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Cook County Recorder

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Junior Mortgage

THIS JUNIOR MORTGAGE is made this 27th day of March, 2001 between 832 W. Superior LLC, a Delaware limited liability company, whose address is 832 West Superior Street, Chicago, Illinois 60622 ("Borrower"), and Humberto Zesati, whose address Avenida Palmas 330, Piso 1, Mexico City, Mexico, 11000 ("Lender").

Reitals:

A. Pursuant to a Revolving Note dated the date hereof (the "Note") executed by Borrower, Lender has extended a revolving loan to Borrower of up to \$300,000 (the "Loan"). The Loan is due and payable on the earlier of (x) seventy-five (75) days from the date hereof or (y) the consummation of the Next Equity Financing (as defined in the Note).

B. Lender would not make the Loan unless Borrower granted and executed this Junior Mortgage to Lender.

C. **LENDER ACKNOWLEDGES THAT THIS IS A JUNIOR MORTGAGE EXPRESSLY SUBORDINATE TO THE PRIOR LIEN INTEREST OF LASALLE BANK NATIONAL ASSOCIATION, ITS SUCCESSORS AND ASSIGNS UNDER THAT CERTAIN MORTGAGE DATED DECEMBER 7, 1999, SECURING A NOTE OF EVEN DATE THEREWITH.**

Agreements:

TO SECURE to Lender the repayment of indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the property located in the County of Cook, State of Illinois described in Exhibit A attached hereto.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with such property are referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record and that the above Recitals are true and accurate.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note and late charges as provided in the Note.

2. **Applications of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note hereof shall be applied by Lender as provided in the Note.

3. **Prior Mortgages and Deed of Trust; Charges; Liens.** Borrower shall perform all Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fine and impositions attributable to the Property that may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

4. **Junior Mortgage.** Lender acknowledges that this is a Junior Mortgage expressly subordinate to the prior lien interest of LaSalle Bank National Association, its successors and assigns under that certain Mortgage dated December 7, 1999 (the "Senior Mortgage"), securing a note of even date therewith. Notwithstanding anything to the contrary contained in this Mortgage, all rights of Lender contained herein are expressly subject to the Senior Mortgage.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and hazards included within the term "extended coverage". All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

6. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced that materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may, subject to the Senior Mortgage, make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as necessary to protect Lender's interest.

Any amounts disbursed by lender pursuant to this Paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause thereof related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend the time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage but does not execute the Note (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to the Borrower at the Property address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. If any provision of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note that can be given effect without the conflicting provision. The provisions of this Mortgage or the Note are declared severable. The terms "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a copy of the Note and of this Mortgage at the time of execution or after recordation thereof.

15. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent,

Lender may, at its option and subject to the Senior Mortgage, require immediate payment in full of all sums secured by this Mortgage.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

16. **Events of Default.** If one or more of the following events ("Events of Default") shall occur:

- a. Any payment required under the terms of the Note is not paid when due and remains unpaid for 30 days as provided in the Note, or
- b. If, without the prior written consent of Lender, Borrower shall create, effect or consent to or shall suffer or permit (or shall contract for or agree to) any conveyance, sale, assignment, transfer, or alienation of the Property or any part thereof or interest therein, including, any beneficial interest, excluding any leases entered into during the ordinary course of business in each case whether any such conveyance, sale, transfer, lien or alienation is effected directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise; or
- c. If (and for the purpose of this subsection (c) of this Paragraph 16 only, the term Borrower shall mean and include not only Borrower but any beneficiary of a trustee borrower),
 - (i) Borrower shall file a petition for voluntary bankruptcy under any chapter of the federal bankruptcy code, or any similar law for the relief of debtors, state or federal, now or hereafter in effect, or
 - (ii) Borrower shall file an answer admitting insolvency or inability to pay its debts, or
 - (iii) Within 30 days after filing against Borrower of any involuntary proceeding under the federal bankruptcy code or similar law for the relief of debtors, such proceedings shall not have been vacated or stayed, or
 - (iv) Borrower shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for Borrower for all or a material part of Borrower's property or the Property, in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Borrower, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within 30 days, or
 - (v) Borrower shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidation of all a material part of its property, or the Property, or
- d. If default shall continue for 30 days after notice thereof by Lender to Borrower (Borrower shall include any beneficiary of a trustee borrower) in the due and punctual performance or observance of any other agreement contained herein or in the Note or in any other agreement between Borrower and Lender (collectively, the "Loan Documents").

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then Lender is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of such lien or any right of Lender hereunder to declare, without further notice, all amounts secured hereby and due hereunder (collectively, the "Liabilities") to be immediately due and payable, whether or not such default be thereafter remedied by Borrower, and Lender may immediately proceed to foreclose this Mortgage or to exercise any right, power or remedy provided by this Mortgage, the Note and the Loan Documents or by law or in equity conferred, subject in each case to the Senior Mortgage.

17. **Possession by Lender.** When the Liabilities, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to enter into and upon the Property and take possession thereof or to appoint an agent or trustee for the collection of rents, issues and profits of the Property. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, may be applied to the payment of the Liabilities as Lender may elect; the rents, issues and profits of and from the Property are hereby specifically pledged to the payment of the Liabilities.

18. **Foreclosure.** When the Liabilities shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien, all reasonable expenditures and expenses that may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs, that may be estimated as to items to be expended after entry of the decree, or procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurance with respect to title, as Lender may deem necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title or the value of the Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of attorneys employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Liabilities and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate in the Note per annum until paid.

19. **Proceeds for Foreclosure Sale.** The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 17 and 18 hereof; Second, all other items that, under the terms hereof, constitute Liabilities additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and Fifth, any remaining amounts to Borrower and its successors or assigns, as their rights may appear.

20. **Hazardous Waste.** From the date of this Mortgage, Borrower agrees not to cause or permit any toxic or hazardous substance or waste or underground storage tanks or any other pollutants that could be detrimental to the premises, human health or the environment or that would violate any local, state or federal laws or regulations to be present on or affect the Property. Borrower agrees to indemnify, defend and save Lender, its successors and assigns harmless from and against the following: (a) any liability, loss, cost, damage or expense including attorneys' fees and expenses, arising from the imposition or recording of the lien, the occurrence of any clean up and removal costs under any hazardous waste, environmental protection, spill compensation, clean air and water or other local, state or federal law (collectively "Environmental Laws") with respect to the Property, or to any other real or personal property owned by Borrower or its agents, and (b) any loss of value in the Property as a result of any such lien, such clean up and removal costs, or such other liability incurred pursuant to (a) above and (c) any liability, loss,

cost, damage or expense arising from any failure or defect in title occasioned by any of the applicable Environmental Laws.

21. **Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that Lender's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of such casualty insurance policy making the loss thereunder payable to such decree creditor. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all such insurance policies to the purchaser at the sale, or to take such other larger steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such other insurance policies without credit or allowance to Borrower for prepaid premiums thereon.

22. **Waiver.** Borrower hereby covenants that it will not, at any time, insist upon or plead, or in any manner whatsoever claim or take advantage of any stay, exemption, extension or moratorium law now or at anytime hereafter in force, nor claim, take or insist upon any benefit or advantage of, or from any law now or hereafter in force providing for the valuation or appraisal of provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. Borrower hereby expressly waives any and all rights of redemption under any order or decree of foreclosure of the Mortgage, on its own behalf and on behalf of each and any person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by 735 ILCS 5/15-1601, and any statute enacted in replacement or substitution thereof.

23. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or limited, given now or hereafter existing, at law or in equity, and each and every right, power or remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Lender and the exercise or the beginning of the exercise of one right, power or remedy. No delay or omission of Lender in the exercise of any right, power or remedy shall impair any such right, power or remedy, or be construed to be a waiver of any type.

24. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns, subject to the Senior Mortgage, to Lender the rents of the Property, provided that Borrower shall, prior to acceleration hereunder or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration hereunder or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

25. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower and Borrower shall pay all costs of recordation, if any.

26. **Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property.

27. **Uniform Commercial Code.** By execution of this Mortgage, Borrower (and for the purpose of this paragraph 27 only, the term Borrower shall mean and include not only Borrower but any and all beneficiaries of a trustee borrower holding title to any of the Collateral defined below, and any and all such beneficiaries acknowledge the trustee borrower's authority to convey the security interest in their personal property, if any, by directing the trustee to execute this Mortgage) grants Lender a security interest, under the Illinois Uniform Commercial Code (the "Code"), in the following property: All fixtures and personal property located on, related to or used in connection with the maintenance and operation of the Property and all Borrower's accounts with Lender (all for the purposes of this Paragraph 27 hereinafter referred to as "Collateral"). All the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property. In addition thereto:

- a. Borrower represents that, as the debtor as that term is used in the Code, it is and will be the true and lawful owner of the Collateral.
- b. The Collateral will be kept at the real property comprised within the Property, and will not be removed therefrom without the prior written consent of Lender, as the Secured Party as that term is used in the Code, and the Collateral may be affixed to such real property but will not be affixed to any other real property.
- c. Borrower will at its own cost and expense, upon demand, furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts and things as Lender may at any time from time to time request to establish and maintain a perfected security interest in the Collateral as security for the Liabilities; subject to no prior liens or encumbrances and Borrower will pay the cost of filing the same or recording such financing statements or other documents and this instrument, in all public offices wherever filing or recording is deemed by Lender to be desirable.
- d. Upon an Event of Default hereunder and at any time thereafter, Lender at its option may declare the Liabilities immediately due and payable, all as more fully set forth in Paragraph 16 hereof, and thereupon Lender shall have the remedies of the secured party under the Code. Any foreclosure sale may be held as part of and in conjunction with any foreclosure sale of the real property comprised within the Property, the Collateral and real property to be sold as one lot if Lender so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling the like and the attorneys' fees and legal expenses incurred by Lender shall be applied against the Liabilities. Lender will account to Borrower for any surplus realized on such disposition.
- e. The remedies of the Lender hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Lender, including having the collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Liabilities remains unsatisfied.
- f. This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of the Mortgage, which goods are or are to become fixtures relating to the Property. The address of Borrower (Debtor) and Lender

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(Secured Party) are set forth herein. The Mortgage is to be filed for record with the Registrar of Deeds of the County where the Property is located. Borrower is the record owner of the Property.

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date first written above.

832 W. SUPERIOR LLC
By: [Signature]
Its: Manager

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Fernando Leal, personally known to me to be the manager of 832 W. Superior LLC, a limited liability company of the State of Delaware, whose name is subscribed to the within the Instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said Instrument as his free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

[Signature]
Notary Public
"OFFICIAL SEAL"
JAYNE L. MCGIVNEY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 3/27/2002

My Commission expires: 3/2/2002

This Instrument was prepared by and after recording should be mailed to:

Michael S. Roberts
Connelly Roberts & McGivney LLC
One North Franklin Street, Suite 1200
Chicago, Illinois 60606

