

UNOFFICIAL COPY



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

Doc#: 0519302152
Eugene "Gene" Moore Fee: \$78.00
Cook County Recorder of Deeds
Date: 07/12/2005 11:19 AM Pg: 1 of 28

Name and Return Address
Harold A. Laufer, Esq.
Davis & Kuelthau, sc.
111 East Kilbourn Avenue
Suite 1400
Milwaukee, WI 53202

2 of 3 HYNES # 82-67-965-D1

Property of Cook County Clerk's Office

[This Space For Recorder's Use Only]

**MORTGAGE, LEASEHOLD MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT**

This MORTGAGE, LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING dated made May 20, 2005 (this "Mortgage"), by ALBS WIRELESS SERVICES CORP. AND A.L.B.S. WIRELESS SERVICES II LLC, an Illinois Corporation (the "Mortgagor"), having its principal office at 2225 E. Oakton Street, Arlington Heights, Illinois 60005, in favor of STATE FINANCIAL BANK (the "Mortgagee"), whose address is 10708 W. Janesville Road, Hales Corners, Wisconsin 53130.

This is a Construction Mortgage and advances secured hereby may be used to enable completion of contemplated improvements on the Realty (as hereafter defined).

This Mortgage is also a Security Agreement and financing statement under the Uniform Commercial Code of the State of Illinois and in compliance therewith the following information is set forth:

1. The names and addresses of the Debtor and Secured Party are:

Debtor: ALBS Wireless Services Corp. and A.L.B.S. Wireless Services II LLC
2225 E. Oakton Street
Arlington Heights, IL 60005
Attention: Anthony Baroud

Secured Party: State Financial Bank NA
10708 W. Janesville Road
Hales Corners, WI 53130
Attention: Bill Gates

Box 400-CTCC

28
g

UNOFFICIAL COPY

2. The property covered by this Security Agreement and financing statement is described in the Granting Clauses hereof.
3. Some or all of the fixtures, equipment and other property described herein is or may become fixtures.
4. The Debtor is the record owner of the leasehold interest in the real estate described in Exhibit A attached hereto and made a part hereof and is also the record owner of all improvements now and hereafter located thereon.
5. The record owner of the fee estate of the subject property (described in Granting Clause First below) is Random Corporation, as Lessor (the "**Fee Owner**").

RECITALS

A. Mortgagee has agreed to loan to Mortgagor the principal sum of Three Million Three Hundred Fifty Thousand (\$3,350,000) (the "**Loan**"), as evidenced by a Promissory Note of even date herewith in the amount of Three Million Three Hundred Fifty Thousand (\$3,350,000) ("**Note**"), payable to the order of Mortgagee, all on the terms and conditions as are set forth in the Note. As security for Mortgagor's obligations of repayment under the Note and the performance of such obligations as set forth in that certain Loan Agreement dated the same date hereof by and between the parties hereto, the terms of which are incorporated herein by this reference (the "**Loan Agreement**"), Mortgagor has agreed to execute this instrument and make this Mortgage, with full knowledge of the terms contained herein, in the Loan Agreement, the Note and any other Loan Document (as defined below).

B. Mortgagor is ground leasing the Realty (described in Granting Clause First below) from the Fee Owner under that certain Ground Lease dated as of September 26, 2004 (the Ground Lease, as otherwise heretofore or hereafter amended, modified and supplemented is herein referred to as the "**Ground Lease**"). Mortgagor, as ground lessee under the Ground Lease, executes the Loan Documents with the intent to use the proceeds from the Loan to construct and own a cellular communications tower on the Realty along with other improvements; and subsequent to such construction, lease a portion of the Cell Tower to Singular Wireless, a Delaware Corporation (the "**Tenant**"), under and pursuant to the terms of that certain Lease Agreement dated January 1, 2005 (the "**Lease**").

C. The Note and all principal thereof, premium, if any, and interest thereon and all additional amounts and other sums at any time due and owing from, and required to be paid by Mortgagor under the terms of the Note, the Loan Agreement and this Mortgage are hereinafter sometimes collectively referred to as the "**Indebtedness Hereby Secured**."

D. Mortgagor is duly authorized under all applicable provisions of law and its Articles of Incorporation, Bylaws (or the equivalent of such items under the law of the state that Mortgagor is incorporated in) (the "**Organizational Documents**") to issue the Note, to execute and deliver this Mortgage and to mortgage, convey and assign the Mortgaged Premises (defined below) to Mortgagee as security for the Indebtedness Hereby Secured and all action and all consents, approvals and other authorizations and all other acts and things necessary to make this Mortgage the valid, binding and legal instrument for the security of the Indebtedness Hereby Secured have been done and performed.

UNOFFICIAL COPY

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That Mortgagor, in consideration of the premises, and of the sum of Ten Dollars received by Mortgagor from Mortgagee and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Note according to its tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, agreements and conditions contained in or incorporated by reference into the Note, this Mortgage or the Loan Agreement, Mortgagor does hereby grant, warrant, mortgage, assign, pledge, sell, demise, bargain, convey, transfer, set over and hypothecate unto Mortgagee, its successors and assigns, forever, WITH POWER OF SALE, to the extent permitted by law, and grant to Mortgagee, its successors and assigns, forever, a security interest in and to all and singular the following described properties, rights, interest and privileges and all of Mortgagor's estate, right, title and interest therein, thereto and thereunder (all of which properties, rights, interests and privileges hereby mortgaged, assigned, pledged and hypothecated or intended so to be are hereinafter collectively referred to as the "Mortgaged Premises"):

GRANTING CLAUSE FIRST

THE PROPERTY

Mortgagor's leasehold interest (the "Leasehold Estate") in the parcel of land located at 2910 W. Lake Street in the City of Chicago County of Cook State of Illinois, legally described in Exhibit A attached hereto and made a part hereof (the "Realty"), together with the entire interest of Mortgagor including, but not limited to its fee interest, in and to all cellular telecommunications towers and associated electronic equipment, buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon such land, including all right, title and interest of Mortgagor, if any, in and to all building material, building equipment and fixtures of every kind and nature whatsoever on said land or in any cellular telecommunications towers, building, structure or improvement now or hereafter standing on said land which are classified as personal property or fixtures under applicable law and which are used in connection with the operation, maintenance or protection of said buildings, structures and improvements as such (including, without limitation, all boilers, air conditioning, ventilating, plumbing, heating, lighting and electrical systems and apparatus, all communications equipment and intercom systems and apparatus, all sprinkler equipment and apparatus and all elevators and escalators) and the reversion or reversions, remainder or remainders, in and to said land, and together with the entire interest of Mortgagor in and to all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to said land, belonging or in anywise appertaining thereto, including, without limitation, the entire right, title and interest of Mortgagor in, to and under any streets, ways, alleys, gores or strips of land adjoining said land, and all claims or demands whatsoever of Mortgagor either in law or in equity, in possession or expectancy, of, in and to said land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by Mortgagor and is affixed or attached or annexed to said land, shall be and remain or become and constitute a portion of said land and the security covered by and subject to the lien of this Mortgage, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith.

UNOFFICIAL COPY

GRANTING CLAUSE SECOND

THE LEASE AND RENTS

The Lease and all of Mortgagor's estate, right, title, interest, claim and demand as landlord in, to and under the Lease, including all extensions and renewals of the term thereof, and all existing or future amendments, supplements or modifications of the Lease (and to any short memorandum form of the Lease executed for recording purposes), together with all rights, powers, privileges, options and other benefits of Mortgagor as landlord under the Lease, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default (as defined in the Promissory Note, Construction Loan Agreement and Commercial Security Agreement) under any of the Loan Documents shall have occurred and be continuing) to receive and collect all rents (whether as fixed rent, basic rent, percentage rent, additional rent or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease; (b) if the Tenant exercises any right, or shall be required, to purchase the Mortgaged Premises or the landlord's interest therein, the right and power (such power and right being coupled with an interest) to execute and deliver as agent and attorney-in-fact of the landlord under the Lease, an appropriate deed or other instruments of transfer necessary or appropriate for the conveyance and transfer to the purchaser of the Mortgaged Premises or the portion thereof being so purchased, and all interest of the landlord therein and to perform in the name and for and on behalf of the landlord, as such agent and attorney-in-fact, any and all other necessary or appropriate acts with respect to any such purchase, conveyance and transfer; (c) the right to make all waivers, consents and agreements; (d) the right to give and receive copies of all notices and other instruments or communications; (e) the right to take such action upon the occurrence of an event of default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law; and (f) the right to do any and all other things whatsoever which Mortgagor or any landlord is or may be entitled to do under the Lease.

GRANTING CLAUSE THIRD

GROUND LEASE

The Ground Lease and all of Mortgagor's estate, right, title, interest, claim and demand as landlord or tenant but none of the obligations of Mortgagor in, to and under the Ground Lease, including all extensions and renewals of the term thereof, and all existing or future amendments, supplements and modifications of the Ground Lease.

GRANTING CLAUSE FOURTH

CONDEMNATION AWARDS

All of the right, title and interest of Mortgagor in and to any award or awards or settlements or payments heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of the Mortgaged Premises, including without limitation any award or awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of the Mortgaged Premises, or any part thereof, under the power of eminent domain; or (ii) the alteration of grade or the location or the discontinuance of any street adjoining the Mortgaged Premises or any portion thereof, or (iii) any other injury to or decrease in value of the Mortgaged Premises; and Mortgagor hereby

UNOFFICIAL COPY

agrees to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award, damage, payment or other compensation.

GRANTING CLAUSE FIFTH

PERSONAL PROPERTY

All tangible and intangible personal property now owned or at any time hereafter acquired by Mortgagor of every nature and description, and used in any way in connection with the Mortgaged Premises, or any other portion of the same, including, without limitation, all inventory; goods; materials; supplies; equipment; furnishings; fixtures; structures; accounts; accounts receivable; chattel paper; documents; instruments; money; bank accounts (including, without limitation, any accounts or reserves held by Mortgagee under the terms of the Loan Documents); security deposits; claims to rebates, refunds or abatement of real estate taxes or any other taxes; contract rights, plans and specifications; permits, licenses, general intangibles; the rights of Mortgagor under contracts with respect to the Mortgaged Premises or any portion thereof; signs, brochures, advertising and good will.

GRANTING CLAUSE SIXTH

OTHER AND AFTER-ACQUIRED PROPERTY

Any and all moneys and other property (including each amendment or supplement to any and all instruments included in the Mortgaged Premises) which may from time to time, by delivery to Mortgagee or by any instrument, including this Mortgage, be subjected to the lien hereof by Mortgagor or by anyone on the behalf of Mortgagor or with the consent of Mortgagor, or which may come into the possession or be subject to the control of Mortgagee pursuant to this Mortgage, or pursuant to any instrument included in the Mortgaged Premises, it being the intention of Mortgagor and Mortgagee and it being hereby agreed by them that all property hereafter acquired by Mortgagor and required to be subjected to the lien of this Mortgage or intended so to be shall forthwith upon the acquisition thereof by Mortgagor be as fully embraced within the lien of this Mortgage as if such property were now owned by Mortgagor and were specifically described in this Mortgage and granted hereby or pursuant hereto.

GRANTING CLAUSE SEVENTH

PROCEEDS

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, any proceeds of a sale of all or part of the Mortgaged Premises to the Tenant or any affiliate thereof and all proceeds of insurance and condemnation awards and payments and all products, additions, accessions, substitutions and replacements of any of the foregoing.

TO HAVE AND TO HOLD the Mortgaged Premises unto Mortgagee and its successors and assigns, with the purpose of securing performance of each agreement, covenant and warranty of Mortgagor contained in the Loan Documents and payment of all Indebtedness Hereby Secured. It is understood and agreed that this Mortgage is to secure the obligation of Mortgagor to repay all Indebtedness thereby secured.

UNOFFICIAL COPY

AND MORTGAGOR COVENANTS AND WARRANTS that it has good, marketable and insurable title to the Leasehold Estate and good and marketable title in all of the other components of the Mortgaged Premises, free and clear of all liens, charges and encumbrances whatsoever, subject to the terms of the Ground Lease and except as set forth on Exhibit B or otherwise consented to by Mortgagee, and that Mortgagor has full and legal right, power and authority to so convey the same and that Mortgagor and its respective successors in interest will forever warrant and defend the lien and priority of this Mortgage against the lawful claims and demands of all persons whomsoever.

IN TRUST, NEVERTHELESS, WITH POWER OF SALE (to the extent permitted by law), upon the terms and trusts herein set forth for the benefit and security of all present and future holders of the Note in accordance with their terms and all other sums payable hereunder or under the Note, and for the performance and observance of the Note and this Mortgage, all as herein set forth.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if Mortgagor performs the covenants herein contained and pays to Mortgagee, its successors or assigns, the full amount of all Indebtedness Hereby Secured, the estate, right and interest of Mortgagee in the property hereby conveyed shall cease and this Mortgage shall become null and void, but otherwise to remain in full force and effect.

It is agreed and understood by the parties hereto that:

1. This Mortgage is intended to and shall constitute security for the entire Indebtedness Hereby Secured.
2. Any part of the security herein described, and any security described in any other mortgage, assignment of lease or other instrument now or hereafter given to secure the indebtedness which is secured by this Mortgage, may be released by Mortgagee without affecting the lien hereof on the remainder.
3. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof, or to have the Mortgaged Premises hereunder and the property covered by any other mortgage or assignment of lease securing the Note marshalled upon any foreclosure of any of said deeds of trust or assignments of leases, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety.
4. Upon the occurrence of an Event of Default, Mortgagee has, among other things, the right to foreclose on the Mortgaged Premises and dispose of the same. Mortgagee's deed or other instrument of conveyance, transfer or release (which, if permitted by law, may be in the name of Mortgagee or as attorney for Mortgagor and Mortgagee hereby is irrevocably appointed) shall be effective to convey and transfer to the grantee an indefeasible title to the property covered thereby, discharged of all rights of redemption by Mortgagor or any person claiming under either or both of them, and to bar forever all claims by Mortgagor or the said Mortgagee to the property covered thereby and no grantee from Mortgagee shall be under any duty to inquire as to the authority of Mortgagee to execute the same, or to see to the application of the purchase money.
5. The assignment of the Lease made under Granting Clause Second and Section 34 hereof is executed as a present, unconditional and absolute assignment and not merely as collateral

UNOFFICIAL COPY

security, and the execution and delivery of this Mortgage shall not in any way impair or diminish any obligations of Mortgagor as tenant under the Ground Lease or Mortgagor as landlord under the Lease nor impair, affect or modify any of the terms and conditions of the Note or the Loan Agreement, nor shall any of such obligations be imposed upon Mortgagee, including but not limited to collecting rentals or enforcing performance by the Tenant. Without limiting the generality of the foregoing, Mortgagee shall not be obligated to perform or discharge, nor does Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability under the Ground Lease or the Lease, or under or by reason of this Mortgage; and it is further understood and agreed that this Mortgage shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Premises upon Mortgagee, nor for the carrying out of any of the terms and conditions of the Lease, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Premises by the Tenant or any other parties, or for any dangerous or defective condition of the Mortgaged Premises, or for any negligence of the management, upkeep, or repair or control of the Mortgaged Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger. Mortgagee may, at its option, although it shall not be obligated so to do, after giving written notice to the Tenant and Mortgagor, perform any Lease or Ground Lease covenant for and on behalf of Mortgagor and may recover any money advanced for any such purpose from Mortgagor on demand, with interest at the Default Rate (as defined in the Promissory Note, Construction Loan Agreement and Commercial Security Agreement) (or at the maximum rate permitted by applicable law, whichever is less) from date of advancement. Upon the payment of the principal of (and premium, if any) and all interest on the Note and of all other sums payable on the Note or under the Loan Agreement or this Mortgage and the performance and observance of the provisions thereof, this Mortgage shall cease and terminate and all the estate, right, title, interest, claim and demand of Mortgagor under the Lease in and to the above-described assigned property shall revert to Mortgagor under the Lease, and Mortgagee shall at the request of Mortgagor deliver to Mortgagor an instrument canceling the assignment of Lease set forth in this Mortgage and reassigning the above-described assigned property to Mortgagor.

6. Mortgagor does hereby irrevocably constitute and appoint Mortgagee, its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acceptance for any and all rents, income and other sums which are assigned under the Granting Clauses of this Mortgage with full power to settle, adjust or compromise any claim thereunder as surely as Mortgagor, as the case may be, could itself do and to endorse the name of Mortgagor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings either in its own name or in the name of Mortgagor or otherwise, which Mortgagee may deem necessary or appropriate to protect and preserve the right, title and interest of Mortgagee in and to such rents and other sums and the security intended to be afforded by this Mortgage.

IT IS FURTHER UNDERSTOOD AND AGREED THAT

1. Payment and Performance. Mortgagor shall promptly pay the principal of and interest on the indebtedness evidenced by the Note at the time and in the manner in the Note provided, and Mortgagor shall duly and punctually perform and observe all of the terms, covenants, and conditions to be performed or observed by Mortgagor in the Note and the Security Documents, as defined in the Note, this Mortgage and any other documents evidencing, securing or referring to said indebtedness.
2. Payment of Taxes. Mortgagor shall, to the extent required by the Ground Lease, pay before delinquent and before any interest or penalty for non-payment attaches thereto, all taxes, assessments, water

UNOFFICIAL COPY

rates, sewer rentals and other governmental charges of every nature and to whomever assessed that may now or hereafter be levied or assessed upon the Mortgaged Premises, the Realty or any part thereof, including all personal property taxes levied or assessed upon personal property located on, in or about the Realty, or upon the Mortgagor's interest in the rents, issues, income or profits thereof, whether any or all of said items be levied directly or indirectly or as excise taxes or income taxes, and Mortgagor shall deliver to Mortgagee, at least ten (10) days before delinquent to the extent Mortgagor is required to pay same under the Ground Lease, receipted bills evidencing payment therefore. Notwithstanding the foregoing, Mortgagor may, to the extent Mortgagor is required to pay same under the Ground Lease, in good faith and with reasonable diligence, contest the validity or amount of any such taxes, assessments, rates, rentals or charges in the manner provided by law, in which event, Mortgagor shall:

(a) pay in full, under protest in the manner provided by law, any tax, assessment, rate, rental or charge which Mortgagor may desire to contest, or

(b) withhold the payment thereof, if contest of any tax, assessment, rate, rental or charge may be made without the payment thereof, provided, however, that:

(i) such contest shall have the effect of preventing the sale or forfeiture of the Mortgaged Premises or any part thereof, or any interest therein, to satisfy any such tax, assessment, rate, rental or charge;

(ii) Mortgagor has not less than forty-five (45) days prior to the date the amount of any such tax, assessment, rate, rental or other charge shall be increased by reason of any interest, penalties or costs, to notify Mortgagee in writing of the intention of Mortgagor to contest the same;

(iii) Mortgagor shall have furnished Mortgagee from time to time as Mortgagee may request such indemnification satisfactory to Mortgagee for the final payment and discharge thereof; and

(iv) in the event of a ruling or adjudication adverse to Mortgagor, Mortgagor shall promptly pay any such tax, assessment, rate, rental or other charge, plus any interest, penalty or additional charge thereon.

All costs and expenses incidental to any such contest shall be paid by Mortgagor.

3. Effect of New Taxation or Changes in Law Regarding Taxation. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, the Mortgaged Premises, any tax, assessment or governmental charge of any character whatever is due or becomes due on account of this Mortgage or the Indebtedness Hereby Secured, except for income or franchise taxes, Mortgagor shall pay any such tax, assessment or governmental charge of any character whatever in the manner required by any such law when the same shall become due. Mortgagor further covenants to hold harmless and agree to indemnify the Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any such tax, assessment or government charge on account of this Mortgage or the Indebtedness Hereby Secured, other than income or franchise taxes assessed, levied or payable by Mortgagee. In the event of the enactment after the date of this Mortgage of any law of the state in which the Mortgaged Premises are located deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Mortgaged Premises, or the manner of collecting taxes, so as to impose on the Mortgagee the payment of the whole or any part of the taxes, assessments, charges or liens herein required to be paid by Mortgagee, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or

UNOFFICIAL COPY

assessments or charges or liens or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness Hereby Secured to be and become due and payable sixty (60) days from the giving of such notice.

4. Environmental Warranties.

(a) For purposes of this Section 4, the following definitions shall apply:

(i) The term "Environmental Laws" shall mean all federal, state and local laws including statutes, regulations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process wastewater or otherwise relating to the environment, toxic or hazardous substances, pesticides, herbicides or fertilizer including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, the Environmental Protection Act (415 ILCS 5/1), the Uniform Hazardous Substances Act of Illinois (430 ILCS 35/1) and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect.

(ii) The term "Loan Documents" shall include the Note, the Mortgage, Loan Agreement and any and all other documents executed in connection with the Loan.

(b) In order to induce Mortgagee to make the Loan, Mortgagor represents and warrants to Mortgagee the following:

(i) Mortgagor is not a party to any litigation or administrative proceeding and, so far as is known by Mortgagor, there is no litigation or administrative proceeding threatened against Mortgagor relating to the Mortgaged Premises, which in either case asserts or alleges (i) Mortgagor violated Environmental Laws, (ii) Mortgagor is required to clean up or take remedial or other response action due to the disposal, discharge or other release of any hazardous substance or materials, or (iii) Mortgagor is required to contribute to the cost of any past, present or future cleanup or remedial or other response action which arises out of or is related to the disposal, discharge or other release of any hazardous substances or materials.

(ii) To the Mortgagor's knowledge, no person or entity has caused or permitted materials to be generated, stored, treated, recycled or disposed of on, under or at the Mortgaged Premises which materials, if known to be present, would require cleanup, removal or some other remedial action under Environmental Laws.

(iii) To the Mortgagor's knowledge, there are no conditions existing currently or that are likely to exist during the term of the Loan which would subject Mortgagor to damages, penalties, fines, injunctive relief or cleanup or other costs or expenses under any Environmental Laws or which would require cleanup, remedial action or other response pursuant to Environmental Laws by Mortgagor.

(iv) Mortgagor is not subject to any judgment, decree, order or citation related to or arising out of any Environmental Laws and to the Mortgagor's knowledge, has not been

UNOFFICIAL COPY

named or listed as a potentially responsible party by any governmental body or agency in a matter arising under any Environmental Laws.

(v) Mortgagor has obtained all permits, licenses and approvals required to be obtained by Mortgagor under all Environmental Laws; and any fees and/or conditions for such permits, licenses and approvals have been paid and/or complied with.

(vi) To Mortgagor's knowledge, no materials have been used on, applied to or disposed of on the Mortgaged Premises in violation in any material respect of any Environmental Laws.

(c) While any part of the principal of or interest on the Loan or any obligations under the Loan Documents remains unpaid or unsatisfied, Mortgagor shall:

(i) Timely comply with all applicable Environmental Laws; provided, however, that Mortgagor shall not be required to comply with any Environmental Law so long as Mortgagor shall, in good faith and with due diligence, contest the same or the validity or applicability thereof by appropriate legal proceedings which shall have the effect of preventing the immediate enforcement of the same against Mortgagor or the Mortgaged Premises;

(ii) Provide Mortgagee, upon receipt, copies of any correspondence, notice, pleading, citation, indictment, complaint, order, decree or other document from any governmental agency or instrumentality asserting or alleging violation, in any material respect, by Mortgagor of any Environmental Law, or asserting or alleging a circumstance or condition which may require a material financial contribution by Mortgagor or a cleanup, remedial action or other response by or on the part of Mortgagor under Environmental Laws;

(iii) Advise Mortgagee in writing as soon as Mortgagor becomes aware of any condition or circumstance which makes any of the representations or warranties contained herein incomplete or inaccurate in any material respect;

(iv) Promptly undertake and diligently pursue to completion any legally required remedial containment or cleanup action for which Mortgagor is liable, to the extent directed to do so by the governmental agency with authority therefor, in the event of any release or discharge or threatened release or discharge of any solid, hazardous or toxic substance or material or other health or environment threatening substance on, upon, into or from the Mortgaged Premises; and

(v) At all times while operating the Mortgaged Premises, Mortgagor agrees to maintain and retain complete and accurate records required by applicable Environmental Laws of all releases, discharges or other use, handling, storage, disposal or transport of any toxic, hazardous or health or environment threatening substance on, onto, into or from the Mortgaged Premises by Mortgagor, including without limitation, records of the quantity and type of any such substance disposed of on or off of the Mortgaged Premises to the extent required by Environmental Laws.

(d) Mortgagor hereby agrees to indemnify, defend and hold harmless Mortgagee and each of its officers, directors, employees, agents, consultants, attorneys, and contractors (the "Agents") with respect to any and all loss, liability, damage, fines, penalties, costs and expenses of every kind and character, including reasonable attorneys' fees and court costs, reasonably incurred and expended by

UNOFFICIAL COPY

Mortgagee, and occasioned by or associated with any claims, demands, causes of action, suits and/or enforcement actions including any administrative or judicial proceedings and any remedial, removal or response actions ever asserted, threatened, instituted or requested by any person whatsoever arising out of or related to (i) the breach of any representation or warranty of Mortgagor in any material respect set forth in this Section 4; or (ii) the failure of Mortgagor to perform any material covenant or obligation contained in this Section 4; or (iii) the occupancy, operation or use of the Mortgaged Premises in default of the terms and provisions of this Section 4; unless caused by the bad faith or gross negligence of Mortgagee, its employees, agents, contractors, tenants, representatives or invitees or arising after the date Mortgagee or its employees, agents, contractors, tenants, representatives or invitees take possession of the Premises. The provisions of this Section shall be in addition to and not in limitation of any other obligations and liabilities which Mortgagor may have to Mortgagee under applicable statutes or at common law and shall survive the term of this Mortgage and/or the Loan Documents.

5. Mortgagor's Covenants. Mortgagor shall, during the term of this Mortgage:

(a) keep the Mortgaged Premises in reasonably good condition and repair and not commit or permit the commission of any waste of any kind whatsoever on the Mortgaged Premises or any part thereof;

(b) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Mortgaged Premises which may become damaged or be destroyed by any cause whatsoever, so that upon completion of the repair, restoration and rebuilding of said buildings and improvements there will not be any liens of any nature arising out of said repair, restoration and rebuilding, and the Mortgaged Premises will have a commercial value at least as great as the commercial value thereof prior to the damage or destruction;

(c) not directly or indirectly, without Mortgagee's prior written consent, create, incur, permit to exist or assume any mortgage, pledge or other lien or claim for lien or encumbrance upon the Mortgaged Premises, the Leasehold Estate or any part thereof other than (i) the lien and security interest of Mortgagee as created by this Mortgage and any other documents evidencing, securing or referring to the Note and (ii) the liens, charges or encumbrances set forth on Exhibit B or otherwise consented to by Mortgagee; provided, however, that with respect to any lien or claim for lien arising from any work performed or materials furnished on or relating to the Mortgaged Premises or any part thereof, Mortgagor may contest any such lien or claim for lien by obtaining the release of such lien and by otherwise complying with the procedures of the applicable provisions of the Illinois Compiled Statutes (the sufficiency of the sureties shall be subject to Mortgagee's reasonable approval) or upon furnishing Mortgagee indemnification satisfactory to Mortgagee for the final payment and discharge thereof;

(d) promptly comply, and shall use reasonable efforts to cause each lessee or other user of the Mortgaged Premises or any part thereof to promptly comply, in all material respects, with all laws, ordinances, regulations and orders of all public authorities having jurisdiction of the Mortgaged Premises or any part thereof and the use, occupancy and maintenance thereof, and with all restrictions of record pertaining to the Mortgaged Premises or any part thereof and the use, occupancy and maintenance thereof;

(e) not make any material alterations to the Mortgaged Premises or any part thereof without the prior written consent of Mortgagee if the affect thereof is to reduce the value of the Mortgaged Premises in any material respect;

(f) promptly notify Mortgagee in writing of (i) any material loss or damage to the

UNOFFICIAL COPY

Mortgaged Premises or any part thereof, (ii) any change, whether contemplated, pending or final, in the assessment of the Mortgaged Premises or any part thereof by taxing authorities or in the zoning classification of the Mortgaged Premises or any part thereof by public authorities, upon receipt by Mortgagor of actual notice thereof (iii) the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting the Mortgaged Premises or any part thereof, including those proceedings relating to severance and consequential damage and change in grade of streets, copies of any and all papers served in connection with any such proceedings to be delivered to Mortgagee upon such service, upon receipt by Mortgagor of actual notice thereof and (iv) any other action, whether contemplated, pending or final, by any public authority or otherwise, that could materially, adversely affect the value of the Mortgaged Premises or any part thereof, upon receipt by Mortgagor of actual notice thereof;

(g) not suffer or permit any change, in any material respect, in the general nature of Mortgagor's occupancy of the Mortgaged Premises or any part thereof, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed;

(h) not initiate or acquiesce in any zoning reclassification, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed;

(i) not make or permit any use of the Mortgaged Premises or any part thereof that could with the passage of time result in the creation of any right of user, or any claim of adverse possession or easement on, to or against any part of the Mortgaged Premises in favor of any person or the public;

(j) not permit any portion of the Mortgaged Premises to be used for any unlawful purpose;

(k) permit at any reasonable time, and upon reasonable notice (except in the event of emergency), the Mortgagee to enter the Mortgaged Premises for the purpose of inspecting the same;

(l) the Ground Lease shall not be amended, modified or supplemented in any respect without the prior written consent of Mortgagee, nor shall the Ground Lease be terminated, surrendered or allowed to expire without the prior written consent of Mortgagee;

(m) so long as any of the Indebtedness Hereby Secured shall remain unpaid, the fee title to the Mortgaged Premises and the Leasehold Estate created by the Ground Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates either in the lessor or the lessee, or in a third party, by purchase or otherwise, unless Mortgagee shall consent to join in the execution of a writing effecting such merger and same shall be duly recorded with the Register of Deeds in and for the County of Cook, State of Illinois;

(n) should any greater estate in the Mortgaged Premises be acquired by Mortgagor in any manner (subject to the restriction on merger set forth in (m) above), this Mortgage shall automatically attach and extend to and be a valid lien upon such greater estate;

(o) promptly pay, when due and payable under the Ground Lease, the rents, any additional rents, taxes and all other sums and charges to be paid by Mortgagor under the Ground Lease;

(p) promptly perform and observe all of the terms, covenants, and conditions required to be performed and observed by Mortgagor under the Ground Lease, within the periods provided in the Ground Lease, and will do all things reasonably necessary to preserve and to keep unimpaired its

UNOFFICIAL COPY

rights under the Ground Lease;

(q) promptly notify the Mortgagee in writing of the receipt by the Mortgagor of any notice noting or claiming any default by the Mortgagor in the performance or observance of any of the terms, covenants or conditions on the part of the Mortgagor to be performed or observed under the Ground Lease, and promptly cause a copy of each such notice received by Mortgagor under the Ground Lease to be delivered to Mortgagee;

(r) furnish to the Mortgagee, upon Mortgagee's written request therefor, proof of payment of all items which are required to be paid by the Mortgagor pursuant to the Ground Lease; and

(s) upon any Event of Default, execute and deliver, on the reasonable request of the Mortgagee, such instruments as the Mortgagee may reasonably deem required to permit the Mortgagee to cure any default under the Ground Lease by Mortgagor or permit the Mortgagee to take such other action as the Mortgagee considers reasonably necessary to cure or remedy the matter in default and preserve the interest of the Mortgagee in the Mortgaged Premises.

6. Insurance. At all times during the term of this Mortgage, Mortgagor shall furnish Mortgagee with insurance policies and proof of payment of premiums as follows:

(a) Insurance Required Pursuant to Ground Lease. Any policy or policies of insurance required to be maintained by Mortgagor pursuant to the Ground Lease.

(b) Public Liability Insurance. Public liability insurance covering the Mortgaged Premises and the Leasehold Estate with combined single limits for bodily injury, property damage and personal injury of at least One Million Dollars (\$1,000,000.00) per accident or occurrence.

(c) All-Risk Casualty Insurance. Mortgagor shall maintain all-risk casualty insurance on the Mortgaged Premises insuring against loss by all casualties and other applicable hazards in the amount of one hundred percent (100%) of the replacement cost of the improvements located on the Mortgaged Premises and Mortgagee shall be named as Mortgagee, loss payee and additional insured on such policies.

(d) Additional Insurance Requirements. The insurance maintained by Mortgagor pursuant to this Section 6 shall bear a standard non-contributory first Mortgagee endorsement in favor of Mortgagee or assigns and shall provide that all proceeds under such policy shall be paid to Mortgagee and shall be disbursed in accordance with the provisions of the Mortgage. All insurance policies shall be written by companies having a Best rating of A and a financial size category rating of Class X or larger. All insurance policies shall provide that they may not be cancelled without at least thirty (30) days prior written notice of intention to cancel delivered to Mortgagee.

7. Adjustment of Losses with Insurer and Application of Proceeds of Insurance. Subject to Mortgagor's obligations under the Ground Lease, in case of any casualty loss, or damage to the Mortgaged Premises, Mortgagor shall give prompt notice to the Mortgagee, and Mortgagee shall consult with Mortgagor as to how to proceed but may in its reasonable discretion, either (i) settle and adjust any claim under any insurance policy or policies required hereunder as aforesaid, without consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In either case, the insurance proceeds shall be paid to Mortgagee and Mortgagee is authorized to collect and to give receipts therefor. All such insurance proceeds may, at the option of Mortgagee, either (i) be applied in reduction of the Indebtedness Hereby Secured, in such order as Mortgagee shall determine, or (ii) be held by Mortgagee, and used to reimburse Mortgagor for the cost of the rebuilding or restoration of said buildings and improvements on

UNOFFICIAL COPY

the Mortgaged Premises, in which event the proceeds so used shall not be deemed a payment on the Indebtedness Hereby Secured and the Mortgagee shall make such proceeds available, from time to time, for such reconstruction costs in a manner to be determined by Mortgagee. If Mortgagee elects to make insurance proceeds available for rebuilding or restoration, and if the amount of such proceeds are insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the proceeds, before being entitled to reimbursement out of the proceeds. Any surplus which may remain out of said proceeds after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the Indebtedness Hereby Secured or be paid to any other party entitled thereto. If Mortgagee elects to make insurance proceeds available for rebuilding or restoration, subject to Mortgagor's obligations under the Ground Lease, rebuilding or restoration of said buildings and improvements shall be commenced within a reasonable time after the occurrence of the loss and shall be prosecuted to completion diligently, and said buildings and improvements shall, to the extent permitted under the Ground Lease, be so restored or rebuilt as to be of at least equal value and substantially the same character as immediately prior to such damage and destruction.

8. Condemnation. To the extent Mortgagor may be entitled thereto, Mortgagor hereby assigns, transfers and sets over unto Mortgagee all of Mortgagor's right, title and interest in and to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, any damage or taking to or of the Mortgaged Premises or any part thereof through condemnation or under the power of eminent domain (sometimes hereafter referred to collectively as the "award"), and Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute in its own or the Mortgagor's name any action or proceeding relating to any condemnation or power of eminent domain and to settle or compromise any claim in connection therewith, provided Mortgagee agrees to consult with Mortgagor concerning such action. The entire award is included in the Mortgaged Premises, and the Mortgagee may elect (i) to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured, in such order as Mortgagee shall determine, or (ii) be held by Mortgagee and used to reimburse Mortgagor for the cost of rebuilding or restoring buildings or improvements on the Mortgaged Premises in accordance with Mortgagor's obligations under the Ground Lease, in which event the proceeds so used shall not be deemed a payment on the Indebtedness Hereby Secured and the proceeds of the award shall be applied and paid out in the same manner as is provided in Section 8 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If Mortgagee elects to make these proceeds available for rebuilding or restoration, rebuilding or restoration of any remaining portion of the Mortgaged Premises shall be commenced within a reasonable time after the taking and diligently pursued to completion.

9. Hold Harmless. Mortgagor shall save the Mortgagee harmless from and indemnify Mortgagee against all loss, liability, damages, costs and expenses, including reasonable attorneys' fees, incurred by reason of any action, suit, proceeding, hearing, motion or application before any Court or administrative body in and to which Mortgagee may be or become a party by reason hereof, including but not limited to condemnation, bankruptcy, probate and administrative proceedings, as well as any other of the foregoing wherein proof of claim is by law required to be filed or in which it becomes reasonably necessary to defend or uphold the terms of and the lien created by this Mortgage (but excluding any action in which Mortgagor and Mortgagee are adversary parties and Mortgagor is the prevailing party or any action arising out of the negligent or willful misconduct of Mortgagee), and all money paid or expended by Mortgagee in that regard, together with interest thereon from date of such payment at the rate set forth in the Note shall be so much additional Indebtedness Hereby Secured and shall be immediately and without notice due and payable to Mortgagee.

10. Mortgagee's Performance of Defaulted Acts. Upon the occurrence of an Event of Default, Mortgagee may, at its option and whether electing to declare the whole Indebtedness Hereby Secured due and payable or not, upon five (5) days prior written notice to Mortgagor, (i) perform the same without waiver of any other remedy, and/or (ii) purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Premises and the maintenance of the lien created hereby, including reasonable attorney's fees, with interest on all such items at the rate at which principal bears interest under the Note, shall be repayable by the Mortgagor immediately upon demand and shall be tacked and impressed as an

UNOFFICIAL COPY

additional lien upon the Mortgaged Premises prior to any right, title, interest or claim attaching or accruing subsequent to the lien of this Mortgage and shall be deemed to be secured by and collectible as part of this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any such default on the part of Mortgagor.

11. Mortgagee's Reliance in Making Payments. Mortgagee, in making any payment herein and as herein authorized, (i) relating to taxes and assessments or governmental charges, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the validity or accuracy thereof, and (ii) relating to any prior lien or title or claim thereof, may do so without inquiry as to the validity or amount of any such prior lien or title or claim which may be asserted, and (iii) may do so whenever, in its reasonable judgment and discretion, such payment or payments shall seem necessary to protect the full security intended to be created by this Mortgage; provided, however, that in connection with any such payment as aforesaid, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the reasonable cost and expenses of which shall be repayable by the Mortgagor upon demand and shall be secured hereby.

12. Change in Ownership or Other Transfers. Notwithstanding anything herein to the contrary, in the event that there is any change in the legal or equitable ownership of the Mortgaged Premises or any part thereof, or in the event there is any change in ownership of the Mortgagor, or in the event of any transfer, conveyance, encumbrance, sale, lease, sublease (by Mortgagor as tenant under the Ground Lease, Tenant under the Lease, or any tenant under any future lease of the Mortgaged Premises) or other disposition of the Mortgaged Premises, or any part thereof, or any agreement to do any of the foregoing (individually and collectively "**Prohibited Transfers**"), the Mortgagee may, at its option, unless its prior written consent has been obtained, declare the whole Indebtedness Hereby Secured immediately due and payable, together with reasonable attorneys' fees. Prohibited Transfers shall also be an Event of Default under this Mortgage and the other Loan Documents. No consent of the Mortgagee, even if granted, shall release Mortgagor or any other person liable for any Indebtedness Hereby Secured, unless expressly provided in such consent.

13. Acceleration of Indebtedness Upon Default. Upon the occurrence of an Event of Default, the whole Indebtedness Hereby Secured shall, at the option of the Mortgagee, and without notice, become immediately due and payable with reasonable attorneys' fees, and thereupon, or at any time during the existence of any such default, Mortgagee may proceed to foreclose this Mortgage as provided by law, anything hereinbefore or in the Note contained to the contrary notwithstanding and/or exercise any other right or remedy available to it under this Mortgage or the Note or any other document securing or evidencing the Indebtedness Hereby Secured.

14. Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Subject to the terms of the Ground Lease, such receiver shall have (i) power to collect the rents, issues and profits of the Mortgaged Premise during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and (ii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of (a) the Indebtedness Hereby Secured, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) after any such sale, to the balance due of any amounts secured hereby or

UNOFFICIAL COPY

by such decree after application of any proceeds obtained by such foreclosure sale.

15. Expenses. If Mortgagee commences or defends any proceeding to enforce its rights hereunder or under the Note or Security Documents, Mortgagor agrees to pay to Mortgagee all costs and expenses, including reasonable attorneys' fees, paid or incurred by Mortgagee in connection therewith, which costs and expenses shall be secured by this Mortgage (but excluding any action in which Mortgagor and Mortgagee are adversary parties and Mortgagor is the prevailing party or any action arising out of the negligent or willful misconduct of Mortgagee). In furtherance of the foregoing, but not in limitation thereof, in any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's 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, title insurance policies and similar data and assurances with respect to title as Mortgagee may deem 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 Premises.

16. Maintenance of Mortgaged Premises During Foreclosure. In the event of foreclosure of this Mortgage and subject to the terms of the Ground Lease, Mortgagor hereby authorizes and empowers Mortgagee, its successors and assigns: (a) to pay all taxes, assessments, water rates, sewer rentals and other governmental charges of every kind and nature that may have been or that thereafter during the period of redemption from the sale under such foreclosure may be levied or assessed upon the Mortgaged Premises or any part thereof; (b) to keep the improvements then existing upon the Mortgaged Premises insured and to pay the premiums therefor as required hereunder during the period of redemption (if any) from the sale under such foreclosure; and (c) to keep the Mortgaged Premises in thorough repair as required hereunder during the period of redemption, if any, of the sale from such foreclosure.

17. Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 Illinois Compiled Statutes 5 Sections 15-1101 et seq.) (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. Furthermore, if any provision of this Mortgage grants to Mortgagee any rights or remedies, upon default of Mortgagor, that are more limited than the rights that would otherwise be vested in Mortgagee under the Act, in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act, to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

18. Waiver of Marshaling and Strict Foreclosure. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. Mortgagor agrees that to the extent permitted by law this Mortgage may be foreclosed by Mortgagee at its option.

19. Security Agreement and Financing Statement. This Mortgage is, pursuant to the Illinois Commercial Code, a security agreement and Financing Statement with respect to that portion of the Mortgaged Premises constituting fixtures. Mortgagor hereby authorizes Mortgagee to execute and file continuation statements without the signature of Mortgagor if Mortgagee shall determine that such are necessary or advisable in order to perfect Mortgagee's security interest in such fixtures and Mortgagor shall promptly execute financing and continuation statements in form satisfactory to Mortgagee, upon request, to further evidence and secure

UNOFFICIAL COPY

Mortgagee's interest in such fixtures and shall pay to Mortgagee on demand any reasonable expenses incurred by Mortgagee in connection with the preparation, execution and filing of such statements and any continuation statements that may be filed by Mortgagee. Upon the occurrence of any Event of Default, Mortgagee may, at its option, sell or otherwise dispose of such fixtures by public or private proceedings, separate from or together with the sale of the Mortgaged Premises, in accordance with the provisions of the Illinois Commercial Code, and Mortgagee may with respect to such fixtures, exercise any other rights or remedies of a secured party under the Illinois Commercial Code. Mortgagee shall give Mortgagor at least ten (10) days prior written notice of the time and place of any public sale of such fixtures or other intended disposition thereof. Upon occurrence of any Event of Default, the Mortgagee reserves the option, pursuant to the appropriate provisions of the Illinois Commercial Code to proceed with respect to such personal property and/or fixtures as part of the Mortgaged Premises in accordance with its rights and remedies with respect to the Mortgaged Premises, in which event the default provisions of the Illinois Commercial Code shall not apply.

20. No Waiver. The failure of the Mortgagee to exercise its option for acceleration of maturity and/or foreclosure following any default or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder shall not constitute a waiver of any such default, nor extend or affect the grace period, if any, but such option shall remain continuously in force. Acceleration of maturity once claimed hereunder by Mortgagee may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by the Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

21. Cumulative Rights and Remedies. The rights and remedies herein provided are cumulative and Mortgagee may recover judgment on the Note, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security or any right or remedy afforded by this Mortgage and no enumeration of special rights or powers by any provision of this Mortgage shall be construed to limit any grant of general rights or powers, or to take away or limit any and all rights granted to or vested in the Mortgagee by virtue of the laws of Illinois.

22. No Effect on Liability. In the event the Mortgagee: (a) releases any part of the security described herein or any person liable for any Indebtedness Hereby Secured; (b) grants one or more renewals or extensions of the Note for any period or periods of time; (c) takes other or additional security for the payment thereof; or (d) waives or fails to exercise any right granted herein or in the Note, said act or omission shall not release the Mortgagor, subsequent purchasers of the Mortgaged Premises or any part thereof, or makers, guarantors or sureties of this Mortgage or of the Note, under any covenant of this Mortgage or of the Note or the Security Documents, nor preclude the Mortgagee from exercising any rights, power or privilege herein granted or intended to be granted in the event of any default then made or any subsequent default.

23. Notices. Any notice to be given hereunder shall be in writing, addressed to the party at the address stated below and shall be (i) delivered in person to the receiving party by the other party, his agent or a professional courier service, (ii) sent by United States certified or registered mail, postage prepaid, return receipt requested, or (iii) sent by telecopy to the receiving party at the telecopy phone number stated below. Any such notice shall be deemed effective upon the earlier of the actual receipt of the notice or (i) if delivered in person, then when such notice is delivered to an individual at the receiving party's address who is apparently authorized to accept deliveries, (ii) if sent by United States certified or registered mail, then one day after such notice or election is deposited with the United States Postal Service, or (iii) if sent by telecopy, then at the time sent and confirmed by the sender's transmitted copy of such notice.

Mortgagee: State Financial Bank, N.A.
10708 W. Janesville Road
Hales Corners, WI 53130
Attention: Commercial Lending

UNOFFICIAL COPY

Facsimile No. 414-525-3197

With a copy to:
 Davis & Kuelthau, S.C.
 111 East Kilbourn Avenue
 Milwaukee, WI 53202
 Attention: Harold A. Laufer
 Facsimile No. 414-278-3623

Mortgagor: ALBS Wireless Services Corp. and A.L.B.S. Wireless Services II LLC
 2225 E. Oakton Street
 Arlington Heights, IL 60005
 Attn: Anthony Baroud
 Facsimile No. (847) 690-0885

24. Governing Law. The Mortgaged Premises is located in the State of Illinois, and the Mortgage and the rights and Indebtedness Hereby Secured shall be construed and enforced according to the laws of the State of Illinois.

25. Covenants Run with the Land. All the covenants hereof shall run with the land.

26. Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage and that the waiver of the options, or obligations secured hereby, shall not at any time thereafter be held to be an abandonment of such rights. Notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby, is not required to be given.

27. Binding on Successors and Assigns. This Mortgage and all the provisions hereof shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, including but not limited to its respective successors and assigns, heirs, administrators or executors, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the Indebtedness Hereby Secured or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" as used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders from time to time of the Note secured hereby.

28. Captions. The captions and headings of various Sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions thereof.

29. Amendments. This Mortgage may not be amended or altered in any manner other than by a writing signed by the party sought to be charged or bound thereby.

30. Subrogation. As additional security for the Note and all other sums secured hereby, Mortgagee shall be and is hereby subrogated to the lien of any mortgage, encumbrance or other lien, whether or not released of record, paid or discharged, in whole or in part, by the proceeds of the Note.

31. Recording and Filing Fees. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto or to any security agreement securing the Note, to be recorded, filed, re-recorded and refiled in such manner and in such places as the Mortgagee shall reasonably request, and will pay all recording, filing, re-recording and re-filing taxes, fees and other charges, duties, imposts or assessments relating in any way whatsoever thereto.

UNOFFICIAL COPY

32. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby.

33. Invalidity. Nothing contained herein nor any transaction related hereto shall be construed or shall so operate either presently or prospectively (a) to require Mortgagor to pay interest at a greater rate than is lawful, or (b) to require Mortgagor to make any payment or do any act contrary to law; but if any clause or provision contained herein shall otherwise operate to invalidate this Mortgage, in whole or in part, then such clause(s) or provision(s) only shall be held for naught as though not contained herein and the remainder of this Mortgage shall remain operative and in full force and effect.

34. Representations and Warranties. Mortgagor hereby warrants, represents and certifies to Mortgagee that as of the date hereof and throughout the term of the Loan:

(a) Execution of Loan Documents. The Note and Loan Documents have been duly executed and delivered by the Mortgagor, Guarantor, as defined in the Note, and other applicable parties that such documents constitute the legally enforceable obligations of the Mortgagor, Guarantor and other applicable parties in accordance with their respective terms.

(b) Financial Statements. All financial statements, information and other data furnished by Mortgagor and the Guarantor to Mortgagee are complete and correct in all material respects and disclose all contingent obligations which are materially individually or in the aggregate. Such financial statements accurately and fairly represent each applicable parties' financial condition and operating result as of such date and since such date there has been no material change in the Mortgagor's or the Guarantor's financial condition or results of operation sufficient to materially impair the Mortgagor's or Guarantor's ability to repay the loan.

(c) Operation of Real Estate. The present proposed operation and use of the Mortgaged Premises do not, to the Mortgagor's knowledge, violate any applicable law, ordinance, code, rule, regulation, order or any restrictive covenant or any similar land use restriction binding on the Mortgaged Premises.

(d) Default. Neither the Mortgagor nor the Guarantor are in default under any agreement to which they are a party, the effect of which would adversely affect performance by the Mortgagor or the Guarantor of their obligations pursuant to the terms and provisions of the Note or Security Documents. Neither the execution and delivery of the Note or Security Documents nor any other document executed and delivered by Mortgagor or the Guarantor in connection with this transaction, nor the consummation of this transaction, nor compliance with the terms and provisions thereof, violate any presently existing law, order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality or constitutes a default under any indenture, mortgage, deed of trust, agreement or contract of any kind to which the Mortgagor or Guarantors may be bound.

(e) No Legal Proceedings. There are no actions, suits or proceedings pending or threatened against Mortgagor, Guarantor or the Mortgaged Premises before any court or any governmental, administrative, regulatory or arbitrational body or agency of any kind which will adversely affect performance by the Mortgagor or the Guarantor of their obligations pursuant to the terms and provisions of the Note or Security Documents.

(f) Liens and Encumbrances. Except for the Permitted Liens and Encumbrances, Mortgagor has not taken, suffered or permitted any action, the effect of which would be to establish or

UNOFFICIAL COPY

cause the inception or priority of any construction or materialmen's liens, statutory or otherwise, or other lien, charge or encumbrance against the Mortgage Premises to be prior or superior to the liens and security interest of the Note or Security Documents.

(g) Insolvency. Neither the Mortgagor nor the Guarantor have filed any petition nor has any petition been filed against any such party in bankruptcy or insolvency or reorganization or for the appointment of a receiver or trustee or for the arrangement of debts, nor has such party or the Mortgaged Premises been the subject of such action, nor has such action been threatened by or against any such party or the Mortgaged Premises. Neither the Mortgagor nor the Guarantor are insolvent nor will they be rendered insolvent by the consummation of this transaction.

(h) Governmental Approvals. Mortgagor has obtained all approvals from all governmental authorities necessary or required to develop and operate the Mortgaged Premises.

(i) Usury. The amounts secured by this Mortgage will be used for the purposes specified in paragraph 815 LCSS 205/4(1)(c), and that the principal obligation secured hereby constitutes a "business loan" within the purview of said paragraph.

34. Assignment of Lease. In addition to, and not in contravention of, the assignment of the Lease set forth in Granting Clause Second of this Mortgage, Mortgagor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by Mortgagor of all obligations under the Note, this Mortgage and any other Loan Documents, hereby absolutely and unconditionally assigns, transfers and grants to Mortgagee the following property, rights, interests and estates, now owned, or hereafter acquired, by Mortgagor:

(a) Leases. All existing and future leases, including, without limitation, the Lease, affecting the use, enjoyment, or occupancy of all or any part of the Mortgaged Premises, and the right, title and interest of Mortgagor, its successors and assigns, therein and thereunder.

(b) Other Leases and Agreements. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Mortgaged Premises or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same, this assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The Lease, the other leases and other agreements described in Section 34(a) and the leases and other agreements described in this Section 34(b), together with all other present and future leases and present and future agreements and any amendments, modifications, extensions or renewals thereof are collectively referred to as the "Leases."

(c) Rents. All rents, additional rents, revenues, income, proceeds, reimbursable amounts, issues and profits arising from the Leases and any cash or security deposited in connection therewith (including, without limitation, all oil and gas and other mineral royalties and bonuses) payable by any tenant under any of the Leases or otherwise, for or in connection with the use, enjoyment and occupancy of the Mortgaged Premises (collectively, the "**Rents**").

(d) Bankruptcy Claims. All of Mortgagor's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, 11 U.S.C. §101, *et seq.*, as the same may be amended (the "**Bankruptcy Code**").

UNOFFICIAL COPY

(e) Lease Guaranties. All of Mortgagor's right, title and interest in and to any and all lease guaranties, letters of credit and any other credit support given in connection with any of the Leases to Mortgagor or predecessors (the "**Lease Guaranties**") by any guarantor.

(f) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) Other. All rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation, (A) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Indebtedness Hereby Secured, and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties; (B) the right to pursue and collect any claim in bankruptcy proceedings of any Tenant; (C) the right to accept or reject any offer made by a Tenant pursuant to its Lease to purchase the Property or any part thereof and any other property subject to a Lease and to perform all other necessary or appropriate acts with respect to such purchases; (D) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under any Lease as Mortgagor shall have the right under any of the Leases or at law to take, including the right to commence, conduct and consummate eviction proceedings; (E) the right, at Mortgagee's option to enter upon the Property in person, by agent or by court-appointed receiver; and (F) Mortgagor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Mortgage and any or all other actions designated by Mortgagee for the proper management and preservation of the Mortgaged Premises.

This assignment of leases and rents is a perfected present, absolute, direct and unconditional assignment and transfer of all Mortgagor's right, title and interest in and to, but not obligations under, the Leases and the Rents made in consideration of the loan by Mortgagee to Mortgagor and as additional security for the repayment of the Indebtedness Hereby Secured. This assignment of leases and rents set forth in this Section 34 and Granting Clause Second of this Mortgage shall run with the land and be good and valid against Mortgagor or those claiming by, under or through Mortgagor, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Mortgage. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. Mortgagee shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Mortgaged Premises.

35. **WAIVER OF JURY TRIAL**. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (I) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (II) THIS WAIVER HAS BEEN REVIEWED BY MORTGAGOR

UNOFFICIAL COPY

AND MORTGAGOR'S COUNSEL AND IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THE MORTGAGE AND THE OTHER LOAN DOCUMENTS (III) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

36. STATE-SPECIFIC PROVISIONS.

(a) Principles of Construction. The following provisions shall apply cumulatively with the other provisions of this Mortgage, and in the event of any inconsistencies between the terms and conditions of this Section 36 and the terms and conditions of this Mortgage, the terms and conditions of this Section 36 shall control and be binding.

(b) Protective Advances. Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act, shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

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

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

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

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

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

UNOFFICIAL COPY

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

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

All Protective Advances shall be additional Indebtedness Hereby Secured, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Loan Agreement. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of the Indebtedness Hereby Secured at any time; (B) the amount of the Indebtedness Hereby Secured found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Debt becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Section 15-1522 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1522 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of sections 15-1508 and Section 15-1511 of the Act, subject to the provisions of the Loan Agreement.

(c) Waiver of Right of Redemption and Reinstatement. Without limiting the generality of Section 18 of this Mortgage, the waiver by Mortgagor of its rights of redemption and reinstatement in

UNOFFICIAL COPY

such Section, include the waiver of such rights as provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

(d) Business Loan Recital/Statutory Exemption.

(i) Mortgagor acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 105/4(1)(1)); (B) the Debt secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the Debt secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the Indebtedness Hereby Secured is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section.

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

(e) Open-End Mortgage; Maximum Principal Amount. This Mortgage is an open-end mortgage, and shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. The maximum amount of unpaid principal of the Indebtedness Hereby Secured arising under or in connection with this Mortgage, exclusive of interest thereon, which may be outstanding at any time and secured hereby shall be 200% of the face amount of the Note. This Mortgage also secures any and all debt and obligations arising under or in connection with this Mortgage, which future Indebtedness Hereby Secured shall have the same priority as if all such debt and obligations were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Mortgagee in connection with the Indebtedness Hereby Secured and which are to be reimbursed by Mortgagor under the terms of this Mortgage and the Loan Agreement; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts plus all the portions of the debt and the other obligations arising under or in connection with this Mortgage exceed two hundred percent of the aggregate, original principal amounts of the Notes.

(f) Mortgagee's Right to Possession. Upon an Event of Default, and subject to the requirements of 735 ILCS 5/1701(b)(2), Mortgagee shall be entitled to be placed in possession of the Mortgaged Premises and to exercise the rights and powers of a mortgagee in possession under the Act.

(g) Priority of Leases. Subject to the provisions of agreements between the Mortgagee and the tenants at the Mortgaged Premises, at the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance

UNOFFICIAL COPY

proceeds or any Award arising out of any condemnation), to any and all leases of all or any part of the Mortgaged Premises upon the execution by Mortgagee and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Mortgaged Premises is situated, of a unilateral declaration to that effect.

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

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

Unless the Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee, as provided in the Loan Agreement, may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Premises or any other collateral for the Debt or Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Premises or any other collateral for the Debt or Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Premises or any other collateral for the Indebtedness Hereby Secured, Mortgagor will be responsible for the out-of-pocket costs of that insurance, including interest on such costs until paid in full by Mortgagor at the rate specified in the Loan Agreement to the extent that Mortgagee may lawfully impose such interest in connection with the placement of the insurance. The costs of such insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(j) Receiver. Upon an Event of Default, Mortgagee, 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 indebtedness, 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 Premises, and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all rights and powers to the fullest extent permitted by law. Mortgagor shall pay to Mortgagee, upon demand, all of Mortgagee'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 at the Default Rate, and all such amounts shall be additional indebtedness secured hereby.

(k) Sealed Instrument. Mortgagor intends for this Mortgage to be executed and delivered by Mortgagee, and accepted by Mortgagee, as a sealed instrument.

UNOFFICIAL COPY

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage has been executed and delivered at Glenview, Illinois, on the day, month and year first above written.

ALBS WIRELESS SERVICES CORP.

A.L.B.S. WIRELESS SERVICES II LLC

By: [Signature]

By: [Signature]

Its: PRESIDENT

Its: MANAGING MEMBER

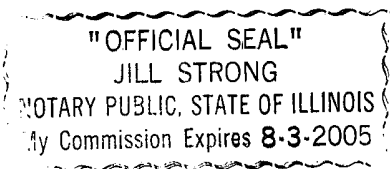
STATE OF IL)
COUNTY OF Cook) SS

I, Jill Strong, a Notary Public in and for the County and State aforesaid, do hereby certify that Anthony Baroud to me known, who declared and acknowledged that he is the Authorized President of ALBS Wireless Services Corp., incorporated under the laws of the State of Illinois, and the Managing Member of A.L.B.S. Wireless Services II LLC, organized under the laws of the State of Illinois, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said ALBS Wireless Services Corp. and A.L.B.S. Wireless Services II LLC and as his own free and voluntary act, for the uses and purposes therein set forth.

[Seal]

[Signature]
Notary Public, State of IL
My Commission: _____

This instrument was drafted by:
Harold A. Laufer, Esq.
Davis & Kuelthau, s.c.



UNOFFICIAL COPY

EXHIBIT A

THE ESTATE OR INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE LEASE, EXECUTED BY: -, AS LESSOR, AND ALBS CONSTRUCTION, AS LESSEE, DATED -, WHICH LEASE WAS RECORDED - AS DOCUMENT -, WHICH LEASE DEMISES THE FOLLOWING DESCRIBED LAND FOR A TERM OF YEARS BEGINNING - AND ENDING -.

LOT 64 (EXCEPT THE NORTH 105 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 12 IN D. S. LEE AND OTHER BEING A SUBDIVISION OF THE SOUTHWEST 1/4 IN SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SITE NUMBER: CHI586

PIN # 16-12-314-057-0006

K.A. 2912 W. LAKE ST.
Chgo., Ill.