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Cook County Recorder 40.50



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Property of Cook County Clerk's Office

**MORTGAGE, DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT (SUBORDINATE LOAN)
(FIFTH LOAN)**

from

105 WEST ADAMS BUILDING LLC

as Mortgagor

to

LEHMAN BROTHERS HOLDINGS INC.

as Mortgagee

Dated: as of February 3, 2003

Location:

The Bankers' Building, 105 West Adams Street, Chicago, Illinois

17-16-222-003

PREPARED BY ~~AND AFTER RECORDATION RETURN TO:~~



Please Record & Return to: *605-870*
Bridge Service Corp.
800-225-2736
277 Broadway, #510
New York, NY 10007-2001

Jill D. Block, Esq.
Katten Muchin Zavis Rosenman
575 Madison Avenue
New York, New York 10022

THIS INSTRUMENT IS ALSO A FIXTURE FINANCING STATEMENT

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**MORTGAGE, DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT
(SUBORDINATE LOAN) (FIFTH LOAN)**

30187997

This **MORTGAGE, DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (SUBORDINATE LOAN) (FIFTH LOAN)** is dated as of the 3rd day of February, 2003.

105 WEST ADAMS BUILDING LLC, a Delaware limited liability company having its principal place of business at c/o The Witkoff Group LLC, 220 East 42nd Street, New York, New York 10017 ("Mortgagor") for \$10.00 and other valuable consideration paid in hand to Mortgagor by **LEHMAN BROTHERS HOLDINGS INC.**, a Delaware corporation with an address at 399 Park Avenue, New York, New York 10022 ("Mortgagee"), does hereby grant, bargain, sell, mortgage and convey unto Mortgagee and unto its successors and assigns forever, all of the right, title and interest of Mortgagor, in and to certain lands in Cook County, Illinois, more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises"), and all improvements located thereon or appurtenant thereto (the "Improvements"); together with the right, title and interest of Mortgagor in the following described property (collectively, the "Mortgaged Property");

TOGETHER WITH all machinery, furnishings and equipment including, without limitation, all furnaces, boilers, oil burners, radiators and piping, coal stokers, refrigeration and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, awnings, window shades, kitchen cabinets, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every kind in or used in the operation of the Premises, together with any and all replacements thereof and additions thereto, fixtures (including, without limitation, all heating, air conditioning, plumbing and bathroom, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, without limitation, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamo motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washer and dryers), other customary equipment and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements thereon or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements;

TOGETHER WITH all accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as such terms are defined in the Uniform Commercial Code, and all agreements, contracts, certificates, instruments, and other documents, now or hereafter entered into, and all proceeds, substitutions and replacements thereof, all contract rights, insurance proceeds, franchises, books, records, appraisals, architectural and engineering plans, specifications, environmental and other reports relating to the Premises and the Improvements, trademarks, trade names, servicemarks, symbols, logos,

relating to the Premises and the Improvements, trademarks, trade names, servicemarks, symbols, logos, copyrights, goodwill, correspondence with present and prospective purchasers, tenants and suppliers, all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Premises and/or the Improvements as a result of tax certiorari or any applications or proceedings for reduction, refunds of real estate taxes and assessments, permits, licenses (to the extent assignable), approvals, actions, and causes of action which now or hereafter relate to, are derived from or are used in connection with the Premises and/or the Improvements, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

TOGETHER WITH all leases and other agreements affecting the use, enjoyment or occupancy of the Premises or the Improvements heretofore or hereafter entered into (including, without limitation, subleases, licenses, concessions, tenancies and other occupancy agreement covering or encumbering all or any portion of the Premises and/or the Improvements), together with any guarantees, supplements, amendments, modifications, extensions and renewals of any thereof, and all additional remainders, reversionary, and other rights and estates appurtenant thereto;

TOGETHER WITH all income, rents, issues, profits, revenues (including oil and gas or other mineral royalties and bonuses), deposits and other benefits from the operation of the business at the Premises, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Premises and/or the Improvements or personalty located thereon, or rendering of services by Mortgagor or any operator or manager of the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Premises and/or the Improvements; and

TOGETHER WITH all awards heretofore and hereafter made to Mortgagor for taking by eminent domain the whole or any part of the Premises and/or the Improvements or any easement therein, including any awards for changes of grade of streets; and

TOGETHER WITH all additions to, replacements of, substitutions for and all proceeds (including, without limitation, goods, accounts, general intangibles, chattel paper, documents, instruments, money and the proceeds thereof) and all products of the Mortgaged Property.

To have and to hold the Mortgaged Property unto Mortgagee and unto its successors and assigns forever with all appurtenances thereunto belonging, together with all rents and profits therefrom.

Mortgagor covenants with Mortgagee that Mortgagor will forever warrant and defend the title to the Mortgaged Property against all lawful claims whatever.

Mortgagor waives any and all rights of appraisalment, sale, redemption and homestead under the laws of Illinois.

1. Successors. The terms Mortgagor and Mortgagee mean and include the successors in interest of such parties.

2. Debt Secured. This instrument is given to secure the payment of an interest bearing loan and debt in the original principal sum of \$2,500,000.00 evidenced by a Mortgage Note (Subordinate Loan) (Fifth Loan) dated the date hereof from Mortgagor to Mortgagee (the "Note"), the terms of which are incorporated herein by reference (the obligations evidenced by the Note, the "Debt"). The maturity date of the Debt is January 1, 2004.

3. Additional Debt Secured. This instrument also secures Mortgagee for any extensions or renewals of the debt secured hereby and is continuing security for all indebtedness of every nature which shall be owed Mortgagee by Mortgagor prior to satisfaction hereof without limit as to the amount thereof, including but not limited to future loans and advances and sums expended for payment of taxes and assessments, for release of liens and encumbrances, for insurance premiums and for protecting title to and securing possession of the Mortgaged Property, all costs of collecting any amounts due hereunder and in connection with the Debt including, without limitation, reasonable attorneys' fees and costs. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total principal balance so secured at any one time shall not exceed \$2,500,000.00, together with interest thereon and any and all disbursements made by Mortgagee for the payment of taxes, or insurance on the Mortgaged Property and for reasonable attorneys' fees, loan commissions, deferred financing fees, service charges, liquidated damages, expenses and court costs incurred in the collection of any or all of such sums of money. The parties hereby acknowledge and intend that all advances, including future advances wherever hereafter made, shall be entitled to a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the IMF Act (as such term is defined in Section 11 hereof).

4. Fixtures. Mortgagee shall have a lien upon and security interest in the plant, property and equipment and all other items of tangible personal property, and all replacements thereof and accessions thereto, including replacement parts and equipment, located in and on the Mortgaged Property owned by Mortgagor and which are now and hereafter shall become fixtures. This instrument constitutes a fixture financing statement and filing under the Uniform Commercial Code. The name and address of the debtor is that of the Mortgagor set forth on page 1 hereof. The name and address of the secured party is that of Mortgagee set forth on page 1 hereof. The legal description of the real estate on which the fixtures are located is set forth on Exhibit A hereof.

5. Severability. If any part or parts hereof shall be inoperative by law, all remaining parts shall remain in full force and effect.

6. Law. The rights and duties of the parties hereto shall be governed by the law of the State of Illinois.

7. Discharge. If all indebtedness secured hereby is promptly paid when due and all other provisions hereof are faithfully performed, Mortgagee will satisfy this Mortgage of record.

8. Loan Agreement. Mortgagor and Mortgagee are parties to a certain Loan Agreement (Subordinate Loan) (Fifth Loan) dated as of the date hereof (the "Loan Agreement"). All of

the terms, covenants and conditions of the Loan Agreement are incorporated herein by this reference with the same force and effect as if fully stated herein.

9. Security Agreement. This Agreement is a “security agreement” within the meaning of the Uniform Commercial Code of the State of Illinois. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. By executing and delivering this instrument, Mortgagor has granted and thereby grants to Mortgagee, as security for the Debt and additional debt referred to in Section 3 hereof, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code of the State of Illinois.

10. Nomenclature as a Matter of Convenience. Notwithstanding that this Instrument is titled “Mortgage, Deed of Trust, Assignment of Leases and Rents and Security Agreement”, it is expressly understood and agreed that this instrument is and shall be deemed to be a mortgage, and not a deed of trust, for all purposes under the laws of the State of Illinois.

11. Remedies. The Loan Agreement contains specific provisions regarding defaults, notice and cure periods relating thereto, late charges and other remedies that may be available to Mortgagee under certain circumstances. With respect to the rights and remedies granted to the Mortgagee hereunder and under the Loan Agreement:

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law, Ill. Rev. Stat., c. 110 ¶¶ 15-1101, et seq., as amended from time to time (the “IMF Act”), then the IMF Act 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 IMF Act.

(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 IMF Act in the absence of such provision, then the Mortgagee shall be vested with the rights granted in the IMF Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 of the IMF Act, whether incurred before or after any decree of judgment of foreclosure, shall be added to the indebtedness secured hereby or by the judgment of foreclosure.

12. Purpose of Loan. The Debt secured hereby is a business loan within the purview of Illinois Interest Act, Ill. Rev. Stat. c. 17, ¶ 6404 (or any substitute, amended or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor or, if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of such Mortgagor.

13. Limitation on Recourse. Anything herein to the contrary notwithstanding, Mortgagee’s recourse upon the occurrence of an Event of Default (as such term is defined in the Loan Agreement) is limited pursuant to the express provisions of the Note.

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14. Subordination. The Debt and Mortgagee's rights hereunder and under the other documents evidencing or securing the Debt from time to time outstanding, are subject and subordinate to: (a) those certain first and second mortgage loans made by Mortgagee to Mortgagor on or about June 17, 1998; (b) that certain third mortgage loan made by Mortgagee to Mortgagor on or about February 21, 2001; (c) that certain fourth mortgage loan made by Mortgagee to Mortgagor on or about May 31, 2001; (d) the rights of the holder or holders thereof from time to time; and (e) any refinancings, substitutions or replacements thereof.

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this instrument as of the day and year first above written.

105 WEST ADAMS BUILDING LLC

By: _____

James F. Stomber, Jr.
Authorized Signatory

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[Acknowledgment]

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STATE OF NEW YORK)
 :
) ss.
COUNTY OF NEW YORK)

I, Amy Emel Nevin Muedin a Notary Public in and for said County and State aforesaid, do hereby certify that James F. Stomber, Jr., not personally but as Authorized Signatory of 105 West Adams Building LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act on behalf of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of January, 2003.

Amy Emel Nevin Muedin (SEAL)
Notary Public

My commission expires:

Amy Emel Nevin Muedin
Notary Public, State of New York
No. 01MU6051744
Qualified in Queens County
Commission Expires December 4, 20 06

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EXHIBIT A

Legal Description

LOTS 1 THROUGH 7 IN THE SUBDIVISION OF BLOCK 116 IN THE SCHOOL SECTION ADDITION TO THE ORIGINAL TOWN OF CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office