

UNOFFICIAL COPY

0010481880

2001/06/05 07:00:18 Page 1 of 38
2001-06-05 12:23:18
Cook County Recorder 95.00



DRAWN OUTSIDE OF THE STATE OF ILLINOIS BY, AND WHEN RECORDED RETURN TO:

Michael Weinberger, Esq.
Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, New York 10006

79140380248

[COLLATERAL IS OR INCLUDES FIXTURES]

STATE OF ILLINOIS

COUNTY OF COOK

38

LEASEHOLD MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

This Leasehold Mortgage, Security Agreement and Fixture Filing (as modified or replaced from time to time, this "Security Instrument") is made, and is executed as of May 17, 2001, by TrizecHahn Regional Pooling LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Debtor"), whose address for all purposes hereunder is Sears Tower, 233 S. Wacker Drive, Suite 4600, Chicago, IL 60606, for the benefit of Secore Financial Corporation, a Pennsylvania corporation (together with all successors and assigns, the "Lender"), whose address for all purposes hereunder is 7315 Wisconsin Avenue, Suite 450 North, Bethesda, Maryland 20814.

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Indebtedness": The sum of all principal, interest and other amounts due from Borrowers or Maryland Guarantors under, or secured by, the Loan Documents.

"Loan Agreement": The Loan Agreement, dated as of May 17, 2001, by and among Trizec (as defined therein), Lender and Borrowers, as the same may be replaced, amended, supplemented, extended or otherwise modified from time to time.

"Loan Documents": The (1) Loan Agreement, (2) the Promissory Notes executed by Borrowers pursuant to the Loan Agreement, in the original, aggregate principal amount of \$1,440,000,000.00 (as the same may be modified or replaced and in effect from time to time, the "Notes"), (3) this Security Instrument and the other mortgages, deeds of trust and deeds to secure debt executed by Debtor, the other Borrowers or Maryland Guarantors pursuant to the Loan Agreement which encumber the Properties owned by each of them, (4) the assignments of rents

BOX 333-CTI

UNOFFICIAL COPY

Property of Cook County Clerk's Office

00000000000000000000

UNOFFICIAL COPY

and leases executed by Debtor, the other Borrowers or Maryland Guarantors pursuant to the Loan Agreement, (5) all other documents now or hereafter executed by Debtor, or any other person or entity to evidence or secure the payment of the Indebtedness and (6) all modifications, restatements, extensions, renewals and replacements of the foregoing.

"Obligations": All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrowers or Maryland Guarantors under the Loan Documents.

"Permitted Encumbrances": shall mean the Permitted Encumbrances, as defined in the Loan Agreement.

"Property": All of the following, or any interest therein (whether now owned or hereafter acquired or arising, or in which Lender now or hereafter has any right):

(1) Debtor's leasehold interests created by those certain Leases described in Exhibit C attached hereto and made a part hereof (collectively, the "Pledged Leases") with respect to the real property described in Exhibit A, attached hereto and made a part hereof (the "Land"), together with all right, title and interest in and to any right pursuant to Section 365(h) of the Bankruptcy Code or any successor to such Section (i) to possession of any statutory term of years derived from or incident to the Pledged Leases, or (ii) to treat the Pledged Leases as terminated,

(2) all of Debtor's right, title and interest in and to all buildings, structures and other improvements, now or at any time situated, placed or constructed in, under or upon the Land (the "Improvements"),

(3) all of Debtor's right, title and interest in and to all materials, machinery, supplies, equipment, fixtures, apparatus and other items of personal property now owned or hereafter acquired by Debtor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including, without limitation, any and all partitions, dynamos, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, plumbing, lighting, communications and elevator fixtures, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery and equipment, disposals, dishwashers, furniture, refrigerators and ranges, security systems, art work, recreational and pool equipment and facilities of all kinds, water, gas, electrical, storm and sanitary sewer facilities of all kinds, and all other utilities whether or not situated in easements together with all accessions, replacements, betterments and substitutions for any of the foregoing (the "Fixtures"),

(4) all right, title and interest of Debtor in and to all goods, accounts, general intangibles, instruments (including, without limitation, any applicable Interest Rate Cap Agreement, together with all proceeds therefrom and payments made thereunder), documents, accounts receivable, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now

UNOFFICIAL COPY

owned or hereafter acquired by Debtor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and/or the Improvements or which may be used in or relating to the planning, development, financing or operation of the Land and/or the Improvements, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, condemnation awards, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Debtor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Debtor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs and all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments against the Property as a result of tax certiorari or any applications or proceedings for reduction (the "Personalty"),

(5) all of Debtor's right, title and interest in and to all reserves, escrows or impounds, if any, required under the Loan Agreement ,

(6) all of Debtor's right, title and interest in and to all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"),

(7) subject to the rights of Debtor hereunder and under the Loan Agreement, all of Debtor's right, title and interest in and to all leasehold estates, leases, subleases, sub-subleases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect and every modification, amendment or other agreement relating thereto, including every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto) which grant a possessory interest in, or the right to use or occupy, all or any part of the Property, together with all related security and other deposits (the "Leases"),

(8) all of Debtor's right, title and interest in and to all of the rents, revenues, income, proceeds, issues, profits (including all oil or gas or other mineral royalties and bonuses), security and other types of deposits, and other benefits paid or payable and to become due or payable by parties to the Leases other than Debtor for using, leasing, licensing, possessing, occupying, operating from, residing in, selling or otherwise enjoying any portion or portions of the Property (the "Rents"),

(9) all of Debtor's right, title and interest in and to all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Property

UNOFFICIAL COPY

or the sale of goods or services produced in or relating to the Property (the "Property Agreements"),

(10) all of Debtor's right, title and interest in and to all rights, privileges, titles, interests, liberties, tenements, hereditaments, rights-of-way, easements, sewer rights, water, water courses, water rights and powers, air rights and development rights, licenses, permits and construction and equipment warranties, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Debtor in and to any streets, ways, alleys, passages, strips or gores of land adjoining the Land or any part thereof,

(11) all of Debtor's right, title and interest in and to all accessions, replacements, renewals, additions and substitutions for any of the foregoing and all proceeds thereof,

(12) subject to the rights of Debtor hereunder or under the Loan Agreement, all of Debtor's right, title and interest in and to all insurance policies, unearned premiums therefor and proceeds from such policies, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, covering any of the above property now or hereafter acquired by Debtor,

(13) all of Debtor's right, title and interest in and to all mineral, riparian, littoral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Property, and

(14) all of Debtor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, improvements, Fixtures or Personalty.

"UCC": The Uniform Commercial Code of the State of Illinois as in effect from time to time.

Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Loan Agreement.

ARTICLE 2

HABENDUM

Section 2.1 Grant. To secure in part the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DEBTOR HAS MORTGAGED AND WARRANTED, GIVEN, GRANTED, BARGAINED, SOLD, TRANSFERRED, PLEDGED, ASSIGNED and CONVEYED, and does hereby MORTGAGE AND WARRANT, GIVE, GRANT, BARGAIN, SELL, TRANSFER, PLEDGE, ASSIGN and CONVEY to the Lender, its heirs, successors and assigns, all of the debtor's estate, right, title and interest in, to and under any and all of the Property including, but not limited to, Debtor's

UNOFFICIAL COPY

leasehold interest in the Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD all of the Property unto and, for the use and benefit of Lender, its heirs, successors and assigns forever, and Debtor does hereby bind itself, its heirs, successors and assigns to WARRANT AND FOREVER DEFEND the title to the Property unto the Lender and its heirs, successors and assigns.

Debtor warrants and represents to Lender that none of the Property is presently, or will during the term of this Security Instrument, be used principally or at all for agricultural or farming purposes.

ARTICLE 3

DEFAULT AND FORECLOSURE

Section 3.1 Remedies. If an Event of Default (as defined in the Loan Agreement) exists and is continuing, the Lender may, at the Lender's election, take such action permitted at law or in equity, without notice or demand (except as explicitly provided in the Loan Agreement), as it deems advisable to protect and enforce its rights against Debtor and to the Property, including but not limited to, any or all of the following rights, remedies and recourses each of which may be pursued concurrently or otherwise, at such time and in such order as the Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Lender:

(a) Acceleration. Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Debtor (except as provided in the Loan Agreement)), whereupon the same shall become immediately due and payable.

(b) Entry on Property. Enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Debtor remains in possession of the Property after an Event of Default and after demand from Lender to turn over possession of the Property, the Lender may invoke any legal remedies to dispossess Debtor.

(c) Operation of Property. Whether or not a receiver has been appointed pursuant to Section 3.1(e) hereof, hold, lease, develop, manage, operate, control and otherwise use the Property upon such terms and conditions as the Lender may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as the Lender deems reasonably necessary or desirable), exercise all rights and powers of Debtor with respect to the Property, whether in the name of Debtor or otherwise, including without limitation the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for collect and receive all Rents, and apply all Rents and other amounts collected by the Lender in connection therewith in accordance with the provisions of Section 3.7 hereof.

(d) Foreclosure and Sale. (i) Institute proceedings for the complete foreclosure of this Security Instrument, by exercise of the STATUTORY POWER OF SALE or otherwise, in

UNOFFICIAL COPY

which case the Property may be sold for cash or credit in one or more parcels or in several interests or portions and in any order or manner.

(ii) With respect to any notices required or permitted under the UCC, Debtor agrees that ten (10) business days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse including power of sale, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Debtor shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Debtor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Debtor. The Lender may be a purchaser at such sale and if the Lender is the highest bidder, may credit the portion of the purchase price that would be distributed to the Lender against the Indebtedness in lieu of paying cash.

(e) Receiver. Prior to, concurrently with, or subsequent to the institution of foreclosure proceedings, make application to a court of competent jurisdiction for, and (to the extent permitted by applicable law) obtain from such court as a matter of strict right and without notice to Debtor or anyone claiming under Debtor or regard to the value of the Property or the solvency or insolvency of Debtor or the adequacy of any collateral for the repayment of the Indebtedness or the interest of the Debtor therein, the appointment of a receiver or receivers of the Property, and Debtor irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 3.7 hereof.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Notes either before, during or after any proceeding to enforce this Security Instrument).

Section 3.2 Separate Sales. The Property may be sold in one or more parcels and in such manner and order as the Lender in its sole discretion, may elect, subject to applicable law; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 3.3 Remedies Cumulative, Concurrent and Nonexclusive. The Lender shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent and shall be in addition to every other remedy so provided or permitted, (b) may be pursued separately, successively or concurrently against Debtor, or against the Property, or against any one or more of them, at the sole discretion of the Lender, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by the Lender in the enforcement of any rights, remedies or

UNOFFICIAL COPY

recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 3.4 Release of and Resort to Collateral. The Lender may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, the Lender may resort to any other security in such order and manner as the Lender may elect.

Section 3.5 Waiver of Redemption, Notice and Marshaling of Assets. To the fullest extent permitted by law, Debtor for itself and all who may claim through or under it hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Debtor by virtue of any present or future statute of limitations or "moratorium law" or other law or judicial decision exempting the Property or any part thereof, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, or extension of time for payment, (b) any right to a marshaling of assets or a sale in inverse order of alienation, (c) any right of redemption from sale or reinstatement, including under any order or decree of foreclosure of this Security Instrument, and (d) any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure.

Section 3.6 Discontinuance of Proceedings. If the Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, the Lender shall have the unqualified right to do so and, in such an event, Debtor and the Lender shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of the Lender shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of the Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 3.7 Application of Proceeds. Except as otherwise provided in the Loan Documents and unless otherwise required by applicable law, the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Property, shall be applied by the Lender (or the receiver, if one is appointed) in the following order or in such other order as the Lender shall determine in its reasonable discretion:

(a) to the payment of the reasonable costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) any receiver's fees and expenses, (2) court costs, (3) reasonable attorneys', accountants', appraisers', environmental consultants', engineers' and other experts' fees and expenses, (4) costs of advertisement, (5) costs of procuring title searches, title policies and similar data and assurance with respect to title, and (6) the payment of all ground rent, real estate taxes and assessments except any taxes, assessments or other charges subject to which the Property shall have been sold;

UNOFFICIAL COPY

(b) to the payment of all amounts, other than the unpaid principal balance of the Notes and accrued but unpaid interest, which may be due under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as the Lender in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

If the Lender shall be ordered, in connection with any bankruptcy, insolvency or reorganization of Debtor, to restore or repay to or for the account of Debtor or its creditors any amount theretofore received under this Section 3.7, the amount of such restoration or repayment shall be deemed to be a part of the Indebtedness so as to place the Lender in the same position it would have been in had such amount never been received by the Lender.

Section 3.8 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 3.1(d) shall become the legal owner of the Property. All occupants of the Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and, subject to such occupants' rights under their leases, shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Property.

Section 3.9 Additional Advances and Disbursements; Costs of Enforcement. If any Event of Default has occurred and is continuing, the Lender shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Debtor. All sums reasonably advanced and expenses incurred at any time by the Lender under this Section 3.9, or otherwise under this Security Instrument or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Loan Agreement), and all such sums, together with interest thereon, shall constitute additions to the Indebtedness and shall be secured by this Security Instrument and Debtor covenants and agrees to pay them to the order of the Lender promptly upon demand.

Section 3.10 No Lender in Possession. Neither the enforcement of any of the remedies under this Article 3, the assignment of the Rents and Leases under Article 4, the security interests under Article 5, nor any other remedies afforded to the Lender under the Loan Documents, at law or in equity shall cause the Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate the Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Debtor shall, and hereby agrees to indemnify the Lender for, and to hold the Lender harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by the Lender, as the case may be, solely by reason of the Lender's status as an assignee pursuant to the assignment of Rents and Leases contained herein prior to Lender's taking possession or ownership of the Property, but excluding any claim to the extent of the Lender's gross negligence or willful misconduct or to the extent arising after Lender has taken possession or ownership of the Property. Should the Lender incur any such claim, liability, expense, loss or

UNOFFICIAL COPY

damage, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Debtor shall reimburse the Lender, as the case may be, therefor immediately upon demand.

Section 3.11 Cross-Collateralization. Without limitation to any other right or remedy provided to Lender in this Security Instrument or any of the other Loan Documents, Debtor acknowledges and agrees that upon the occurrence of an Event of Default, to the fullest extent permitted by law (i) Lender shall have the right to pursue all of its rights and remedies in one proceeding, or separately and independently in separate proceedings which Lender, in its sole and absolute discretion, shall determine from time to time, (ii) Lender is not required to either marshal assets, sell Collateral in any inverse order of alienation, or be subjected to any "one action" or "election of remedies" law or rule, (iii) the exercise by Lender of any remedies against any Collateral will not impede Lender from subsequently or simultaneously exercising remedies against other Collateral, (iv) all Liens and other rights, remedies and privileges provided to Lender in the Loan Documents or otherwise shall remain in full force and effect until Lender has exhausted all of its remedies against the Collateral and all Collateral has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Loan, and (v) all of the Properties (including the Property) shall remain security for the performance of all of the obligations of Borrowers and Maryland Guarantors hereunder and under any of the other Loan Documents. Debtor acknowledges and agrees that it shall be jointly and severally liable for the obligations of all of the Borrowers and the Maryland Guarantors under the Loan Documents and Debtor consents to and agrees to the terms and conditions of the other Loan Documents. As used in this Section, "Collateral" has the meaning set forth in the Loan Agreement.

ARTICLE 4

ASSIGNMENT OF RENTS AND LEASES

Section 4.1 Assignment. Debtor does hereby presently, absolutely and unconditionally assign to the Lender, Debtor's right, title and interest in all current and future Leases and the absolute, unconditional and continuing right to receive and collect all Rents, it being intended by Debtor that this assignment constitutes a present, outright, immediate, continuing and absolute assignment and not an assignment for additional security only. Such assignment to the Lender shall not be construed to bind the Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon the Lender. The Lender shall have no responsibility on account of this assignment for the control, care, maintenance, management or repair of the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Debtor agrees to execute and deliver to the Lender such additional instruments, in form and substance reasonably satisfactory to the Lender, as may hereafter be requested by the Lender to further evidence and confirm such assignment.

Section 4.2 License. Notwithstanding that Debtor hereby presently grants to the Lender an outright, immediate, continuing and absolute assignment of the Rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in, the Rents and

UNOFFICIAL COPY

Leases, the Lender hereby grants to Debtor and its successors and not to any lessee or any other person, a revocable license to collect and receive the Rents and to retain, use and enjoy the same and otherwise exercise all rights as landlord under any Lease, including, without limitation, the right to collect and receive the Rents and other sums due under the Leases and to perform all obligations of the landlord and enforce all obligations of the tenants, in each case subject to the terms of Section 3.1(c) hereof, this Article IV and the Loan Agreement. During the continuance of any Event of Default, the license granted herein to Debtor shall immediately and automatically cease and terminate and shall be void and of no further force or effect, at which time Debtor at the request of the Lender shall notify in writing all tenants and subtenants under any of the Leases that all Rent due thereunder should be paid to the Lender at its address set forth in the Loan Agreement, or at such other place as the Lender shall notify Debtor in writing. Notwithstanding said license, Debtor agrees that the Lender, and not Debtor, shall be deemed to be the creditor of each tenant or subtenant under any Lease in respect to assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant or subtenant (without obligation on the part of the Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditors' rights therein), with an option in favor of the Lender to apply any money received by Debtor as such creditor in reduction of any amounts due under the Loan Documents. During the continuance of an Event of Default, any portion of the Rents held by Debtor shall be held in trust for the benefit of the Lender for use in the payment of the Indebtedness. Upon the occurrence and during the continuance of an Event of Default, the license granted to Debtor herein shall cease and terminate and shall be void and of no further force or effect, and the Lender shall immediately be entitled to possession of all Rents, whether or not the Lender enters upon or takes control of the Property, provided that if such Event of Default ceases to exist, the license shall automatically be reinstated.

Section 4.3 Certain Rights of the Lender. Subject to the revocable license granted above, upon the occurrence and during the continuance of an Event of Default, the Lender shall have the immediate and continuing right, power and authority, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without the necessity of taking possession of the Property in its own name, and without the need for any other authorization or action by Debtor or the Lender, in addition to and without limiting any of the Lender's rights and remedies hereunder, under the Loan Agreement and any other Loan Documents and as otherwise available at law or in equity, (a) to notify any lessee or other person that the Leases have been assigned to the Lender and that all Rents are to be paid directly to the Lender, whether or not the Lender has commenced or completed foreclosure or taken possession of the Property; (b) to reasonably settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations in, to and under the Leases; (c) to demand, sue for or otherwise collect, receive, and enforce payment of Rents, including those past-due and unpaid and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and Leases; (d) subject to the rights of tenants under the Leases, to enter upon, take possession of and operate the Property whether or not foreclosure under this Security Instrument has been instituted and without applying for a receiver; (e) to lease all or any part of the Property; and/or (f) to perform any and all obligations of Debtor under the Leases and reasonably exercise any and all rights of Debtor therein contained to the full extent of Debtor's rights and obligations thereunder.

UNOFFICIAL COPY

Section 4.4 Irrevocable Instructions to Tenants. At the Lender's request, Debtor shall deliver a copy of this Assignment to each tenant under a Lease and to each manager and managing agent or operator of the Property, and the Lender shall have the continuing right to do so. Debtor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Debtor, to comply with all demands of the Lender under this Article 4 and to turn over to the Lender on demand all Rents which it receives. Debtor hereby acknowledges and agrees that payment of any Rents by a person to the Lender as hereinabove provided shall constitute payment by such person, as fully and with the same effect as if such Rents had been paid to Debtor. The Lender is hereby granted and assigned by Debtor the right, at its option, upon revocation of the license granted herein, upon an Event of Default that is continuing, to enter upon the Property in person or by agent, without bringing any action or proceeding, or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license shall be applied in accordance with the provisions of the Loan Agreement. Neither the enforcement of any of the remedies under this Article 4 nor any other remedies or security interests afforded to the Lender under the Loan Documents, at law or in equity shall cause the Lender to be deemed or construed to be a mortgagee in possession of the Property, to obligate the Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Debtor shall, and hereby agrees to indemnify the Lender for, and to hold the Lender harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by the Lender solely by reason of the Lender's status as an assignee pursuant to the assignment of Rents and Leases contained herein, but excluding any claim to the extent caused by the Lender's negligence or willful misconduct or related to conditions first arising after foreclosure of this Security Instrument, acceptance of a deed in lieu of foreclosure or possession of the Property by Lender. Should the Lender incur any such claim, liability, expense, loss or damage solely by reason of the Lender's status as an assignee pursuant to the assignment of Rents and Leases, the amount thereof, including all actual expenses and reasonable fees of attorneys, shall constitute Indebtedness secured hereby, and Debtor shall reimburse the Lender therefor ten (10) days after written demand.

Section 4.5 Unilateral Subordination. Lender may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Security Instrument to any Lease, without joinder or consent of, or notice to, Debtor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Security Instrument to any Lease.

ARTICLE 5

SECURITY AGREEMENT

Section 5.1 Security Interest. This Security Instrument constitutes both a real property mortgage and a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents

UNOFFICIAL COPY

and Property Agreements (said portion of the Property subject to the UCC, the "Collateral"). The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Debtor in the Property. Debtor, by executing and delivering this Security Instrument, hereby grants to the Lender, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, subject only to Permitted Encumbrances, and agrees that the Lender shall have all the rights and remedies of a secured party under the UCC with respect to such property including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as the Lender may deem necessary for the care, protection and preservation of the Collateral. Debtor shall pay to the Lender on demand any and all expenses, including actual reasonable legal expenses and attorneys' fees, incurred or paid by the Lender in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by the Lender with respect to the Collateral sent to Debtor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall constitute commercially reasonable notice to Debtor. The proceeds of any disposition of the Collateral, or any part thereof, shall, except as otherwise required by law, be applied by the Lender in accordance with Section 3.7 hereof.

Section 5.2 Further Assurances. Debtor shall execute and deliver to the Lender and/or file, in form and substance reasonably satisfactory to the Lender and Debtor, such further statements, documents and agreements, financing statements, continuation statements, and such further assurances and instruments, and do such further acts, as the Lender may, from time to time, reasonably require to create, perfect and preserve the Lender's security interest hereunder and to carry out the purposes of this Security Instrument, and the Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest; provided that such further statements, documents, agreements, assurances, instruments and acts do not increase the liability or obligations or decrease the rights of Debtor from those provided for in the Loan Documents. Debtor's chief executive office and principal place of business is at the address set forth in the first paragraph of this Security Instrument.

Section 5.3 Fixture Filing. To the extent permitted by applicable law, this Security Instrument shall also constitute a "fixture filing" for the purposes of the UCC upon all of the Property which is or is to become "fixtures" (as that term is defined in the UCC) upon being filed for record in the real estate records of the City or County wherein such fixtures are located. Information concerning such security interest, to the extent herein granted, may be obtained at the addresses of Debtor and Secured Party (the Lender) as set forth in the first paragraph of this Security Instrument.

ARTICLE 6

MISCELLANEOUS

Section 6.1 Notices. Any notice required or permitted to be given under this Security Instrument shall be given in the manner described in the Loan Agreement.

UNOFFICIAL COPY

Section 6.2 Covenant Running with the Land. All representations, warranties, covenants and Obligations contained in the Loan Agreement are incorporated herein by this reference and, to the extent relating to the Property, are intended by the parties to be, and shall be construed as, covenants running with the Land. As used herein, "Debtor" shall refer to the party named in the first paragraph of this Security Instrument and to any subsequent owner of all or any portion of the Property (without in any way implying that the Lender has or will consent to any such conveyance or transfer of the Property). All persons or entities who may have or acquire an interest in the Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of the Lender.

Section 6.3 Attorney-in-Fact. Debtor hereby irrevocably appoints the Lender and its successors and assigns, as its attorney-in-fact, which appointment is irrevocable and coupled with an interest, after and during the continuance of an Event of Default (a) to execute and/or record any notices of completion, cessation of labor or any other notices that the Lender deems appropriate to protect the Lender's interest, if Debtor shall fail to do so within ten (10) days after written request by the Lender, (b) upon the issuance of a deed pursuant to the foreclosure of this Security Instrument or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to the extent that Lender may lawfully do so, to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve the Lender's security interests and rights in or to any of the collateral, and (d) during the continuance of any Event of Default, to perform any obligation of Debtor hereunder; however: (1) the Lender shall not under any circumstances be obligated to perform any obligation of Debtor; (2) any necessary sums advanced by the Lender in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) the Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by the Lender; and (4) the Lender shall not be liable to Debtor or any other person or entity for any failure to take any action which it is empowered to take under this Section 6.3.

Section 6.4 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of the Lender and Debtor and their respective successors and assigns.

Section 6.5 No Waiver. Any failure by the Lender to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and the Lender shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 6.6 Subrogation. To the extent proceeds of the Notes have been used to extinguish, extend or renew any indebtedness against the Property, then the Lender shall be subrogated to all of the rights, security titles, liens and interests existing against the Property and held by the holder of such indebtedness and shall have the benefit of the priority of all of the same, and such former rights, security titles, liens and interests, if any, are not waived, but are continued in full force and effect in favor of the Lender.

UNOFFICIAL COPY

Section 6.7 Loan Agreement. If any conflict or inconsistency exists between this Security Instrument and the Loan Agreement, the Loan Agreement shall govern.

Section 6.8 Release. Upon payment in full of the Indebtedness and performance in full of the Obligations, or upon the transfer of the Property in the manner permitted by the Loan Agreement (including, without limitation, in connection with a Defeasance), the estate hereby granted shall cease, terminate and be void and the Lender, at Debtor's expense, shall release the liens and security interests created by this Security Instrument.

Section 6.9 Waiver of Jury Trial; Consent to Jurisdiction. (a) TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SECURITY INSTRUMENT, ANY OTHER LOAN DOCUMENT, OR ANY DEALINGS, CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS BY EITHER OF THEM RELATING TO THE SUBJECT MATTER OF THIS SECURITY INSTRUMENT AND THE LENDER/BORROWER RELATIONSHIP BETWEEN THEM. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. DEBTOR AND LENDER EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS SECURITY INSTRUMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. DEBTOR AND LENDER EACH FURTHER WARRANT AND REPRESENT THAT EACH OF THEM HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH OF THEM KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS SECURITY INSTRUMENT, OR ANY OTHER LOAN DOCUMENTS OR AGREEMENTS RELATING TO THIS SECURITY INSTRUMENT. IN THE EVENT OF LITIGATION, THIS SECURITY INSTRUMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(b) DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER FURTHER CONSENT, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE IN WHICH ANY OF THE COLLATERAL IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO SUCH COLLATERAL. DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS, GENERALLY, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH IN THE

UNOFFICIAL COPY

FIRST PARAGRAPH HEREOF IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF DEBTOR AND, BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST DEBTOR IN ANY JURISDICTION.

Section 6.10 Governing Law. THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

Section 6.11 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify, limit or define, or be used in construing, the scope, intent or text of such Articles, Sections or Subsections.

Section 6.12 Entire Agreement. This Security Instrument and the other Loan Documents embody the entire agreement and understanding between the Lender and Debtor pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, representations or other arrangements, whether express or implied, written or oral, between such parties relating to the subject matter hereof and thereof. This Security Instrument and the other Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 6.13 Severability. If any provision of this Security Instrument is invalid or unenforceable, then such provision shall be given full force and effect to the fullest possible extent, and all of the remaining provisions of this Security Instrument shall remain in full force and effect and shall be binding on the parties hereto.

Section 6.14 Variable Rate of Interest. This Security Instrument secures, inter alia, obligations which provide for a variable rate of interest (as described in the Loan Agreement).

Section 6.15 Lien Absolute, Multisite Real Estate and Multiple Collateral Transaction. Debtor acknowledges that this Security Instrument and a number of other Loan Documents and those documents required by the Loan Documents together secure the

UNOFFICIAL COPY

Indebtedness. Debtor agrees that, to the extent permitted by law, the lien of this Security Instrument and all obligations of the Debtor hereunder shall be absolute and unconditional and shall not in any manner be affected or impaired by:

(a) any lack of validity or enforceability of the Loan Agreement or any other Loan Document, any agreement with respect to any of the Indebtedness or Obligations or any other agreement or instrument relating to any of the foregoing;

(b) any acceptance by the Lender of any security for or guarantees of any of the Indebtedness hereby secured;

(c) any failure, neglect or omission on the part of the Lender to realize upon or protect any of the Indebtedness hereby secured or any of the collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Debtor in respect of the Indebtedness and Obligations hereby secured or any collateral security therefor, including the Loan Documents, or due to any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Debtor in respect of the Indebtedness or Obligations or this Security Instrument (other than the indefeasible payment in full in cash of all the Indebtedness and Obligations hereby secured);

(d) any change in the time, manner or place of payment of, or in any other term of, all or any of the Indebtedness or Obligations;

(e) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, nonperfection, renewal, extension, indulgence, alteration, exchange, modification or disposition of any of the Indebtedness or Obligations hereby secured or of any of the collateral security therefor;

(f) any amendment or waiver of or any consent to any departure from the Loan Agreement or any other Loan Documents or of any guaranty thereof, if any, and the Lender may in its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Loan Documents without first exercising or enforcing any of its rights and remedies hereunder; and

(g) any exercise of the rights or remedies of the Lender hereunder or under any or all of the Loan Documents.

Section 6.16 Real Estate Taxes. The Debtor shall not be entitled to any credit upon the Indebtedness or deduction from the assessed value of the Property by virtue of payment of real estate taxes on the Property. If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Indebtedness from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Indebtedness or Lender's interest in the Property, Debtor will pay such tax and shall reimburse Lender for any such amounts paid by Lender. In the event that the payment or reimbursement of such tax by Debtor would, in the opinion of Lender's counsel, be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender shall have the option, by written notice of not less than 180 days, to declare the Indebtedness

UNOFFICIAL COPY

immediately due and payable, in which event no prepayment premium or fee or Release Price or Release Premium will be due.

Section 6.17 Incorporation by Reference. (a) All obligations of Debtor under this Security Instrument shall be limited by the provisions of Section 9.19 of the Loan Agreement, the provisions of which are incorporated herein by this reference.

(b) The parties hereby acknowledge that the Loan Agreement, among other things, contains restrictions on the prepayment of the Indebtedness, as well as restrictions on the sale, transfer and encumbrance of the Property and the ownership interests in the Debtor.

Section 6.18 Lease Covenants.

(a) Debtor shall (i) pay or cause to be paid all rents, additional rents and other sums required to be paid by Debtor as tenant under and pursuant to the provisions of the Pledged Leases on or before the date on which such rent or other charge is payable, (ii) diligently perform and observe all of the terms, covenants and conditions of the Pledged Leases, as tenant thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, (iii) promptly notify the Lender of the giving of any notice by the lessor under the Pledged Leases (the "Lessor") to Debtor of any default by Debtor as tenant thereunder, and promptly deliver to the Lender a true copy of each such notice except, in the case of clauses (i) through (iii) above, for any such defaults or breaches as would not be reasonably expected to have a Material Adverse Effect.

(b) Debtor shall not (i) surrender the leasehold estate created by the Pledged Leases or terminate or cancel the Pledged Leases, (ii) modify, change, supplement, alter or amend the Pledged Leases, in any respect, either orally or in writing, in any manner that materially impairs the collateral value of the leaseholds created by the Pledged Leases or in any manner that would be materially adverse to the Lender. Debtor hereby assigns to the Lender, as further security for the payment and performance of the Obligations and observance of the terms, covenants and conditions of this Security Instrument, all of the rights, privileges and prerogatives of Debtor, as tenant under the Pledged Leases following the occurrence and during the continuance of an Event of Default, to surrender the leasehold estates created by the Pledged Leases or to terminate, cancel, modify, change, supplement, alter or amend any of the Pledge Leases, and any such surrender of the leasehold estate created by any of the Pledged Leases or termination, cancellation, modification, change, supplement, alteration or amendment of the Pledged Leases not permitted pursuant to the foregoing terms of this Section 6.21(b) shall be void and of no force or effect.

(c) If at any time after the occurrence and during the continuance of an Event of Default, Debtor shall default in the performance or observance of any term, covenant or condition of the Pledged Leases to be performed or observed by Debtor, as tenant thereunder, then, without limiting the generality of the other provisions of this Security Instrument, and without waiving or releasing Debtor from any of its Obligations, the Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Pledged Leases on the part of Debtor, as tenant thereunder, to be performed or observed or to be promptly

UNOFFICIAL COPY

performed or observed on behalf of Debtor, to the end that the rights of Debtor in, to and under the Pledged Leases shall be kept unimpaired and free from default. If the Lender shall make any payment or perform any act or take action in accordance with the preceding sentence, the Lender will notify Debtor thereof. In any such event, upon the occurrence and during the continuance of an Event of Default and subject to the rights of tenants, subtenants and other occupants under the Leases, the Lender and any person designated by the Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If the Lessor shall deliver to the Lender a copy of any notice of default sent by Lessor to Debtor, as tenant under the Pledged Leases, such notice shall constitute full protection to the Lender for any action taken or omitted to be taken by the Lender, in good faith, in reliance thereon.

(d) In the event that Debtor shall be the owner and holder of the fee title to any portion of the Land while any portion of the Obligations remains unpaid or unsatisfied, the lien of this Security Instrument shall be spread to cover such person's fee title to such portion of the Land and such fee title shall be deemed to be included in the Property. Debtor agrees, at its sole cost and expense, including any reasonable attorneys' fees and disbursements incurred by the Lender, to (i) execute or cause to be executed any and all documents or instruments necessary to subject Debtor's fee title to the Land to the lien of this Security Instrument; and (ii) provide a title insurance policy, at Debtor's expense, that shall insure that the lien of this Security Instrument is a first lien on Debtor's or such person's fee title to the Land.

(e) In the event of the bankruptcy, reorganization or insolvency of Debtor, any attempt by Debtor to surrender its leasehold estate, or any portion thereof, under the Pledged Leases, or any attempt under such circumstances by Debtor to terminate, cancel or acquiesce in the rejection of the Pledged Leases without the consent of the Lender shall be null and void. Debtor hereby expressly releases, assigns, relinquishes and surrenders unto the Lender all of its right, power and authority to terminate, cancel, acquiesce in the rejection of, modify, change, supplement, alter or amend the Pledged Leases in any respect, either orally or in writing, in the event of the bankruptcy, reorganization or insolvency of Debtor, and any attempt on the part of Debtor to exercise any such right without the consent of the Lender shall be null and void. Debtor hereby irrevocably appoints the Lender as its true and lawful attorney-in-fact which power of attorney shall be coupled with an interest, for the purpose of exercising its rights pursuant to Section 365(h) of the Bankruptcy Code or any successor to such Section, (i) to obtain for the benefit of Debtor or the Lender a right to possession or statutory term of years derived from or incident to the Pledged Leases, or (ii) to treat the Pledged Leases as terminated.

(f) Notwithstanding the rejection of the Pledged Leases by the Lessor, as debtor in possession, or by a trustee for the Lessor, pursuant to Section 365 of the Bankruptcy Code, neither the lien of this Security Instrument nor the Lender's rights with respect to the Pledged Leases shall be affected or impaired by reason thereof. In the event that Debtor shall remain in possession of the Property following a rejection of the Pledged Leases by the Lessor, as debtor in possession, or by a trustee for the Lessor, Debtor agrees that it shall not exercise any right of offset against the rent payable under the Pledged Leases, pursuant to Section 365(h)(2) of the Bankruptcy Code, or otherwise, without the prior consent of the Lender thereto.

UNOFFICIAL COPY

Section 6.19 State Specific Provisions. The provisions of Exhibit B attached hereto are hereby incorporated by reference as though set forth in full herein.

Section 6.20 Last Dollars Secured. This Security Instrument secures only a portion of the Indebtedness owing or which may become owing by Debtor to the Lender. The parties agree that any payments or repayments of such Indebtedness by Debtor shall be and be deemed to be applied first to the portion of the Indebtedness that is not secured hereby, it being the parties' intent that the portion of the Indebtedness last remaining unpaid shall be secured hereby.

Section 6.21 Recording Taxes. Debtor hereby covenants to pay any and all recording or other taxes or fees due in connection with this Security Instrument.

Section 6.22 Multiple Exercise of Remedies. To the extent permitted by law, Debtor specifically consents and agrees that the Lender may exercise rights and remedies hereunder and under the other Loan Documents separately or concurrently and in any order that the Lender may deem appropriate.

Debtor hereby acknowledges receipt of a true copy of the within Security Instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

UNOFFICIAL COPY

Debtor has executed this instrument the day and date first written above.

DEBTOR:

TRIZECHAHN REGIONAL POOLING LLC, a
Delaware limited liability company

By: 
Its: Authorized Signatory

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF New York)
COUNTY OF New York) SS.

I DEANA BAGLANZIS do hereby certify that Vincent M. Cozzi personally known to me to be the 15th day of May 2001, a _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ (she)(he) signed and delivered the said instrument pursuant to authority, given by said _____ and as (his) (her) free and voluntary act for the uses and purposes therein set forth. Given under my hand and seal this 15th day of May, 2001.

Deana Baglanzis
Notary Public

My Commission Expires:
June 22, 2002

DEANA BAGLANZIS
Notary Public, State of New York
No. 01BA6009276
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires June 22, 2002

UNOFFICIAL COPY

EXHIBIT A

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

LEGAL DESCRIPTION OF LEASEHOLD ESTATE 'A'

TWO CERTAIN PARCELS OF LAND IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL 1:

A PART OF LOTS 1 AND 2 IN FAIRROAD COMPANIES RESUBDIVISION OF BLOCKS 62 TO 76 BOTH INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON MARCH 29, 1924 IN BOOK 188 OF PLATS AT PAGE 16 AS DOCUMENT NUMBER 8339751, SAID PARTS OF LOTS 1 AND 2 BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE SOUTHWARDLY ALONG THE EASTERLY LINE OF SAID LOT 1 A DISTANCE OF 199.495 FEET TO AN ANGLE POINT IN SAID EASTERLY LOT LINE; THENCE CONTINUING SOUTHWARDLY ALONG SAID EASTERLY LINE A DISTANCE OF 199.23 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1 AND OF SAID LOT 2 A DISTANCE OF 218.865 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE WEST 20 FEET OF SAID LOT 2; THENCE NORTH ALONG SAID EAST LINE OF THE WEST 20 FEET OF SAID LOT 2 A DISTANCE OF 398.19 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF SAID LOT 2, AND THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 AND OF SAID LOT 1 A DISTANCE OF 239 FEET TO THE POINT OF BEGINNING EXCEPTING FROM THE PARCEL OF LAND ABOVE DESCRIBED, THE RESPECTIVE PORTIONS THEREOF LYING VERTICALLY BELOW THE FOLLOWING HORIZONTAL PLANES:

(A) A HORIZONTAL PLANE 18.5 FEET ABOVE CHICAGO CITY DATUM, THE PERIMETER OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL AND RUNNING THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE INTERSECTION OF SAID NORTH LINE AND A LINE (THE "LIMITING PLANE LINE") 168 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL; THENCE SOUTHWARDLY ALONG THE LIMITING PLANE LINE TO THE INTERSECTION OF SAID LINE AND THE SOUTH LINE OF SAID PARCEL; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PARCEL TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL, WHICH IS THE POINT OF BEGINNING OF SAID HORIZONTAL PLANE; AND

(B) A HORIZONTAL PLANE 21.0 FEET ABOVE CHICAGO CITY DATUM OVER THAT PORTION OF SAID PARCEL WHICH IS NOT VERTICALLY BELOW THE HORIZONTAL PLANE DESCRIBED IN CLAUSE (A) ABOVE.

PARCEL 2:

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

ALL LAND AND SPACES BELOW THE HORIZONTAL PLANES DESCRIBED IN PARCEL 1 ABOVE WHICH ARE OCCUPIED BY THE COLUMNS, CAISSONS, FOUNDATIONS, GUSSETS AND ALL OTHER SUPPORTING STRUCTURES, FOR THE BUILDING AND IMPROVEMENTS CONSTRUCTED IN PARCEL 1 AND BY ALL OTHER IMPROVEMENTS, PLENUMS, MECHANICAL AND ELECTRICAL EQUIPMENT, PIPES, WIRES, CONDUITS, UTILITIES AND OTHER STRUCTURES LOCATED BELOW SAID HORIZONTAL PLANES IN CONNECTION WITH SAID BUILDING AND IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO THE SPACE OCCUPIED BY THE IMPROVEMENTS AND STRUCTURES SHOWN ON THE PLAT OF SURVEY PREPARED AND CERTIFIED BY CHICAGO GUARANTEE SURVEY COMPANY DATED JULY 8, 1966 (CONSISTING OF THREE SHEETS IDENTIFIED AS ORDER NOS. 6311001 K AND 6311001-S AND 6311001 N, RESPECTIVELY), WHICH WAS RECORDED AS PART OF DOCUMENT 19881999.

PARCEL 3:

AN EASEMENT APPURTENANT TO PARCELS 1 AND 2 TN, OVER AND ACROSS THE WEST 20 FEET OF LOT 2 IN SAID RAILROAD COMPANIES' RESUBDIVISION TO CONSTRUCT, USE, MAINTAIN, REPAIR, REPLACE OR RENEW FROM TIME TO TIME SUCH COLUMNS, GUSSETS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, CAISSONS, FOUNDATIONS AND OTHER SUPPORTS AS MAY BE REASONABLY NECESSARY OR APPROPRIATE TO MAINTAIN AND SUPPORT THE PLAZA AND OTHER IMPROVEMENTS CONTEMPLATED BY THE LEASE, INCLUDING, WITHOUT LIMITATION, THE COLUMNS (DESIGNATED 'DD') AND THE CAISSONS, FOUNDATIONS AND RELATED STRUCTURES SHOWN ON THE PLAT OF SURVEY REFERRED TO IN PARCEL 2 ABOVE.

PARCEL 4:

A NONEXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF THE LEASEHOLD INTEREST IN PARCELS 1 AND 2 AS CREATED BY DEED OF EASEMENT DATED JANUARY 16, 1990 AND RECORDED JANUARY 31, 1990 AS DOCUMENT 90047309 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NUMBER 107292 TO GATEWAY IV JOINT VENTURE, AN ILLINOIS GENERAL PARTNERSHIP, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107361, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107362, AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107363 FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER, AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LOTS 5, 6, 7, AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT DATED FEBRUARY 9, 1990, AND RECORDED OCTOBER 9, 1990, AS DOCUMENT NUMBER 90491486.

LEGAL DESCRIPTION FOR LEASEHOLD ESTATE 'B'

TWO CERTAIN PARCELS OF LAND IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PART OF LOT 2 IN RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76 BOTH INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON MARCH 29, 1924 IN BOOK 188 OF PLATS AT PAGE 10 AS DOCUMENT NUMBER 8339751, SAID PARTS OF LOTS 1 AND 2 IN SAID RAILROAD COMPANIES' RESUBDIVISION WHICH IS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE SOUTHWARDLY ALONG THE EASTERLY LINE OF SAID LOT 1 A DISTANCE OF 199.495 FEET TO AN ANGLE POINT IN SAID EASTERLY LOT LINE; THENCE CONTINUING SOUTHWARDLY ALONG SAID EASTERLY LINE A DISTANCE OF 199.23 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1 AND OF SAID LOT 2 A DISTANCE OF 218.865 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE WEST 20 FEET OF SAID LOT 2; THENCE NORTH ALONG SAID EAST LINE OF THE WEST 20 FEET OF SAID LOT 2 A DISTANCE OF 398.19 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF SAID LOT 2; AND THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 AND OF SAID LOT 1 A DISTANCE OF 239 FEET TO THE POINT OF BEGINNING EXCEPTING FROM THE PARCEL OF LAND ABOVE DESCRIBED, THE RESPECTIVE PORTIONS THEREOF LYING VERTICALLY BELOW THE FOLLOWING HORIZONTAL PLANES:

(A) A HORIZONTAL PLANE 18.5 FEET ABOVE CHICAGO CITY DATUM, THE PERIMETER OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL AND RUNNING THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE INTERSECTION OF SAID NORTH LINE AND A LINE (THE "LIMITING PLANE LINE") 168 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL; THENCE SOUTHWARDLY ALONG THE LIMITING PLANE LINE TO THE INTERSECTION OF SAID LINE AND THE SOUTH LINE OF SAID PARCEL; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PARCEL TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL, WHICH IS THE POINT OF BEGINNING OF SAID HORIZONTAL PLANE; AND

(B) A HORIZONTAL PLANE 21.0 FEET ABOVE CHICAGO CITY DATUM OVER THE PORTION OF SAID PARCEL WHICH IS NOT VERTICALLY BELOW THE HORIZONTAL PLANE DESCRIBED IN

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

CLAUSE (A) ABOVE.

PARCEL 2:

ALL LAND AND SPACES BELOW THE HORIZONTAL PLANES DESCRIBED IN PARCEL 1 ABOVE WHICH ARE OCCUPIED BY THE COLUMNS, CAISSONS, FOUNDATIONS, GUSSETS AND ALL OTHER SUPPORTING STRUCTURES FOR THE BUILDING AND IMPROVEMENTS CONSTRUCTED IN PARCEL 1, AND BY ALL OTHER IMPROVEMENTS, PLENUMS, MECHANICAL AND ELECTRICAL EQUIPMENT, PIPES, WIRES, CONDUITS, UTILITIES AND OTHER STRUCTURES LOCATED BELOW SAID HORIZONTAL PLANES IN CONNECTION WITH SAID BUILDING AND IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, THE SPACE OCCUPIED BY THE IMPROVEMENTS AND STRUCTURES SHOWN ON THE PLAT OF SURVEY PREPARED AND CERTIFIED BY CHICAGO GUARANTEE SURVEY COMPANY, DATED JULY 8, 1966 (CONSISTING OF THREE SHEETS IDENTIFIED AS ORDER NOS. 6311001K AND 6311001S AND 6311001N, RESPECTIVELY), WHICH WAS RECORDED AS PART OF DOCUMENT 19881999

PARCEL 3:

AN EASEMENT APPURTENANT TO PARCELS 1 AND 2 IN, OVER AND ACROSS THE WEST 20 FEET OF SAID LOT 2 IN SAID RAILROAD COMPANIES' RE SUBDIVISION TO CONSTRUCT, USE, MAINTAIN, REPAIR, REPLACE OR RENEW FROM TIME TO TIME SUCH COLUMNS, GUSSETS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, CAISSONS, FOUNDATIONS AND OTHER SUPPORTS AS MAY BE REASONABLY NECESSARY OR APPROPRIATE TO MAINTAIN AND SUPPORT THE PLAZA AND OTHER IMPROVEMENTS CONTEMPLATED BY THE LEASE, INCLUDING, WITHOUT LIMITATION, THE COLUMNS (DESIGNATED 'DD') AND THE CAISSONS, FOUNDATIONS AND RELATED STRUCTURES SHOWN ON THE PLAT OF SURVEY REFERRED TO IN PARCEL 2 ABOVE.

PARCEL 4:

A NONEXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF THE LEASEHOLD INTEREST IN PARCELS 1 AND 2 AS CREATED BY DEED OF EASEMENT DATED JANUARY 16, 1990 AND RECORDED JANUARY 31, 1990 AS DOCUMENT 90047309 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NUMBER 107292 TO GATEWAY IV JOINT VENTURE, AN ILLINOIS GENERAL PARTNERSHIP, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107361, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107362, AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107363 FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER, AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

LOTS 5, 6, 7, AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT DATED FEBRUARY 9, 1990, AND RECORDED OCTOBER 9, 1990, AS DOCUMENT NUMBER 90491486.

LEASEHOLD ESTATES 'A' AND 'B' ARE ALSO KNOWN AS:

PARTS OF LOTS 1 AND 2, RAILROAD COMPANIES RESUBDIVISION OF BLOCKS 62 TO 76 INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, CITY OF CHICAGO, COOK COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 3 DEGREES 44 MINUTES 12 SECONDS WEST, 199.495 FEET; THENCE SOUTH 2 DEGREES 03 MINUTES 08 SECONDS WEST, 199.23 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 40 SECONDS WEST, 218.865 FEET; THENCE NORTH 0 DEGREES 0 MINUTES 0 SECONDS EAST, 398.19 FEET; THENCE SOUTH 89 DEGREES 37 MINUTES 30 SECONDS EAST 239 FEET TO THE POINT OF BEGINNING.

THE LAND REFERRED TO IN THIS POLICY IS ALSO DESCRIBED AS FOLLOWS:

LEGAL DESCRIPTION OF LEASEHOLD ESTATE 'A'

TWO CERTAIN PARCELS OF LAND IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL 1:

A PART OF LOTS 1 AND 2 IN RAILROAD COMPANIES RESUBDIVISION OF BLOCKS 62 TO 76 BOTH INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON MARCH 29, 1924 IN BOOK 188 OF PLATS AT PAGE 16 AS DOCUMENT NUMBER 8339751, SAID PARTS OF LOTS 1 AND 2 BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE SOUTHWARDLY ALONG THE EASTERLY LINE OF SAID LOT 1 A DISTANCE OF 199.495 FEET TO AN ANGLE POINT IN SAID EASTERLY

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

LOT LINE; THENCE CONTINUING SOUTHWARDLY ALONG SAID EASTERLY LINE A DISTANCE OF 199.23 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1 AND OF SAID LOT 2 A DISTANCE OF 218.865 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE WEST 20 FEET OF SAID LOT 2; THENCE NORTH ALONG SAID EAST LINE OF THE WEST 20 FEET OF SAID LOT 2 A DISTANCE OF 398.19 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF SAID LOT 2, AND THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 AND OF SAID LOT 1 A DISTANCE OF 239 FEET TO THE POINT OF BEGINNING EXCEPTING FROM THE PARCEL OF LAND ABOVE DESCRIBED, THE RESPECTIVE PORTIONS THEREOF LYING VERTICALLY BELOW THE FOLLOWING HORIZONTAL PLANES:

(A) A HORIZONTAL PLANE 18.5 FEET ABOVE CHICAGO CITY DATUM, THE PERIMETER OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL AND RUNNING THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE INTERSECTION OF SAID NORTH LINE AND A LINE (THE "LIMITING PLANE LINE") 168 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL; THENCE SOUTHWARDLY ALONG THE LIMITING PLANE LINE TO THE INTERSECTION OF SAID LINE AND THE SOUTH LINE OF SAID PARCEL; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PARCEL TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL, WHICH IS THE POINT OF BEGINNING OF SAID HORIZONTAL PLANE; AND

(B) A HORIZONTAL PLANE 21.0 FEET ABOVE CHICAGO CITY DATUM OVER THAT PORTION OF SAID PARCEL WHICH IS NOT VERTICALLY BELOW THE HORIZONTAL PLANE DESCRIBED IN CLAUSE (A) ABOVE.

PARCEL 2:

ALL LAND AND SPACES BELOW THE HORIZONTAL PLANES DESCRIBED IN PARCEL 1 ABOVE WHICH ARE OCCUPIED BY THE COLUMNS, CAISSONS, FOUNDATIONS, GUSSETS AND ALL OTHER SUPPORTING STRUCTURES, IMPROVEMENTS, PLENUMS, MECHANICAL AND ELECTRICAL EQUIPMENT, PIPES, WIRES, CONDUITS, UTILITIES AND OTHER STRUCTURES AND EQUIPMENT THEN LOCATED IN THE EXCEPTED SPACE IN CONNECTION WITH THE BUILDING AND IMPROVEMENTS CONSTRUCTED IN PARCEL 1 PURSUANT TO THE LEASE DESCRIBED IN SCHEDULE A, AND BY ALL OTHER IMPROVEMENTS, PLENUMS, MECHANICAL AND ELECTRICAL EQUIPMENT, PIPES, WIRES, CONDUITS, UTILITIES AND OTHER STRUCTURES LOCATED BELOW SAID HORIZONTAL PLANES IN CONNECTION WITH SAID BUILDING AND IMPROVEMENTS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1, CREATED BY INSTRUMENT MADE BY CHICAGO UNION STATION COMPANY, AND OTHERS, TO TISHMAN-GATEWAY, INC. AND LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 5, 1963 KNOWN AS TRUST NUMBER 31511, DATED JUNE 21, 1966 AND RECORDED JULY 12, 1966 AS DOCUMENT

LEGAL.D

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104 -006-0000

LEGAL DESCRIPTION:

19881999, TO CONSTRUCT, USE, MAINTAIN, REPAIR, REPLACE AND RENEW COLUMNS, CAISSONS, FOUNDATIONS AND OTHER SUPPORTS BELOW THE EASEMENT FOR STREET PURPOSES GRANTED TO THE CITY OF CHICAGO BY DEED RECORDED SEPTEMBER 23, 1914 AS DOCUMENT 5499205 AND THE GRADE ELEVATION OF WHICH IS SET FORTH IN THE ORDINANCE PASSED MARCH 23, 1914 AND RECORDED AS DOCUMENT 5507199 PURSUANT TO WHICH SAID DEED WAS GIVEN OVER AND ACROSS THE FOLLOWING DESCRIBED LAND:

THE WEST 20 FEET OF LOT 2 (EXCEPT THE SOUTH 33 FEET THEREOF) IN RAILROAD COMPANIES RESUBDIVISION AFORESAID OF BLOCKS 62 TO 76 INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, AFORESAID IN COOK COUNTY, ILLINOIS.

PARCEL 4:

A NONEXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF THE LEASEHOLD INTEREST IN PARCELS 1 AND 2 AS CREATED BY DEED OF EASEMENT DATED JANUARY 16, 1990 AND RECORDED JANUARY 31, 1990 AS DOCUMENT 90047309 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NUMBER 107292 TO GATEWAY IV JOINT VENTURE, AN ILLINOIS GENERAL PARTNERSHIP, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107361, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107362, AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107363 FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER, AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LOTS 5, 6, 7, AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT DATED FEBRUARY 9, 1990, AND RECORDED OCTOBER 9, 1990, AS DOCUMENT NUMBER 90491486.

LEGAL DESCRIPTION FOR LEASEHOLD ESTATE 'B'

TWO CERTAIN PARCELS OF LAND IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PART OF LOT 2 IN RAILROAD COMPANIES' RESUBDIVISION OF BLOCKS 62 TO 76 BOTH

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

INCLUSIVE, 78 PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON MARCH 29, 1924 IN BOOK 188 OF PLATS AT PAGE 16 AS DOCUMENT NUMBER 8339751, SAID PARTS OF LOTS 1 AND 2 IN SAID RAILROAD COMPANIES' RESUBDIVISION WHICH IS BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE SOUTHWARDLY ALONG THE EASTERLY LINE OF SAID LOT 1 A DISTANCE OF 199.495 FEET TO AN ANGLE POINT IN SAID EASTERLY LOT LINE; THENCE CONTINUING SOUTHWARDLY ALONG SAID EASTERLY LINE A DISTANCE OF 199.23 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1 AND OF SAID LOT 2 A DISTANCE OF 218.865 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE WEST 20 FEET OF SAID LOT 2; THENCE NORTH ALONG SAID EAST LINE OF THE WEST 20 FEET OF SAID LOT 2 A DISTANCE OF 398.19 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF SAID LOT 2; AND THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 AND OF SAID LOT 1 A DISTANCE OF 239 FEET TO THE POINT OF BEGINNING EXCEPTING FROM THE PARCEL OF LAND ABOVE DESCRIBED THE RESPECTIVE PORTIONS THEREOF LYING VERTICALLY BELOW THE FOLLOWING HORIZONTAL PLANES:

(A) A HORIZONTAL PLANE 18.5 FEET ABOVE CHICAGO CITY DATUM, THE PERIMETER OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL AND RUNNING THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE INTERSECTION OF SAID NORTH LINE AND A LINE (THE "LIMITING PLANE LINE") 168 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL; THENCE SOUTHWARDLY ALONG THE LIMITING PLANE LINE TO THE INTERSECTION OF SAID LINE AND THE SOUTH LINE OF SAID PARCEL; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PARCEL TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL, WHICH IS THE POINT OF BEGINNING OF SAID HORIZONTAL PLANE; AND

(B) A HORIZONTAL PLANE 21.0 FEET ABOVE CHICAGO CITY DATUM OVER THE PORTION OF SAID PARCEL WHICH IS NOT VERTICALLY BELOW THE HORIZONTAL PLANE DESCRIBED IN CLAUSE (A) ABOVE.

PARCEL 2:

ALL LAND AND SPACES BELOW THE HORIZONTAL PLANES DESCRIBED IN PARCEL 1 ABOVE WHICH ARE OCCUPIED BY THE COLUMNS, CAISSONS, FOUNDATIONS, GUSSETS AND ALL OTHER SUPPORTING STRUCTURES FOR THE BUILDING AND IMPROVEMENTS CONSTRUCTED IN PARCEL 1, AND BY ALL OTHER IMPROVEMENTS, PLENUMS, MECHANICAL AND ELECTRICAL EQUIPMENT, PIPES, WIRES, CONDUITS, UTILITIES AND OTHER STRUCTURES LOCATED BELOW SAID HORIZONTAL PLANES IN CONNECTION WITH SAID BUILDING AND IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO, THE SPACE OCCUPIED BY THE IMPROVEMENTS AND STRUCTURES SHOWN

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

ON THE PLAT OF SURVEY PREPARED AND CERTIFIED BY CHICAGO GUARANTEE SURVEY COMPANY, DATED JULY 8, 1966 (CONSISTING OF THREE SHEETS IDENTIFIED AS ORDER NOS. 6311001K AND 6311001S AND 6311001N, RESPECTIVELY), WHICH WAS RECORDED AS PART OF DOCUMENT 19881993

PARCEL 3:

AN EASEMENT APPURTENANT TO PARCELS 1 AND 2 IN, OVER AND ACROSS THE WEST 20 FEET OF SAID LOT 2 IN SAID RAILROAD COMPANIES' RE SUBDIVISION TO CONSTRUCT, USE, MAINTAIN, REPAIR, REPLACE OR REMOVE FROM TIME TO TIME SUCH COLUMNS, GUSSETS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, CAISSONS, FOUNDATIONS AND OTHER SUPPORTS AS MAY BE REASONABLY NECESSARY OR APPROPRIATE TO MAINTAIN AND SUPPORT THE PLAZA AND OTHER IMPROVEMENTS CONTEMPLATED BY THE LEASE, INCLUDING, WITHOUT LIMITATION, THE COLUMNS (DESIGNATED 'DE') AND THE CAISSONS, FOUNDATIONS AND RELATED STRUCTURES SHOWN ON THE PLAT OF SURVEY REFERRED TO IN PARCEL 2 ABOVE.

PARCEL 4:

A NONEXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF THE LEASEHOLD INTEREST IN PARCELS 1 AND 2 AS CREATED BY DEED OF EASEMENT DATED JANUARY 16, 1990 AND RECORDED JANUARY 31, 1990 AS DOCUMENT 90047309 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NUMBER 107292 TO GATEWAY IV JOINT VENTURE, AN ILLINOIS GENERAL PARTNERSHIP, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107361, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107362, AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107363 FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER, AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LOTS 5, 6, 7, AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AS AMENDED BY FIRST AMENDMENT TO DEED OF EASEMENT DATED FEBRUARY 9, 1990, AND RECORDED OCTOBER 9, 1990, AS DOCUMENT NUMBER 90491486.

LEASEHOLD ESTATES 'A' AND 'B' ARE ALSO KNOWN AS:

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

PARTS OF LOTS 1 AND 2, RAILROAD COMPANIES RE SUBDIVISION OF BLOCKS 62 TO 76 INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, CITY OF CHICAGO, COOK COUNTY, ILLINOIS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 3 DEGREES 44 MINUTES 12 SECONDS WEST, 199.495 FEET; THENCE SOUTH 2 DEGREES 03 MINUTES 08 SECONDS WEST, 199.23 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 40 SECONDS WEST, 218.865 FEET; THENCE NORTH 0 DEGREES 0 MINUTES 0 SECONDS EAST, 398.19 FEET; THENCE SOUTH 89 DEGREES 37 MINUTES 38 SECONDS EAST 239 FEET TO THE POINT OF BEGINNING.

UNOFFICIAL COPY

EXHIBIT B Special Illinois Provisions

The following provisions are incorporated by reference into Section 6.19 of the attached Security Instrument. If any conflict or inconsistency exists between this Exhibit B and the remainder of the attached Security Instrument, this Exhibit B shall govern.

(a) Protective Advances. Without limitation on anything contained in this Security Instrument, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances by Lender in accordance with the terms of this Security Instrument to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(ii) payments by Lender of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

(iv) attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Security Instrument as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Security Instrument or arising from the interest of Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

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

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

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a

UNOFFICIAL COPY

condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member if in any way affecting the Property; (G) costs incurred by Lender for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Property.

All Protective Advances shall be so much additional Indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Loan Agreement. This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Security Instrument at any time; (B) the amount of the Indebtedness found due and owing to Lender in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Security Instrument, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

(b) Waiver of Right of Redemption and Reinstatement. Without limiting the generality of Section 3.5(c) of this Security Instrument, the waiver by Debtor of its rights of redemption and reinstatement in such Section, include the waiver of such rights as provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

(c) Business Loan Recital/Statutory Exemption. (i) Debtor acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (B) the Indebtedness secured hereby has been incurred by Debtor solely for business purposes of Debtor and for Debtor's investment or profit, as contemplated by said

10481880

UNOFFICIAL COPY

Section 4; (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Debtor and for Debtor's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Debtor acknowledges and agrees that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)).

(d) Maximum Principal Amount. This Security Instrument shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Security Instrument also secures any and all future obligations and Indebtedness arising under or in connection with this Security Instrument, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Security Instrument shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Security Instrument shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Debtor under the terms of this Security Instrument; provided, however, that at no time shall the principal amount of the indebtedness secured by this Security Instrument not including sums advanced in accordance herewith to protect the security of this Security Instrument (e.g., any disbursements for the payment of taxes or insurance), exceed \$1,440,000,000 plus interest thereon.

(e) Illinois Mortgage Foreclosure Act. It is the express intention of Lender and Debtor that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Security Instrument shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Security Instrument is deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act.

(f) Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Debtor is hereby notified as follows:

Unless the Debtor provides Lender with evidence of the insurance coverage required by this Security Instrument, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Debtor's expense to protect Lender's interest in the Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Debtor's interests. The coverage Lender purchases may not pay any claim that Debtor makes or any claim that is made against Debtor in connection with the Property or any other collateral for the Indebtedness or Obligations. Debtor may later cancel any insurance purchased by Lender but only after providing

UNOFFICIAL COPY

Lender with evidence that Debtor has obtained insurance as required by this Security Instrument, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Property or any other collateral for the Indebtedness or Obligations, Debtor will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connect with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Debtor may be able to obtain on its own.

(g) Illinois Responsible Property Transfer Act. No portion of the Property is subject to the disclosure requirements of the Illinois Responsible Property Transfer Act of 1988, 765 ILCS 90/1 et seq., as supplemented, amended and restated from time to time ("IRPTA") or if the Property is subject to IRPTA then Debtor has complied with IRPTA. Debtor shall, and hereby agrees to indemnify Lender for, and to hold Lender harmless from and against, any and all claims, liability, expenses, losses or damages which may or might be asserted against or incurred by Lender, as the case may be, by reason of Debtor's failure to timely comply with IRPTA.

(h) Sealed Instrument. Debtor intends for this Security Instrument to be executed and delivered by Debtor, and accepted by Lender, as a sealed instrument.

(i) Maturity Date. The maturity date of the Obligations secured hereby is no later than May 2011.

UNOFFICIAL COPY

EXHIBIT C

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104-006-0000

LEGAL DESCRIPTION:

LEGAL DESCRIPTION OF LEASEHOLD ESTATE 'A'

TWO CERTAIN PARCELS OF LAND IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL 1:

A PART OF LOTS 1 AND 2 IN RAILROAD COMPANIES RESUBDIVISION OF BLOCKS 62 TO 76 BOTH INCLUSIVE, 78, PARTS OF 61 AND 77 AND CERTAIN VACATED STREETS AND ALLEYS IN SCHOOL SECTION ADDITION TO CHICAGO, A SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON MARCH 29, 1924 IN BOOK 188 OF PLATS AT PAGE 16 AS DOCUMENT NUMBER 8339751, SAID PARTS OF LOTS 1 AND 2 BEING BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1 AND RUNNING THENCE SOUTHWARDLY ALONG THE EASTERLY LINE OF SAID LOT 1 A DISTANCE OF 199.495 FEET TO AN ANGLE POINT IN SAID EASTERLY LOT LINE; THENCE CONTINUING SOUTHWARDLY ALONG SAID EASTERLY LINE A DISTANCE OF 199.23 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1; THENCE WEST ALONG THE NORTH LINE OF THE SOUTH 33 FEET OF SAID LOT 1 AND OF SAID LOT 2 A DISTANCE OF 218.865 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE WEST 20 FEET OF SAID LOT 2; THENCE NORTH ALONG SAID EAST LINE OF THE WEST 20 FEET OF SAID LOT 2 A DISTANCE OF 398.19 FEET TO ITS INTERSECTION WITH THE NORTH LINE OF SAID LOT 2, AND THENCE EAST ALONG THE NORTH LINE OF SAID LOT 2 AND OF SAID LOT 1 A DISTANCE OF 239 FEET TO THE POINT OF BEGINNING EXCEPTING FROM THE PARCEL OF LAND ABOVE DESCRIBED, THE RESPECTIVE PORTIONS THEREOF LYING VERTICALLY BELOW THE FOLLOWING HORIZONTAL PLANES:

(A) A HORIZONTAL PLANE 18.5 FEET ABOVE CHICAGO CITY DATUM, THE PERIMETER OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL AND RUNNING THENCE EASTERLY ALONG THE NORTH LINE OF SAID PARCEL TO THE INTERSECTION OF SAID NORTH LINE AND A LINE (THE "LIMITING PLANE LINE") 168 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL; THENCE SOUTHWARDLY ALONG THE LIMITING PLANE LINE TO THE INTERSECTION OF SAID LINE AND THE SOUTH LINE OF SAID PARCEL; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PARCEL TO THE SOUTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL, WHICH IS THE POINT OF BEGINNING OF SAID HORIZONTAL PLANE; AND

(B) A HORIZONTAL PLANE 21.0 FEET ABOVE CHICAGO CITY DATUM OVER THAT PORTION OF SAID PARCEL WHICH IS NOT VERTICALLY BELOW THE HORIZONTAL PLANE DESCRIBED IN CLAUSE (A) ABOVE.

PARCEL 2:

LEGALD

10481880

UNOFFICIAL COPY

ORDER NUMBER: 1401 007914038 D2
STREET ADDRESS: 10 S. RIVERSIDE PLAZA
CITY: CHICAGO COUNTY: COOK
TAX NUMBER: 17-16-104 -006-0000

LEGAL DESCRIPTION:

ALL LAND AND SPACES BELOW THE HORIZONTAL PLANES DESCRIBED IN PARCEL 1 ABOVE WHICH ARE OCCUPIED BY THE COLUMNS, CAISSONS, FOUNDATIONS, GUSSETS AND ALL OTHER SUPPORTING STRUCTURES, FOR THE BUILDING AND IMPROVEMENTS CONSTRUCTED IN PARCEL 1 AND BY ALL OTHER IMPROVEMENTS, PLENUMS, MECHANICAL AND ELECTRICAL EQUIPMENT, PIPES, WIRES, CONDUITS, UTILITIES AND OTHER STRUCTURES LOCATED BELOW SAID HORIZONTAL PLANES IN CONNECTION WITH SAID BUILDING AND IMPROVEMENTS, INCLUDING, BUT NOT LIMITED TO THE SPACE OCCUPIED BY THE IMPROVEMENTS AND STRUCTURES SHOWN ON THE PLAT OF SURVEY PREPARED AND CERTIFIED BY CHICAGO GUARANTEE SURVEY COMPANY DATED JULY 8, 1966 (CONSISTING OF THREE SHEETS IDENTIFIED AS ORDER NOS. 6311001 K AND 6311001-S AND 6311001 N RESPECTIVELY), WHICH WAS RECORDED AS PART OF DOCUMENT 19881999.

PARCEL 3:

AN EASEMENT APPURTENANT TO PARCELS 1 AND 2 IN, OVER AND ACROSS THE WEST 20 FEET OF LOT 2 IN SAID RAILROAD COMPANIES' RESUBDIVISION TO CONSTRUCT, USE, MAINTAIN, REPAIR, REPLACE OR RENEW FROM TIME TO TIME SUCH COLUMNS, GUSSETS, TRUSSES, HORIZONTAL STRUCTURAL MEMBERS, CAISSONS, FOUNDATIONS AND OTHER SUPPORTS AS MAY BE REASONABLY NECESSARY OR APPROPRIATE TO MAINTAIN AND SUPPORT THE PLAZA AND OTHER IMPROVEMENTS CONTEMPLATED BY THE LEASE, INCLUDING, WITHOUT LIMITATION, THE COLUMNS (DESIGNATED 'DD') AND THE CAISSONS, FOUNDATIONS AND RELATED STRUCTURES SHOWN ON THE PLAT OF SURVEY REFERRED TO IN PARCEL 2 ABOVE.

PARCEL 4:

A NONEXCLUSIVE APPURTENANT EASEMENT IN FAVOR OF THE LEASEHOLD INTEREST IN PARCELS 1 AND 2 AS CREATED BY DEED OF EASEMENT DATED JANUARY 16, 1990 AND RECORDED JANUARY 31, 1990 AS DOCUMENT 90047309 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 17, 1983 AND KNOWN AS TRUST NUMBER 107292 TO GATEWAY IV JOINT VENTURE, AN ILLINOIS GENERAL PARTNERSHIP, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107361, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107362, AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1983 AND KNOWN AS TRUST NUMBER 107363 FOR THE USE OF 1,100 PUBLIC PARKING SPACES IN THE GARAGE, AS DEFINED THEREIN, WITH RIGHTS OF INGRESS AND EGRESS AND AN EASEMENT FOR THE PURPOSE OF CONSTRUCTION OF SUCH REPAIRS OR RESTORATION FOR THE PERIOD REQUIRED TO COMPLETE SUCH REPAIRS OR RESTORATION ON, OVER, AND ACROSS THE FOLLOWING DESCRIBED LEGAL DESCRIPTION:

LOTS 5, 6, 7, AND 8 (EXCEPT FROM SAID LOTS THAT PART FALLING IN ALLEY) IN BLOCK 49 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LEGALD

10481880

UNOFFICIAL COPY

Exhibit C

Pledged Leases

[10 S. Riverside]

That certain Lease dated as of September 3, 1963, recorded in the Office of Recorder of Deeds of Cook County, Illinois ("Recorder's Office"), on September 18, 1963 as Document Number 19817214, as supplemented by Supplement to Lease dated as of June 21, 1966 and recorded July 12, 1966 in the Recorder's Office as Document Number 19981999, as further supplemented by Second supplement to Lease dated as of November 29, 1977 and recorded November 30, 1977 in the Recorder's Office as Document Numbers 24217073, 24217074 and 24217075, as further supplemented by Third Supplement to Lease dated as of March 21, 1989 and recorded April 19, 1989 in the Recorder's Office as Document 89173332, and further supplemented by letter agreement dated March 21, 1989 with respect to the Third Supplement to Lease, as assigned to H, B-H Associates, a California limited partnership, by Assignment and Assumption of Lease recorded on December 18, 1998 in the Recorder's Office as Document Number 08153308, and as further assigned to TrizecHahn Regional Pooling LLC, a Delaware limited liability company, by Assignment and Assumption of Lease dated May 17, 2001 and recorded on _____, 2001 in the Recorder's Office as Document Number _____.

That certain Master Lease dated as of April 19, 1989, recorded on April 19, 1989 in the Recorder's Office as Document Number 8917338, executed by Chicago Union Station Company, as clarified by those two letter agreement dated April 19, 1989, and as assigned to H, B-H Associations, a California limited partnership, by Assignment and Assumption of Leases dated as of December ____, 1998, recorded in the Recorder's Office on December 18, 1998 as Document Number 08153306, and as further assigned to TrizecHahn Regional Pooling LLC, a Delaware limited liability company, by Assignment and Assumption of Lease dated May 17, 2001 and recorded on _____, 2001 in the Recorder's Office as Document Number

10481879