

UNOFFICIAL COPY

0010924791

8093/0221 45 001 Page 1 of 24

2001-10-04 12:46:54

Cook County Recorder

67.00



This instrument was prepared by  
and after recording return to:

Derek F. Ladgenski  
Katten Muchin Zavis  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661-3693

SPACE ABOVE THIS LINE FOR RECORDER'S USE.

**THIS MORTGAGE SECURES FUTURE ADVANCES**

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

This LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of this 28th day of September, 2001, between BELL & HOWELL MAIL AND MESSAGING TECHNOLOGIES COMPANY, a Delaware corporation ("**Mortgagor**"), whose primary address is 3501 B Tri Center Boulevard, Durham, North Carolina 27713, and HELLER FINANCIAL, INC., a Delaware corporation, whose address is 500 West Monroe, Chicago, Illinois 60661, in its capacity as agent (in such capacity, "**Mortgagee**") for all Lenders (as such term is defined in the Credit Agreement described below).

**RECITALS**

A. Lenders have agreed, subject to the terms and conditions of that certain Credit Agreement dated as of even date herewith, by and among BH Acquisition, Inc., a Delaware corporation ("**Borrower**"), Lenders and Mortgagee (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), to make certain revolving loans (the "**Revolving Loans**") and certain term loans (the "**Term Loans**") in an aggregate principal amount not to exceed \$110,000,000 to Borrower. The Loans are evidenced by Revolving Notes dated as of even date herewith in the original aggregate principal amount of \$40,000,000 made by Borrower (which notes, together with all notes issued in substitution or exchange therefor and all amendments thereto, are hereinafter referred to as the "**Revolving Notes**"), Term A Notes dated as of even date herewith in the original aggregate principal amount of \$40,000,000 made by Borrower (which notes, together with all notes issued in substitution or exchange therefor and all amendments thereto, are hereinafter referred to as the "**Term A Notes**"), and Term B Notes dated as of even date herewith in the original aggregate principal amount of \$30,000,000 made by Borrower (which notes, together with all notes issued in substitution or exchange therefor and all amendments thereto, are hereinafter referred to as the

Commercial Sales A60187653 C. Hughes

24

# UNOFFICIAL COPY

**"Term B Notes"**) (the Revolving Notes, the Term A Notes and the Term B Notes, together with all notes issued in substitution or exchange therefor and all amendments thereto, are referred to herein collectively as the **"Notes"**). The Notes provide for certain payments as set forth therein and in the Credit Agreement with none of the Notes becoming due and payable on a date later than September 30, 2007. Capitalized terms used but not defined herein shall have the same meanings herein as such terms have in the Credit Agreement.

B. Mortgagor acknowledges that, as a wholly owned Subsidiary of Borrower, it will receive substantial direct and indirect benefits by reason of the making of the Loans to Borrower as provided in the Credit Agreement and Mortgagor has agreed to guarantee the punctual payment and performance when due of the Obligations incurred by Borrower under the Credit Agreement pursuant to that certain Subsidiary Guaranty of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the **"Subsidiary Guaranty"**) by Guarantor.

C. Mortgagee and Lenders wish to secure: (i) the guaranty by Mortgagor of prompt payment of the Notes, together with all interest, and other amounts, if any, due in accordance with the terms of the Notes, as well as the prompt payment of all **"Obligations"** (as such term is defined in the Credit Agreement) and any additional indebtedness of Mortgagor accruing to Lenders and Mortgagee on account of any future payments, advances or expenditures made by Lenders and Mortgagee pursuant to the Notes, the Credit Agreement, this Mortgage or any other Loan Document; (ii) the prompt performance of each and every covenant, condition, and agreement of Mortgagor contained in the Loan Documents; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Mortgagor to Lenders or Mortgagee in connection with the transactions contemplated by the Credit Agreement. All obligations, liabilities and indebtedness of every nature of Mortgagor to Lenders and Mortgagee are hereinafter sometimes collectively referred to as the **"Obligations"**.

D. Inasmuch as the Credit Agreement provides for advances to be made in the future (**"Future Advances"**), this Mortgage is given to, and shall, secure not only existing indebtedness, but also the guaranty of payment of any and all Future Advances, whether such Future Advances are obligatory or are to be made at the option of Lenders, or otherwise, which are to be made within ten (10) years from the date of the execution of this Mortgage. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed two (2) times the aggregate principal amount of the Notes, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Property (as hereinafter defined), if any, together with interest on such disbursements.

E. Without limiting the continuing nature of this Mortgage, (a) neither the fact that the principal amount of the Revolving Loans may be reduced to zero from time to time, nor the fact that there may be periodic repayments and reborrowings by Borrower of the Revolving Loans, shall affect the continuing validity of this Mortgage, and that the aggregate amount of Revolving Loans shall be increased after any and each reduction in the principal balance, even if such reduction is to zero, and the lien of all subsequent Revolving Loans shall relate back to and have lien priority from the date of this Mortgage, and (b) termination of the Borrower's right to

# UNOFFICIAL COPY

reborrow under the Revolving Loan Commitment or the payment of any particular Revolving Loan shall not terminate this Mortgage, which shall remain in full force and effect until the termination of the Credit Agreement and the full and complete performance and indefeasible satisfaction of all the Obligations (regardless of whether the Credit Agreement shall have earlier terminated).

NOW, THEREFORE, IN CONSIDERATION OF LENDERS MAKING THE LOANS AND TO SECURE the prompt payment and performance of all Obligations of Mortgagor to Lenders and Mortgagee under the Credit Agreement and other Loan Documents to which Mortgagor is a party, including all liabilities, obligations and indebtedness of Mortgagor under this Mortgage, Mortgagor has executed this Mortgage and does hereby mortgage, convey, assign, warrant, transfer, pledge and grant to Mortgagee, and hereby agrees that Mortgagee shall have a security interest in, for the benefit of Lenders, all of Mortgagor's right, title and interest in the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "**Property**"):

A. All of Mortgagor's leasehold estate created under each of those certain Building Leases dated December 28, 1999 between Centerpoint Properties Trust, a Maryland real estate investment trust ("**Lessor**") and Mortgagor (said leases as heretofore amended together with any future modifications, amendments, additions, assignments and supplements thereto, and substitutions, extensions, renewals or replacements thereof is hereinafter referred to individually as a "**Lease**" and collectively as the "**Leases**"), demising the real estate described on Exhibit A attached hereto and the improvements thereon (the "**Land**") together with all options to renew, extend or purchase (including rights of first refusal), if any, now or hereafter contained in each Lease, and the benefits of all covenants contained in each Lease, whether running with the land or otherwise;

B. All of the following (collectively, the "**Improvements**"): all buildings, improvements and fixtures of every kind or nature situated on the Land; all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;

C. All easements, servitudes, rights-of-way, water courses, mineral rights, water rights, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto ("**Appurtenances**");

D. All agreements for the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into (the "**Subleases**") and all rents, prepayments, termination payments, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing under each Sublease or otherwise (the "**Rents**"), reserving to Mortgagor, however, so long as no "Event of Default" (hereinafter defined) has occurred and shall be continuing, a revocable license to receive and apply the Rents in accordance with the terms and conditions of Section 9 of this Mortgage;

# UNOFFICIAL COPY

E. To the extent assignable, Mortgagor's interest in all claims, demands, judgments, insurance proceeds, tax refunds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from or relating to (i) the taking of the Land or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof, or (iii) the ownership or operation of the Property;

F. All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or any other property of the types described in the preceding granting clauses; and

G. Any and all after-acquired right, title or interest of Mortgagor in and to any property of the types described in the preceding granting clauses.

TO HAVE AND TO HOLD the Property and all parts thereof together with the rents, issues, profits and proceeds thereof, unto Mortgagee, to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

Mortgagor covenants and agrees with each Lender and Mortgagee as follows:

**1. Performance of Obligations.**

Mortgagor shall promptly pay and perform when due all the Obligations.

**2. Taxes and Other Obligations.**

If required by the Leases, Mortgagor shall pay, when due, and before any material interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges that have heretofore been, or may hereafter be, imposed, levied or assessed upon, or against, the Property, or any part thereof, subject, however, to Mortgagor's right to contest the amount or validity thereof, subject to and in accordance with, the terms and conditions set forth in the Leases, if any.

**3. Use of Property.**

Unless required by applicable law, Mortgagor shall not permit material changes in the use of any part of the Property from the use existing at the time this Mortgage was executed without the Mortgagee's prior written consent, which shall not be unreasonably withheld. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent, which consent shall not be unreasonably withheld.

## 4. Insurance and Condemnation.

### (a) Insurance.

(i) If required by the Leases, Mortgagor shall keep the Improvements insured, and shall maintain general liability and other insurance coverage, all in such amounts and as is otherwise required by the Credit Agreement.

(ii) In case of loss or damage by fire or other casualty, Mortgagor shall give immediate written notice thereof to the insurance carrier(s) and to Mortgagee. Mortgagee is authorized and empowered, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact (such appointment is coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim in excess of \$250,000 under Mortgagor's insurance policies which insure against such risks, or to direct Mortgagor, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss. In such event, Mortgagor's insurance proceeds are hereby assigned as security to Mortgagee.

### (b) Condemnation.

Mortgagor shall within three (3) business days of its receipt of notice thereof, notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Mortgagor shall, after consultation with Mortgagee, appear in and prosecute any such action or proceeding. Upon Mortgagor's failure to act, Mortgagor authorizes Mortgagee, at Mortgagee's option and upon notice to Mortgagor, as attorney-in-fact for Mortgagor (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. Mortgagor's interest in the proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee and applied in accordance with the Credit Agreement. Mortgagee is authorized (but is under no obligation) to collect any such proceeds.

## 5. Preservation and Maintenance of Property.

Mortgagor shall: (a) not commit waste or permit impairment or deterioration of the Property, subject to ordinary wear and tear and damage by condemnation, fire or other casualty; (b) not abandon the Property; (c) keep the Property in good repair and restore or repair promptly, in a good and workmanlike manner, all or any part of the Property to the equivalent of its condition as of the date hereof, subject to ordinary wear and tear, or such other condition as Mortgagee may approve in writing, upon any damage or loss thereto; (d) comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property; and (e) give notice in writing to Mortgagee of and, unless otherwise directed in writing by Mortgagee, appear in and defend any action or proceeding purporting to affect the Property, the security granted by the Loan Documents or the rights or powers of Lenders or Mortgagee hereunder.



## 6. Protection of Security.

If (a) Mortgagor fails to pay or perform the Obligations, or (b) any action or proceeding is commenced which adversely affects or would reasonably be expected to adversely affect the Property or any Lender's or Mortgagee's interest therein, including any loss, damage, cost, expense or liability incurred by any Lender or Mortgagee with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property, then Mortgagee, at its option and upon notice to Mortgagor, may make such appearances, disburse such sums and take such action as it deems reasonably necessary, to protect the Property or any Lender's or Mortgagee's interest therein, including entry upon the Property to take such actions it reasonably determines appropriate to preserve, protect or restore the Property. Any amounts disbursed pursuant to this Section 6 (including reasonable attorneys' fees, costs and expenses), together with interest thereon at the default rate of interest specified in the Credit Agreement (the "**Default Rate**") from the date of disbursement, shall become additional indebtedness of Mortgagor secured by the lien of this Mortgage and shall be due and payable on demand. Nothing contained in this Section 6 shall require Mortgagee to incur any expense or take any action hereunder.

## 7. Inspection.

Mortgagee and its authorized agents may make or cause to be made reasonable entries upon and inspections of the Property in accordance with the terms and provisions of the Credit Agreement.

## 8. Covenants.

(a) Mortgagor hereby represents and warrants unto each Lender and Mortgagee that, at the time of the execution, delivery and recordation of this Mortgage, Mortgagor owns good and marketable title to, and is well seized of, a valid and subsisting leasehold estate in that portion of the Property that constitutes real property and has good and marketable title to that portion of the Property that constitutes personal property, in each instance free from all liens, encumbrances, charges and other claims whatsoever, except for Permitted Encumbrances, and that the lien created on the Property by this Mortgage is a first, paramount and prior lien on said real property, subject only to Permitted Encumbrances.

(b) Mortgagor shall and will forever warrant and defend the title to the Property against the claims of any and all persons and entities whatsoever, other than the Permitted Encumbrances. Mortgagor shall not do or permit, cause or suffer to be done to, or omit to do, or permit the omission of, in, upon or about said Property, or any part thereof, anything that may in any way impair the validity, priority and/or enforceability of this Mortgage.

(c) If at any time Mortgagor, anyone claiming by, through or under Mortgagor, or a trustee in bankruptcy shall have the right to reject either Lease pursuant to Section 365(a) of Title 11 of the United States Code (the "**Bankruptcy Code**"), or a successor statute, then Mortgagee shall have the exclusive right to exercise said right and Mortgagor hereby assigns said right to

# UNOFFICIAL COPY

Mortgagee. If at any time Lessor, anyone holding by, through or under Lessor under either Lease, or a trustee in bankruptcy shall elect to reject either Lease pursuant to Section 365(a) of the Bankruptcy Code, or successor statute, thereby giving Mortgagor the right to elect either (i) to treat either Lease as terminated, or (ii) to retain its rights under either Lease (including but not limited to rights such as those relating to the amount and timing of payment of rent and other amounts payable by Mortgagor and any right of use, possession, quiet enjoyment, subletting, assignment or hypothecation) that are in or appurtenant to the Land for the balance of the term of either Lease and any extension or renewal thereof, pursuant to Section 365(h)(1)(A) of the Bankruptcy Code, or successor statute, then Mortgagee shall have the exclusive right to exercise said right and Mortgagor hereby assigns said right to Mortgagee. If the assignments provided for in this Section are held to be unenforceable, then Mortgagor, anyone claiming by, through or under Mortgagor, or a trustee in bankruptcy shall not exercise rights purportedly assigned to Mortgagee hereunder without the prior consent of Mortgagee and if Mortgagee shall give such consent, then Mortgagor, anyone claiming by, through or under Mortgagor, or a trustee in bankruptcy shall promptly exercise any of said rights.

(d) Notwithstanding any provision herein contained to the contrary, if the holder of the leasehold estate under either Lease acquires fee title to the real estate covered by either Lease, the fee title and leasehold estate shall not merge but rather shall remain separate and distinct estates.

(e) Mortgagor further covenants with and represents and warrants to each Lender and Mortgagee as follows:

(i) Mortgagor has a good and valid leasehold interest to the estate created by each Lease, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levies, taxes, liens and all other types of encumbrances other than the Permitted Encumbrances;

(ii) There does not exist nor will Mortgagor suffer to occur any default under either Lease, whether waived or not;

(iii) Mortgagor knows of no reason why either Lease is not valid, binding and enforceable against Lessor, no notice of default or termination by Lessor has been given which remains uncured, and each Lease is in full force and effect as of the date hereof. All of the covenants and obligations to be performed by the tenant under each Lease have been fully and promptly performed as of the date hereof;

(iv) This Mortgage and the other Loan Documents have been lawfully executed and delivered in full conformity with each Lease;

(v) Upon Mortgagee's request while an Event of Default is continuing, Mortgagor shall deliver to Mortgagee within three (3) days after any payment is due under either Lease copies of all checks in payment of rent and all amounts due under either such Lease. Notwithstanding the foregoing, Mortgagee does not hereby assume any of Mortgagor's obligations under either Lease and nothing contained herein or in the other Loan Documents shall require Mortgagee to perform any such obligations of Mortgagor;

# UNOFFICIAL COPY

(vi) Mortgagor promptly, fully and faithfully will perform and observe all of the terms, covenants, obligations and conditions required to be performed and observed by Mortgagor as lessee under each Lease, within the periods provided in each such Lease, and will do all things necessary to preserve and to keep unimpaired its and Mortgagee's rights under this Mortgage and each Lease;

(vii) Mortgagor promptly will (a) notify Mortgagee in writing of the receipt by Mortgagor of any notice from Lessor noting or claiming any default by Mortgagor in the performance or observance of any of the terms, covenants, obligations, and/or conditions on the part of Mortgagor to be performed or observed under either Lease; (b) notify Mortgagee in writing of the receipt by Mortgagor of any notice from Lessor to Mortgagor of termination of either Lease or of Mortgagor's right to possession of the Property; and (c) cause a copy of each such notice received by Mortgagor from Lessor to be delivered to Mortgagee;

(viii) Mortgagor promptly will notify Mortgagee in writing of any request made by either party to either Lease for arbitration proceedings pursuant to or in connection with either Lease and of the institution of any arbitration proceedings, as well as of all proceedings thereunder, will not enter into or agree to any such arbitration procedure (unless required by law) without Mortgagor's prior written consent, and will promptly deliver to Mortgagee a copy of the determination of the arbitrators in each such arbitration proceeding;

(ix) Mortgagor will not, without the prior written consent of Mortgagee, terminate, materially amend, supplement, modify or otherwise surrender or suffer, tolerate or permit any termination, material amendment, supplement, modification, or any surrender of either Lease or consent to any waiver or cancellation of any provision thereunder or close and purchase the land and other property subject to either Lease by any agreement to purchase contained in either Lease or otherwise;

(x) Mortgagor irrevocably, hereby designates, makes, constitutes and appoints Mortgagee (and all persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent-in-fact, with power upon the occurrence and during the continuance of an Event of Default under this Mortgage or default under either Lease, upon notice to Mortgagor, and at such time or times thereafter as Mortgagee, at its sole election, may determine, in the name of Mortgagor, Mortgagee or in both names: (i) to exercise all of Mortgagor's remedies in and under each Lease in the event of a default by Lessor thereunder; (ii) to initiate such legal proceedings and to settle, adjust or compromise any legal proceedings deemed necessary by Mortgagee in its sole and reasonable discretion in order to enforce the provisions of either Lease or prevent the termination thereof; (iii) to commence or institute arbitration proceedings, or to participate in any arbitration proceedings commenced or instituted, pursuant to either Lease deemed necessary to Mortgagee in its sole discretion; (iv) to approve all arbitration determinations, awards or findings made pursuant to the provisions of either Lease; (v) to do any and all things necessary, in Mortgagee's sole opinion, to preserve and keep unimpaired Mortgagee's rights under this Mortgage and either Lease; and (vi) to do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing;



# UNOFFICIAL COPY

(xi) Mortgagor shall execute and deliver, upon request of Mortgagee, such instruments as Mortgagee may deem useful or required to permit Mortgagee to cure any default under either Lease or permit Mortgagee to take such other actions as Mortgagee considers desirable to cure or remedy any matter in default and preserve the interest of Mortgagee in the Property;

(xii) So long as any of Mortgagor's Obligations shall remain outstanding or any of the Indebtedness shall otherwise remain unpaid, unless Mortgagee shall otherwise consent in writing, the fee title to and the leasehold estate in the Property, or any portion thereof shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates either in the landlord or the tenant under either Lease, or in a third party, by purchase or otherwise;

(xiii) If either Lease shall be terminated prior to the natural expiration of its term due to default by Mortgagor or any other lessee or tenant thereunder, and if, pursuant to any provision of either Lease or other document, Mortgagee or its designee shall acquire from Lessor a replacement lease, no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal or extension privileges or options to purchase or rights of first refusal therein contained shall vest in Mortgagor or its successors or assigns. Upon the execution of such a replacement or new lease, all rights in occupancy and space leases or subleases under either Lease shall, at Mortgagee's option, immediately vest in Mortgagee;

(xiv) Mortgagor shall not subordinate or consent to the subordination of either Lease to any mortgage on Mortgagor's interest in the land which is the subject of either Lease or any additional Lease, and any such subordination or consent shall be null and void;

(xv) Neither Mortgagor nor any Affiliate (as hereinafter defined) will acquire fee title to the Property or any mortgage on any reversionary interest in the leasehold estate in the Property which reverts back to the Lessor at the expiration of either Lease, unless Mortgagor first complies with the provisions of Section 2.5(B) of the Credit Agreement. The term "**Affiliate**" means with respect to any individual, trust, estate, partnership, limited liability company, corporation or any other incorporated or unincorporated organization (each a "**Person**"), a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with Mortgagor or any principal in Mortgagor; any officer, director, partner or shareholder of Mortgagor, or any principal in Mortgagor; and any relative of any of the foregoing. The term "**control**" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and

(xvi) The generality of the provisions of this Section relating to either Lease shall not be limited by other provisions of this Mortgage setting forth particular obligations of Mortgagor which are also required to be performed by Mortgagor as the tenant under either Lease.

(d) Mortgagor agrees the proceeds evidenced by the Notes shall be used solely and exclusively for proper business purposes within the meaning of Section 205/4 4(c) of Chapter 815 of the Illinois Revised Statutes (or any substitute, amendment or replacement statute), and

# UNOFFICIAL COPY

the principal obligation secured hereby constitutes a "business loan" transacted solely for the purpose of carrying on or acquiring the business of Mortgagor, which comes within the purview and operation of said paragraph, and not for the purchase or carrying of registered equity securities within the purview and operation of any regulation issued by the Board of Governors of the Federal Reserve System or for the purpose of releasing or retiring any indebtedness which was originally incurred for any such purpose.

## 9. Sublease.

To the extent permitted by applicable law, Mortgagor absolutely and unconditionally assigns, transfers and sets over to Mortgagee, for the benefit of Lenders, all right, title and interest in and to all Rents and all right, title and interest under or by virtue of any and all Subleases. Mortgagee grants to Mortgagor a license to collect, subject to the provisions herein, such Rents, as they respectively become due, but not more than thirty (30) days in advance, and to enforce the agreement of the Subleases, so long as there shall not have occurred and be continuing an Event of Default, provided, however, that Mortgagor shall use the Rents in a manner not prohibited by the Credit Agreement. This absolute and present assignment shall be fully operative without any further action on the part of Mortgagor, Mortgagee or any Lender.

## 10. Transfers of the Property; No Additional Liens.

Except as permitted by the Credit Agreement, Mortgagor agrees that it shall not: (i) transfer, sell or convey all or any portion of the Property; and/or (ii) further encumber or pledge all or any portion of the Property.

## 11. Uniform Commercial Code Security Agreement.

(a) This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code for any portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code (such portion of the Property is hereinafter called the "**Personal Property**"), and Mortgagor hereby grants to Mortgagee, for the benefit of Lenders, a security interest in the Personal Property. Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as well as all other rights available at law or in equity. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to the Personal Property. Mortgagor hereby authorizes and empowers Mortgagee and irrevocably appoints Mortgagee its agent and attorney-in-fact to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect such lien. Mortgagor shall pay all actual out-of-pocket costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements as Mortgagee may reasonably require. Without limitation of the foregoing, if an Event of Default occurs and is continuing, Mortgagee shall be entitled immediately to exercise all remedies then available to it under the Uniform Commercial Code.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Mortgagee without the necessity of any further notice or action by Mortgagor. Mortgagee shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the Personal Property nor shall Mortgagee be responsible for any act committed by Mortgagor, or any breach or failure to perform by Mortgagor with respect to any portion of the Personal Property.

(c) To the extent permitted by law, Mortgagor and Mortgagee agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Uniform Commercial Code.

## 12. Events of Default; Acceleration of Indebtedness.

The following shall constitute an "Event of Default" under this Mortgage:

- (a) the occurrence or existence of an Event of Default under the Credit Agreement; or
- (b) the receipt by Mortgagee of a notice from Mortgagor limiting the indebtedness secured by the Mortgage or the filing of such notice by Mortgagor with the Recorder of Deeds of Cook County, Illinois, by which Mortgagor attempts to limit its indebtedness under the Mortgage.

Upon the occurrence and during the continuance of an Event of Default, at the option of Mortgagee, the Obligations shall become immediately due and payable without notice to Mortgagor and Mortgagee shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

To the extent permitted by applicable law, it is specifically covenanted and agreed that the Mortgagee may proceed, at the same or different times, to foreclose this Mortgage or any of the other security documents as shall have been executed and delivered in connection with the extension of the Loans to Borrower and the guaranty of the payment thereof by Mortgagor (the "Other Security Documents") or resort to any of its other remedies thereunder, by any proceedings appropriate in the state where any of the Land lies, and that no event of enforcement taking place in any state, including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on any of the Notes, shall in any way stay, preclude or bar enforcement of this Mortgage or any of the Other Security Documents or any of them in any other state, and that Mortgagee may pursue any or all of its remedies to the maximum extent permitted by state law until all Obligations have been paid or discharged in full.

Notwithstanding anything herein to the contrary, when the Indebtedness or any part

# UNOFFICIAL COPY

thereof shall become due, whether by acceleration or otherwise, Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to (a) enforce payment of the Notes or the performance of any term, covenant, condition or agreement of Mortgagor under any of the Loan Documents, (b) foreclose the lien hereof for the Indebtedness or part thereof and sell the Property as an entirety or otherwise, as Agent may determine, and/or (c) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. The failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Borrower, Mortgagor or any other Loan Party as a defense in any civil action instituted to collect the Indebtedness, or any part thereof any statute or rule of law at any time existing to the contrary notwithstanding.

## 13. Entry; Foreclosure.

(a) Upon the occurrence and during the continuance of an Event of Default, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Property, or to the extent permitted by law, Mortgagee or their officers or agents or a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Mortgagor and its agents and employees wholly therefrom. If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Mortgagee, Mortgagee or such receiver may obtain, to the extent permitted by law, a judgment or decree conferring on Mortgagee or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Mortgagee or such receiver. Upon every such entering upon or taking of possession, Mortgagee or such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and Mortgagee or such receiver may take any action required by applicable law or which Mortgagee or such receiver reasonably believes necessary to enforce compliance with applicable law. Mortgagee and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith in connection therewith, so long as same was not due to the gross negligence or willful misconduct of any such party.

(b) When the Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee may, to the extent permitted by applicable law, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (a) enforce payment of the Notes or the performance of any term, covenant, condition or agreement of Mortgagor under any of the Loan Documents; (b) foreclose the lien hereof for the Obligations or part thereof including all sums advanced after the institution of a mortgage foreclosure action, together with all costs of suit and attorneys' fees and together with interest at the rate set forth in the Notes on any judgment obtained by Mortgagee from and after the date of any judgment until actual payment is made by the sheriff or otherwise for the full amount due Mortgagee and a reasonable attorney's commission for collection, by judicial action, and sell the Property as an entirety or otherwise, as Mortgagee may determine; and/or (c) pursue any other right or remedy available to it under or by the law and decisions of the State in which the Land is located. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party



# UNOFFICIAL COPY

defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect (i) the indebtedness secured hereby, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property.

To the extent permitted by applicable law, in case of any sale or sales of the Property under this Mortgage, by virtue of judicial proceedings or otherwise, the Property may be sold in one or more parcels or as an entirety, and may be sold in one or more lots as a whole, in such manner or order as Mortgagee may elect.

Mortgagee shall have all of the rights and remedies provided in the Uniform Commercial Code including the right to proceed under the Uniform Commercial Code provisions governing default as to any personal property separately from the real estate included within the Property, or to proceed as to all of the Property in accordance with its rights and remedies in respect thereof. If Mortgagee should elect to proceed separately as to such personal property, Mortgagor agrees to make such personal property available to Mortgagee at a place or places reasonably acceptable to Mortgagee, and if any notification of intended disposition of any such personal property is required by law, such notification shall be deemed reasonably and properly given if given at least ten (10) days before such disposition in the manner herein provided.

Upon any foreclosure sale, Mortgagee and any Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Obligations owing to it as a credit to the purchase price.

(c) Rights and Remedies Cumulative. Mortgagee shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Mortgage. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to mortgagees in the State in which the Land is located. Mortgagee shall be entitled to enforce the payment and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other rights or security now or hereafter held by Mortgagee. Mortgagee shall be entitled to enforce this Mortgage and any other rights or security now or hereafter held by Mortgagee in such order and manner as they or either of them may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Mortgagee shall not be deemed to have waived any provision hereof or to have released Mortgagor from any of the obligations

secured hereby unless such waiver or release is in writing and signed by Mortgagee and, if necessary, Requisite Lenders. The waiver by Mortgagee of Mortgagor's failure to perform or observe any term, covenant or condition referred to or contained herein to be performed or observed by Mortgagor shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of Mortgagor to perform or observe the same or any other such term, covenant or condition referred to or contained herein, and no custom or practice which may develop between Mortgagor, Mortgagee and any Lender during the term hereof shall be deemed a waiver of or in any way affect the right of Mortgagee to insist upon the performance by Mortgagor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

#### **14. Expenditures and Expenses.**

In any action to foreclose the lien hereof or otherwise enforce Mortgagee's rights and remedies hereunder, there shall be allowed and included as additional indebtedness secured hereby all reasonable expenditures and expenses which may be reasonably paid or incurred by or on behalf of Mortgagee including repair costs, payments to remove or protect against liens, attorneys' fees, costs and expenses, receivers' fees, costs and expenses, appraisers' fees, engineers' fees, accountants' fees, fees, costs and expenses in connection with any environmental matters concerning the Property, outlays for documentary and expert evidence, stenographers' charges, stamp taxes, publication costs, and costs (which may be estimates as to items to be expended after entry of an order or judgment) for procuring all such abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale which may be had pursuant to an order or judgment the true condition of the title to, or the value of, the Property. All expenditures and expenses of the nature mentioned in this Section 14 and such reasonable costs, expenses and fees as may be reasonably incurred or as may be owing to Mortgagee in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees, costs and expenses of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the other Loan Documents to which Mortgagor is a party or the Property, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, including costs and expenses in connection with obtaining any court order or the appointment of a receiver, shall be immediately due and payable to Mortgagee, with interest thereon at the Default Rate, and shall be secured by this Mortgage. In addition to the foregoing award of attorneys' fees and costs, Mortgagee shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Mortgage, or the other Loan Documents to which Mortgagor is a party. This provision is separate and several and shall survive the merger of this provision into any judgment.

#### **15. Application of Proceeds of Foreclosure Sale.**

After deducting all reasonable costs, fees and expenses of Mortgagee, the proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority set forth in the Credit Agreement with the excess, if any, being applied, to be distributed to the Person or Persons legally entitled thereto.

**16. Appointment of Receiver or Mortgagee in Possession.**

If an Event of Default has occurred and is continuing, Mortgagee, upon application to a court of competent jurisdiction, whether in conjunction with Mortgagee's commencement of judicial proceedings to foreclose the lien hereof, or pursuant to other proceedings, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of the Property or any other security for the indebtedness or the insolvency of any party bound for its payment, in each of the foregoing instances, to the extent permitted by applicable law, to the appointment of a receiver to take possession of and to operate the Property, or any portion thereof, and to collect and apply the Rents and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor.

**17. After-Acquired Property.**

To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under the granting clauses of this Mortgage, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

**18. Forbearance by Mortgagee Not a Waiver.**

Any forbearance by Mortgagee or any Lender in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Mortgagee's or any Lender's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Mortgagee's or such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured hereby, nor shall Mortgagee's receipt of any awards, proceeds or damages under Section 4 hereof operate to cure or waive Mortgagor's default in payment of sums secured by any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Mortgagee and, to the extent required, Requisite Lenders shall be effective against Mortgagee and Lenders.

**19. Waiver of Statute of Limitations.**

To the extent permitted by applicable law, Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Notes or any other obligation secured by any of the Loan Documents.

## 20. Waivers.

To the extent permitted by applicable law, Mortgagor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in, or title to, the Property on or subsequent to the date of this Mortgage; (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension, reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; (ii) does hereby waive any equitable, statutory or other right available to it, in respect to marshalling of assets hereunder, so as to require the separate sales of interests in the Property before proceeding against any other interest in the Property; (iii) does hereby expressly consent to and authorize, at the option of Mortgagee, the sale, either separately or together, of any and all interests in the Property; and (iv) does hereby agree that in no event shall Mortgagee or Lenders be required to allocate any proceeds received from foreclosure sale or otherwise, to all or any interest in the Property; (v) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to the purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor; and (vi) does hereby waive and release: (a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; (b) unless specifically required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of any right, remedy or option under the Notes, the Credit Agreement, any other Loan Document or this Mortgage; (c) the benefit of any and all offsets or counterclaims which may only be asserted, if at all, in an action separate and apart from any proceedings hereunder; and (d) the right to contest jurisdiction selected by Mortgagee.

## 21. Governing Law; Severability.

This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois except that the provisions of the laws of the jurisdiction in which the Land is located shall be applicable to the creation, perfection and enforcement of the lien created by this Mortgage and the exercise of remedies mandatorily governed by the laws of the state in which the Land is located. The invalidity, illegality or unenforceability of any provision of this Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mortgage, and to this end, the provisions of this Mortgage are declared to be severable.

## 22. Notice.

Unless otherwise specifically provided herein or required by law, all notices, requests and other communications provided for hereunder shall be in writing (including, by facsimile transmission) and mailed by certified or registered mail, faxed or delivered, to the address or facsimile number specified below or to such other address as shall be designated by such party in a written notice to each of the other parties hereto given in compliance herewith. All such notices, requests and communications shall, when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next day) delivery, or transmitted by facsimile machine,



# UNOFFICIAL COPY

respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. Mail, certified or registered, or if delivered, upon delivery.

Notices shall be addressed as follows:

If to Mortgagor: Bell & Howell Mail and Messaging Technologies  
Company  
c/o Glencoe Capital, L.L.C.  
190 South LaSalle Street, Suite 2830  
Chicago, Illinois 60603  
Attn.: David S. Evans  
facsimile: 312.795.0455

With a copy to: McDermott Will & Emery  
227 West Monroe Street  
Chicago, Illinois 60606  
Attn: William J. McGrath, P.C.  
facsimile: 312.984.7700

Notices to  
Mortgagee: Heller Financial, Inc.  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Portfolio Manager  
Portfolio Organization  
Corporate Finance Group  
facsimile: 312.441.7367

with a copy to: Heller Financial, Inc.  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Legal Department  
Portfolio Organization  
Corporate Finance Group  
facsimile: 312.441.7367

## **23. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.**

The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of Section 10 hereof. All covenants and agreements of Mortgagor shall be joint and several. In exercising any rights under the Loan Documents or taking any actions provided for therein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

# UNOFFICIAL COPY

**24. Release.**

Upon indefeasible payment in full of all sums secured by this Mortgage, Mortgagee shall promptly release this Mortgage. Mortgagor shall pay promptly Mortgagee's reasonable costs incurred in releasing this Mortgage and any financing statements related hereto.

**25. Time of Essence.**

Time is of the essence of this Mortgage and the performance of each of the covenants and agreement contained herein.

**26. Jury Trial Waiver.**

MORTGAGOR AND MORTGAGEE EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS MORTGAGE, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MORTGAGOR AND MORTGAGEE EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY ARE WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS KNOWING AND VOLUNTARY.

**27. Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any applicable provision of the law of the state in which the Land is located governing foreclosure, (herein collectively called the "Laws"), the provisions of the Laws shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Laws.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Laws in the absence of said provision, Mortgagee shall be vested with the rights granted in the Laws to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by

# UNOFFICIAL COPY

Mortgagee to the extent reimbursable under the Laws, whether incurred before or after any decree or judgment of foreclosure, and whether or not provided for elsewhere in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

**28. Relationship.**

The relationship between each Lender (and Mortgagee on behalf of such Lenders) and Mortgagor shall be that of creditor-debtor only. No term in this Mortgage or in any of the other Loan Documents and no course of dealing between the parties shall be deemed to create any relationship of agency, partnership or joint venture or any fiduciary duty by Mortgagee or any Lender to Mortgagor or any other party.

*- Remainder Of Page Intentionally Left Blank -  
[Signature Page Follows]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage or has caused the same to be executed by its duly authorized representative as of the date first above written.

**MORTGAGOR:**

**BELL & HOWELL MAIL AND MESSAGING  
TECHNOLOGIES COMPANY**, a Delaware corporation

By: 

Name: William J. McGrath

Its: Assistant Secretary

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF ILLINOIS                     )  
  ) ss.  
COUNTY OF COOK                     )

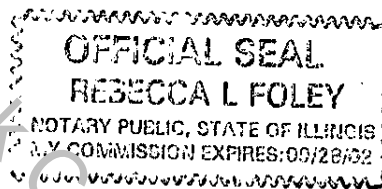
I, Rebecca L. Foley, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William J. McGrath, who is personally known to me to be the Assistant Secretary of BELL & HOWELL MAIL AND MESSAGING TECHNOLOGIES COMPANY, a Delaware corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as Assistant Secretary of said corporation pursuant to authority given by the Board of Directors of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28<sup>th</sup> day of September, 2001.

Rebecca L. Foley  
Notary Public

My Commission Expires:

9/28/02



# UNOFFICIAL COPY

## CERTIFICATION OF RESIDENCE

The undersigned hereby certifies that the principal place of business and complete post office address of Mortgagee is:

500 West Monroe Street  
Chicago, Illinois 60661

### MORTGAGEE:

HELLER FINANCIAL, INC., a Delaware  
corporation

By: Tamara Roehm  
Name: Tamara Roehm  
Title: Vice President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

Legal Description of Industrial Parcel

Legal Description of Industrial Parcel

PARCEL 1:

A PARCEL OF LAND IN THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP, 14 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF A LINE 400 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 35 (BEING ALSO THE NORTH RIGHT-OF-WAY LINE OF PRATT AVENUE) AND THE WEST LINE OF THE EAST 660 FEET OF THE NORTHEAST 1/4 OF SAID SECTION 35, THENCE SOUTH 88 DEGREES 07 MINUTES 30 SECONDS WEST ALONG SAID LINE 400 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST 1/4 SAID SECTION 35, A DISTANCE OF 1,533.97 FEET TO A POINT 400 FEET EAST (AS MEASURED ALONG SAID PARALLEL LINE) OF A LINE 33 FEET EAST OF THE WEST LINE OF THE NORTHEAST 1/4 SAID SECTION 35 FOR A POINT OF BEGINNING; THENCE NORTH 01 DEGREES 52 MINUTES 30 SECONDS WEST, A DISTANCE OF 618.23 FEET TO THE SOUTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF SAID NORTHEAST QUARTER; THENCE NORTH 88 DEGREES 10 MINUTES 15 SECONDS EAST ALONG SAID SOUTH LINE, A DISTANCE OF 941.62 FEET; THENCE SOUTH 01 DEGREES 54 MINUTES 22 SECONDS EAST, A DISTANCE OF 617.48 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID PRATT ROAD; THENCE SOUTH 88 DEGREES 07 MINUTES 30 SECONDS WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 941.95 FEET TO THE POINT OF BEGINNING CONTAINING 13.36 ACRES MORE OR LESS, IN COOK COUNTY, ILLINOIS.

ALSO

PARCEL 2:

A TRACT OF LAND BEING PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 35 TOWNSHIP, 41 NORTH, RANGE 13, EAST OF THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 AND A LINE DRAWN 33 FEET OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHEAST 1/4; THENCE SOUTH ALONG THE SAID PARALLEL LINE, A DISTANCE OF 18 FEET; THENCE EAST PARALLEL WITH THE SAID NORTH LINE OF THE SOUTH 1/2 OF THE SOUTH OF THE NORTHEAST 1/4; A DISTANCE OF 539.34 FEET; THENCE SOUTHEASTERLY ALONG A

# UNOFFICIAL COPY

CURVED LINE, CONVEXED TO THE NORTHEAST, HAVING A RADIUS OF 420.59 FEET, A DISTANCE OF 70.46 FEET (ARC); THENCE CONTINUING SOUTHEASTERLY ALONG A STRAIGHT LINE, TANGENT TO THE LAST DESCRIBED CURVED LINE, A DISTANCE OF 29.87 FEET, TO TIP INTERSECTION WITH A LINE DRAWN PERPENDICULAR TO THE SOUTH LINE OF THE SAID NORTHEAST 1/4 AT A POINT 691 FEET EAST OF THE SOUTHWEST CORNER OF THE SAID NORTHEAST 1/4; THENCE NORTH ALONG SAID PERPENDICULAR LINE, A DISTANCE OF 19.71 FEET; THENCE NORTHWESTERLY ALONG A STRAIGHT LINE, PARALLEL WITH AND 18 FEET DISTANCE FROM THE LAST DESCRIBED STRAIGHT LINE, A DISTANCE OF 24.77 FEET; THENCE CONTINUING NORTHWESTERLY ON A CURVED LINE, CONVEXED NORTHEASTERLY AND CONCENTRIC WITH THE LAST DESCRIBED CURVED LINE, HAVING A RADIUS OF 438.59 FEET, A DISTANCE OF 73.47 FEET (ARC) TO A POINT ON THE NORTH LINE OF THE SAID SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4; THENCE WEST ALONG SAID NORTH LINE, A DISTANCE OF 541.79 FEET TO THE POINT OF BEGINNING, (EXCEPTING THEREFROM THAT A PART OF SAID LAND FALLING IN PARCEL 1) IN COOK COUNTY, ILLINOIS AS CREATED BY DEED FROM DITTO INCORPORATED, TO THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, DATED SEPTEMBER 5, 1956 AND RECORDED SEPTEMBER 12, 1956, AS DOCUMENT 16696145, IN COOK COUNTY, ILLINOIS.