.  
Mail Code: MD9-978-04-01  
1101 Wootton Parkway, 4<sup>th</sup> Floor  
Rockville, Maryland 20852  
Attention: Michael D. Brannan, Senior Vice President

or at such other address as any party shall have notified the others of in the manner set forth in this definition. **For the purpose of making this document a Financing Statement under the Uniform Commercial Code-Secured Transactions (the "Code"), the Mortgagor is the debtor as defined in the Code and the Mortgagee is the secured party as defined in the Code. The Mortgagor is a Maryland limited liability company whose Department ID is #W11344710.**

"Obligations" means all present and future debts, obligations and liabilities of the Borrowers (or any of them) to the Mortgagee arising pursuant to, and/or on account of, the provisions of this Mortgage, the Notes and any of the other Financing Documents, including, without limitation, the obligations to (a) pay all principal (including, again without limitation, any principal advanced after the date of this Mortgage and any principal that is repaid and readvanced), interest, late charges and prepayment premiums (if any) due at any time under the Notes, and (b) pay all Expenses, indemnification payments and other sums due at any time under this Mortgage together with interest thereon as provided in Section 4.19, and (c) perform, observe and comply with all of the terms, covenants and conditions, expressed or implied, which the Mortgagor or the other Borrowers are required by this Mortgage and any of the other Financing Documents, to perform, observe or comply with.

"Permitted Encumbrances" means (a) the Encumbrances set forth in the Commitment for Title Insurance issued on November \_\_\_\_, 2007, by Stewart Title Guaranty Company, as updated to the date of this Mortgage (File No. \_\_\_\_), (b) this Mortgage, (c) any Leases so long as such Leases are subject and subordinate to this Mortgage, and (d) liens for Property Assessments which are either (i) not delinquent, or (ii) being contested in accordance with the provisions of Section 4.20.

"Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, a trust, an unincorporated association, any Governmental Authority or any other entity.

"Personalty" means all of the Mortgagor's interest in personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including, without limitation, (a) the Equipment, (b) the Accounts, (c) any franchise or license agreements and management agreements entered into with respect to the Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and the



Mortgagee shall have no responsibility for the performance of the Mortgagor's obligations thereunder), and (d) all plans and specifications, contracts and subcontracts for the construction or repair of the Improvements, sewer and water taps, allocations and agreements for utilities, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, refunds of fees or deposits paid to any Governmental Authority, letters of credit and policies of insurance; together with all Additions to the Personalty and Proceeds thereof.

"Proceeds", when used with respect to any of the collateral described in this Mortgage, means all proceeds within the meaning of the Uniform Commercial Code of the State and shall also include the proceeds of any and all insurance policies.

"Property" means the Land, the Improvements and the Personalty, and all Additions to, and Proceeds of, all of the foregoing.

"Property Assessments" means all taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and the Improvements, and all Additions to, and Proceeds of, each of the foregoing.

"Reimbursement Rate" means the Post-Default Rate (as defined in the Financing Agreement).

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, or from any Lease or other use or occupancy agreement pertaining to the Property.

"State" means the State of Alabama.

"Taxes" means all taxes and assessments whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed on the Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

"Transfer" means any direct or indirect sale, assignment, conveyance or transfer, including, without limitation, any contract or agreement to sell, assign, convey or transfer, whether made with or without consideration.

## Section 1.2 Rules of Construction.

The words "hereof", "herein", "hereunder", "hereto", and other words of similar import refer to this Mortgage in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants". The headings of this Mortgage are for convenience only and shall



not define or limit the provisions hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (d) to Section numbers are to the respective Sections contained in this Mortgage unless expressly indicated otherwise. If the Mortgagor is two (2) or more Persons, the term "Mortgagor" shall also refer to all of the Persons signing this Mortgage as a Mortgagor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. The Mortgagee may release, compromise, modify or settle with any of the Mortgagor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the other Mortgagors hereunder or under the Notes. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of the Mortgagors.

## ARTICLE II GRANTING CLAUSES; CONDITION OF GRANT.

In order to secure the prompt payment and performance of the Obligations, the Mortgagor (a) grants, bargains, sells and conveys the Real Property unto the Mortgagee, to have and to hold the Real Property in fee simple forever; provided that, the Mortgagor may retain possession of the Real Property until the occurrence of an Event of Default; and (b) grants the Mortgagee a lien on, and security interest in, the Land and Personalty; and (c) unconditionally and absolutely assigns the Leases and Rents to the Mortgagee (but subject to the license for collection of Rents described in Section 4.14(b)); and (d) assigns to, and grants the Mortgagee a security interest in, any Contracts of Sale; and (e) assigns to the Mortgagee all Condemnation Awards and any insurance proceeds payable with respect to any Casualty; **PROVIDED, HOWEVER, THAT THIS MORTGAGE SHALL SECURE PRINCIPAL EVIDENCED UNDER THE NOTES IN THE MAXIMUM AMOUNT OF ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000.00)**, plus accrued and unpaid interest thereon and all other Expenses described herein; AND PROVIDED FURTHER, that these presents are upon the condition that, (i) if the Borrowers shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable with respect of the Credit Facilities and the Notes, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrowers, and shall pay all charges incurred herein by Mortgagee on account of Borrowers, including, but not limited to, attorneys' fees, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Notes, and in the other Financing Documents expressed to be kept, performed, and observed by or on the part of the Borrowers, all without fraud or delay and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Credit Facilities, the Notes, any other Financing Documents (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void. Upon Mortgagor's request Mortgagee shall execute and deliver to Mortgagor all releases, terminations or other documents or instruments that Mortgagor deems necessary or desired to further evidence the termination of this Mortgage. The Mortgagor shall be responsible for the recordation of such release and



payment of any recording costs.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES.

The Mortgagor makes the following representations and warranties to the Mortgagee:

Section 3.1      Organization, Power and Authority of the Mortgagor; Financing Documents.

The Mortgagor (a) is a limited liability company duly organized, existing and in good standing under the laws of the state in which it is organized, and is duly qualified to do business and in good standing in the state in which the Property is located (if different from the state of its formation) and in any other state in which the Mortgagor conducts business except where the failure to so qualify would not result in a Material Adverse Effect, and (b) has the power, authority and legal right to own its property and carry on the business now being conducted by it and to engage in the transactions contemplated by the Financing Documents. The execution and delivery of, and the carrying out of the transactions contemplated by, the Financing Documents executed by the Mortgagor, and the performance and observance of the terms and conditions of such Financing Documents, have been duly authorized by all necessary company action of the Mortgagor. The Financing Documents to which the Mortgagor is a party constitute the valid and legally binding obligations of the Mortgagor and are fully enforceable against the Mortgagor in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and secured parties, and general principles of equity regardless of whether applied in a proceeding in equity or at law.

Section 3.2      Other Documents; Laws.

The execution and performance of the Financing Documents executed by the Mortgagor and the consummation of the transactions contemplated thereby will not conflict with, result in any breach of, or constitute a default under, the certificate of formation or operating agreement of the Mortgagor, or any material contract, agreement, document or other instrument to which the Mortgagor is a party or by which the Mortgagor may be bound or affected, and do not and will not violate or contravene any Law to which the Mortgagor is subject.

Section 3.3      Taxes.

The Mortgagor has filed all federal, state, county and municipal Tax returns required to have been filed by the Mortgagor and has paid all Taxes which have become due pursuant to such returns or pursuant to any Tax assessments received by the Mortgagor.

Section 3.4      Legal Actions.

Except as otherwise previously disclosed by Mortgagor to Mortgagee, there are no (a) Claims pending or, to the best of the Mortgagor's knowledge and belief, threatened, against or affecting the Mortgagor, the Mortgagor's business or the Property, or (b) investigations at law or in equity, before or by any court or Governmental Authority, pending or, to the best of the Mortgagor's knowledge and belief, threatened, against or affecting the Mortgagor, the



Mortgagor's business or the Property that, in any one case or in the aggregate, if determined adversely to the interests of the Mortgagor, would have a material effect on the business, properties, condition (financial or otherwise) or operations, present or prospective, of the Mortgagor. The Mortgagor is not in default with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority affecting the Mortgagor or the Property.

Section 3.5      Nature of Credit Facilities; Usury; Disclosures.

The Mortgagor is a business or commercial organization, and the Credit Facilities are being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. To Mortgagor's knowledge, the rate of interest charged on the Credit Facilities does not, and will not, violate any usury Law or interest rate limitation.

Section 3.6      Trade Names.

The Mortgagor conducts its business solely under the name set forth in the Preamble to this Mortgage and makes use of no trade names in connection therewith, unless such trade names have been previously disclosed to the Mortgagee in writing.

Section 3.7      Warranty of Title.

The Mortgagor is (a) the owner of the fee simple legal title to the Real Property, (b) except for the Permitted Encumbrances, the owner of all of the beneficial and/or equitable interest in and to the Real Property, and (c) lawfully seized and possessed of the Real Property, subject to the rights of any tenants under any Leases. The Mortgagor has the right and authority to convey the Real Property and does hereby warrant specially, and agrees to defend, the Real Property and the title thereto, whether now owned or hereafter acquired, against all Claims by any Person claiming by, through, or under the Mortgagor. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.8      Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.9      Independence of the Real Property.

No building or other improvements on property not covered by this Mortgage rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real Property relies, or will rely, on any property not covered by this Mortgage or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.



Section 3.10 Existing Improvements.

The existing Improvements, if any, were, to Mortgagor's knowledge, constructed, and are being maintained, in accordance with all applicable Laws, including, without limitation, zoning Laws.

Section 3.11 Personalty.

The Mortgagor has good title to the Equipment, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.12 Leases, Rents, Contracts of Sale.

The Leases, Rents and Contracts of Sale are not subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.13 Presence of Hazardous Materials or Contamination; Compliance With Environmental Requirements.

To the Mortgagor's knowledge, (a) no Hazardous Materials are currently located on the Property, nor is the Property affected by any Hazardous Materials Contamination, (b) the Property has never been used as a manufacturing, storage, treatment, processing, recycling or disposal site for Hazardous Materials, and (c) no property in the vicinity of the Real Property has ever been used as a manufacturing, storage, treatment, processing, recycling or disposal site for Hazardous Materials, nor is any such property affected by Hazardous Materials Contamination. The present condition and uses of, and activities on, the Property do not violate any Environmental Requirement and the uses of the Property which the Mortgagor and each tenant and subtenant, if any, intend in the future to make of the Property comply and will comply with all applicable Environmental Requirements. Neither the Mortgagor, nor to the Mortgagor's knowledge, any tenant or subtenant, has obtained or is required to obtain any permit or other authorization to construct, occupy, operate, use or conduct any activity on, the Property by reason of any Environmental Requirement. The Mortgagor has received no notice, and has no knowledge, of any Claim involving a violation of any Environment Requirement with respect to the Property or any parcel in the vicinity of the Real Property or any operation conducted on the Property or on any parcel in the vicinity of the Real Property. There is no Environmental Requirement which requires any work, repair, construction, capital expenditure, or other remedial work of any nature whatsoever to be undertaken with respect to the Property.

ARTICLE IV  
AFFIRMATIVE COVENANTS.

Section 4.1 Obligations.

The Mortgagor agrees to promptly pay and/or perform all of the Obligations, time being of the essence in each case.



Section 4.2      Insurance.

The Mortgagor shall maintain the following insurance at its sole cost and expense:

(a) Insurance against Casualty to the Property under a policy or policies covering such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism and malicious mischief. Unless otherwise agreed in writing by the Mortgagee, such insurance shall be for the greater of (i) the full insurable value of the Property, or (ii) the full principal amount of the Advance made under the Dealer Acquisition Facility with respect to the Property. The deductible amount under such policy or policies shall not exceed \$5,000. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The term "full insurable value" means the actual replacement cost of the Property (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items). The "full insurable value" shall be determined from time to time at the request of the Mortgagee (but not more frequently than once every three (3) years) by an appraiser or appraisal company or one of the insurers, who shall be selected and paid for by the Mortgagor but subject to the Mortgagee's approval.

(b) Comprehensive general public liability insurance for injuries to Persons and damage to property, in limits of not less than \$1,000,000 for any one occurrence and \$3,000,000 for the aggregate of all occurrences during any given annual policy period. Such insurance shall name the Mortgagee as an additional insured.

(c) Workers' compensation insurance for all employees of the Mortgagor in such amount as is required by Law.

(d) During any period of construction upon the Property, the Mortgagor shall maintain, or cause others to maintain, builder's risk insurance (non-reporting form) of the type customarily carried in the case of similar construction for the full replacement cost of work in place and materials stored at or upon the Property.

(e) If at any time the Property is in an area that has been identified as having special flood and mudslide hazards, and flood insurance is available in such area at commercially reasonable rates, the Mortgagor shall purchase and maintain a flood insurance policy in form and amount acceptable to the Mortgagee. In the event that the Property is not in an area having special flood and mudslide hazards, the Mortgagor shall deliver to the Mortgagee upon request evidence satisfactory to the Mortgagee stating that the Property is not in such a flood or mudslide hazard area.

(f) The Mortgagor will obtain and keep in force such other and further insurance as may be required from time to time by the Mortgagee in order to comply with regular requirements and practices of the Mortgagee in similar transactions.

Each policy of insurance shall (i) be issued by one or more recognized, financially sound and responsible insurance companies approved by the Mortgagee and which are qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) with respect



to the insurance described under the preceding subsections (a), (d), and (e), have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling the Mortgagee without contribution to collect any and all proceeds payable under such insurance, (iii) provide that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to the Mortgagee, and (iv) provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the Mortgagor which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Unless an escrow account has been established for insurance premiums pursuant to Section 4.5, the Mortgagor shall promptly pay all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration dates of each such policy, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Mortgagee. The Mortgagor will immediately give the Mortgagee Notice of any cancellation of, or change in, any insurance policy. The Mortgagee shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

#### Section 4.3      Adjustment of Condemnation and Insurance Claims.

The Mortgagor shall give prompt Notice to the Mortgagee of any Casualty or any Condemnation or threatened Condemnation. The Mortgagee is authorized, at its sole option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any Condemnation or Casualty, and to settle or compromise any Claim in connection therewith. In such case, the Mortgagee may also deduct from any payment all of its Expenses. The Mortgagee agrees, however, that, so long as no Event of Default has occurred, it will not settle or compromise any such Claim without the prior written consent of the Mortgagor, which consent shall not be unreasonably withheld or delayed. If the Mortgagee elects not to adjust a Claim, the Mortgagor agrees to promptly pursue the settlement and compromise of the Claim subject to the Mortgagee's approval that will not be unreasonably withheld or delayed. If, prior to the receipt by the Mortgagee of any Condemnation Award or insurance proceeds, the Property shall have been sold pursuant to the provisions of Section 7.2, the Mortgagee shall have the right to receive such funds to the extent of (a) any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied), and (b) necessary to reimburse the Mortgagee for its Expenses. The Mortgagor agrees to execute and deliver from time to time, upon the request of the Mortgagee, such further instruments or documents as may be requested by the Mortgagee to confirm the grant and assignment to the Mortgagee of any Condemnation Awards or insurance proceeds.

#### Section 4.4      Application of Net Proceeds.

Net Proceeds must be applied to either (a) the payment of the Obligations, or (b) the restoration of the Property. The Mortgagee shall determine, in its sole discretion, the manner in which Net Proceeds are to be applied. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, any Net Proceeds shall be used to restore the Property. In the event that, and to the extent that, Net Proceeds are to be applied to the restoration of the Property, each of the following conditions must also be met and complied with:



(a) An escrow account shall have been established with the Mortgagee composed of Net Proceeds, and, if necessary, additional deposits made by the Mortgagor, which, in the sole judgment of the Mortgagee, is sufficient to restore the Property to its use, value and condition immediately prior to the Casualty or Condemnation. The Mortgagee shall be entitled, at the expense of the Mortgagor, to consult such professionals as the Mortgagee may deem necessary, in its sole discretion, to determine the total costs of restoring the Property. The Mortgagor hereby assigns to, and grants the Mortgagee a security interest in, such escrow account and the funds therein to secure the payment and performance of the Obligations.

(b) All Leases must continue in full force and effect (subject to rent abatement during restoration as may be provided in the Leases) or, if terminated, the terminated Leases must have been replaced with Leases of equal quality in the reasonable judgment of the Mortgagee. Any tenant having the right to terminate its Lease due to the Casualty or Condemnation, and which has not exercised that right, shall have confirmed in writing to the Mortgagee its irrevocable waiver of such termination right.

(c) Proceeds from rental loss or business interruption insurance, or both, or other moneys of the Mortgagor, must be available to the Mortgagor in such amounts as the Mortgagee, in its reasonable judgment, considers sufficient to pay the debt service under the Notes, and all Property Assessments, insurance premiums and other sums becoming due from the Mortgagor pursuant to this Mortgage and the Notes during the time required for restoration.

(d) All restoration will be conducted under the supervision of an architect or engineer, or both, selected and paid for by the Mortgagor and approved in advance by the Mortgagee, and by a general contractor who shall be approved by the Mortgagee and shall have executed a fixed price contract.

(e) The restoration will be performed pursuant to plans and specifications approved by the Mortgagee.

(f) If required by the Mortgagee at its sole option, the contractor or contractors responsible for the restoration shall have obtained payment and performance bonds from a corporate surety acceptable to the Mortgagee and naming the Mortgagee as dual obligee.

If any of the foregoing conditions are not satisfied, the Mortgagee may, in its sole discretion, apply Net Proceeds to the payment of the Obligations.

If applied to restoration, Net Proceeds (and any other funds required to be deposited with the Mortgagee) shall be disbursed from time to time in accordance with the terms and conditions of the construction loan agreement most commonly used by the Mortgagee at the time of the Casualty or Condemnation for major commercial construction loans, and subject also to the following conditions (which shall control in the event of any conflict with the provisions of such construction loan agreement):

(a) Restoration shall commence within ninety (90) days following receipt of the Net Proceeds by the Mortgagee and shall be completed within such time as may be determined by the Mortgagee in view of the extent of the Casualty or Condemnation but, in any event, shall be completed within a reasonable period after the date the Net Proceeds are received.



(b) At the time of each disbursement no Default shall have occurred.

(c) Restoration shall be performed in accordance with the requirements of Section 5.4.

(d) With respect to each disbursement and accompanying each request therefor, there shall be delivered to the Mortgagee (i) a certificate addressed to the Mortgagee from the architect or engineer supervising the restoration stating that such disbursement is to pay the cost of restoration not paid previously by any prior disbursement, that all restoration completed to the date of such certificate has been completed in accordance with applicable Laws and substantially in accordance with the approved plans and specifications, and that the amount of such disbursement, together with all other disbursements, does not exceed ninety percent (90%) of the aggregate of all costs incurred or paid on account of work, labor or services performed on, and materials installed in, the Property at the date of such certificate, and (ii) evidence satisfactory to the Mortgagee that all Claims then existing for labor, services and materials have been paid in full or will be paid in full from the proceeds of the disbursement requested.

(e) The final ten percent (10%) holdback shall be disbursed only upon delivery to the Mortgagee, in addition to the items required in paragraph (d) above, of the following:

(i) Final waivers of Liens from all contractors and subcontractors.

(ii) A certificate of the architect or engineer stating that the restoration has been completed in a good and workmanlike manner, substantially in accordance with the plans and specification approved by the Mortgagee and in accordance with all applicable Laws.

(iii) An estoppel affidavit from each tenant occupying or leasing space in the Property stating that its Lease is in full force and effect.

(f) Immediately upon the occurrence of any Event of Default, the Mortgagee may apply Net Proceeds and any other sums deposited with the Mortgagee to the repayment of the Obligations.

#### Section 4.5 Property Assessments; Escrow.

(a) Unless an escrow account for payment of Property Assessments is created pursuant to subsection (c) below, the Mortgagor will (i) promptly pay in full and discharge all Property Assessments, and (ii) exhibit to the Mortgagee, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalties commence to accrue thereon.

(b) In the event of the passage of any Law subsequent to the date of this Mortgage in any manner changing or modifying the Laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting any such taxes so as to adversely affect the Mortgagee (including, without limitation, a requirement that internal revenue



stamps be affixed to this Mortgage or any of the other Financing Documents), the Mortgagor will promptly pay any such tax. If the Mortgagor fails to make such prompt payment, or if any Law prohibits the Mortgagor from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment, then the entire unpaid balance of the Obligations shall, without Notice, immediately become due and payable at the sole option of the Mortgagee. In no event, however, shall any income taxes of the Mortgagee or franchise taxes of the Mortgagee measured by income, or taxes in lieu of such income taxes or franchise taxes, be required to be paid by the Mortgagor.

(c) At any time and from time to time upon demand by the Mortgagee, the Mortgagor shall pay to the Mortgagee monthly, on any date selected by the Mortgagee, such amount as the Mortgagee from time to time estimates will generate sufficient funds to pay all Property Assessments and premiums for the insurance required by Section 4.2 prior to the date such Property Assessments or insurance premiums next become due. The Mortgagee's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made. Any deficiencies shall be promptly paid by the Mortgagor to the Mortgagee on demand. The Mortgagor shall transmit bills for the Property Assessments and insurance premiums to the Mortgagee as soon as received. When the Mortgagee has received from the Mortgagor, or on its account, funds sufficient to pay the same, the Mortgagee shall, except as provided below following an Event of Default, pay such bills. Payments for such purposes may be made by the Mortgagee at its discretion even though subsequent owners of the Property may benefit thereby. Upon foreclosure or release of this Mortgage or, to the extent permitted by Law, upon the occurrence of an Event of Default, the Mortgagee may apply any sums so deposited to the payment of the Obligations. If from time to time funds are accumulated under the terms of this Section in excess of the amount needed to pay the Property Assessments and such insurance premiums, the Mortgagor at least annually shall be given the option of (i) receiving a refund of the excess funds, (ii) applying the excess funds to the payment of the Obligations (provided prepayment is then permitted without penalty pursuant to the Notes), or (iii) permitting the excess funds to remain in the escrow account established pursuant to this Section. If the Mortgagor fails to give Notice to the Mortgagee of its intent with respect to the application of the excess funds as provided in this Section within sixty (60) days from the date the Mortgagee mailed notice of the accumulation of the excess funds, the Mortgagee shall promptly return the excess funds to the Mortgagor. Within sixty (60) days after receipt from the Mortgagor of a Notice requesting a refund, the Mortgagee shall also return excess funds to the Mortgagor. As of the date of this Mortgage, Mortgagor is not required to maintain an escrow account as provided in this Section 4.5.

#### Section 4.6 Compliance with Laws.

The Mortgagor will comply in all material respects with all present and future Laws applicable to the Property and its use and operation.

#### Section 4.7 Maintenance and Repair of the Property.

The Mortgagor, at the Mortgagor's sole expense, will (a) keep and maintain the Improvements and the Equipment in good condition, working order and repair (ordinary wear and tear excepted), and (b) make all necessary or appropriate repairs and Additions to the



Improvements and Equipment, so that each part of the Improvements and all of the Equipment shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed.

Section 4.8      Additions to Security.

All right, title and interest of the Mortgagor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Equipment hereafter acquired shall, without any further mortgage, conveyance, assignment or other act by the Mortgagor, become subject to the Lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clauses hereof. The Mortgagor agrees, however, to execute and deliver to the Mortgagee such further documents as may be required pursuant to Section 8.2.

Section 4.9      Inspection.

The Mortgagor will permit the Mortgagee, or any Person authorized by the Mortgagee, to enter and make inspections of the Property at all reasonable times, and upon reasonable notice or, if an Event of Default exists, at any time with or without notice, all at such times during normal business hours and other reasonable times, and as often as may be reasonably requested by the Mortgagee; provided, however, unless an Event of Default then exists and is continuing Mortgagor shall only be required to reimburse Mortgagee for Expenses relating to two (2) inspections in any fiscal year of Mortgagor.

Section 4.10      Management.

The Mortgagor at all times shall provide for the competent and responsible management and operation of the Property. Any management contract or contracts affecting the Property must be approved in writing by the Mortgagee prior to the execution of the same.

Section 4.11      Books and Records.

The Mortgagor will keep and maintain full and accurate records and books administered in accordance with generally accepted accounting principles, consistently applied, showing in detail the earnings and expenses of the Property and the operation thereof. The Mortgagor shall permit the Mortgagee, or any Person authorized by the Mortgagee, to inspect and examine such records and books (regardless of where maintained) and all supporting vouchers and data and to make copies and extracts therefrom during normal business hours and other reasonable times and as often as may be reasonably requested by the Mortgagee; provided, however, unless an Event of Default then exists and is continuing Mortgagor shall only be required to reimburse Mortgagee for Expenses relating to two (2) inspections in any fiscal year of Mortgagor.

Section 4.12      Estoppel Certificates.

Within ten (10) days after any request by the Mortgagee or a proposed assignee or purchaser of the Credit Facilities, or any of them, the Mortgagor shall certify in writing to the Mortgagee, or to such proposed assignee or purchaser, the then unpaid balance of the Credit Facilities and whether the Mortgagor has any right of defense or setoff to the payment or



performance of any of the Obligations.

Section 4.13     Subrogation.

To the extent permitted by Law, the Mortgagee shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by the Mortgagee whether or not from the proceeds of the Credit Facilities. This Section shall not be deemed or construed, however, to obligate the Mortgagee to pay or discharge any Lien.

Section 4.14     Leases.

(a) The Mortgagee shall have the right to approve any Lease executed after the date of this Mortgage as to form and content. All such Leases shall, at the Mortgagee's option, include subordination provisions acceptable to the Mortgagee in its sole and absolute discretion. At any time, within thirty (30) days after Notice from the Mortgagee, the Mortgagor will deliver to the Mortgagee a written description in such reasonable detail as the Mortgagee may request of all of the Leases, including, without limitation, the names of all tenants, the terms of all Leases and the Rents payable under all Leases, and, on demand, the Mortgagor will furnish to the Mortgagee fully executed copies of any Leases and such subordination and attornment agreements as the Mortgagee may request. If any Lease provides for the giving by the tenant of certificates with respect to the status of such Lease, the Mortgagor shall exercise its right to require such certificate within ten (10) days after any request by the Mortgagee. Within thirty (30) days after any request by the Mortgagee, the Mortgagor will notify all tenants under existing Leases, and agrees to thereafter notify all tenants under future Leases, that (i) the Mortgagor collects and receives all Rents pursuant to the license granted to it hereunder, and (ii) upon Notice from the Mortgagee that such license has been revoked, the tenant shall pay all unpaid Rent directly to the Mortgagee.

(b) So long as no Event of Default has occurred, the Mortgagor shall have a license (which license shall terminate upon Notice from the Mortgagee to Mortgagor following the occurrence of an Event of Default) to collect upon, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for the Mortgagee. Each month, provided no Event of Default has occurred, the Mortgagor may retain such Rents as were collected that month and held in trust for the Mortgagee. Upon revocation of such license and following notification to the tenants under the Leases by the Mortgagee that Rents are to be paid to the Mortgagee, all Rents shall be paid directly to the Mortgagee and not through the Mortgagor. A demand by the Mortgagee on any tenant for the payment of Rent shall be sufficient to warrant such tenant to make future payments of Rent to the Mortgagee without the necessity of further consent by the Mortgagor.

(c) The Mortgagor, at its sole cost and expense, will use its best efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective tenants under any Leases and will appear in and defend, at its sole cost and expense, any action or proceeding arising under, or in any manner connected with, such Leases.



(d) The Mortgagor will not assign the whole or any part of the Leases or Rents without the prior written consent of the Mortgagee, and any assignment without such consent shall be null and void.

(e) The Mortgagor will promptly perform all of its obligations under any Leases. The Mortgagor will not, without the prior written consent of the Mortgagee, (i) cancel, terminate, accept a surrender of, reduce the payment of rent under, or accept any prepayment of rent for more than one (1) month in advance under, any Lease, or (ii) permit a Lien on the Property superior to any Lease, other than this Mortgage.

(f) If any Leases are subordinate (either by their date, their express terms, or by subsequent agreement of the tenant) to this Mortgage, such Leases shall be subject to the condition (and this Mortgage so authorizes) that, in the event of any sale of the Property pursuant to the provisions of Section 7.2, the Leases shall, at the sole option of the Mortgagee or any purchaser at such sale, either (i) continue in full force and effect as set forth in the required advertisement of sale, and the tenant or tenants thereunder will, upon request, attorn to and acknowledge in writing the purchaser or purchasers at such sale or sales as landlord thereunder, or (ii) upon notice to such effect from the Mortgagee or any purchaser or purchasers, terminate within ninety (90) days from the date of sale. As to any Lease, neither the Mortgagee nor any purchaser or purchasers at foreclosure shall be bound by any payment of rent for more than one (1) month in advance or by any amendment or modification of the Lease made without the prior written consent of the Mortgagee or, subsequent to a foreclosure sale, such purchaser or purchasers.

(g) The Mortgagee shall not be obligated to perform or discharge any obligation of the Mortgagor under any Lease. This assignment of the Leases in no manner places on the Mortgagee any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown). The Mortgagor agrees to indemnify the Mortgagee for, and forever hold it harmless from, any and all Claims arising out of, or in connection with, any Leases or any assignment thereof, except for any Claims arising out of the gross negligence or willful misconduct of the Mortgagee.

#### Section 4.15 Contracts of Sale.

Following the occurrence of an Event of Default, the Mortgagor irrevocably authorizes the Mortgagee, at its sole option, to collect, in the name of the Mortgagor or in its own name as assignee, all payments due or to become due under any Contract of Sale. The Mortgagor agrees that it will facilitate in every reasonable way the collection by the Mortgagee of such payments, and will, upon written request by the Mortgagee, execute a written notice and deliver the same to each purchaser directing the purchaser to make such payments to the Mortgagee. In no event shall the Mortgagee be accountable for more moneys than it actually receives pursuant to a Contract of Sale, nor shall the Mortgagee be liable for any failure to collect payments under any Contract of Sale. The right to determine the method of collection and the extent to which the enforcement of collection shall be prosecuted is reserved to the sole discretion of the Mortgagee. The Mortgagor, without the prior written consent of the Mortgagee, will not execute any



assignment of any Contract of Sale or the payments due thereunder. The Mortgagor shall furnish to the Mortgagee, within ten (10) days after a written request from the Mortgagee, a written certification containing the names of all contract purchasers of the Property and shall attach to such certification a copy of any Contract of Sale. Nothing contained in this Section shall (a) be construed as a consent by the Mortgagee to any Transfer of the Property, or (b) constitute a delegation to the Mortgagee of any of the Mortgagor's duties or obligations under any Contract of Sale. The Mortgagor agrees to indemnify the Mortgagee for, and forever hold it harmless from, any Claim arising out of, or in connection with, any Contract of Sale, except for any Claims arising from the gross negligence or willful misconduct of the Mortgagee.

Section 4.16     Taxes.

The Mortgagor shall pay and discharge all Taxes prior to the date on which penalties are attached thereto unless and to the extent only that such Taxes are contested in accordance with Section 4.20.

Section 4.17     Hazardous Materials; Contamination.

(a)     The Mortgagor agrees to (i) give Notice to the Mortgagee immediately upon the Mortgagor's acquiring knowledge of the presence of any Hazardous Materials on the Property or of any Hazardous Materials Contamination or of any Claim made or threatened against the Mortgagor or the Property with respect to any Environmental Requirement with a full description thereof; (ii) at the Mortgagor's sole cost and expense, promptly comply with any and all Environmental Requirements relating to the Property or such Hazardous Materials or Hazardous Materials Contamination and provide the Mortgagee with satisfactory evidence of such compliance; (iii) provide the Mortgagee, within thirty (30) days after a demand by the Mortgagee, with a bond, letter of credit or similar financial assurance evidencing to the Mortgagee's satisfaction that the necessary funds are available to pay the cost of complying with such Environmental Requirements and removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any Lien which may be established on the Property as a result thereof; and (iv) take whatever other action as the Mortgagee may deem necessary or appropriate to restore to the Mortgagor the full use and benefit of the Property as contemplated by the Financing Documents.

(b)     The Mortgagor shall immediately upon the receipt of Notice from the Mortgagee, which may be given at any time and from time to time by the Mortgagee in its sole discretion (but not more frequently than once during any twelve (12) month period), cause an Environmental Assessment to be undertaken with respect to the Property and furnish the same to the Mortgagee within thirty (30) days after the date of the Mortgagee's request. The cost of any such Environmental Assessment shall be borne exclusively by the Mortgagor. The Mortgagor shall cooperate with each environmental consulting firm engaged to make any such Environmental Assessment and shall supply to each such environmental consulting firm, from time to time and promptly on request, all information available to the Mortgagor to facilitate the completion of the Environmental Assessment. Notwithstanding the foregoing, the Mortgagee shall be under no duty to require the preparation of any Environmental Assessment of the Property, and in no event shall any such Environmental Assessment by the Mortgagee be or give rise to any representation or warranty by the Mortgagee that Hazardous Materials are or are not



present on the Property, or that there has been compliance by the Mortgagor or any other Person with any Environmental Requirement.

(c) The Mortgagor shall protect, indemnify, defend and hold the Mortgagee, any Persons owned or controlled by, owning or controlling, or under the common control of or affiliated with, the Mortgagee, any participants in the Credit Facilities, the directors, officers, employees and agents of the Mortgagee, and/or such other Persons, and the heirs, personal representatives, successors and assigns of each of the foregoing, harmless from and against any and all Claims of any kind or nature whatsoever arising out of or in any way connected with any investigative, enforcement, cleanup, removal, containment, remedial or other private, governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement against the Mortgagor or the Mortgagee or against or with respect to the Property or any condition, use or activity on the Property or at any time threatened or made by any Person against the Mortgagor or the Mortgagee or against or with respect to the Property or any condition, use or activity on the Property relating to any damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Materials or Hazardous Materials Contamination. Upon demand by the Mortgagee, the Mortgagor shall diligently defend any such Claim which affects the Property or is made or commenced against the Mortgagee, whether alone or together with the Mortgagor or any other Person, all at the Mortgagor's sole cost and expense and by counsel to be approved by the Mortgagee in the exercise of its reasonable judgment. In the alternative, the Mortgagee may at any time elect to conduct its own defense through counsel selected by the Mortgagee and at the cost and expense of the Mortgagor. Mortgagor shall not be required to indemnify Mortgagee for any Claims relating to the presence of Hazardous Materials or Hazardous Materials Contamination on the Property after a foreclosure of the Property and the Mortgagee or any purchaser at a foreclosure taking possession of the Property, provided that such Hazardous Materials or Hazardous Materials Contamination were not present on the Property prior to such foreclosure or possession.

#### Section 4.18 Right to Perform.

If the Mortgagor fails to promptly pay or perform any of the Obligations, the Mortgagee, without Notice to or demand upon the Mortgagor, and without waiving or releasing any Obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Mortgagor. The Mortgagee may enter upon the Property for that purpose and take all action thereon as the Mortgagee considers necessary or appropriate. All Expenses incurred by the Mortgagee pursuant to this Section, together with interest thereon at the Reimbursement Rate, shall be paid by the Mortgagor to the Mortgagee as provided in Section 4.19.

#### Section 4.19 Reimbursement; Interest.

If the Mortgagee shall incur any Expenses or pay any Claims to which the Mortgagee becomes a party by reason of this Mortgage or the rights and remedies provided hereunder (regardless of whether this Mortgage expressly provides for an indemnification against such Claims by the Mortgagor), such Expenses and Claims shall be (a) paid by the Mortgagor to the Mortgagee on demand, together with interest thereon from the date incurred until paid in full by



the Mortgagor at the Reimbursement Rate, and (b) a part of the Obligations secured by this Mortgage. Notwithstanding the foregoing, however, in any action or proceeding to foreclose this Mortgage or to recover or collect the Obligations, the provisions of Law governing the recovery of costs, disbursements and allowances shall prevail unaffected by this Section. Whenever this Mortgage provides for interest to be paid at the Reimbursement Rate, the Reimbursement Rate shall be calculated on the basis of a 360-day year factor applied to actual days elapsed.

#### Section 4.20 Permitted Contests.

The Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as the Mortgagor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings. Each such contest shall be promptly prosecuted to final conclusion or settlement, and the Mortgagor shall indemnify and save the Mortgagee harmless against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, the Mortgagor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

#### Section 4.21 Security Agreement.

This Mortgage creates a security interest in the Personalty, and, to the extent the Personalty is not real property, this Mortgage constitutes a security agreement from the Mortgagor to the Mortgagee under the Uniform Commercial Code of the State. The Mortgagor hereby agrees to execute and deliver on demand, and hereby irrevocably constitutes and appoints the Mortgagee the attorney-in-fact of the Mortgagor, to execute, deliver and, if appropriate, to file with the appropriate filing office or offices, such financing statements or other instruments as the Mortgagee may request or require in order to perfect the security interest granted hereby or to continue the effectiveness of the same. Mortgagor hereby authorizes Mortgagee to file one or more financing statements and amendments with the appropriate state and local filing offices as deemed necessary by the Mortgagee to perfect, and to maintain and continuing the perfection of, the security interest granted hereunder in the personalty.

#### Section 4.22 Appraisals.

The Mortgagee shall have the right to require annual updated appraisals of the Property, which appraisals shall be prepared by an appraiser or appraisers designated by the Mortgagee and shall be in all respects acceptable to the Mortgagee. The basis of the appraisal calculations shown on such appraisal reports and all other aspects of the appraisal reports must be satisfactory to the Mortgagee in all respects. The appraisal reports shall not be released by the Mortgagee to the Mortgagor. The Mortgagor shall reimburse the Mortgagee upon demand for all costs and expenses incurred by the Mortgagee with respect to the preparation and review of all future appraisals required pursuant to the terms hereof.



Section 4.23     Access Law.

(a)     The Mortgagor agrees to use its best efforts to ensure that the Property shall at all times comply with and remain in compliance with the requirements of the Americans with Disabilities Act of 1990, all state and local Laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant to any of the foregoing, including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, all to the extent applicable to the Property (collectively, "Access Laws").

(b)     Notwithstanding any provisions set forth herein or in any other document regarding the Mortgagee's approval of alterations of the Property, the Mortgagor shall not alter the Property in any manner which would increase the Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of the Mortgagee. The foregoing shall apply to tenant improvements constructed by the Mortgagor or by any of its tenants (if any). The Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to the Mortgagee.

(c)     The Mortgagor agrees to give prompt notice to the Mortgagee of the receipt by the Mortgagor of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

ARTICLE V  
NEGATIVE COVENANTS.

Section 5.1     Encumbrances.

Without the prior written consent of the Mortgagee, the Mortgagor will not permit the Real Property or the Personalty, or the Leases, Rents and Contracts of Sale, to become subject to any Encumbrances other than the Permitted Encumbrances. The Mortgagor shall give the Mortgagee Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure.

Section 5.2     Transfer of the Property.

The Mortgagor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except for Transfers of the Equipment permitted by Section 5.3).

Section 5.3     Removal, etc. of Equipment and Improvements.

Except to the extent permitted by the following sentence, none of the Improvements or Equipment shall be removed, demolished or materially altered, without the prior written consent of the Mortgagee. The Mortgagor may remove and dispose of, free from the Lien of this Mortgage, such Equipment as from time to time becomes worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Equipment is replaced with other Equipment which is free from Liens other than Permitted Encumbrances and has a value at least



equal to that of the replaced Equipment (and by such removal and replacement the Mortgagor shall be deemed to have subjected such Equipment to the Lien of this Mortgage), or (b) such Equipment is sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to the Mortgagee to be applied to the prepayment of the principal of the Credit Facilities.

Section 5.4      Additional Improvements.

The Mortgagor will not construct any Improvements other than those presently on the Land without the prior written consent of the Mortgagee. The Mortgagor will complete and pay for, within a reasonable time, any Improvements which the Mortgagor is permitted to construct on the Land. The Mortgagor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction lines applicable to the Land.

Section 5.5      Restrictive Covenants, Zoning, etc.

Without the prior written consent of the Mortgagee, the Mortgagor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Property. The Mortgagor will (a) promptly perform and observe, and cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Section 5.6      Prohibition on Hazardous Materials.

The Mortgagor will not cause, commit, permit or allow to continue any violation of any Environmental Requirement by any Person on or with respect to the Property. The Mortgagor will not place, install, store, spill, leak, dispose of or release, or cause, commit, permit, or allow the placement, installation, storage, spilling, leaking, disposal or release of, any Hazardous Materials on the Property, other than Hazardous Materials placed or stored on the Property in accordance with applicable Laws in the ordinary course of Mortgagor's or any of its tenant's business, and will keep the Property free of all Hazardous Materials Contamination.

ARTICLE VI  
EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an "Event of Default" under this Mortgage:

Section 6.1      Payment Obligations.

The Borrowers fail to promptly pay any of the Obligations when and as due and payable and except where the failure is a failure to pay at maturity (by acceleration or otherwise), the failure continues uncured for a period of ten (10) days beyond the due date therefor.



Section 6.2      Transfer of the Property; Encumbrances.

The Mortgagor fails to comply with Section 5.1 or Section 5.2.

Section 6.3      Insurance Obligations.

The Mortgagor fails to promptly perform or comply with any of the terms and conditions set forth in Section 4.2.

Section 6.4      Hazardous Materials.

The Mortgagor fails to promptly perform or comply with any of the terms and conditions set forth in Section 4.17 or Section 5.6.

Section 6.5      Other Obligations

The Borrowers fail to promptly perform or comply with any of the Obligations (other than those expressly described in the other Sections of this ARTICLE VI), and such failure continues uncured for a period of thirty (30) days after Notice from the Mortgagee to the Mortgagor.

Section 6.6      Event of Default Under Other Financing Documents.

An Event of Default (as defined therein) occurs under the Financing Agreement or any of the Financing Documents other than this Mortgage.

Section 6.7      Change in Zoning or Public Restriction.

Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Financing Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Section 6.8      Default Under Other Lien Documents.

A default occurs under any other mortgage, deed of trust or security agreement covering all or any portion of the Property, including, without limitation, any Permitted Encumbrances, if either (i) the indebtedness secured thereby is in excess of \$250,000 and the default is the failure to pay such indebtedness secured thereby at maturity or the effect of such default is to accelerate the maturity of the indebtedness secured thereby prior to its stated maturity, or (ii) if foreclosure proceedings are commenced under such mortgage, deed of trust or security agreement.

Section 6.9      Execution; Attachment.

Any execution or attachment is levied against the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.



ARTICLE VII  
RIGHTS AND REMEDIES.

Upon the occurrence of any Event of Default, the Mortgagee may at any time thereafter exercise any of the following rights, powers or remedies:

Section 7.1      Acceleration.

The Mortgagee may declare (without Notice to the Mortgagor and without presentment, demand, protest or notice of protest or of dishonor, all of which the Mortgagor hereby waives) the Obligations to be immediately due and payable.

Section 7.2      Foreclosure.

(a)      Power of Sale. If an Event of Default shall have occurred, Mortgagee may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The provisions of Section 7.05 of this Mortgage shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Property hereunder.

(b)      Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Section 7.02(a) and Section 7.05, or any other sale pursuant to the provisions of this Mortgage, shall be applied as follows:

(i)      First, to the costs and expenses of (i) retaking, holding, storing and processing the Personalty and preparing the Personalty or the Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(ii)      Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Notes, this Mortgage, the other Financing Documents, as applicable, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Financing Documents, such repayment to be applied in the manner determined by Mortgagee;

(iii)      Third, to the payment of the indebtedness (including but not limited to the Credit Facilities) secured hereby, with interest to date of sale at the applicable rate



or rates specified in the Notes, this Mortgage, the other Financing Documents, as applicable, whether or not all of such indebtedness is then due;

(iv) Fourth, the balance, if any, shall be paid as provided by law.

(c) Mortgagee's Option on Foreclosure. At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

### Section 7.3 Taking Possession or Control of the Property.

As a matter of right without regard to the adequacy of the security, and to the extent permitted by law without Notice to the Mortgagor, the Mortgagee shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership be incidental to a proposed sale of the Property or otherwise, and the Mortgagor hereby consents to the appointment of such a receiver. In addition, to the extent permitted by Law, and with or without the appointment of a receiver, or an application therefor, the Mortgagee may (a) enter upon, and take possession of (and the Mortgagor shall surrender actual possession of), the Property or any part thereof, without Notice to the Mortgagor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude the Mortgagor and its agents and employees therefrom.

### Section 7.4 Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.3, the Mortgagee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, (c) receive all Rents, and (d) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of the Mortgagor (the cost of completing the Improvements shall be Expenses secured by this Mortgage and accrue interest as set forth in Section 4.19). In so doing, the Mortgagee or such receiver shall have the right to manage the Property and to carry on the business of the Mortgagor and may exercise all of the rights and powers of the Mortgagor, either in the name of the Mortgagor, or otherwise, including, but without limiting the generality of the foregoing, the right to lease the Property, to cancel, modify, renew or extend any Lease or sub-lease of the Property and to carry on any contracts entered into by the Mortgagor with respect to the Property. The Mortgagee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or



management, except for gross negligence or willful misconduct. Any Rents received shall be applied (a) first, to pay all Expenses, and (b) the balance, if any, to payment of the other Obligations. The Mortgagor shall pay on demand to the Mortgagee or the receiver (as the case may be) the amount of any deficiency between (a) the Rents received by the Mortgagee or the receiver, and (b) all Expenses incurred together with interest thereon at the Reimbursement Rate as provided in Section 4.19. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as the Mortgagee shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

#### Section 7.5      Uniform Commercial Code.

The Mortgagee may proceed under the Uniform Commercial Code of the State as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code of the State. Upon the occurrence of any Event of Default, the Mortgagor shall assemble all of the Equipment and make the same available within the Improvements. Any notification required by Section 9-504 of the Uniform Commercial Code of the State shall be deemed reasonably and properly given if sent in accordance with the Notice provision of this Mortgage at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. Proceeds from any such sale shall be applied as follows: (a) first, to pay all Expenses incurred in connection with the sale, and (b) the balance, if any, to payment of the other Obligations.

#### Section 7.6      Other Remedies.

The Mortgagee shall have the right from time to time to enforce any legal or equitable remedy against the Mortgagor and to sue the Mortgagor for any sums (whether interest, damages for failure to pay principal or any installments thereof, taxes, or any other sums required to be paid under the terms of this Mortgage, as the same become due), without regard to whether or not any other of the Obligations shall be due, and without prejudice to the right of the Mortgagee thereafter to enforce any appropriate remedy against the Mortgagor, including, without limitation, an action of foreclosure or an action for specific performance, for a Default by the Mortgagor existing at the time such earlier action was commenced.

#### Section 7.7      Remedies, etc. Cumulative.

Each right, power and remedy of the Mortgagee as provided for in this Mortgage, or in any of the other Financing Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, or in any of the other Financing Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by the Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such other rights, powers or remedies.



Section 7.8      No Waiver by Mortgagee, etc.

No course of dealing or conduct between the Mortgagee and the Mortgagor shall be effective to amend, modify or change any provisions of this Mortgage or the other Financing Documents. No failure or delay by the Mortgagee to insist upon the strict performance of any term, covenant or agreement of this Mortgage or of any of the other Financing Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude the Mortgagee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, the Mortgagee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither the Mortgagor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of the Mortgagee to comply with any request of the Mortgagor or of any other Person to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and the Mortgagee, or (c) the Mortgagee extending the time of payment or modifying the terms of this Mortgage or any of the other Financing Documents without first having obtained the consent of the Mortgagor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, the Mortgagee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations, and may extend the time of payment or otherwise modify the terms of this Mortgage or any of the other Financing Documents without in any way impairing or affecting the Lien of this Mortgage or the priority of this Mortgage over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Mortgage. The Mortgagee may resort to the security or collateral described in this Mortgage or any of the other Financing Documents in such order and manner as the Mortgagee may elect in its sole discretion.

Section 7.9      Waivers and Agreements Regarding Remedies.

To the full extent the Mortgagor may do so, the Mortgagor hereby:

- (a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisement, stay of execution, extension and notice of election to accelerate the Obligations;
- (b) waives all rights to a marshalling of the assets of the Mortgagor, including without limitation, the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of the Mortgagee under the terms of this Mortgage to a sale of the Property without any prior or different resort for collection, or the right of the Mortgagee to the payment of the



Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which the Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

#### Section 7.10 Setoff.

The Mortgagee may set off against and apply any funds of the Mortgagor on deposit with, or under the control of, the Mortgagee to the payment of the Obligations, without Notice and without resort to any judicial proceeding.

### ARTICLE VIII MISCELLANEOUS.

#### Section 8.1 Application of Moneys.

Whenever it is provided in this Mortgage for any moneys to be applied to payment of the Obligations, and no express order of payment is set forth, such moneys shall be applied to the Obligations in such order and manner set forth in the Financing Agreement or in any other Financing Documents, and if no express order is set forth therein, then in such order and manner as the Mortgagee may determine in its sole discretion.

#### Section 8.2 Further Assurances.

At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will, at the Mortgagor's expense, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Financing Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates, and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to complete, perfect or continue and preserve the Lien of this Mortgage. Upon any failure by the Mortgagor to do so, the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor, all at the sole expense of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of the Mortgagor to do so, this appointment being coupled with an interest. With respect to any financing statement, the Mortgagor agrees that a carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient



as a financing statement for purposes of Section 9-402 of the Uniform Commercial Code of the State.

Section 8.3      Notices.

All Notices shall be deemed to have been received when delivered by hand, when delivered to an overnight courier, or when deposited in the mail in the manner provided for in the definition of Notices in ARTICLE I.

Section 8.4      Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the Land and shall apply to and bind the successors and assigns of the Mortgagor (including any permitted subsequent owner of the Property), and inure to the benefit of the Mortgagee, its successors and assigns.

Section 8.5      No Warranty by Mortgagee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by the Mortgagor or to be given to the Mortgagee pursuant to this Mortgage or any of the other Financing Documents, the Mortgagee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by the Mortgagee.

Section 8.6      Amendments.

This Mortgage may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 8.7      Illegality.

If fulfillment of any provision of this Mortgage or any transaction related hereto shall at any time involve transcending the limit of validity prescribed by Law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained, other than the provisions requiring the Mortgagor to pay the Obligations, operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be void, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect; and if such clause or provision requires the Mortgagor to pay any of the Obligations, then at the sole option of the Mortgagee, all of the Obligations shall become due and payable.

Section 8.8      Governing Law.

This Mortgage is being executed and delivered in the State and shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State.

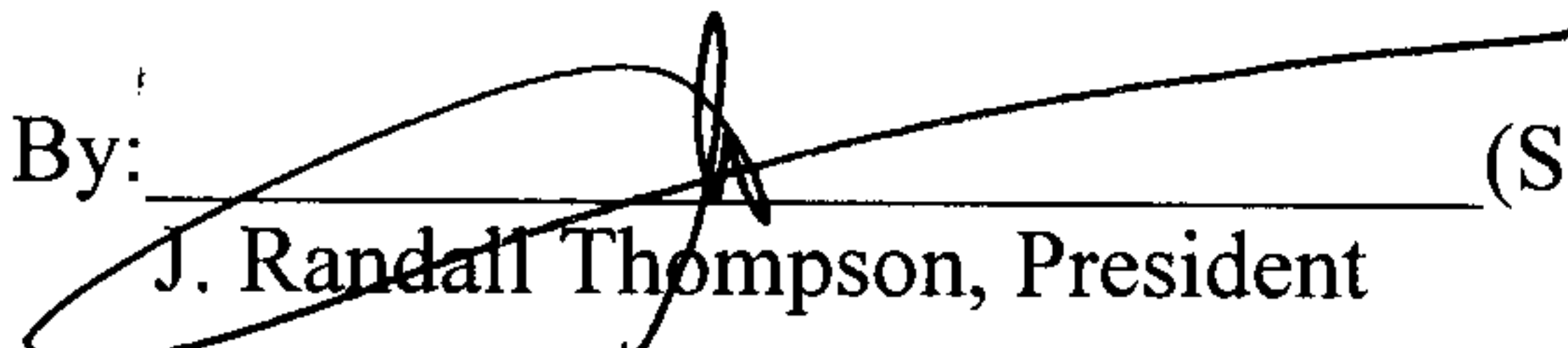


IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed under seal as of the day and year first written above.

WITNESS OR ATTEST:

SUBURBAN GAS PROPANE PARTNERS, LLC,  
A Maryland Limited Liability Company



By:  (SEAL)  
J. Randall Thompson, President

STATE OF Maryland, CITY/COUNTY OF Washington, TO WIT:

I HEREBY CERTIFY, that on this 28<sup>th</sup> day of November, 2007, before me, the undersigned Notary Public of said State, personally appeared J. Randall Thompson, who acknowledged himself to be the President of Suburban Gas Propane Partners, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized President of said limited liability company by signing the name of the company by himself as President.

WITNESS my hand and Notarial Seal.

  
Notary Public

My Commission Expires: July, 2008



20071204000547890 33/34 \$323.00  
Shelby Cnty Judge of Probate, AL  
12/04/2007 09:07:33AM FILED/CERT



## EXHIBIT A

### PARCEL I:

Commence at the SW corner of the SW 1/4 of the NW 1/4 of Section 7, Township 24 North, Range 13 East, and run North 465.0 feet; thence turn 18 degrees 00 minutes 00 seconds left and run 55.00 feet; thence turn 80 degrees 30 minutes 00 seconds right and run 86.90 feet; thence turn 93 degrees 35 minutes 15 seconds left and run 92.31 feet to the point of beginning; thence turn 81 degrees 21 minutes 27 seconds left and run 141.99 feet; thence turn 90 degrees 00 minutes 11 seconds right and run 3.65 feet; thence turn 90 degrees 00 minutes 11 seconds left and run 8.00 feet; thence turn 89 degrees 59 minutes 49 seconds left and run 3.65 feet; thence turn 89 degrees 59 minutes 49 seconds right and turn 30.19 feet to the South right of way line of Shelby County Road No. 18; thence turn 129 degrees 09 minutes 33 seconds right and run along said right of way line 245.80 feet; thence turn 132 degrees 12 minutes 05 seconds right and run 192.79 feet to the point of beginning.

Situated in Shelby County, Alabama.

### PARCEL II:

A parcel of land located in the SW 1/4 of the NW 1/4 of Section 7, Township 24 North, Range 13 East, and Fractional Section 12, Township 24 North, Range 12 East, described as follows:

From the SW corner of the SW 1/4 of NW 1/4, Section 7, Township 24 North, Range 13 East, Shelby County, Alabama, run a tie line of North for 636.49 feet; thence deflect right 90 degrees for 12.42 feet to the point of beginning of subject lot; from said point, deflect left 58 degrees 53 minutes 47 seconds for 65.84 feet; thence deflect left 32 degrees 06 minutes 40 seconds for 168.56 feet to the South right of way line of County Road No. 18; deflect left 132 degrees 12 minutes 02 seconds along said right of way for 47.25 feet; deflect left 47 degrees 47 minutes 58 seconds for 192.59 feet, back to the beginning point; being situated in Shelby County, Alabama.



20071204000547890 34/34 \$323.00  
Shelby Cnty Judge of Probate, AL  
12/04/2007 09:07:33AM FILED/CERT