

UNOFFICIAL COPY

Loan No. _____



Doc#: 0423615139
Eugene "Gene" Moore Fee: \$68.50
Cook County Recorder of Deeds
Date: 08/23/2004 04:24 PM Pg: 1 of 23

[This Space For Recorder's Use Only]

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

THIS SECOND MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 13th day of August, 2004, by Charles J. Dixon, Jr. ("Mortgagor"), in favor of Carl Schmedeke (the "Creditor").

WITNESSETH:

WHEREAS, Mortgagor has executed a guaranty in favor of Creditor of even date herewith (the "Guaranty"), pursuant to which Mortgagor has guaranteed to Creditor the payment of (a) that certain Promissory Note, of even date herewith, payable by Mid-American Water, Inc. and Mid-American Water of Wauconda, Inc. (collectively the "Companies") to the order of Creditor in the principal amount of \$595,000 (the "Purchase Note"), which note bears interest and is payable to Creditor as more fully described therein and which note shall mature as provided therein, but in no event later than July 10, 2014; and (b) amounts due to Creditor under that certain Non-Competition Agreement between Creditor and the Companies dated July 28, 2004 (the "Non-Competition Agreement"), and (c) amounts due to Creditor under Section 3 of that certain Confidential Settlement Agreement and General Release between Creditor and the Companies dated July 28, 2004 (the "Settlement Agreement Amounts");

WHEREAS, Creditor is desirous of securing the prompt payment of all amounts due under the Purchase Note and the Non-Competition Agreement, as well as the Settlement Agreement Amounts (collectively the "Guarantied Obligations");

NOW, THEREFORE, to secure the payment of the Guarantied Obligations, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Mortgagor has executed and delivered this Mortgage and does hereby grant a lien and/or

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING SHOULD
BE RETURNED TO:

ATTY CRAIG HASENBALG
Dickson & Hasenbalg
2000 W. Galena Blvd., Suite 305
Aurora, IL 60506
[Local Counsel Name and Address]

34
ML
P-88
JW

UNOFFICIAL COPY

Loan No. _____

security interest, as applicable, in, and grant, convey, assign, mortgage and warrant and confirm, to Creditor and Creditor's successors and assigns forever, all of the property now or hereafter owned by Mortgagor described in the following GRANTING CLAUSES (the "**Mortgaged Property**"):

- A. All those certain tracts, pieces or parcels of land legally described in **Exhibit A** attached hereto and hereby made a part hereof; and
- B. All improvements of every nature whatsoever now or hereafter situated on the Mortgaged Property, and all furnishings, furniture, fixtures, machinery, inventory, equipment, appliances, systems, building materials, vehicles and personal property of every kind and nature whatsoever including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus and systems, refrigerating plant, refrigerators, computers and all hardware and software therefor, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements, or which are or shall be located in, on or about the Mortgaged Property, or which, wherever located (including, without limitation, in warehouses or other storage facilities or in the possession of or on the premises of vendors or manufacturers thereof), are used or intended to be used in or in connection with the construction, fixturing, equipping, furnishing, use, operation or enjoyment of the Mortgaged Property or the improvements thereon, now or hereafter owned by Mortgagor, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with all warehouse receipts or other documents of title relating to any of the foregoing and the benefit of any deposits or payments now or hereafter made by Mortgagor in connection with any of the foregoing; and
- C. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, licenses, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to the Mortgaged Property, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor and the reversion and reversions, remainder and remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same; and
- D. Each and every lease, license and other document or instrument, including, without limitation, those described in Granting Clause C above, granting to any person or entity any right to use or occupy, and any other agreement with respect to the use or occupancy of, all or any portion of the Mortgaged Property, whether heretofore, now or hereafter entered into (the "**Leases**"); and
- E. The rents, deposits, issues, profits, proceeds, revenues, awards and other benefits of the Mortgaged Property from time to time accruing (including, without limitation, all

UNOFFICIAL COPY

Loan No. _____

- payments under the Leases, licenses and documents described in Granting Clause D above, proceeds of insurance, condemnation awards and payments in lieu thereof, tenant security deposits, advance room deposits and escrow funds, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Mortgaged Property, or personality located thereon, or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or acquired from others including, without limitation, from the rental of any space, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same) (collectively, the "**Rents**"); and
- F. All proceeds and avails from rentals, mortgages, sales, conveyances or other dispositions or realizations of any kind or character of or from the foregoing Rents now or hereafter existing, all of which shall constitute proceeds of collateral pursuant to Section 9-315 of the Uniform Commercial Code ("**UCC**"), as adopted in the state in which the Mortgaged Property is located (the "**State**"); and
- G. All of the aforementioned personal property and any and all other personal property, whether tangible or intangible, not otherwise described herein and now or at any time hereafter owned by the Mortgagor and now or at any time hereafter located in or on or otherwise utilized in any one or more of the ownership, use, enjoyment, construction, occupancy, management, maintenance, repair and operation of the Mortgaged Property or the equipment located thereon, including, without limitation, trade names, trademarks, service marks, copyrights, patents and other intellectual property and any and all funds of Mortgagor from time to time in Creditor's possession, all of which shall constitute proceeds of collateral pursuant to Section 9-306 of the UCC (the "**Personality**"); and
- H. All of the aforementioned contracts and agreements and any and all other contracts or agreements, whether written or oral, to which Mortgagor is or hereafter becomes a party, to the extent assignment is permitted therein, including, without limitation, purchase contracts for the sale of all or any portion of the Mortgaged Property, contracts pertaining to architectural services, contracts pertaining to engineering services, and contracts relating in any manner to the ownership, use, enjoyment, construction, occupancy, management, maintenance, operation or repair of all or any portion of the Mortgaged Property, the equipment located thereon or the Personality or otherwise related to all or any part of the real and personal property described elsewhere herein (the "**Contracts**"); and
- I. To the extent assignment thereof is legally permissible, all franchises, permits, licenses, entitlements and rights therein respecting the ownership, use, enjoyment, occupation, management, maintenance, repair and operation of any of the foregoing; and
- J. Any and all rights, titles, interests, estates and other claims, at law or in equity, that Mortgagor now has or may hereafter acquire in or to any proceeds from the sale,

UNOFFICIAL COPY

Loan No. _____

assignment, conveyance, hypothecation, grant, pledge or other transfer of any or all of the foregoing real or personal property; and

- K. Any and all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally registered credits (such as emissions reduction credits) and payments of any kind due from or payable by any governmental authority or any insurance or utility company relating to any or all of the Mortgaged Property; and
- L. All refunds, rebates, reimbursements and payments of any kind due from or payable by any governmental authority for any taxes, assessments or governmental or quasi-governmental charges or levies imposed upon Mortgagor with respect to the Mortgaged Property or upon any or all of the Mortgaged Property; and
- M. All monies relating to the Mortgaged Property held in any cash collateral or operating account maintained with Creditor or any Affiliate of Creditor now or at any time hereafter, all monies held in any capital expenditure escrows or other operational escrows or reserve funds and any other escrows, reserves or letters of credit benefiting or relating to the Mortgaged Property; and
- N. All right, title and interest of Mortgagor arising from the operation of the Mortgaged Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper including, without limiting the generality of the foregoing, all accounts, accounts receivable, contract rights, book debts, and notes arising from the operation of the Mortgaged Property and Mortgaged Property-related services on the Mortgaged Property or arising from the sale, lease or exchange of goods or other property and/or the performance of services.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Creditor, its successors and assigns, to their own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein contained.

WITHOUT LIMITATION OF THE FOREGOING, Mortgagor hereby further grants unto Creditor, pursuant to the provisions of the UCC, a security interest in all of the Mortgaged Property, which property includes, without limitation, goods which are or are to become fixtures, the Leases and the Rents.

THIS MORTGAGE IS GIVEN TO SECURE payment of the principal and interest evidenced by the Notes, each of which shall be equally secured by this Mortgage without priority or preference to one over another, and performance of each and every of the covenants, conditions and agreements of the Mortgagor contained in this Mortgage (collectively the “Secured Obligations”).

PROVIDED, HOWEVER, that this Mortgage and all rights of Creditor hereunder are all subject and subordinate to the First Mortgage (as defined in Section 1.1 below) and the prior rights of the First Mortgage Holder (as defined in Section 1.1 below).

UNOFFICIAL COPY

Loan No. _____

PROVIDED, HOWEVER, THE FOREGOING PRESENTS are made upon the condition that, if (i) all of the Secured Obligations shall have been paid to Creditor, and (ii) Mortgagor shall keep, perform and observe (or cause to be kept, performed and observed) each and every one of the covenants and promises in this Mortgage required to be kept, performed and observed by and on the part of Mortgagor, then this Mortgage shall cease, terminate and be void; however, if such conditions are not all satisfied, this Mortgage shall otherwise remain in full force and effect; provided, however, that this Mortgage shall cease, terminate and be void on _____, 2009, regardless of whether the above conditions are met.

MORTGAGOR FURTHER COVENANTS AND AGREES WITH CREDITOR AS FOLLOWS:

1. MORTGAGOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES.

1.1. Warranty of Title. At the time of the recordation of this Mortgage, Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property, and Mortgagor has good right, full power and lawful authority to convey, mortgage and grant a security interest therein and to assign the Rents. To the Mortgagor's best knowledge, said title of Mortgagor in the Mortgaged Property is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, other than (a) the first mortgage from Mortgagor to ABN AMRO Mortgage Group, Inc. dated as of September 19, 2002, securing a promissory note in the original principal amount of \$382,500 (such mortgage, and all amendments thereof, replacements or substitutions therefor, and refinancings thereof, referred to as the "First Mortgage" and the holder from time to time of the First Mortgage referred to as the "First Mortgage Holder"), (b) liens for current taxes and assessments not in default, (c) easements, covenants and restrictions of record which do not materially interfere with the intended uses of the Property, and (d) the declaration of condominium with respect to the Mortgaged Property (collectively the "Permitted Exceptions"). Mortgagor shall and will forever defend the title to the Mortgaged Property against the claims of all persons whomsoever, other than the Permitted Exceptions.

1.2. Taxes. Mortgagor shall pay, or cause to be paid, all installments of taxes, assessments and other similar charges which are assessed, levied, confirmed, imposed, or which become a lien upon or against the Mortgaged Property, or any portion thereof, or which become payable with respect thereto or with respect to the occupancy, use or possession of the Mortgaged Property before the same become delinquent; provided that Mortgagor may contest the validity of any such taxes or assessments through proper proceedings, and in such case Mortgagor shall be under no obligation to pay such tax or assessment until such time as the same has been decreed, by court order, to be a valid lien on the Mortgaged Property.

1.3. Mortgage Taxes. In the event of the passage of any federal, state or local governmental law, order, rule or regulation subsequent to the date hereof which changes or modifies in any manner the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to materially and adversely affect Creditor, all sums secured by this Mortgage and all interest accrued thereon shall become due

UNOFFICIAL COPY

Loan No. _____

forthwith at the option of Creditor and be payable 60 days after notice to Mortgagor. Notwithstanding the foregoing, instead of paying all the sums secured by this Mortgage and all interest accrued thereon as provided above, Mortgagor shall have the right to pay to Creditor an amount which will place Creditor in exactly the same position Creditor would have been in had the events outlined above not occurred, provided, however, if such payment may, in Creditor's judgment, be considered unlawful by a court of competent jurisdiction, then such payment may not be made and all sums secured by this Mortgage and all interest accrued thereon shall become due forthwith at the option of Creditor and payable 60 days after notice to Mortgagor as aforesaid.

1.4. No Tax Credits. Mortgagor shall not claim or demand or be entitled to receive any credit or credits on any principal or interest payable with respect to any Secured Obligations, for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property, or any part thereof, as are applicable to the Secured Obligations or to Creditor's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Secured Obligations or this Mortgage.

1.5. Utilities. Mortgagor shall pay or cause to be paid when due any and all charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof, and all license fees, rents or other charges for the use of any appurtenance to the Mortgaged Property.

1.6. Liens. The Mortgaged Property shall be kept free and clear of all liens and encumbrances (unless the same are bonded or insured over in a manner satisfactory to Creditor) of every nature or description, including, without limitation, liens and encumbrances arising from past due taxes or assessments and from charges for labor, materials, supplies or services, other than the Permitted Encumbrances.

1.7. Insurance. Mortgagor shall, at its expense, maintain insurance policies in accordance with the terms and conditions of the First Mortgage.

1.8. Condemnation. If all or any part of the Mortgaged Property, other than a part the loss of which, in Creditor's reasonable discretion, would not adversely affect the operation of the Mortgaged Property, shall be damaged or taken through condemnation (which term, when used herein, shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily, if in Creditor's judgment such taking causes a material, adverse impact on (i) the Mortgaged Property and (ii) Mortgagor's ability to pay or perform the Secured Obligations, or permanently, then all of the Secured Obligations shall, at the option of Creditor, become immediately due and payable. Creditor shall be entitled to all compensation, awards and other payments or relief therefor and all such compensation, awards, damages, claims, rights, actions and proceedings, and the right thereto, are hereby assigned by Mortgagor to Creditor and shall be paid to Creditor. Mortgagor agrees to execute such further assignments of, or payment directions relating to, any compensations, awards, damages, claims, rights, actions and proceedings as Creditor may require. Creditor may deduct from such compensation, awards and other payments any reasonable expenses incurred by Creditor in the collection and settlement thereof, including, without limitation, attorneys' fees and expenses. The remaining amount is referred to herein as the "**Net Award Proceeds**". Creditor is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name

UNOFFICIAL COPY

Loan No. _____

of Mortgagor, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith during the continuance of an Event of Default hereunder; in all other cases, Mortgagor shall have the right to prosecute, settle or compromise any such claim and any proceeds therefrom shall be payable to Mortgagor and Creditor jointly. Creditor shall not be liable to Mortgagor for any failure to collect any amount in connection with any such proceeding regardless of the cause of such failure.

1.9. Restoration. If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the Net Insurance Proceeds or the Net Award Proceeds (in either event, the "**Proceeds**") are available or sufficient to pay the cost of such restoration or repair, which restoration and repair shall be commenced within 30 days of the damage or destruction and completed within 180 days thereof. Creditor may require that all plans and specifications for such restoration or repair be submitted to and approved by Creditor in writing prior to commencement of the work. Creditor may require evidence of the estimated cost of completion of such restoration or repair satisfactory to Creditor and, thereafter, such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance relating to such restoration or repair work which is satisfactory to Creditor.

1.10. Application of Proceeds. At Creditor's election, to be exercised by written notice to Mortgagor within 30 days following Creditor's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds shall be either (i) applied to the amounts outstanding with respect to the Secured Obligations and in such order and manner as Creditor may elect, or (ii) made available to Mortgagor on the terms and conditions set forth in this Section to finance the cost of restoration or repair, with any excess to be applied to the Secured Obligations. Notwithstanding the foregoing, (x) if the aggregate amount of the Proceeds shall not exceed the lesser of \$250,000.00 or 10% of the total outstanding amount of the Secured Obligations, and (y) if no Event of Default exists at the time of Creditor's election, then Creditor must elect the option set forth in clause (ii) of the preceding sentence, and Creditor shall pay the entire amount of such Proceeds directly to Mortgagor and Mortgagor shall thereafter be obligated to repair or restore the Mortgaged Property regardless of whether or not the Proceeds are sufficient to finance the necessary repairs or restoration.

1.11. Governmental Authority Payments. Mortgagor agrees with respect to the collateral described in Granting Clauses K and L hereof (the "**Governmental Authority Payments**") as follows: (i) that Mortgagor shall, at Mortgagor's sole expense, promptly take all actions necessary to obtain all proceeds to which Mortgagor is entitled in connection with the Governmental Authority Payments, including, without limitation, the filing of applications or claims and the prosecution of appeals or litigation, if reasonably necessary and cost effective, (ii) that, in the event of an Event of Default by Mortgagor under this Mortgage, Mortgagor shall direct the payor with regard to any of the Governmental Authority Payments to remit same directly to Creditor when due, (iii) that Mortgagor shall forward promptly to Creditor all notices and correspondence relating in any manner to any of the Governmental Authority Payments and any proceeds received by Mortgagor in connection with any of the Governmental Authority Payments, (iv) that, during the continuance of an Event of Default hereunder, the proceeds of any

UNOFFICIAL COPY

Loan No. _____

of the Governmental Authority Payments received by Creditor shall be applied toward the repayment of the Secured Obligations in a manner determined by Creditor in its sole discretion or, at the request of Mortgagor and with the consent of Creditor, said proceeds shall be deposited in a secured deposit account maintained with Creditor or an Affiliate of Creditor, as designated by Creditor, and applied from time to time toward the payment of any expenses relating to the Mortgaged Property, in a manner determined by Creditor in its sole discretion, and (v) that, in the event of an Event of Default by Mortgagor under this Mortgage, Creditor shall be and hereby is appointed as Mortgagor's agent with respect to any of the Governmental Authority Payments and in that capacity Creditor shall have the right to take all such actions that Creditor deems necessary and expedient in order to obtain all proceeds to which Mortgagor is entitled with respect to any of the Governmental Authority Payments.

1.12. General Care of the Property. Mortgagor shall preserve and maintain or cause to be preserved and maintained the Mortgaged Property in good condition and repair, shall not commit or suffer any waste thereof, and shall keep the same in a clean, orderly and attractive condition. Mortgagor shall not do or suffer to be done anything which will increase the risk of fire or of any other hazard to the Mortgaged Property or any part thereof. No buildings, structures, improvements, fixtures, personal property or other part of the Mortgaged Property shall be removed, added to, demolished or altered structurally to any extent or altered non-structurally in any material respect without the prior written consent of Creditor. Mortgagor shall promptly comply, and cause the Mortgaged Property and the occupants or users thereof to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof. Creditor and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage.

1.13. Leases and Other Agreements Affecting the Mortgaged Property. Mortgagor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon Mortgagor or the Mortgaged Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof and which is binding on Mortgagor. Mortgagor represents and warrants that Mortgagor has heretofore furnished Creditor with true and complete copies of all such leases, agreements and instruments existing on the date of this Mortgage. Mortgagor agrees to furnish Creditor with executed copies of all leases hereafter entered into with respect to all or any part of the Mortgaged Property. Mortgagor shall not, without the express written consent of Creditor, enter into any new lease or modify, surrender, terminate, extend or renew, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor shall Mortgagor permit an assignment or sublease thereof without the express written consent of Creditor. If Creditor so requests, Mortgagor shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with Creditor which are satisfactory to Creditor. Mortgagor shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than one month's rent without the express written consent of Creditor. Mortgagor shall keep any security deposits made by any tenant in an account with Creditor. Mortgagor may not withdraw any such security deposit from such account without providing Creditor with reasonable assurance that such withdrawal is being paid directly to the applicable tenant. In order to further secure payment of the Secured Obligations, Mortgagor hereby assigns,

UNOFFICIAL COPY

Loan No. _____

transfers and sets over to Creditor all of Mortgagor's right, title and interest in, to and under all of the leases now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Mortgaged Property or any part thereof. Unless and until an Event of Default occurs, Mortgagor shall be entitled to collect the rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property (except as otherwise provided in this Mortgage) as and when they become due and payable. Creditor shall be liable to account only for rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property actually received by Creditor pursuant to any provision of this Mortgage.

1.14. Impairment of Security. Without limitation of any other provision hereof, Mortgagor shall not assign, in whole or in part, the rents, issues, profits, revenues, awards and other benefits from the Mortgaged Property without the prior written consent of Creditor; any such assignment made without Creditor's prior written consent shall be null and void and of no force and effect and the making thereof shall constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Mortgagor shall not in any other manner impair the security of this Mortgage for the payment of any Secured Obligations.

1.15. Prohibition of Transfer. Mortgagor shall not, without the prior written consent of Creditor, sell, assign or otherwise transfer, whether directly or indirectly, by operation of law or otherwise, all or any portion of any interest in the Mortgaged Property, except replacements of personal property in the ordinary course of business. Any such transfer made without Creditor's prior written consent shall be null and void and of no force and effect, and any mere attempt to create or cause a transfer in default of the terms hereof shall constitute an Event of Default under this Mortgage. Notwithstanding anything herein to the contrary, if Mortgagor desires to sell, assign or otherwise transfer the Mortgaged Property, the Creditor shall not withhold his consent to the same if Mortgagor shall have provided to Creditor, or made provision for the delivery to the Creditor of, substitute collateral approximately equal in value to the Creditor's interest in the Mortgaged Property, including but not limited to a second mortgage on property with approximately equivalent unencumbered equity value to that of the Mortgaged Property as of the date hereof.

1.16. Further Assurances; After Acquired Property. At any time and from time to time, upon request from Creditor, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Creditor and, where appropriate, to cause to be recorded or filed, or both, and from time to time thereafter to be re-recorded or refiled, or both, at such time and in such offices and places as shall be deemed desirable by Creditor, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Creditor, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (i) the obligations of Mortgagor under this Mortgage, and (ii) the lien and security interest of this Mortgage as a lien and security interest upon all of the Mortgaged Property, whether now or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to so make, execute and deliver each of such documents after written demand, Creditor may make, execute, record, file, re-record and refile, as appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Creditor as its agent and

UNOFFICIAL COPY

Loan No. _____

attorney-in-fact in connection therewith. The lien and security interest hereof will automatically attach, without further act, to all after-acquired property owned by Mortgagor attached to or used in connection with the operation of the Mortgaged Property or any part thereof.

2. MORTGAGOR'S DEFAULT.

2.1. Mortgagor's Defaults and Creditor's Remedies.

2.1.1. Events of Default. The occurrence of a Company Event of Default (as defined in the Purchase Note) shall constitute an "**Event of Default**" under this Mortgage:

2.1.2. Creditor's Remedies. Upon the happening of any Event of Default, Creditor shall have the right, if such Event of Default shall then be continuing, in addition to all the remedies conferred upon Creditor by law or equity, to do any or all of the following, concurrently or successively, without notice to Mortgagor:

2.1.2.1. Declare any and all amounts due under the Notes to be, and they shall thereupon become, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding; or

2.1.2.2. Enter upon and take possession of the Mortgaged Property and do anything necessary or desirable to sell, manage, maintain, repair and protect the Mortgaged Property, and, without restricting the generality of the foregoing and for the purposes aforesaid, Mortgagor hereby authorizes Creditor (A) to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens or security interests against the Mortgaged Property or as may be necessary or desirable for the clearance of title or otherwise, (B) to use any funds of any land trustee, including, without limitation, any loan balance which might not have been disbursed and customer deposits, for the purpose of completing said improvements (C) to make necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personality or other property, (D) insure or keep the Mortgaged Property insured, (E) to manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in the name of Mortgagor or otherwise with respect to the same, (F) to do any and every act which Mortgagor might do, including, without limitation, to enter into leases of any portion of the Mortgaged Property and to enter into contracts for the sale of, and to sell and convey title to, the Mortgaged Property or any portion thereof and Mortgagor agrees to execute and deliver such contracts, deeds, leases and other instrument as may be required by Creditor or Creditor's title company to carry out the intent of this Section, (G) to prosecute or defend any and all actions or proceedings involving the Mortgaged Property or any fixtures, equipment or other installations thereon, and (H) to exclude Mortgagor and the representatives of Mortgagor from the Mortgaged Property or any portion thereof, and Creditor shall have joint access with Mortgagor to the books and accounts of Mortgagor; furthermore, in connection with an exercise by Creditor of the foregoing remedy:

- (i) Creditor and its representatives shall be entitled to the entry, possession and use contemplated herein upon

UNOFFICIAL COPY

Loan No. _____

demand and without the consent of any party and without any legal process or other condition precedent whatsoever; however, if Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Creditor, Creditor may obtain a judgment or decree conferring on Creditor the right to immediate possession or requiring the delivery of immediate possession of all or part of the Mortgaged Property to Creditor, and Mortgagor hereby specifically consents to the entry of such judgment or decree;

- (ii) Mortgagor acknowledges that any denial of such entry, possession and use by Creditor will cause irreparable injury and damage to Creditor and agrees that Creditor may forthwith sue for any remedy to enforce the immediate enjoyment of such right, and Mortgagor hereby waives the posting of any bond as a condition for granting such remedy; and
- (iii) Mortgagor shall pay to Creditor, upon demand, all expenses (including, without limitation, attorneys' fees and expenses) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under this Mortgage; and all such expenses shall, until paid, be secured by this Mortgage and shall bear interest at the rate of interest under the Purchase Note; or

2.1.2.3. Offset and apply any indebtedness now or hereafter owing from Creditor to Mortgagor (including, without limitation, any amounts on deposit in any demand, time, savings, passbook, certificate of deposit or like account maintained by Mortgagor with Creditor or any affiliate of Creditor) against any and all amounts due from Mortgagor to Creditor hereunder; or

2.1.2.4. Collect and receive all the rents, issues, profits and revenues of the Mortgaged Property, including those past due as well as those accruing thereafter, after deducting therefrom (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including, without limitation, compensation for the services of all persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments and other similar charges as Creditor may determine to pay, (E) other proper charges upon the Mortgaged Property or any part thereof, and (F) Creditor's attorneys' fees and expenses.

2.2. Protective Advances. If an Event of Default occurs, Creditor may (but shall in no event be required to) cure any such Event of Default and any amounts expended by Creditor in so doing, including, without limitation, all funds furnished by Creditor pursuant to **Section 2.1.2.2** above, shall (i) be deemed advanced by Creditor under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished,

UNOFFICIAL COPY

Loan No. _____

(ii) constitute additional advances hereunder, the payment of which is additional indebtedness evidenced by the Notes, and (iii) become due and owing, at Creditor's demand, with interest accruing from the date of disbursement thereof until fully paid at the rate of interest under the Purchase Note.

2.3. No Creditor Liability. To the extent permitted by law, Creditor shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it, or any of its representatives, which was taken, omitted or made in good faith except losses, damages, injuries, costs or expenses resulting from Creditor's gross negligence.

2.4. Creditor's Attorneys' Fees. In case of any Event of Default hereunder, Mortgagor shall pay Creditor's attorneys' fees and expenses in connection with the enforcement of this Mortgage.

2.5. Receiver. If an Event of Default shall have occurred and be continuing, Creditor, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the Secured Obligations or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. Mortgagor shall pay to Creditor upon demand all of Creditor's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section plus interest thereon accruing at the rate of interest under the Purchase Note, and all such amounts shall be additional indebtedness comprising Secured Obligations.

2.6. Creditor's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Creditor 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 (i) to enforce payment of the Secured Obligations or the performance of any term, covenant, condition or agreement of this Mortgage or any other right, (ii) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or otherwise, as Creditor may determine, and (iii) to pursue any other remedy available to it, all as Creditor shall deem most effectual for such purposes. Creditor may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Creditor may determine. Creditor may elect to pursue any one or more or all of the foregoing.

2.7. Purchase by Creditor. Upon any foreclosure sale, Creditor may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of any indebtedness or obligation secured hereby as a credit to the purchase price.

2.8. Fees and Expenses; Application of Proceeds of Sale. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby (and part of the Secured Obligations) in the decree for sale, to the extent permitted by law, all costs and expenses which may be paid or incurred by or on behalf of Creditor or the holder of the Notes for attorneys' fees and expenses, appraiser's fees and expenses, receiver's fees and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication cost and costs of procuring all

UNOFFICIAL COPY

Loan No. _____

abstracts of title, title searches and examinations, and similar data and assurances with respect to title as Creditor or the holder of the Notes may deem to be 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 value of the Mortgaged Property, or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby (and part of the Secured Obligations) in the decree for sale. In the event of a foreclosure sale of the Mortgaged Property, the proceeds of said sale shall be applied first to the expenses of such sale and of all proceedings in connection therewith, including, without limitation, attorneys' fees and expenses, then to insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, then to payment of the outstanding principal balance of any indebtedness secured hereby, then to the accrued interest on all of the foregoing, and, finally, the remainder, if any, shall be paid to Mortgagor. Notwithstanding anything herein to the contrary, the Borrower shall not be responsible for any attorneys or consultants' fees in connection with the negotiation, documentation or closing of the Loan.

2.9. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.

Mortgagor agrees, to the fullest extent permitted by law, that if an Event of Default occurs hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim by, through or under it, hereby waives and releases, to the fullest extent permitted by law, the benefit of all such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.

2.10. Leases. Creditor, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Creditor to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.11. Discontinuance of Proceedings and Restoration of the Parties. In case Creditor shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Creditor, then and in every such case, Mortgagor and Creditor shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Creditor shall continue as if no such proceeding had been taken.

2.12. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Creditor by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

UNOFFICIAL COPY

Loan No. _____

2.13. Suits to Protect the Mortgaged Property. Upon the occurrence of an Event of Default hereunder, Creditor shall have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (ii) to preserve or protect its interest in the Mortgage Property and in the rents, issues, profits, revenues, awards and other benefits arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of Creditor, and all costs and expenses incurred by Creditor in connection therewith (including, without limitation, attorneys' fees and expenses) shall be paid by Mortgagor to Creditor on demand with interest at the rate of interest under the Purchase Note, and all such amounts shall be additional indebtedness secured hereby (and part of the Secured Obligations).

2.14. Creditor May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, Creditor, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Creditor allowed in such proceedings for the entire amount due and payable by Mortgagor under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

3. ASSIGNMENT OF LEASES AND RENTS.

3.1. Assignment. For \$10.00 and other good and valuable consideration, including the indebtedness evidenced by the Notes, the receipt and sufficiency of which are hereby acknowledged, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey absolutely unto Creditor the Leases and the Rents, subject only to the hereinafter referenced License, to have and to hold the Leases and the Rents unto Creditor, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Creditor against every person whomsoever lawfully claiming or to claim the same or any part thereof by or through Mortgagor; provided, however, if Mortgagor shall pay or cause to be paid and shall perform and discharge or cause to be performed and discharged, the Secured Obligations on or before the date same is to be paid, performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Mortgagor without the necessity of any further act or requirement by Mortgagor or Creditor.

3.2. Limited License. Creditor hereby grants to Mortgagor a limited license (the "License"), nonexclusive with the rights of Creditor reserved in this Mortgage, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor.

3.3. Enforcement of Leases. Subject to and in accordance with the terms and conditions of **Section 1.13** of this Mortgage, Mortgagor shall (a) duly and punctually perform

UNOFFICIAL COPY

Loan No. _____

and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (b) maintain each of the Leases in full force and effect during the term thereof, (c) to the extent commercially reasonable, appear in and defend any action or proceeding in any manner connected with any of the Leases, (d) deliver to Creditor copies of executed counterparts of all Leases and (e) deliver to Creditor such further information, and execute and deliver to Creditor such further assurances and assignments, with respect to the Leases as Creditor may from time to time reasonably request. Without Creditor's prior written consent, Mortgagor shall not materially discount any future accruing Rent, or assign or grant a security interest in or to the License or any of the Leases.

3.4. Suits; Attornment. Subject to the License and the provisions of **Section 2.1.2** of this Mortgage, Creditor hereby reserves and may exercise the right and Mortgagor hereby acknowledges that Creditor has the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of any indebtedness secured hereby selected by Creditor, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Mortgagor hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Creditor. Mortgagor hereby ratifies and confirms all that Creditor shall do or cause to be done by virtue and in compliance with the terms of this assignment. No lessee shall be required to inquire into the authority of Creditor to collect any Rent, and any lessee's obligation to Mortgagor shall be absolutely discharged to the extent of its payment to Creditor.

3.5. Remedies. Upon or at any time after the occurrence of any Event of Default, Creditor, at its option and in addition to the remedies provided in this Mortgage, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Mortgagor. Upon Creditor's giving of such notice, the License shall immediately terminate without any further action being required of Creditor. Thereafter, as long as any Event of Default shall exist, Creditor shall have the exclusive right, power and authority to take any and all action as described above, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Creditor has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to above or in this Section taken by Creditor shall constitute an election of remedy. Notwithstanding any term to the contrary herein, in the event of such a termination of Mortgagor's License, such License shall be reinstated when and if the applicable Event of Default shall have been cured or waived.

3.6. No Obligation of Creditor. Neither the acceptance by Creditor of the assignment granted in this Mortgage, nor the granting of any other right, power, privilege or authority in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Creditor, be deemed to constitute Creditor as a "**mortgagee in possession**" or (b) at any time thereafter, obligate Creditor (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability

UNOFFICIAL COPY

Loan No. _____

with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Creditor or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property, provided that nothing herein shall relieve Creditor of liability for the willful misconduct or gross negligence or omissions of Creditor.

3.7. Mortgagor's Indemnities. So long as the License is in effect, Mortgagor shall indemnify and hold Creditor harmless from and against any and all liability, loss, cost, damage or expense which Creditor incurs under or by reason of this assignment, or for any action taken by Creditor hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Creditor arising out of the Leases. In the event Creditor incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the rate of interest under the Purchase Note and shall be payable by Mortgagor to Creditor, within 10 days after demand by Creditor, and shall be secured by this Mortgage, provided that Mortgagor shall have no duty or liability hereunder to indemnify and hold Creditor harmless from matters resulting from the willful misconduct or gross negligence of Creditor.

4. MISCELLANEOUS.

4.1. Time of the Essence. Time is of the essence of this Mortgage.

4.2. Severability. Any provision of this Mortgage which is unenforceable or invalid or contrary to law, or the inclusion of which would adversely affect the validity, legality or enforcement of this Mortgage, shall be of no effect and, in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage the same as though any such invalid portion had never been included herein. Notwithstanding any of the foregoing to the contrary, if any provisions of this Mortgage or the application thereof are held invalid or unenforceable only as to particular persons or situations, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

4.3. Notices. Any notice which either party hereto may be required or may desire to give hereunder shall be deemed to have been given if in writing and if delivered personally, or if mailed, postage prepaid, by United States registered or certified mail, return receipt requested, or if delivered by a responsible overnight courier, addressed:

If to Creditor: Carl Schmedeke
309 Barnaby Drive
Oswego, Illinois 60543

with a copy to: Craig D. Hasenbalg, Esq.
Dixon & Hasenbalg
2000 West Galena Blvd, Suite 305
Aurora, Illinois 60506

UNOFFICIAL COPY

Loan No. _____

If to Mortgagor: Charles J. Dixon, Jr.
 c/o/ Mid-American Water, Inc.
 1500 E. Mountain
 Aurora, Illinois 60506
 ATTENTION: President

with copies to: Peter Storm, Esq.
 Cooper & Storm
 117 S. Second Street
 Geneva, Illinois 60134

Robert I. Schwimmer, Esq.
 Jenkins & Gilchrist
 225 West Washington, Suite 2600
 Chicago, Illinois 60606

or to such other address or addresses as the party to be given notice may have furnished in writing to the party seeking or desiring to give notice, as a place for the giving of notice, provided that no change in address shall be effective until seven days after being given to the other party in the manner provided for above. Any notice given in accordance with the foregoing shall be deemed given when delivered personally or, if mailed, three business days after it shall have been deposited in the United States mails as aforesaid or, if sent by overnight courier, the business day following the date of delivery to such courier.

4.4. Documentation. All documents and other matters required by any of the provisions of this Mortgage to be submitted or furnished to Creditor shall be in form and substance satisfactory to Creditor.

4.5. Additional Assurances. Mortgagor agrees that, at any time or from time to time, upon the written request of Creditor, Mortgagor will execute all such further documents and do all such other acts and things as Creditor may request to effectuate the transaction herein contemplated.

4.6. Choice of Law. This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois, except the law of the State shall govern matters pertaining to the lien and enforcement of this Mortgage. Nothing herein shall be deemed to limit any rights, powers or privileges which Creditor may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Creditor which is lawful pursuant to, or which is permitted by, any of the foregoing.

4.7. No Third Party Beneficiary. This Mortgage is made for the sole benefit of Mortgagor and Creditor, and no other person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

UNOFFICIAL COPY

Loan No. _____

4.8. Interpretation. All references herein to a party's best knowledge shall be deemed to mean the best knowledge of such party based on all appropriate and thorough inquiry. Unless specified to the contrary herein, all references herein to an exercise of discretion or judgment by Creditor, to the making of a determination or designation by Creditor, to the application of Creditor's discretion or opinion, to the granting or withholding of Creditor's consent or approval, to the consideration of whether a matter or thing is satisfactory or acceptable to Creditor, or otherwise involving the decision making of Creditor, shall be deemed to mean that Creditor shall decide unilaterally using its sole and absolute discretion or judgment.

4.9. No Waiver.

4.9.1. General Waiver Provisions. No waiver of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in a writing signed by Creditor, and any such waiver shall be effective only to the extent set forth in such writing. No failure by Creditor to exercise or delay by Creditor in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right or remedy provided by law. The rights and remedies provided in this Mortgage are cumulative and not exclusive of any right or remedy provided by law or equity. No notice or demand on Mortgagor in any case shall, in itself, entitle Mortgagor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Creditor to any other or further action in any circumstances without notice or demand.

4.9.2. Specific Waiver Provisions. If Creditor (i) grants forbearance or an extension of time for the payment of any indebtedness or obligation secured hereby; (ii) takes other or additional security for the payment of any indebtedness or obligation secured hereby; (iii) waives or does not exercise any right granted herein or in any other document or instrument securing the Secured Obligations; (iv) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (v) changes any of the terms, covenants, conditions or agreements of the Notes or this Mortgage or in any other document or instrument securing the Secured Obligations; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (vii) consents to the granting of any easement or other right affecting the Mortgaged Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (v) above) the original liability under the this Mortgage or any other obligation of Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Creditor from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of an Event of Default then made or of any subsequent Event of Default, except to the extent expressly agreed to in writing by Creditor, nor, except as otherwise expressly provided in an instrument or instruments executed by Creditor, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing.

4.9.3. Sale or Transfer. In the event of the sale, assignment or other transfer, by operation of law or otherwise, of all or any part of the Mortgaged Property, Creditor, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with

UNOFFICIAL COPY

Loan No. _____

reference to the Mortgaged Property or the Secured Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not limit the prohibition against transfer set forth in **Section 1.15** hereof.

4.9.4. Partial Releases. Without limitation of the foregoing, Creditor hereby reserves the right to make partial release or releases of the Mortgaged Property, or of any other security held by Creditor with respect to all or any part of the Secured Obligations, without notice to, or the consent, approval or agreements of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said property not so released.

4.10. Security Agreement. This Mortgage shall be construed as a “**Security Agreement**” within the meaning of and shall create a security interest under the UCC, with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Creditor shall have the rights with respect to such fixtures and personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Creditor by this Mortgage.

4.11. Fixture Filing. As to all of the Mortgaged Property which is or which hereafter becomes a “fixture” under applicable law, this Mortgage constitutes a fixture filing under Sections 9-334 and 9-502(c) of the UCC.

4.12. No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereunder understood and agreed that, should Creditor acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Creditor as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, such that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.13. Successors and Assigns. This Mortgage shall be binding upon the Mortgagor and its legal representatives, successors and assigns.

4.14. Legal Tender of United States. All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

4.15. Compliance with Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the statutes or common law of the State governing the foreclosure of this Mortgage (collectively, the “**Foreclosure Laws**”), the provisions of the Foreclosure 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 Foreclosure Laws.

4.16. Definitions; Captions. With respect to any reference in this Mortgage to any defined term, (i) if such defined term refers to a person, or a trust, corporation, partnership or

UNOFFICIAL COPY

Loan No. _____

other entity, then it shall also mean all heirs, personal representatives, successors and assigns of such person or entity, and (ii) if such defined term refers to a document, instrument or agreement, then it shall also include any replacement, extension or other modification thereof. Captions contained in this Mortgage in no way define, limit or extend the scope or intent of their respective provisions.

4.17. Subordination. The Creditor agrees that this Mortgage is second and subordinate to the First Mortgage (including all amendments thereto, substitutions and replacements therefor, and refinancings thereof). Upon request, the Creditor will execute and deliver all documents reasonably requested by Mortgagor and/or the First Mortgage Holder to confirm and otherwise document the second and subordinate position of this Mortgage, including subordination agreements required by the First Mortgage Holder.

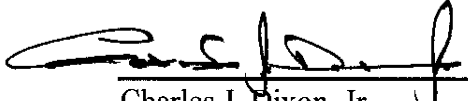
4.18. Counterparts. This Second Mortgage, Assignment Of Leases And Rents, Security Agreement And Fixture Filing may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instruments.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

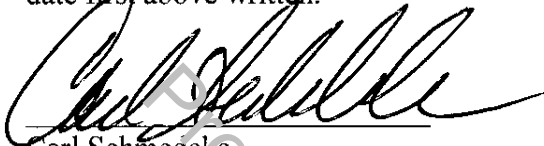
Loan No. _____

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representatives as of the date first above written.



Charles J. Dixon, Jr.

Acknowledged and agreed to as of the date first above written.



Carl Schmedele

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Loan No. _____

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

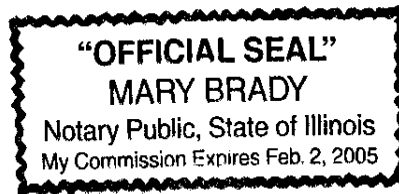
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **CHARLES J. DIXON, JR.**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 28th day of July, 2004

Mary Brady

Notary Public

My Commission expires:



STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **CARL SCHMEDEKE**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 13th day of August, 2004

Lynn M. Wittman
Notary Public

My Commission expires: 4/4/05



UNOFFICIAL COPY

LEGAL DESCRIPTION

PARCEL 1:

UNIT 808 AND PARKING SPACE⁵⁻31 IN 340 WEST SUPERIOR CONDOMINIUMS, AS DELINEATED AND DEFINED ON THE PLAT OF SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE:

PART OF LOTS 11, 12, 13, 14, 15, AND 16 BOTH INCLUSIVE IN BLOCK 18 IN BUTLER, WRIGHT, AND WEBSTER'S ADDITION TO CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM RECORDED FEBRUARY 15, 2002 AS DOCUMENT NUMBER 0020190306 AS AMENDED FROM TIME TO TIME.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AFORESAID, AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS (RECIPROCAL EASEMENT AGREEMENT) RECORDED FEBRUARY 15, 2002 AS DOCUMENT NUMBER 0020190305.

PIN# 17-09-200-007
008
009
012.

Property of Cook County Clerk's Office

