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Property of Cook County Clerk's Office

Third Mortgage, Security
Agreement and Fixture
Filing

From Old Colony Partners, LP
to Banco Panamericano

July 22, 2004

P.I.N. # 17-16-246-001-0000

Please return to:
Banco Panamericano
330 S. Wells St., Suite 718
Chicago, IL 60606

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THIRD MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (ILLINOIS)

THIS THIRD MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING, is made this 22 day of July, 2004, between OLD COLONY PARTNERS LIMITED PARTNERSHIP, an Illinois limited partnership, whose address is 330 S. Wells St., Chicago, Illinois 60606 (hereinafter referred to as "Mortgagor") and BANCO PANAMERICANO, a South Dakota corporation, having its principal office at 330 South Wells, Suite 718, Chicago, Illinois 60606, and licensed to do business in the State of Illinois (hereinafter referred to as "Third mortgagee"):

WITNESSETH: That Mortgagor hereby grants, conveys, and mortgages to Mortgagee, the following described real estate, situate, lying and being in Chicago, Cook County, Illinois, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART
HEREOF FOR LEGAL DESCRIPTION.

The street address of the above described property is: 407 S. Dearborn Street,
Chicago, Illinois 60605; and the Permanent Tax Numbers thereof are
17-16-246-001-0000.

together with all leases, rents, awards, royalties and other revenue thereof and all and singular the tenements, hereditaments and appurtenances to the above described property belonging, or in anywise appertaining, including any after-acquired title, reversions, franchise, license, party wall, right-of-way, mineral, oil and gas right and profit, water, water right and profits thereof, easement, equipment or fixture and also together with all right, title and interest of Mortgagor, from time to time, in and to any and all buildings and improvements on the above described real estate or which may hereafter be placed thereon or attached thereto, including, but not limited to, any equity which may be acquired by Mortgagor in any such fixtures or equipment as a result of the making of installments payments on account of the purchase of the same, and all the interior improvements and fixtures, movable or immovable of every kind and description in and upon said property or which may hereafter be placed in or upon the same or used in connection therewith and other property now or hereafter owned by Mortgagor, or any successors in title, and attached to or used in connection with the real estate hereinabove described, all of which property, together with any and all replacements thereof, and all similar apparatus, equipment or articles placed in or upon the mortgaged property, shall be deemed to be fixtures and an accession to the freehold, and a part of the realty as between the parties hereto and all persons claiming by, through or under them, and shall be deemed a portion of the security for the indebtedness herein mentioned and secured by this third mortgage and security agreement (hereinafter "third mortgage"), and all of the property hereinbefore mentioned is hereinafter designated as "real estate".

AND Mortgagor does hereby irrevocably grant and convey unto Mortgagee a continuing security interest in all of Mortgagor's right, title and interest in and to each of the following, whether now owned or in existence or hereafter acquired or arising: (a) machinery, equipment,

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fixtures, fittings, appliances, furniture and articles of real, personal or mixed property of every kind and nature whatsoever, including, but not limited to, and to the extent not classified as fixtures for purposes of the definition of real estate set forth above, all heating, ventilating, air conditioning, plumbing and lighting systems and equipment, ranges, refrigerators, dishwashers, food and beverage appliances, shades, drapes, mirrors, carpeting, linoleum, tables, chairs, beds, dressers, sofas, sprinkling systems, fire prevention and/or fire-extinguishing apparatus, all electrical communications systems and equipment, and all cleaning laundry, lawn and other maintenance systems and equipment; (b) all accounts, contract rights, general intangibles, instruments, documents, chattel paper, accounts receivables, deposits, fees, charges and other payments, income, lease termination fees, unamortized tenant improvement reimbursements and cash receipts; (c) all substitutes and replacements for, accessories, attachments, and other additions to, and all raw materials, supplies, work in process, tools, parts, and equipment of any nature and description used or which might be used in connection with any of the foregoing; (d) all products and proceeds of any of the foregoing, including, without limitation, all payments under any insurance policies and any indemnity, warranty or guaranty relating to any of the foregoing; and (e) all other personal property of the same general kind or class which Mortgagor may now own or hereinafter acquire, wherever located, used or usable in the operation of or relating to the real estate (all of said property being hereafter referred to as the "personal property"; all of the real estate and all of the personal property shall be hereafter referred to collectively as the "mortgaged property").

TO HAVE AND TO HOLD the mortgaged property, together with all and singular the privileges and appurtenances, teneaments, hereditaments, easements, party walls and rights of way thereunto belonging or usually enjoyed with said mortgaged property or any part thereof, and the reversions, remainder and remainders, unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, and all right to retain possession of the mortgaged property or any part thereof after any default in or breach of any of the covenants, agreements or provisions herein contained, which said rights and benefits Mortgagor hereby expressly releases and waives;

FOR THE PURPOSE OF SECURING: First, payment of the indebtedness evidenced by one promissory note (and any modification, extension or renewal thereof) dated evenly herewith made by Mortgagor in the original principal sum of THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00) payable to the order of Mortgagee in lawful money of the United States of America, with interest from date thereof, at the rate of eight percent (8%) per annum, with interest only payable in consecutive monthly installments beginning on the first day of September, 2004, and continuing on the first day of each succeeding month thereafter, to and including the first day of September 2014. The outstanding balance of said principal sum and interest accrued thereon shall be due on the first day of September, 2014. Each payment shall be credited on interest then due and the remainder on principal, and interest thereupon shall cease upon the principal so credited.

Second, payment by Mortgagor to Mortgagee as herein provided of all sums expended or advanced by Mortgagee pursuant to any term or provision of this third mortgage; and Third, performance of each and every covenant and agreement of Mortgagor herein contained.

THIS instrument also constitutes a security agreement, as that term is defined in the Uniform Commercial Code and in any state in which personal property is located, and, since

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some of the property is or is to become fixtures on the real estate, this deed shall also be effective as a financing statement filed as a fixture filing with respect to all fixtures included in the property, executed by Mortgagor (as "debtor") in favor of Mortgagee (as "secured party"); information relating to the security interest created hereby may be obtained from Mortgagee, the secured party hereunder, at the address of Mortgagee set forth above.

The Mortgagor covenants with the Mortgagee that Mortgagor is lawfully seized in fee of the real estate and with full legal title to the personal property; that said real estate is free from all encumbrances and liens whatsoever except covenants, restrictions and easements of record that concern the first and second mortgages on the property and, with regard to the personal property, free and clear of all liens, security interests, claims and encumbrances other than the previously disclosed first and second mortgages and security interest granted hereunder; Mortgagor has a good and legal right to sell and convey the mortgaged property or, as applicable, the security interest therein, to Mortgagee; and that Mortgagor will warrant and defend the title to said property to Mortgagee forever against the claims and demands of any person or persons whomsoever; and Mortgagor will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered all and every such further assurances in law for the better assuring, conveying, assigning and transferring unto Mortgagee, all and singular the mortgaged property or as applicable the security interest therein, hereby conveyed, assigned or transferred, or intended so to be, or which Mortgagor may be or hereafter become bound to convey, assign or transfer to Mortgagee in such manner as the Mortgagee shall require.

FOR THE CONSIDERATION AFORESAID, It is further covenanted and agreed by Mortgagor to and with Mortgagee that

1. **Taxes.** In the event that Mortgagee is not in possession of sufficient escrow funds for such purpose, Mortgagor will, while any of the indebtedness secured hereby remains unpaid, pay, at least ten (10) days before they become delinquent, all taxes (both general and special), assessments and governmental charges lawfully levied or assessed, or that become a lien, against the mortgaged property or any part thereof; will promptly furnish the Mortgagee the receipts, or such other evidence of payment as might be required by Mortgagee, showing such payments; and will allow no payment of any taxes, assessments or governmental charges by a third party with subrogation attaching, nor permit the mortgaged property, or any part thereof, to be sold or forfeited for any tax, assessment or governmental charge whatsoever. Any irregularities or defects in the levy or assessment of taxes, assessments, and governmental charges paid by the Mortgagee are hereby expressly waived and receipt by the proper officer shall be conclusive evidence both as to the amount and validity of such payments.

2. **Insurance.** Mortgagor will maintain in force, upon the buildings and other insurable property now or hereafter erected or placed in or on said mortgaged property, insurance as required by the Mortgagee against loss or damage by fire, windstorm, lightning explosion, tornado, acts or consequences of war and other hazards, casualties and contingencies, and will carry any other kinds of insurance in such amounts and for such periods as may from time to time be required by Mortgagee, and not less than thirty (30) days prior to the expiration of any policy of insurance, Mortgagor will deliver to Mortgagee renewal of new policies in like amounts covering the same risks together with receipts (showing the premiums therefor have been paid in full). All insurance shall be carried in insurance companies approved by Mortgagee, and the policies shall include the standard provision making loss payable to Mortgagee as third mortgagee, and provide for not less than thirty (30) days' prior written notice

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to Mortgagee in the event of cancellation or material modification thereof. All policies of insurance or certificates of insurance in form satisfactory to Mortgagee shall be delivered to and held by Mortgagee, and Mortgagor will pay promptly when due all premiums for such insurance. Should any loss occur to insured property, the Mortgagee is hereby appointed attorney in fact for the Mortgagor to make proof of loss if Mortgagor fails to do so promptly, and to receipt for any sums collected under said policies, which said sums, or any part thereof, at the option of the Mortgagee may be applied as payment on the indebtedness hereby secured, or to the restoration or repair of the property so destroyed or damaged. Mortgagor promptly will give notice by registered mail to the Mortgagee of any loss or damage to the said property and will not adjust or settle such loss without the written consent of Mortgagee. In the event of foreclosure of this third mortgage, all right, title and interest of Mortgagor in and to any insurance policy then in force shall pass to the purchaser at the foreclosure sale and Mortgagee is hereby appointed attorney in fact for the Mortgagor to assign and transfer said policies. The Mortgagee shall not be responsible for any insurance upon the said property or for the collection of any insurance money or for the insolvency of any insurer.

3. **Tax and Insurance Escrows.** For the purpose of providing regularly for the prompt payment of all taxes, assessments and governmental charges levied or assessed against the mortgaged property and insurance premiums that will become due and payable to renew the insurance on the mortgaged property as may be required by Mortgagee under this third mortgage, Mortgagor will deposit with the Mortgagee, at mortgagee's option, on the dates installments of principal and/or interest are payable, an amount equal to the taxes, assessments, governmental charges and insurance premiums next due (as reasonably estimated by Mortgagee), less amounts already deposited therefor, divided by the number of months to elapse prior to the date when such taxes, assessments, governmental charges and insurance premiums will become due and payable. The moneys thus deposited with the Mortgagee are to be held without interest and shall be applied by it to the payment of said taxes, assessments, governmental charges and insurance premiums, Mortgagor will deposit with Mortgagee any amount necessary to make up the deficiency. When the indebtedness secured hereby is repaid in full, any balances in the escrows shall be applied against any final principal balance then due and outstanding.

4. **Maintenance, No Mechanics Liens, Inspections.** Mortgagor will maintain the mortgaged property free from waste or nuisance of any kind and in good condition, and make all repairs, replacements, improvements and additions which may be necessary to preserve and maintain the mortgaged property and the value thereof; will not alter, destroy or remove any of the buildings, improvements or other property covered by this third mortgage, or permit the same to be altered, destroyed or removed, or used for any purpose other than that for which it is now used, without first obtaining the permission in writing of the Mortgagee; will do any and all acts all in a timely and proper manner, requested by Mortgagee to protect and preserve the security interests granted hereunder including, without limitation, the execution and delivery of one or more financing statements and continuation statements pursuant to the Uniform Commercial Code of the State where the property is located, in a form satisfactory to Mortgagee, and the payment of the cost of filing said statements in all public offices requested by Mortgagee; will do any and all acts as shall hereafter be reasonably requested by Mortgagee to effectuate the intent hereof and to render all of the property available for the security and satisfaction of the indebtedness secured hereby and to enable Mortgagee to sell and/or convey the property pursuant to the terms hereof; will complete in a good, workmanlike manner any building which is being or may be constructed or repaired thereon; will pay when due all claims for labor performed and material furnished, and will not permit any lien of mechanics or materialmen to

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attach to the mortgaged property. No lien provided for by the statutes of the State of Illinois in favor of any one furnishing labor or materials in the erection or repair of any building and improvements, now or hereafter, on the mortgaged property shall attach to said mortgaged property, building or improvements, except as subject and subordinate to the lien of this third mortgage, and anyone dealing with said mortgaged property after the recording of this third mortgage is hereby charged with notice of and consent to this stipulation, and with a waiver of any lien except as subject and subordinate hereto. The Mortgagor will permit Mortgagee, its agents or representatives, to inspect the mortgaged property at any reasonable time, and will comply with any commercially reasonable requirements made by Mortgagee with respect to the mortgaged property or the management thereof. Mortgagor represents and warrants that it is or, to the extent this mortgage states that the personal property is to be acquired after this date hereof, will be, the absolute owner and in possession of the personal property, it is free from any adverse liens, encumbrances or security interest, and this third mortgage will remain a first lien upon all of the personal property.

5. **Compliance with Law and Agreements.** Mortgagor will keep and comply with all laws, ordinances, regulations, rules, orders and directions of any legislative, executive, administrative or judicial body affecting the mortgaged property or its use. Mortgagor shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, leases, instruments and documents relating to the mortgaged property.

6. **Repayment of Advances and Note.** Mortgagor will repay to Mortgagee, without demand, in lawful money of the United States of America, at Mortgagee's office, 330 S. Wells Street, Suite 718, Chicago, Illinois 60606, or at such other place as Mortgagee in writing may direct: (i) all sums due pursuant to the said Promissory Note, payable at the times and under the terms therein provided; and (ii) all sums advanced or expended by Mortgagee pursuant to this third mortgage to protect or preserve the property covered by this third mortgage, or to protect or preserve the lien of this third mortgage or the priority thereof, or to enforce its rights hereunder, with interest thereon from the date of advancement until repaid at the rate of interest applying in event of default under the note secured hereby (hereinafter "Default Rate"), which sums shall also be secured hereby and shall be repayable immediately.

7. **Claims against Property.** Mortgagor promptly will pay and settle or cause to be removed all claims against any of the mortgaged property which affect the rights of Mortgagee hereunder and will appear in and defend any action or proceeding purporting to affect the lien of this third mortgage or the rights or powers of Mortgagee hereunder, and Mortgagor will pay all expenses incident thereto.

8. **Books of Account.** Mortgagor will maintain complete books of account and records pertaining to the mortgaged property; will allow Mortgagee to inspect at any reasonable time all such books and records; and will furnish promptly and fully at any time, upon written request and in such form as Mortgagee may require, audits of Mortgagor's books of account with respect to said property and any and all additional information concerning said property and Mortgagor's business, past operations and prospects.

9. **Condemnation.** All judgments, decrees and awards for injury or damage to the mortgaged property and all awards pursuant to proceedings for condemnation thereof, or any part thereof, as rent or otherwise and whether for a temporary taking or otherwise, are hereby assigned in their entirety to Mortgagee who may apply the same to all reasonable charges in

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connection with the collection thereof and to the indebtedness secured hereby in such manner as it may elect, and Mortgagee is hereby authorized in the name of Mortgagor to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Settlement shall be made pursuant to any proceedings for condemnation only with the consent of Mortgagee. Provided, however, Mortgagee shall not be held responsible for any failure to collect awards.

10. **Indulgences or Forbearances.** Mortgagee may at any time and without notice deal in any way with Mortgagor, or grant to Mortgagor any indulgences or forbearances or any extension of the time for payment of any indebtedness secured hereby, or may release portions of the mortgaged property from the lien hereof, without affecting the personal liability of any person for the payment of the indebtedness secured hereby or the priority of the lien of this third mortgage upon the remainder of the third mortgaged property for the full amount of the indebtedness then remaining unpaid.

11. **Cumulative Remedies; No Waiver.** Every right and remedy provided in this third mortgage shall be cumulative of every other right or remedy of Mortgagee, whether herein or by law conferred, and may be enforced concurrently therewith; and no acceptance of the performance of any obligations as to which Mortgagor shall be in default or failure to exercise any rights or remedy upon a particular default or breach shall be construed as a waiver of the same or any other default then, theretofore or thereafter existing.

12. **Assignment of Leases and Rents.** Mortgagor does hereby assign, transfer and set over unto the Mortgagee all leases (whether written or oral), rents, revenues and income on and from the property covered by this third mortgage, as additional security for the indebtedness and the performance of the conditions, covenants and agreements to be performed on the part of Mortgagor hereunder, and the Mortgagee is given a prior and continuing lien thereon. Upon default in the payment of any installment of principal or interest of any note or notes secured hereby or upon default in the performance of any of the conditions, covenants or agreements herein contained, which default continues beyond the applicable notice and cure period, if any, the Mortgagee, itself or through its duly authorized agent, shall be entitled to immediate possession of the mortgaged property and shall have the right to control, manage and operate the same and collect the rents and revenue therefrom, and rent, lease or let all or any part of the mortgaged property to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and after the deduction of the expenses incidental thereto including reasonable attorney's fees, shall apply the rents and revenue derived from the mortgaged property to the payment of any indebtedness then due and secured hereby or incurred hereunder, in such manner as Mortgagee may elect, and after all causes of default shall have been remedied and after making such provisions for the next maturing obligations as the Mortgagee shall deem advisable, said property and any surplus remaining in the hands of Mortgagee shall be turned over to the Mortgagor or to the party entitled thereto; provided, however, that, unless there is a default under the terms of this third mortgage or of the said note or notes, Mortgagor may continue to collect and enjoy said rents, revenues and income as they accrue with out accountability to the Mortgagee, but in no event shall Mortgagor collect more than two months' rental in advance or waive, release, reduce or discount any part of the rents to accrue for any part of the mortgaged property without first receiving the written consent of Mortgagee. Mortgagor waives any rights of set-off against any person in possession of any part of the mortgaged property and agrees that it will not assign any of the rents or profits from the mortgaged property except with the consent of Mortgagee. This assignment of leases, rents,

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revenues and income shall be irrevocable and in addition to the other remedies herein provided for in the event of default, but the Mortgagee shall be under no liability by reason of its failure or inability to collect any rents, revenues or income herein assigned. This assignment shall apply to all rents, revenues and income hereinafter accruing from present leases and tenants and from all leases and rentals hereinafter made by the present or any future owners of the property. The power of entry and the powers incident thereto as in this paragraph provided for may be exercised as often as occasion therefor shall arise, and their exercise shall not suspend or modify any other right or remedy hereunder.

13. **Receiver.** Upon commencement of any foreclosure proceeding, the court in which said proceeding is filed, at any time thereafter, either before or after sale, and without notice to Mortgagor or any party claiming under him, and without Mortgagee giving bond (such notice and bond being hereby expressly waived), and also without reference to the then value of the mortgaged property, to the use of said property as a homestead, or to the solvency or insolvency of any person liable for any of said indebtedness, or other grounds for extraordinary relief, may appoint a Receiver for the benefit of Mortgagee, with power to take immediate possession of the mortgaged property, manage, rent and collect the rents, issues and profits thereof during the pendency of such foreclosure suit and, in case of sale and deficiency, during the statutory period of redemption, if any, and such rents, issues and profits, when collected, may be applied toward the payment of any indebtedness then due and secured hereby, and the costs, taxes, insurance or other items necessary for the protection and preservation of the mortgaged property, including the expenses of such receivership; and in connection with the aforesaid proceedings, or if Mortgagee shall bring, intervene in or defend any other action to protect or establish any of its rights hereunder, the Mortgagor will pay, in addition to costs and disbursements allowed by law, the reasonable costs of bringing, intervening in or defending any such action, including reasonable attorneys' fees, all of which shall be added to the indebtedness secured hereby.

14. **Default, Remedies.** If default be made in the performance of any covenant or agreement of Mortgagor herein contained (other than the payment of money) and such default continues for more than fifteen (15) days after Mortgagee provides Mortgagor written notice thereof (or, if such default is of such a nature that it cannot be cured with due diligence within fifteen (15) days, Mortgagor shall fail or refuse to commence such cure within said fifteen (15) day period and thereafter diligently in good faith pursue the same to completion; in no event, however, shall the cure period, as extended hereby, exceed thirty (30) days), or in making any payment under said note (or any extension or renewal thereof) or any other payment as herein provided and such monetary default continues for more than five (5) days after the date such payment became due; or if any party liable for the indebtedness secured hereby file a voluntary petition in bankruptcy, make an assignment for the benefit of any creditor, or be declared bankrupt or insolvent; or if a debtor's or creditor's petition, filed pursuant to the provisions of the Bankruptcy Code, as amended, affecting the mortgaged property, be approved; or if the mortgaged property be placed under control or in custody of any court; or if Mortgagor abandons any of the mortgaged property; or if any representation and warranty of Mortgagor hereunder is false; then in any of said events, Mortgagee is hereby authorized and empowered at its option, without further notice and without affecting the lien hereby created, or the priority of said lien or any right of Mortgagee hereunder:

(a) To perform any such defaulted covenant or agreement to such extent as Mortgagee shall determine and to do and perform such other acts with respect to mortgaged

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property as Mortgagee shall deem necessary and advance such moneys as Mortgagee shall deem advisable for any of the aforesaid purposes, and all moneys so advanced by Mortgagee, with interest thereon from date advanced until repaid at the Default Rate, shall be secured hereby, and shall be repaid promptly without demand, but nothing herein contained shall be construed as requiring Mortgagee to advance money or to take any affirmative action for any of the aforesaid purposes;

(b) To declare, without notice, all sums secured hereby immediately due and payable, whether or not such default be remedied by Mortgagor, and to enforce any of the rights which accrue to Mortgagee hereunder, and proceed to foreclose this third mortgage, and to exercise all other rights and remedies it has at law or in equity.

(c) To exercise the remedies of a secured party under the Uniform Commercial Code of the State in which personal property is located (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted), the right to take possession of the property and enter the premises on which the personal property or any part thereof may be situated and remove the same therefrom, the right to resell the personal property at any place Mortgagee elects, the rights to require Mortgagor to make the personal property available to Mortgagee at a place designated by Mortgagee and reasonably convenient to both parties, and without removal, the right to render the personal property unusable and to dispose of the personal property on the real estate; provided Mortgagee shall send Mortgagor at least five days' prior written notice of the time and place of any public sale of the personal property or of the time after which any private sale or any other intended disposition is to be made, by United States mail, postage prepaid, to the address set forth above, and Mortgagee may bid and purchase personal property at public or private sale.

No right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive or any other right or remedy, but every right and remedy herein provided shall be cumulative, and shall be in addition to every other right or remedy given hereunder or now or hereafter existing at law or in equity. Notwithstanding anything to the contrary in this third mortgage, Mortgagee shall have no obligation to provide Mortgagor written notice of any failure or refusal by Mortgagor to do any act, which he is obligated hereunder to make or do, if Mortgagor is in default for substantially the same non-monetary default more than twice within any twelve (12) month period; in such event, solely at Mortgagee's election, and without further notice, Mortgagor shall not have any right to cure such repeated non-monetary default during said twelve (12) month period, and Mortgagee shall have all rights and remedies as provided herein.

15. **Foreclosure Expenses.** In case of foreclosure of this third mortgage in any court of law or equity whether or not any order or decree shall have been entered therein, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and appraisers' fee, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the mortgaged property. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the Default Rate, when paid or incurred by Mortgagee in

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connection with (a) any proceeding, including probate and bankruptcy proceedings, to which either of them shall be a party, either as plaintiff, claimant or defendant, by reason of this third mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclosure whether or not actually commenced; or (c) preparations for the defense of any threatened suit or proceeding which might affect the premises or the security hereof, whether or not actually commenced.

16. **Acceleration of Debt.** The act of Mortgagee in exercising its option electing to declare the entire indebtedness secured hereby due and payable upon breach of any of the covenants or agreements herein contained may be evidenced by the filing of proceedings to foreclose this third mortgage, by the filing of a suit in ejectment to obtain possession of the mortgaged property, by the filing of suit upon the note secured hereby or upon any other indebtedness secured hereby, or by giving notice as specified herein, stating that Mortgagee has exercised its option and has elected to declare the entire indebtedness due and payable, addressed to Mortgagor at the address shown in the caption hereof; provided, however, that nothing herein contained shall be interpreted to impose a duty upon Mortgagee to evidence in any of the ways herein stated its election to declare indebtedness due and payable.

17. **Change in Law.** In the event of the passage, after the date of this third mortgage, of any law of the State of Illinois, deducting from the value of real estate for the purpose of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of mortgages deeds of trust or debt secured thereby, for state or local purposes, or the manner of the collection of any such taxes, so as to affect the interest of the Mortgagee hereunder, or imposing upon Mortgagee the payment of the whole or any part thereof, the whole of the principal sum secured by this third mortgage, together with interest accrued thereon, shall at the option of Mortgagee, after thirty (30) days' notice to the Mortgagor or the then record owner of said mortgaged property, become immediately due and payable, and Mortgagor shall, in any such event, pay such taxes, liens or impositions.

18. **Waivers by Mortgagor.** Mortgagor hereby waives, to the extent permitted by law, the benefits of all valuation, appraisal, exemption, stay, redemption and moratorium laws, now in force or which may hereafter become laws, and Mortgagor, on behalf of itself and each and every person, except its decree or judgment creditors hereafter acquiring any interest in or title to the mortgaged property, hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this third mortgage.

19. **Due-on-Sale.** Upon the sale, exchange, conveyance, encumbrance, transfer, alienation, removal or other disposition of (i) the mortgaged property, or any part thereof, or any interest therein (including but not limited to the beneficial interest of any trust which holds title to the mortgaged property), or (ii) all or part of the legal or beneficial ownership interest in Mortgagor, or if the title to the mortgaged property shall become vested in any other party than Mortgagor in any manner whatsoever, the note and obligations secured by this instrument, irrespective of the maturity dates expressed therein, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable.

20. **Successors and Assigns.** The terms used to designate any of the parties herein shall be deemed to include the heirs, representatives, successors and assigns of such parties; and the term "Third mortgagee" shall also include any lawful owner, holder or pledge of any indebtedness secured hereby.

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21. **Satisfaction of third mortgage.** The condition of this third mortgage is such that if Mortgagor shall well and truly make all payments called for herein and in said note in accordance with its terms, and shall perform and comply with each and all of the covenants, conditions and agreements either in said note or in this third mortgage contained, then this third mortgage and the security interest granted hereunder shall be null and void, but otherwise the same shall remain in full force and virtue in law. When this third mortgage shall have been fully paid in accordance with its terms, the same shall be duly released by Mortgagee and all legal fees and expenses pertaining to such release shall be paid by Mortgagor.

22. **Indemnification and Release.** Mortgagor will protect, save harmless and indemnify Mortgagee from and against any and all claims, liabilities, costs and expenses, of whatever nature, including attorneys' fees, which may arise or result, directly or indirectly, by reason of the use or occupation of the mortgaged property or any part thereof or by reason of any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this third mortgage or its rights hereunder. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability.

23. **Miscellaneous.** The unenforceability or invalidity of any one or more provisions, clause, sentences and/or paragraphs hereof shall not render any other provisions, clauses, sentences and/or paragraphs herein contained unenforceable or invalid. Whenever the context hereof requires, reference herein made to the singular number shall be understood as including the plural, and likewise the plural shall be understood as denoting the singular; words denoting gender shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but shall be considered as cumulative. Time is of the essence hereof. Every covenant and agreement herein of Mortgagor shall run with the land, is a condition upon which the loan secured was made, and is of the essence of this instrument, and breach of any thereof shall be deemed a material breach going to the substance hereof. This third mortgage shall be governed in accordance with the internal laws of the State of Illinois. The headings of the paragraphs hereof are for convenience only, and shall not limit or affect any of the terms of this third mortgage.

24. **Notices.** All notices hereunder shall be in writing. All notices to be given hereunder (including, without limitation, notices of sale or default) may be given by any of the following means: i) personal service, ii) overnight delivery by a reliable courier service, iii) U.S. registered or certified mail, postage thereon prepaid or iv) facsimile transmission, followed by U.S. registered or certified mail, postage thereon prepaid. Written notice shall be deemed effective as follows: i) if by personal service or overnight delivery, upon delivery or first attempted delivery, ii) if by U.S. registered or certified mail two days after deposit in the U.S. Mail, and iii) if by facsimile transmission, followed by U.S. Mail, upon electronic confirmation of receipt in the recipient's office prior to 5:00 p.m. local time at the recipient's office. Notices to Mortgagor or Mortgagee shall be addressed to the mailing address for the applicable party shown in the caption hereof. Each of the parties may hereafter designate a different address for notices hereunder by providing notice of such designation to the other parties pursuant to the procedures set forth above.

25. **Operating and Financial Statements.** Mortgagor, its successors and assigns, will furnish to Mortgagee, annually by March 31, the following information: (i) income and

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expense statements with respect to the herein described property, (ii) rent rolls with respect to the herein described property showing areas leased, monthly rents, expense contributions and lease expiration dates; and (iii) current financial statements with respect to Mortgagor, its successors and assigns. Such information shall be sworn to, and based upon records compiled in conformity with recognized accounting practices.

26. **Exculpatory Provisions.** The note secured hereby contains, and there is hereby incorporated as a part hereof, the following clause:

“Except only as to the hereinafter Retained Liability Matters, Liability otherwise under this Note shall be limited to the security given for this Note, and the maker hereof (including any and all general or limited partners, members or joint venturers of such maker) shall not be personally liable, whether by way of election of remedy, deficiency judgment, or otherwise for any monies due hereunder, whether principal, interest, attorney’s fees, or other. Nothing in this paragraph, however, shall be deemed or construed to affect the validity of any instrument given to secure this Note. Further provided, however, the maker of this Note and the person(s) or entities related to such maker who are also signatories hereto shall be personally liable, jointly and severally, to the holder of this Note for any and all costs, losses, damages and attorney’s fees incurred or suffered by the holder of this Note as respects any of the following Retained Liability Matters: (i) Liability for rents and other income from any property given as security for this Note collected by such maker but not paid over in payment of any default under this Note or under any instrument given to secure this Note, (ii) Liability for insurance loss proceeds and condemnation award proceeds relating to any property given as security for this Note and released to such maker but not applied in accordance with any agreement between such maker and the payee hereunder with respect thereto; (iii) Liability for amounts necessary to pay costs of investigation and clean-up of hazardous materials and toxic substances on or affecting any property given as security for this Note or as provided in any instrument securing this Note; (iv) Liability for any fraud or misrepresentation by such maker as respects the financing evidenced by this Note; (v) Liability for unpaid real estate taxes in excess of the dollar amount of funds held in escrow by the holder of this Note for the payment of such taxes assessed against the property given as security for this Note; (vi) liability for any failure by such maker to maintain all insurance as required by the Mortgage securing this Note; (vii) Liability for any failure to pay the holder of this Note any lease termination fees, unamortized tenant improvement reimbursement or similar proceeds paid to maker.”

27. **Escrow Deposit of Lease Termination Proceeds.** In the event any lease at the mortgaged property is terminated by the tenant before the end of its full initial term and such termination results in the tenant’s payment of a lease termination fee, unamortized tenant improvement reimbursement, or any similar proceeds in an amount exceeding \$25,000, Mortgagor will immediately notify Mortgagee of said lease termination and will deposit all of said proceeds into a non interest-bearing escrow account with Mortgagee (“Lease Escrow”). Mortgagor does hereby irrevocably grant and convey unto Mortgagee a continuing security interest in all of Mortgagor’s right, title and interest in and to such Lease Escrow and the sums contained therein which shall be deemed mortgaged property hereunder. Any amount contained in the Lease Escrow will be available for release to Mortgagor as reimbursement for the costs of tenant improvements or leasing commissions for new leases at the mortgaged property occurring subsequent to the lease termination in question. To qualify for a release, Mortgagor must

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provide satisfactory evidence to Mortgagee that: (i) the tenant(s) for the space in question are in occupancy and paying rent, as evidenced by a tenant-certified copy of the lease agreement and an estoppel certificate satisfactory to Mortgagee confirming the lease terms and the fact that Mortgagor is not in default under the lease and has fulfilled all of its initial obligations under the lease; and (ii) all costs associated with the leasing and construction of the space have been paid in full and all appropriate lien waivers have been obtained.


28. **Environmental Matters.** Mortgagor represents that it, and the holders of easements, licenses, occupancy agreements and any other rights relating to the use of all or any portion of the mortgaged property (herein jointly called "Persons Responsible"), are currently in compliance with, and covenants and agrees that it will manage and operate the mortgaged property and will cause each Person Responsible to occupy and use its demised portion of the mortgaged property in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, treatment and removal, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, building components, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed on the mortgaged property asbestos or any substance containing asbestos and deemed hazardous by or in violation of such federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall send to Mortgagee, within five (5) days of receipt or completion thereof, any report, citation, notice or other writing including, without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the activities discussed in this paragraph, whether demonstrating compliance with applicable law, noticing noncompliance, requesting or requiring notice or action, commencing investigation or requesting Mortgagor to show cause why action is not required. After reasonable inquiry and investigation, Mortgagor is not aware of any hazardous or toxic substances on or in the property whether contained in tanks or other containers, in structures or equipment, or incorporated in buildings. In the event that, through whatever means, Mortgagor or a third party discovers hazardous substances on the mortgaged property, Mortgagor shall remedy, rectify, rehabilitate, correct and remove from the mortgaged property and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances. Mortgagor shall take any and all action necessary, including but not limited to, bringing legal suit against, those Persons Responsible for the presence of the substance on site, or otherwise obligated by law to bear the cost of such remedy. Mortgagee shall be subrogated to Mortgagor's rights against any and all Persons Responsible; provided, however, Mortgagee shall in no event be obligated to remedy, rectify, rehabilitate, correct or remove and dispose of any such substances nor shall Mortgagee be obligated to take any action against Persons Responsible for the foregoing activities. Mortgagor agrees to indemnify, defend with counsel acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability or demand (including without limitation reasonable attorney fees and costs incurred by Mortgagor or Mortgagee, or both) arising out of any claimed violation by Mortgagor or any Person Responsible for any of the foregoing laws, regulations or ordinances or breach of any of the foregoing representations, covenants or agreements. Mortgagor specifically agrees that, notwithstanding any provision to the contrary in this Third mortgage this indemnification shall survive the reconveyance or release of this third mortgage, whether pursuant to payment in full of the Note or judicial or non-judicial foreclosure by third mortgagee under this third mortgage and that, if requested by Mortgagee, Mortgagor at any time shall execute a separate writing setting forth such indemnification.

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29. **Indemnity as to Brokerage Fees.** Mortgagor hereby agrees to indemnify, defend and hold harmless, the Mortgagee from any and all brokerage fees or commissions relating to the procurement, origination or closing of the loan contemplated hereby.

OLD COLONY PARTNERS LIMITED
PARTNERSHIP, an Illinois limited partnership

By: Old Colony Properties, Inc., a South Dakota corporation, General Partner

By: 

Print Name: Andrew A. Jabelka

Title: President

Property of Cook County Clerk's Office

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ATTEST:

By: Sonya A. Levoy

Print Name: SONYA A. Levoy

Title: _____

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

On this 22nd day of July, 2004, before me, the undersigned Notary Public, personally appeared Andrew Janelka, personally known to me and known to me to be the President of OLD COLONY PROPERTIES, INC., a South Dakota corporation, General Partner of OLD COLONY PARTNERS LIMITED PARTNERSHIP, an Illinois limited partnership, and who acknowledged under oath that he executed the within instrument in such capacity as the free act and deed of the said corporation and such partnership.

Natalie Montoya
Notary Public

My commission expires:



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EXHIBIT "A"

Legal Description

LOTS 1, 6 AND 7 (EXCEPTING THAT PORTION OF SAID LOTS FALLING IN DEARBORN STREET) IN BLOCK 138 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDAN, IN COOK COUNTY, ILLINOIS

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RIDER TO MORTGAGE

EXISTING INDEBTEDNESS. The following provisions concerning existing indebtedness (the "Existing Indebtedness") are a part of this Mortgage.

Existing Lien. The Lien of this Mortgage securing the Indebtedness may be tertiary and inferior to existing liens. Grantor express covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

Default. If the payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the note evidencing such indebtedness, or should a default occur under the instrument securing such indebtedness and not to be cured during any applicable grace period therein, then, at the option of the Lender, the Indebtedness secured by this Mortgage shall become immediately due and payable, and this Mortgage shall be in default.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

Grantor and Lender acknowledge and agree that this Mortgage dated July 22, 2004 shall be subject to and inferior to the first Mortgage of General American Life Insurance Company on the subject property dated October 29, 1999 recorded prior to this Mortgage and recorded as document number 04059061.

Grantor and Lender acknowledge and agree that this Mortgage dated July 22, 2004 shall be subject to and inferior to the second Mortgage of Marine Bank on the subject property dated January 26, 2001 recorded prior to this Mortgage and recorded as document number 0010111397.

Grantor:

Old Colony Partners Limited Partnership, an Illinois Limited Partnership

By: Old Colony Properties, Inc.

By: 
Its President