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9868/0162 04 001 Page 1 of 35
1999-12-28 14:06:42
Cook County Recorder 89.00

Address of Premises:

12450 South Halsted Street
Calumet Park, Illinois 60827

Permanent Tax Index Number S :

25-29-416-002
25-29-416-003
25-29-416-008
25-29-416-009
25-29-416-010



Calumet Park, Illinois
(Cook County)

35
J.

THIS INSTRUMENT PREPARED BY, AND WHEN RECORDED, RETURN TO:

Jenkins & Gilchrist,
a Professional Corporation
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799
Attention: E. Leigh Gillett, Esq.

STATE OF ILLINOIS

§
§

COUNTY OF COOK

§

KNOW ALL MEN BY THESE PRESENTS:

7569824
J2 AM

MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage"), dated to be effective as of December 20, 1999, is executed and delivered by Mortgagor for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by Mortgagor. Unless otherwise indicated, the capitalized terms used herein have the meanings given to them in Section 1.1 below.

WITNESSETH:

BOX 333-CT1

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ARTICLE I

DEFINITIONS

1.1. As used herein, the following terms shall have the following meanings:

- (a) Debtor Relief Laws: Any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.
- (b) Escrowed Sums. The amounts (if any) paid by Mortgagor to Mortgagee pursuant to the Section 4.7 below, to be held by Mortgagee in a fund for the payment of Impositions and insurance premiums.
- (c) Event of Default: Any happening or occurrence described in Article VI herein.
- (d) Fixtures. All materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed on or in the Land or the Improvements, or which in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the state in which the Land is located, including the Uniform Commercial Code in effect in such state. The term "Fixtures" shall include, without limitation, all items of personalty to the extent that the same may be deemed Fixtures under applicable law.
- (e) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.
- (f) Guarantor (individually and/or collectively, as the case may be): the persons or entities, if any, who have executed instruments of Guaranty.
- (g) Guaranty (individually and/or collectively, as the case may be): That or those instruments of Guaranty, if any, from Guarantor to Mortgagee guaranteeing the repayment of the Indebtedness and the performance and satisfaction of, and/or continued compliance with, the Obligations.
- (h) Impositions: All real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges; charges imposed pursuant to any subdivision, planned unit development or condominium declaration or restrictions; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof.
- (i) Improvements: Any and all buildings, structures, open parking areas and other improvements, and any and all accessions, additions, replacements, substitutions or alterations thereof

or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(j) Indebtedness: The principal of, interest on and all other amounts and payments due under or secured by the Note, and the other Loan Documents and all renewals, extensions, increases, amendments and replacements thereof, together with all funds hereafter advanced by Mortgagee to or for the benefit of Mortgagor as contemplated by any covenant or provision herein contained or for any other purpose, and all other indebtedness, of whatever kind or character, direct or indirect, absolute or contingent, owing or which may hereafter become owing by Mortgagor to Mortgagee with respect to the Mortgaged Property, together with all renewals, extensions, amendments, increases, and replacements thereof, whether such indebtedness is evidenced by note, open account, overdraft, other advance, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Mortgagor may hereafter become indebted to Mortgagee in further sum or sums.

(k) Land: The real estate, or any interest therein, located in Cook County, Illinois, and being more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all Improvements and Fixtures and rights, titles and interests appurtenant thereto.

(l) Lease(s): Any and all leases, subleases, licenses, concessions or other agreements (written or verbal, now or hereafter in effect) which grant a possessory interest in and to, or the right to extract, mine, reside in, sell or use the Mortgaged Property, and all other agreements, including, but not limited to, utility contracts, maintenance agreements and service contracts, which in any way relate to the use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, save and except any and all leases, subleases or other agreements pursuant to which Mortgagor is granted a possessory interest in the Land.

(m) Legal Requirements: (A) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor, any Guarantor (with respect to the Indebtedness on the Mortgaged Property) or the Mortgaged Property, including, but not limited to, those respecting the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; (B) any and all leases and other contracts (written or oral) of any nature to which Mortgagor may be bound; and (C) any and all restrictions, reservations, conditions, easements or other covenants or agreements of record affecting the Mortgaged Property.

(n) Loan Documents: The Note, this Mortgage and any and all other documents now or hereafter executed by Mortgagor or Guarantor to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations, together with all renewals, extensions, amendments and replacements thereof.

(o) Mortgaged Property: The Land whether now owned or hereafter acquired together with:

(i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title

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and interest of Mortgagor in and to any street, ways, alleys, strips or gores of land adjoining the Land or any part thereof, which Mortgagor now owns or at any time hereafter acquires;

(ii) all betterments, accessions, additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;

(iii) all of Mortgagor's right, title and interest in and to any award, remuneration, settlement or compensation heretofore made or hereafter to be made by any Governmental Authority to Mortgagor, including those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements;

(iv) all plans and specifications for the Improvements; all contracts and subcontracts relating to the Improvements, all deposits (including tenant's security deposits), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, service marks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the property described herein; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the property described herein; all proceeds arising from or by virtue of the sale, lease or other disposition of all or any part of the Mortgaged Property (consent to same not granted or to be implied hereby); all proceeds (including premium refunds) payable or to be payable under any and all policies of insurance relating to the Mortgaged Property;

(v) all other interest of every kind and character which Mortgagor now has or at any time hereafter acquires in and to the above described real property and all property rights in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Mortgagor with respect to such property. To the extent permitted by law, all of the foregoing Personalty and Fixtures are to be deemed and held to be a part of and affixed to the real property; and

(vi) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations, including, without limitation, the Personalty.

As used in this Mortgage, the term "Mortgaged Property" is expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(p) Mortgagee: **MESBIC VENTURES, INC.**, a Texas corporation, whose address for notice hereunder is North Central Plaza I, Suite 710, 12655 North Central Expressway, Dallas, Texas 75243, and the subsequent holder or holders, from time to time, of the Note.

(q) Mortgagor: **PERPETUA HOLDINGS OF ILLINOIS, INC.**, an Illinois corporation, whose address for notice hereunder is 5620 North Kolb Road, Suite 220, Tucson, Arizona 85750, and any and all subsequent record or equitable owners of the Mortgaged Property.

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(r) Note: That certain promissory note dated of even date herewith, executed by Mortgagor, as "Borrower", payable to the order of Mortgagee, as "Lender", being in the original principal amount of \$2,500,000.00, bearing interest and being payable as therein provided, with a maturity date of January 1, 2004, together with any and all renewals, increases, extensions, amendments, modifications, substitutions, and replacements thereof.

(s) Obligations: Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any Guarantor to Mortgagee or others as set forth in the Loan Documents.

(t) Permitted Encumbrances: The outstanding liens, easements, building lines, restrictions, security interests and other matters (if any) as set forth in the mortgagee title insurance policy obtained by Mortgagee in connection with this Mortgage, and the financing evidenced by (i) that certain Investment Agreement dated as of December 19, 1997, by and among Perpetua, Inc., formerly know as 3G CORP Holdings, Inc. ("P.I."), certain former management shareholders of P.I., and Banc of America SBIC Corporation, formerly known as NationsBanc SBIC Corporation ("SBIC"), and (ii) that certain Purchase Agreement and Amendment dated as of January 28, 1999, by and between P.I. and SBIC ((i) and (ii), together with any amendments thereto, are referred to herein collectively as the "SBIC Loan").

(u) Personalty: All of the right, title and interest of Mortgagor in and to all tangible and intangible personal property including all equipment, inventory, goods, consumer goods, accounts containing funds generated from the Mortgaged Property, chattel paper, instruments, money, general intangibles, documents, minerals, crops and timber (as those terms are defined in the applicable state's Uniform Commercial Code) which is attached to, installed on or placed or used on, in connection with or is acquired for such attachment, installation, placement or use, or which arises out of the development, improvement, financing, leasing, operation or use of, the Land, the Improvements, Fixtures or other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments and modifications thereto, extensions, renewals, enlargements and proceeds thereof, substitutions therefor, and income and profits therefrom. The following are included, without limitation, in the definition of Personalty: furnishings, building materials, supplies, machines, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, furniture, cabinets, shades, blinds, screens; plumbing, heating, air conditioning, lighting, lifting, ventilating, refrigerating, cooking, medical, laundry and incinerating equipment, partitions, drapes, carpets, rugs and other floor coverings, awnings, call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, swimming pools, compressors, vacuum cleaning systems, disposals, dishwashers, ranges, ovens, kitchen equipment, cafeteria equipment, recreational equipment, loan commitments, financing arrangements, bonds, construction contracts, leases, licenses, permits, sales contracts, insurance policies and the proceeds therefrom, plans and specifications, surveys, rent rolls, books and records, funds, bank deposits; all items of Personalty listed on Exhibit "B" attached hereto and made a part hereof; and all other intangible personal property used in connection with the Land.

(v) Rents: All of the rents, revenues, income, proceeds, royalties, profits and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting or otherwise enjoying or using the Mortgaged Property.

ARTICLE II

GRANT

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors in trust and the Mortgagee's assigns forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates and rights granted by the Loan Documents shall terminate, otherwise same shall remain in full force and effect.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Mortgagee as follows:

3.1. Organization and Power. Mortgagor has all requisite power and authority, and all applicable and necessary governmental certificates, licenses, permits, qualifications and documentation to own, lease, operate and encumber the Mortgaged Property and to carry on its business as now being, and as proposed to be, conducted.

3.2. Validity of Documents. The execution, delivery and performance by Mortgagor of the Loan Documents and the borrowing evidenced by the Note (a) have received all (if any) requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof, and (b) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents to which Mortgagor is a party constitute the legal, valid and binding obligations of Mortgagor, in accordance with their respective terms, and Mortgagor has full and lawful authority to bargain, grant, sell, mortgage, pledge, assign, transfer and convey all of the Mortgaged Property as set forth herein. To the best of Mortgagor's knowledge, the Guaranty constitutes the legal, valid and binding obligation of Guarantor, in accordance with its terms, and, to the best of Mortgagor's knowledge, Guarantor has full and lawful authority to guarantee the loan evidenced by the Note, as set forth in the Guaranty. By execution of this Mortgage, Mortgagor acknowledges that, to Mortgagor's knowledge, the loan evidenced by the Note is non-usurious.

3.3. Information. All financial statements, balance sheets, earning statements and other financial data which have been or may hereafter be furnished to Mortgagee in connection with the Loan accurately represent the financial condition of Mortgagor and any Guarantor for the periods for which the same are furnished and, since the date thereof, there has been no material adverse change in the financial condition of Mortgagor or any Guarantor, and all other information, reports, papers and data given to Mortgagee by Mortgagor and Mortgagor's employees, agents or representatives, with respect to Mortgagor, any Guarantor or the Mortgaged Property are accurate, complete and correct in all material respects and do not omit any fact the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

3.4. Title to Mortgaged Property and Lien of this Instrument. Mortgagor has good and indefeasible title to the Land, in fee simple, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances. This Mortgage constitutes a valid, subsisting first lien on the Land, all in accordance with the terms hereof, subject only to the Permitted Encumbrances.

3.5. Taxes and Other Payments. Mortgagor and any Guarantor have filed all federal, state, county, municipal and city income and other tax returns required to have been filed by it and have paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and neither Mortgagor nor any Guarantor knows of any basis for any additional assessment in respect of any such taxes. Mortgagor has paid or will pay in full (except for such retainages as may be permitted or required by any Legal Requirements to be withheld by Mortgagor pending completion of any improvements and except for the contesting of same in accordance with the terms hereof) all sums owing or claimed for labor, material, supplies, personal property (whether or not constituting a fixture hereunder) and services of every kind and character used, furnished or installed in the Mortgaged Property and no claim for same currently exists or will be permitted to become past due.

3.6. Litigation. To Mortgagor's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting the Mortgaged Property or involving the validity or enforceability of this Mortgage or the priority of the lien hereof, and there are no actions, suits or proceedings pending or to Mortgagor's knowledge threatened against or affecting Mortgagor or any Guarantor which could have a material adverse affect on the ability of each or any of such parties to perform their respective obligations under the Loan Documents; and further, no event has occurred (including specifically Mortgagor's execution of the Loan Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property other than the lien and security interest created by the Loan Documents, the Permitted Encumbrances and the SBIC Loan.

3.7. Environmental Laws. To the best of Mortgagor's knowledge, except as disclosed in (a) that certain Phase I Environmental Site Assessment Update dated November 30, 1999, from Conestoga-Rovers & Associates ("CRA") regarding Cedar Park Funeral Home and (b) that certain Phase I Environmental Site Assessment Update dated November 30, 1999, from CRA regarding Cedar Park Cemetery (the reports referenced in (a) and (b) above are referred to herein as the

"Environmental Reports"), the Mortgaged Property does not contain any hazardous substance or solid waste (as defined below). Except as disclosed in the Environmental Reports, the Mortgaged Property and Mortgagor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any applicable laws pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended from time to time, hereinafter called "CERCLA"), the Resource Conservation and Recovery Act of 1976 as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (as amended from time to time, hereinafter called "RCRA"), and any environmental protection provisions contained in any applicable laws of the State of Illinois. The use which Mortgagor makes and intends to make of the Mortgaged Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Mortgaged Property, other than hazardous substance or solid waste commonly used in the ordinary course of Mortgagor's business, but then only in compliance with Applicable Environmental Laws (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and provided further, to the extent that the laws of the State of Illinois establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply). There are no judicial or administrative actions, suits or proceedings pending or threatened against or affecting Mortgagor, any other person liable, directly or indirectly, for the secured indebtedness relating to the matters described in this Section 3.7. The definitions in this Section 3.7 shall also be applicable to Section 4.11 and Section 4.12 below.

3.8. Asbestos; Underground Storage Tanks. To the best of Mortgagor's knowledge, and except as disclosed in the Environmental Reports, the Mortgaged Property does not contain friable asbestos, or any substance containing asbestos deemed hazardous by federal or state regulations, or any underground oil or petroleum storage tanks.

3.9. Non-Foreign Status. Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1954, as amended (hereinafter called the "Code"), specifically sections 1445 and 7701.

ARTICLE IV

AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee as follows:

4.1. Payment and Performance. Mortgagor will pay the Indebtedness, as and when called for in the Loan Documents, and will perform all of the Obligations, in full and on or before the dates they are to be performed.

4.2. Existence. Mortgagor will preserve and keep in full force and effect its rights, franchises and trade names.

4.3. Compliance with Legal Requirements. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements, whether or not same shall necessitate improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

4.4. Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof, or the day any fine, penalty, interest or cost may be added thereto or imposed, or the day any lien may be filed, for the nonpayment thereof (if such day is used to determine the due date of the respective item) and will furnish Mortgagee with receipts showing payment of such Impositions at least ten (10) days prior to the applicable delinquency date. Provided, however, that Mortgagor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted Impositions and, pending such contest, Mortgagor shall not be deemed in default hereunder if prior to delinquency of the asserted Impositions Mortgagor establishes an escrow acceptable to Mortgagee adequate to cover the payment of such Impositions with interest, costs and penalties and a reasonable additional sum to cover possible costs, interest and penalties, and if Mortgagor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereof, before such Impositions could constitute a lien on the Mortgaged Property; and provided, further, that in any event each such contest shall be concluded and the Impositions, penalties, interest and costs shall be paid prior to the date such Impositions, penalties, interest and costs could constitute a lien on the Mortgaged Property or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

4.5. Defense of Title. If the title of the Mortgagee to, or the interest of Mortgagee in, the Mortgaged Property hereby conveyed, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Mortgagor hereby authorizes Mortgagee, at Mortgagor's expense, to take all reasonably necessary and proper steps for the defense of such title or interest, including, without limitation, making a claim under the mortgagee title insurance policy obtained by Mortgagee in connection with this Mortgage, the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such title or interest in the Mortgaged Property. Provided that Mortgagee has made a claim under the mortgagee title insurance policy obtained by Mortgagee in connection with this Mortgage, and such claim is rejected (either partially or as a whole), Mortgagor will indemnify and hold Mortgagee harmless from and against any and all loss, cost, damage, liability or expense incurred by Mortgagee in protecting its interests hereunder in such an event (including all court costs and attorneys' fees).

4.6. Insurance. (a) Mortgagor shall keep the buildings, improvements, fixtures and personal property included in the Mortgaged Property or any which may hereafter be erected or installed on the Mortgaged Property insured against loss or damage by fire, explosion, windstorm, hail, tornado and other hazards by policies of fire and extended coverage insurance, including earthquake and sinkhole coverage if required by Mortgagee, in an amount equal to the full replacement value of the Mortgaged Property, but in no event shall this amount be less than \$1,000,000.00, together with flood insurance if the Mortgaged Property is now or hereafter determined to be located in a Flood Hazard Area, under policies issued by such company or

companies, in such amounts and with such terms as may be acceptable to Mortgagee. In no event shall the maximum deductible under the policies described above exceed \$5,000.00. Mortgagor further agrees that Mortgagor will deliver to Mortgagee the original policies evidencing such insurance and any additional insurance which shall be taken out upon said properties and receipts evidencing the payment of all premiums, and that certificates evidencing renewals of all such policies of insurance shall be delivered to Mortgagee at least thirty (30) days before any such insurance shall expire; and that all such policies shall have attached thereto (a) a standard mortgagee clause in favor of and which shall be satisfactory in form and content to Mortgagee, (b) a replacement cost or restoration endorsement with an agreed amount endorsement, (c) a provision providing that the waiver of subrogation rights by the insured does not void the coverage, and (d) such special endorsements, if any, as may be required by the terms of leases assigned as security for the indebtedness. Each insurance policy shall also provide that the coverage of Mortgagee shall not be canceled, endorsed, altered or reissued to affect a change in coverage for any reason or terminated, reduced or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy unless such insurer shall have first given Mortgagee thirty (30) days prior written notice thereof. In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to such policies then in force concerning the Mortgaged Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Mortgagee in the event of such transfer. In the event any of the Mortgaged Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail, or by any other casualty against which insurance shall have been required hereunder, Mortgagor will give immediate notice by mail to Mortgagee who may make proof of loss if not made promptly by Mortgagor. Provided that no Event of Default shall have occurred and be continuing hereunder, Mortgagor shall be entitled to receive the insurance proceeds for the sole purpose of the prompt restoration of the Mortgaged Property to its condition prior to such casualty. However, if an Event of Default shall have occurred and be continuing hereunder, each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor, and Mortgagee shall have the right to apply the insurance proceeds in payment (without premium or penalty) of the indebtedness secured hereby, either in whole or in part, in the order determined by Mortgagee in its sole discretion, or to require the Mortgaged Property so destroyed or damaged to be repaired or replaced, either partly or entirely, by the use of such proceeds; provided, however, in any event the then unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof.

(b) Mortgagor shall maintain general public liability insurance against claims for bodily injury or death and property damage occurring in or upon the Mortgaged Property, in standard form and with such insurance company or companies as may be acceptable to Mortgagee, such insurance to list Mortgagee as an additional insured and afford immediate protection, to the limit of not less than \$2,000,000.00 for bodily injury or death in respect of any one accident or occurrence, and to the limit of not less than \$2,000,000.00 for property damage, with a maximum deductible in the amount of \$5,000.00. Mortgagor shall maintain with respect to each policy or agreement evidencing such public liability insurance an endorsement, rider, or other supplement expressly providing "contractual coverage" for the indemnification of Mortgagee by Mortgagor (but such coverage or the amount thereof shall in no way limit such indemnification) and shall include a broad form comprehensive general liability endorsement. Mortgagor further agrees that Mortgagor will deliver to Mortgagee

the original policies evidencing such insurance and receipts evidencing the payment of all premiums. Mortgagor further agrees that certificates evidencing renewals of all such policies of insurance shall be delivered to Mortgagee at least thirty (30) days before any such insurance shall expire. Each insurance policy shall also provide that the coverage of Mortgagee shall not be canceled, endorsed, altered or reissued to affect a change in coverage for any reason or terminated, reduced or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy unless such insurer shall have first given Mortgagee thirty (30) days prior written notice thereof. In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Property shall succeed to all the rights of Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned pursuant to the provisions of this Section; and Mortgagor hereby authorizes Mortgagee and its successors or assigns to notify any or all insurance carriers of this assignment.

4.7. Impositions and Insurance Escrow. To implement the provisions of Sections 4.4 and 4.6 hereof relating to the payment of taxes and insurance premiums, if an Event of Default shall have occurred and be continuing hereunder, Mortgagee shall have the option (but not the obligation) to require that Mortgagor pay to Mortgagee, on the first day of each month until payment in full of the Indebtedness and the Obligations, one twelfth (1/12th) of the sum of: (a) the annual Impositions (excluding any utility rates and charges), estimated wherever necessary, to become due for the tax year during which such payment is so directed; and (b) the insurance premiums for the same year for those insurance policies as are required hereunder. If Mortgagee requires such escrow and determines that any amounts theretofore paid by Mortgagor are insufficient for the payment in full of such Impositions and insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to provide a sufficient fund, whereupon Mortgagor shall pay to Mortgagee within ten (10) days thereafter the additional amount so stated in Mortgagee's notice. Any amounts in excess of amounts required to pay the Impositions and insurance premiums referred to above deposited with Mortgagee shall be held by Mortgagee for future use, applied to the Indebtedness or Obligations or refunded to Mortgagor at the Mortgagee's option. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of the sums escrowed pursuant to this Section then in its possession to its assignee, whereupon the Mortgagee shall then become completely released from all liability with respect thereto, provided that such assignee acknowledges receipt in writing of such escrowed sums. Upon payment of the Indebtedness and Obligations, or at such earlier time that Mortgagee may elect, the balance of the sums escrowed pursuant to this Section in its possession shall be paid over to Mortgagor, and no other party shall have any right or claim thereto. If an Event of Default shall have occurred and be continuing hereunder, Mortgagee shall have the additional option of crediting the full amount of the sums escrowed pursuant to this Section against the Indebtedness and the Obligations without in any way being deemed to have waived such Event of Default.

4.8. Leases and Rents. Mortgagor shall (a) not enter into any Lease without first obtaining the prior written approval of Mortgagee, other than commercially reasonable Leases entered into in the ordinary course of Mortgagor's business; (b) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under any such Lease; (c) not voluntarily terminate, cancel, waive, substantially or materially modify or amend its rights or the obligations of any party under any such Lease, without the prior written approval of Mortgagee, other than in connection with commercially reasonable Leases, if any, entered into in the

ordinary course of Mortgagor's business; (d) use all reasonable efforts to maintain any Lease in full force and effect during the full term hereof; and (e) appear and/or defend any action or proceeding arising under or in any manner connected with any Lease or the representations, warranties, covenants and agreements of it or of any other party or parties thereto. Subsequent to an Event of Default, Mortgagee (i) shall have the right to collect all Rents, incomes and other sums due and owing from the Mortgaged Property directly from any lessee, tenant or any other obligor obligated to pay the same, (ii) at any time may contact each and every such lessee, tenant or obligor and any other party obligated on any Lease, informing them to make payment of all sums due and owing Mortgagor or any other party directly to Mortgagee to the credit of Mortgagor, and (iii) may demand, sue for, compromise and collect any Rents, either under its own name or in the name of Mortgagor, with or without the consent of Mortgagor. Mortgagor will establish, at Mortgagee's request, a separate account into which all Rents and other income from the Land, Improvements, Fixtures and Personalty shall be deposited which account Mortgagor hereby pledges and assigns to Mortgagee as additional security for the Indebtedness and Obligations; provided, however, prior to an Event of Default Mortgagor shall be entitled to the full use and disposition of funds in such account. Subsequent to an Event of Default, Mortgagee may also establish a post office box in the name of the Mortgagee to which all Rents shall be sent at the direction of Mortgagee made upon the lessees, tenants or other parties renting, leasing or otherwise using the Mortgaged Property.

4.9. Inspection. Mortgagor shall permit Mortgagee, and its agents, representatives and employees, to inspect the Mortgaged Property at all reasonable times upon reasonable notice to Mortgagor.

4.10. Future Impositions. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage or upon any rights, titles, liens or security interest created hereby or upon the Note, or any part thereof, Mortgagor shall immediately pay all such taxes; provided that, in the alternative, Mortgagor may, in the event of the enactment of such a law, and must, if it is unlawful for Mortgagor to pay such taxes, prepay the Note in full within ninety (90) days after demand therefor by Mortgagee.

4.11. Environmental Laws. Except as disclosed in Section 3.7 above, Mortgagor will not cause or permit the Mortgaged Property to be in violation of or subject to any existing, pending or threatened investigation or inquiry by any Governmental Authority or to any remedial obligations under any Applicable Environmental Laws (as defined in Section 3.7 above), assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property. Mortgagor will not use the Mortgaged Property in a manner which will result in the disposal or other release of any hazardous substance or solid waste on or to the Mortgaged Property, other than hazardous substances or solid waste commonly used in the ordinary course of Borrower's business, but then only in compliance with Applicable Environmental Laws. If at any time during the existence of this Mortgage, Mortgagee has reason to believe, in the exercise of its reasonable discretion, that the Mortgaged Property is not free of hazardous waste or contaminants, then upon Mortgagee's reasonable request, Mortgagor will provide at Mortgagor's sole expense an inspection or audit of the Mortgaged Property from an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of any such substances on the Mortgaged Property. If Mortgagor fails to provide same after ten (10) days notice, Mortgagee may order same, and Mortgagor grants to Mortgagee and its employees and agents access to the Mortgaged Property

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and a license to undertake the testing. The costs of such tests shall be a demand obligation owing by Mortgagor to Mortgagee pursuant to this Mortgage. Notwithstanding the foregoing, this Section 4.11 shall be subject to the terms and provisions of Section 3.7 above.

4.12 Indemnification. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against, and to reimburse Mortgagee with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, reasonable costs and expenses (including reasonable attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Mortgagee at any time or from time to time by reason of or arising out of any violation of CERCLA, RCRA, or any other federal, state, or local environmental statute, regulation, or ordinance (including, without limitation, all claims, demands, loss, damage, liabilities, costs and expenses in connection with the presence on the Mortgaged Property or release from or to the Mortgaged Property of hazardous substances or solid wastes disposed of or otherwise released), regardless of whether the act, omission, event, or circumstance constituted a violation of applicable law at the time of existence or occurrence.

4.13 Financial Statements. Mortgagor shall deliver to Mortgagee current Financial Statements (hereinafter defined) (a) within twenty (20) days after the end of each calendar month, and (b) within 90 days after the end of each fiscal year. The term "Financial Statements," as used herein, means such balance sheets (including disclosure of all contingent liabilities), profit and loss statements, reconciliations of capital and surplus, changes in financial condition, schedules of sources and uses of funds, statements of cash flow, pro forma schedules of sources and uses of funds for ensuing periods, operating statements for the Mortgaged Property, and other financial information of Mortgagor as shall be required by Mortgagee, which statement shall be certified as true and correct by an officer of Mortgagor; provided, however, that upon the occurrence of an Event of Default, Mortgagee shall have the right to require future financial statements submitted pursuant to this Section to be audited by an independent certified public accountant reasonably acceptable to Mortgagee.

4.14. Further Security Interest. Within forty-five (45) days from the date hereof, Mortgagor shall cause Guarantor (or the applicable subsidiary entity of Guarantor) to execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to grant for the benefit of Mortgagee, as additional security for the loan evidenced by the Note and the Loan Documents, first liens and security interests on all real and personal property owned by Guarantor (or the applicable subsidiary entity of Guarantor) located at the real property with an address of 2163 North Illinois Street, Indianapolis, Indiana 46202 (the "Boatright Funeral Home"). In connection with the grant of such first liens and security interests in the Boatright Funeral Home, Grantor shall cause Guarantor (or the applicable subsidiary entity of Guarantor) to purchase Mortgagee, in each instance, a mortgagee policy of title insurance in an amount acceptable to Mortgagee, and subject only to the encumbrances and exceptions to title as are shown on that certain commitment for mortgagee policy of title insurance by Lawyers Title Insurance Corporation, through its local agent Republic Title of Texas, Inc., with an effective date of November 23, 1998, under GF No. 99 R 00455 ND 6 (with respect to the Boatright Funeral Home).

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ARTICLE V

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NEGATIVE COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1. Use Violations. Mortgagor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in a manner which (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancelable, or increases the premium of (unless Mortgagor pays such increase), any insurance then in force with respect thereto.

5.2. No Waste; Zoning. Mortgagor will not commit or permit any waste of the Mortgaged Property and will not without the prior written consent of Mortgagee, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature or apply for or cooperate with any proposed zoning change affecting the Land.

5.3. Replacement of Fixtures and Personalty. Mortgagor will not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance or repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except such as may be first approved in writing by Mortgagee.

5.4. Due on Sale or Encumbrance. Except for the sale of goods, equipment, inventory, consumer goods, crypts, markers, monuments, lots, plots, vaults, niches and other tangible and intangible personal property in the ordinary course of Mortgagor's business (collectively, "Permitted Transfers"), upon the voluntary or involuntary sale, lease, exchange, assignment, conveyance, transfer or other disposition (herein collectively called "Disposition") of all or any portion of the Mortgaged Property (or any interest therein), or all or any part of the beneficial ownership interest in Mortgagor, or in the event Mortgagor conveys to any other party a security interest in the Mortgaged Property (with the exception of the security interest granted in connection with the SBIC Loan) or any part thereof or voluntarily or involuntarily permits or suffers the Mortgaged Property to be further encumbered (herein collectively called "Encumbrance"), then Mortgagee may, at its option, enforce any and all of its rights, remedies and recourses as set forth in this Mortgage; provided, however, Mortgagee shall not enforce such rights, remedies, and recourses if it consents, in writing, to the Disposition or Encumbrance in question. It is expressly agreed that in connection with determining whether to grant or withhold such consent the determination made by Mortgagee shall be conclusive and Mortgagee may require as conditions to granting such consent (a) an increase in the rate of interest payable under the Note, (b) payment to Mortgagee of a transfer fee, (c) payment of Mortgagee's reasonable attorneys' fees in connection with such Disposition or Encumbrance, (d) the express assumption of the payment of the indebtedness and performance of the obligations of the Mortgagor by the party to whom such Disposition will be made (with or without the release of Mortgagor from liability for such indebtedness and obligations).

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ARTICLE VI

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EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1. Payment of Indebtedness. If Mortgagor shall fail to make any payment due under the Note or any of the Loan Documents within ten (10) days after the same becomes due and payable in accordance with the terms of the Note or this Mortgage.

6.2. Performance of Obligations. If Mortgagor shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations, as and when required and such failure continues for a period of thirty (30) days after the delivery of written notice to Mortgagor by Mortgagee specifying the failure.

6.3. Warranties or Representations. If any warranty, representation or other statement by Mortgagor, Guarantor, or by anyone else on behalf of Mortgagor or Guarantor, as contained in the Note or any of the Loan Documents is or becomes false or incorrect, and is not corrected within thirty (30) days after delivery of written notice to the appropriate party by Mortgagee.

6.4. Negative Covenants. If Mortgagor shall fail to perform or observe any negative covenants (including, but not limited to, those contained in Article V of this Mortgage) contained in the Note or any of the Loan Documents, and such failure is not corrected within thirty (30) days after delivery of written notice to Mortgagor by Mortgagee specifying the failure.

6.5. Affirmative Covenants. If Mortgagor or Guarantor shall fail to perform or observe any covenants or agreements contained in the Note or any of the Loan Documents and such failure continues for a period of thirty (30) days after the delivery of written notice to Mortgagor by Mortgagee specifying the failure.

6.6. Enforceability of Liens. If any lien granted by Mortgagor or Guarantor to Mortgagee in connection herewith becomes invalid, unenforceable, or is not, or ceases to be, a first perfected priority lien in favor of the Mortgagee against any asset which it is intended to encumber, and such default is not cured within a period of thirty (30) days after the delivery of written notice to Mortgagor by Mortgagee specifying the default.

6.7. Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without implying Mortgagee's consent to such sale or the existence, placing, creating or permitting of any lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder and any such proceedings shall not be stayed or discharged within twenty (20) days thereafter.

6.8. Title and Lien Priority. If title of the Mortgagor to any or all of the Mortgaged Property or the status of this Mortgage as a valid lien and security interest on the Mortgaged Property subject only to the Permitted Encumbrances and Permitted Transfers, shall be challenged or

endangered by any party whatsoever, and Mortgagor shall fail to commence (or cause to be commenced) diligent efforts to cure the same upon demand by Mortgagee.

6.9. Involuntary Proceedings. If a case is commenced or petition is filed against Mortgagor or any Guarantor under any Debtor Relief Law; a receiver, liquidator, or trustee of Mortgagor or any Guarantor is appointed by court order and such order is not stayed or vacated within sixty (60) days; or any asset of any Mortgagor or any Guarantor is sequestered by court order and such order is not stayed or vacated within sixty (60) days.

6.10. Voluntary Petitions. If Mortgagor or any Guarantor voluntarily seeks, consents to, or acquiesces in the benefit of any provision of any Debtor Relief Law, whether now or hereafter in effect; consents to the filing of any petition against it under such law; makes an assignment for the benefit of its creditors; admits in writing its inability to pay its debts generally as they become due; or consents to the appointment of a receiver, trustee, liquidator, or conservator for it or any part of its assets.

6.11. Undischarged Final Judgments. If final judgment or judgments for the payment of money aggregating in excess of \$25,000.00 is or are outstanding against Mortgagor or any Guarantor and any one of such judgments has been outstanding for more than thirty (30) days from the date of its entry and has not been discharged in full or stayed. The judgment obtained in favor of Geoff Sutton against Guarantor in the case styled *Geoff Sutton v. 3G Corp, et al*, filed in the Circuit Court of St. Charles County, Missouri, Case No. CV 197-6955CC (the "Sutton Judgement") shall be excepted from the requirements of the first sentence of this Section 6.11 above provided, that, Mortgagor has filed an appeal in connection with the Sutton Judgment in an appropriate court, and has obtained and placed with the applicable court an appeal bond, if required, satisfactory to such court pending the resolution of such appeal of the Sutton Judgment. Upon resolution of the appeal of the Sutton Judgment, the requirements of the first sentence of this Section 6.11 above shall be applicable to any judgment against Mortgagor or any Guarantor resulting from the Sutton Judgment and/or the appeal of the Sutton Judgment.

6.12. Attachment. If Mortgagor or any Guarantor shall fail to have discharged or stayed within a period of ten (10) days after the commencement thereof, any attachment, sequestration, or similar proceeding against any substantial portion of its assets.

6.13. Payment of Judgments. If Mortgagor or any Guarantor fails to pay any money judgment against it at least five (5) days prior to the date on which any substantial portion of its assets may be lawfully sold to satisfy such judgment.

6.14. Change of Ownership. If there shall occur any voluntary or involuntary change in the fee simple ownership of the Mortgaged Property (other than Permitted Transfers), in whole or in part in violation of the terms of the Loan Documents, or in the ownership structure of Mortgagor in violation of Section 5.4 above.

6.15. Other Defaults. If any Event of Default, as defined or described in any of the other Loan Documents shall occur, and be continuing beyond the expiration of any and all applicable notice, grace and/or cure periods.

6.16. Death or Incapacity. If there shall occur the death, dissolution, business failure, merger, or similar event affecting Mortgagor or any Guarantor or any surety, endorser or guarantor of the Indebtedness.

6.17. Abandonment. If Mortgagor shall abandon all or a portion of the Mortgaged Property.

6.18. Levy on Assets. If there shall occur a levy on a substantial portion of the assets of Mortgagor or any Guarantor or any surety, endorser or other guarantor of the Indebtedness.

6.19. Null and Void. If this Mortgage, the Note, or any other Loan Document, or any material provision thereof, shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Mortgagor or any Guarantor, or Mortgagor or any Guarantor shall deny that it or he has any or further liability or obligation hereunder or thereunder.

6.20. Payment of Other Debts. Subject to the terms of Section 6.11 above, if Mortgagor or any Guarantor fails to pay in a timely manner (i.e., as any such payments are due) any principal or interest payments due on any obligation to any financial institution or creditor of Mortgagor or any Guarantor, respectively (subject to any applicable notice, grace or cure periods).

6.21. Compliance with Section 4.14. If Mortgagor fails to timely fulfil Mortgagor's obligations as set forth in Section 4.14 above.

6.22. Future Advances. If Mortgagor, notifies Mortgagee of Mortgagor's election to terminate the operation of this Mortgage as a security for future advances or future obligations.

ARTICLE VII

REMEDIES

7.1. Certain Remedies. If an Event of Default shall occur and be continuing, Mortgagee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Judicial Foreclosure. Mortgagee may at its option declare the whole amount of the Indebtedness remaining unpaid immediately due and payable without notice, and proceed by suit or suits in equity or at law to foreclose this Mortgage in accordance with applicable Illinois law. The Mortgaged Property may be sold as one parcel or in such parcels as the Mortgagee may elect unless otherwise provided by law.

(b) Uniform Commercial Code. Without limitation of Mortgagee's rights of enforcement with respect to the Personalty or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights of enforcement with respect to the Personalty or any part thereof under the State Uniform Commercial Code as amended (or under the

Uniform Commercial Code in force in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the Personalty or, to the extent and for those items of the Personalty permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Personalty and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Personalty; (3) written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Mortgaged Property under power of sale as provided in paragraph (a) above in this Section 7.1; (5) in the event of a foreclosure sale, whether made by Mortgagee under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Personalty or any part thereof prior to the time that any sale pursuant to the provisions of this location is conducted and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; (7) with respect to application of proceeds of disposition of the Personalty under Section 7.3 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Indebtedness or as to the occurrence of any default, or as to Mortgagee having declared all of the Indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

(c) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the Indebtedness, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

(d) Entry on Mortgaged Property. Mortgagee is authorized, prior or subsequent to, the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Mortgaged Property, or any part thereof, and to take possession of the Mortgaged Property and all books and records relating thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Mortgaged Property. Mortgagee shall not be deemed to have taken possession of the Mortgaged Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Mortgagee in

managing, operating, maintaining, protecting or preserving the Mortgaged Property shall constitute a demand obligation of Mortgagor (which obligation Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor. In connection with any action taken by Mortgagee pursuant to this Section, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property or any part thereof, or from any act or omission of Mortgagee in managing the Mortgaged Property unless such loss is caused by the willful misconduct and bad faith of Mortgagee (provided that Mortgagee shall be liable only for loss caused by its own willful misconduct and bad faith), nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any lease or other agreement relating to the Mortgaged Property or arising under any of the permitted Encumbrances or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Mortgaged Property taken under this Section.

(e) Receiver. Mortgagee shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Mortgaged Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Mortgaged Property or the solvency of any person or persons liable for the payment of the Indebtedness, and Mortgagor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Mortgagee, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Mortgagee to application of Rents as provided in this Mortgage. Nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee pursuant to this Mortgage.

(f) Other Rights and Remedies. Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents or at law or in equity or otherwise.

7.2. Action by Mortgagee. This instrument may be foreclosed as to any of the Mortgaged Property in any manner permitted by applicable law. Mortgagee may at any time before the sale of the Mortgaged Property abandon the sale, and Mortgagee may then institute suit for the collection of the Note and/or any other Indebtedness, and for the foreclosure of this Mortgage. It is agreed that if Mortgagee should institute a suit for the collection of the Note or any other Indebtedness and for the foreclosure of this Mortgage, Mortgagee may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Mortgaged Property in accordance with the provisions of this Mortgage.

7.3. Proceeds of Foreclosure. The proceeds of any sale held by Mortgagee or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied: FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all reasonable trustee's and attorneys' fees and legal expenses, all court costs and charges of every character, and to the payment of the other Indebtedness, including specifically without limitation, the principal, accrued interest and attorneys' fees due and unpaid on the Note and

the amounts due and unpaid and owed to Mortgagee under this Mortgage, the order and manner of application to the items in this clause FIRST to be in Mortgagee's sole discretion; and SECOND, the remainder, if any there shall be, shall be paid to Mortgagor, or to Mortgagor's successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Mortgagee is uncertain which person or persons are so entitled, Mortgagee may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the Indebtedness and shall be reimbursable (without limitation) from such remainder.

7.4. Mortgagee as Purchaser. Mortgagee, as the highest bidder, shall have the right to become the purchaser at any sale held by Mortgagee or substitute or successor or by any receiver or public officer or at any public sale, and Mortgagee shall have the right to a credit in the amount of Mortgagee's successful bid, upon all or any part of the Indebtedness owed to Mortgagee in such manner and order as Mortgagee may elect.

7.5. Foreclosure as to Matured Debt. If an Event of Default occurs and is continuing, Mortgagee shall have the right to proceed with nonjudicial foreclosure, and Mortgagee shall have the right to proceed with judicial foreclosure of the liens and security interests hereunder without declaring the entire Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part this Mortgage shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 7.3 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the Indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other Indebtedness in such manner and order and to such extent as Mortgagee deems advisable, and the remainder, if any, shall be applied as provided in clause SECOND of Section 7.3 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Indebtedness.

7.6. Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Mortgagee shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

7.7. Mortgagee's Discretion as to Security. Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

7.8. Mortgagor's Waiver of Certain Rights. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor, Mortgagor's representatives, successors and assigns, and for any and all persons ever claiming interest in the Mortgaged Property, to the extent permitted by applicable law, hereby waives and releases (i) all rights of redemption (including, without limitation, redemption from sale or from any order or decree of foreclosure), valuation, appraisal, stay of execution; (ii) except as otherwise provided in any Loan Document, notice of intention to mature, accelerate, or declare due the whole of the Indebtedness, and notice of election to mature, accelerate, or declare due the whole of the Indebtedness; and (iii) all rights to a marshaling of assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert pursuant to any provision of Illinois law, pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Mortgagor or Mortgagor's representatives, successors or assigns or any other persons claiming any interest in the Mortgaged Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not hereafter be deemed to preclude the application of this Section.

7.9. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's representatives, successors or assigns are occupying or using the Mortgaged Property, or any part thereof, each and all shall immediately become the tenant or subtenant, as the case may be, of the purchaser at such sale, which tenancy or subtenancy, as the case may be, shall be a tenancy or subtenancy, as the case may be, from day to day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants or subtenants at will. In the event the tenant or subtenant fails to surrender possession of said property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the property (such as an action for forcible detainer) in any court having jurisdiction.

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ARTICLE VIII 09200550

CONDEMNATION

8.1. Application of Proceeds. If the Mortgaged Property, or any part thereof, shall be condemned or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Mortgaged Property shall be paid to the Mortgagee who shall have the right to apply the amounts so received as follows:

- (a) First, to reimburse the Mortgagee for all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with collection of such proceeds; and
- (b) Second, the remainder of said proceeds shall be applied to the payment of the Indebtedness, in the order determined by the Mortgagee in its sole discretion; and
- (c) Third, after full payment of the Indebtedness, the remainder of said proceeds, if any, shall be paid to the holder or Mortgagee of any inferior liens covering the Mortgaged Property of which Mortgagee has actual knowledge; and
- (d) Fourth, the remainder, if any, shall be paid to Mortgagor.

To enforce its rights hereunder, Mortgagee shall be entitled to participate in any condemnation proceedings and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation. In the event Mortgagee, as a result of any such judgment, decree or award, reasonably believes that the payment or performance of any obligation secured by this Mortgage is impaired, Mortgagee may, upon ninety (90) days written notice, declare all of the Indebtedness secured hereby immediately due and payable. Notwithstanding the foregoing, provided that no Event of Default shall have occurred and be continuing hereunder, Mortgagor shall be entitled to receive all such condemnation proceeds for the sole purpose of the prompt restoration of the Mortgaged Property to conditions substantially similar to its condition prior to such condemnation, provided such restoration is practicable through rebuilding, acquisition of new property or otherwise.

ARTICLE IX

SECURITY AGREEMENT

9.1. Security Interest. This Mortgage shall be construed as a mortgage on real property, and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article II hereof, a first and prior pledge and assignment and a first and prior lien security interest under the applicable Uniform Commercial Code (being 810 ILCS 5/1-101 — 5/1-102 (1993), as amended, as to the property within the scope thereof and situated in the State of Illinois) with respect to the Personalty, Fixtures, Leases and Rents. This Mortgage secures future advances and future obligations and shall

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be governed by the applicable Uniform Commercial Code. The total principal amount of the present and future advances and obligations which may be secured hereby is \$5,000,000.00. Mortgagor has granted, bargained, conveyed, assigned, transferred and set over, and by these presents does grant bargain, convey assign, transfer and set over unto Mortgagee a first and prior security interest in and to all of Mortgagor's rights, title and interest in, to and under the Personalty, Fixtures, Leases and Rents in trust, to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Upon an Event of Default, Mortgagor shall gather all of the Mortgaged Property which is Personalty at a location designated by the Mortgagee for sale pursuant to the terms hereof.

9.2. Financing Statements. Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's security interest herein granted and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to 810 ILCS 5/9-103(5) (1993) of the applicable Uniform Commercial Code, as amended, and similar provisions (if any) of the Uniform Commercial Code as enacted in any other state where the Mortgaged Property is situated, which will be financed at the wellhead or minehead of the wells or mines located on the Mortgaged Property and is to be filed for record in the real estate records of each county where any part of the Mortgaged Property is situated. This Mortgage shall also be effective as a financing statement covering any other Mortgaged Property and may be filed in any other appropriate filing or recording office. The mailing address of the debtor is the address of Mortgagor set forth in Section 1.1(q) of this Mortgage above and the address of the secured party from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth in Section 1.1(p) of this Mortgage above. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section. The record owner of the fee simple estate of the Mortgaged Property is Mortgagor.

9.3. Uniform Commercial Code Remedies. Mortgagee shall have all the rights, remedies and recourses with respect to the Personalty, Fixtures, Leases and Rents afforded a secured party by the aforesaid Uniform Commercial Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded by the Loan Documents and at law.

9.4. No Obligation of Mortgagee. The assignment and security interest herein granted shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession of the Mortgaged Property or to obligate Mortgagee to operate the Mortgaged Property or attempt to do the same or take any action, incur expenses or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE X

ASSIGNMENT OF MORTGAGE

In the event of an assignment of the interests of the Mortgagee under this Mortgage, all rights and remedies granted to the Mortgagee in this Mortgage, shall inure to the benefit of, and may be exercised by, the assignee.

ARTICLE XI

MISCELLANEOUS

11.1. Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full.

11.2. Further Assurances. Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of the Loan Documents, to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property, and to complete, execute, record and file any document or instrument reasonably necessary to place third parties on notice of the liens and security interests granted under the Loan Documents, including, without limitation, Mortgagor's obligations as set forth in Section 4.14 above.

11.3. Recording and Filing. Mortgagor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request and will pay all recording, filing, re-recording and refiling taxes, fees and other charges associated therewith.

11.4. Notices. All notices, demands and other communications permitted or required under this Mortgage shall be in writing and shall be delivered personally, delivered via Federal Express or similar reliable express mail service with all freight charges prepaid, or sent by certified or registered United States mail, return receipt requested, postage prepaid, to the address specified in the introductory paragraph of this Mortgage or at such other address within the continental United States of America as Mortgagor and Mortgagee may designate by written notice of change of address delivered to Mortgagor or Mortgagee personally, via Federal Express or similar reliable express mail service with all freight charges prepaid, or by certified or registered United States mail, return receipt requested, addressed to Mortgagor or Mortgagee at its respective address set forth in the introductory paragraph of this Mortgage. All such notices or other communications shall be deemed to have been given on the date of personal delivery, on the date of delivery by overnight courier, or three (3) business days after the date of mailing, as the case may be.

11.5. No Waiver. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of the same or of any other term, provisions or condition thereof, and Mortgagee shall have the right at any time, from time to time thereafter, to insist upon strict performance by Mortgagor of any and all of such terms, provisions and conditions.

11.6. Mortgagee's Right to Pay Indebtedness and Perform Obligations. If Mortgagor or Guarantor shall fail, refuse or neglect to make any required payment of the Indebtedness or perform any of the Obligations required by the Loan Documents, then at any time after an Event of Default, and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of the same, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon with respect to the Mortgaged Property as it may reasonably deem necessary or appropriate. Mortgagor shall be obligated to repay Mortgagee for all sums advanced by it pursuant to this Section 11.6 and shall indemnify and hold Mortgagee harmless from and against any and all loss, cost, expense, liability, damage and claims and causes of action, including attorneys' fees, incurred or accruing by any acts performed by Mortgagee (other than Mortgagee's wrongful, willful acts and gross negligence) pursuant to the provisions of this Section 11.6 or by reason of any other provision of the Loan Documents. All sums paid by Mortgagee pursuant to this Section 11.6 and all other sums extended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the highest rate allowed by applicable law, shall constitute additions to the Indebtedness and Obligations, shall be secured by the Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand.

11.7. Covenants Running with the Land. All obligations contained in the Loan Documents are intended by the parties to be and shall be construed as covenants running with the Mortgaged Property.

11.8. Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives and all other persons claiming by, through or under them.

11.9. Severability. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances or other instruments referred to hereinabove shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law.

11.10. Controlling Agreement. As provided in the Note, all agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the maturity of the Notes or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to Mortgagee exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Mortgagee in excess of the maximum lawful

amount, the interest payable to Mortgagee shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Mortgagee shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal of the Indebtedness and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Indebtedness, such excess shall be refunded to Mortgagor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal so that the interest on the Indebtedness for such full period shall not exceed the maximum amount permitted by applicable law. Mortgagee hereby expressly disclaims any intent to contract for, charge or receive interest in an amount which exceeds the maximum amount of interest permitted by applicable law. This section shall control all agreements between Mortgagor and Mortgagee.

11.11. ENTIRE AGREEMENT AND MODIFICATION. THE LOAN DOCUMENTS CONTAIN THE ENTIRE AGREEMENTS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF, AND ALL PRIOR AGREEMENTS RELATIVE THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE TERMINATED. IN THE EVENT OF A CONFLICT BETWEEN THE COMMITMENT AND ANY OF THE OTHER LOAN DOCUMENTS, THE TERMS AND PROVISIONS OF SUCH OTHER LOAN DOCUMENTS SHALL CONTROL. THE LOAN DOCUMENTS MAY BE AMENDED, REVISED, WAIVED, DISCHARGED, RELEASED OR TERMINATED ONLY BY A WRITTEN INSTRUMENT OR INSTRUMENTS EXECUTED BY THE PARTY AGAINST WHICH ENFORCEMENT OF THE AMENDMENT, REVISION, WAIVER, DISCHARGE, RELEASE OR TERMINATION IS ASSERTED. ANY ALLEGED AMENDMENT, REVISION, WAIVER, DISCHARGE, RELEASE OR TERMINATION WHICH IS NOT SO DOCUMENTED SHALL NOT BE EFFECTIVE AS TO ANY PARTY.

11.12. APPLICABLE LAW; SUBMISSION TO JURISDICTION.

(a) THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ITS LAWS RELATING TO CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE LAWS OF ANY OTHER JURISDICTION MANDATORILY GOVERN THE MANNER OR PROCEDURE FOR ENFORCEMENT OF THE LIEN CREATED BY THIS MORTGAGE, PROVIDED THAT ANY REMEDIES HEREIN PROVIDED WHICH SHALL BE VALID UNDER THE LAWS OF THE JURISDICTION WHERE PROCEEDINGS FOR THE ENFORCEMENT HEREOF SHALL BE TAKEN SHALL NOT BE AFFECTED BY ANY INVALIDITY UNDER THE LAWS OF THE STATE OF TEXAS.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS AND ANY TEXAS STATE COURT SITTING IN HOUSTON, TEXAS FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR

THE TRANSACTIONS CONTEMPLATED HEREBY. MORTGAGOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

11.13. Gender, Titles, Construction. Within this Mortgage, words of any gender shall be held and construed to mean and include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

11.14. Sole Benefit. This instrument and the other Loan Documents have been executed for the sole benefit of Mortgagor, any Guarantor and Mortgagee and the heirs, successors, assigns and legal representatives of Mortgagor, any Guarantor and Mortgagee. No other party shall have rights thereunder nor be entitled to assume that the parties thereto will insist upon strict performance of their mutual obligations hereunder, any of which may be waived from time to time. Mortgagor and any Guarantor shall have no right to assign any of their rights under the Loan Documents to any party whatsoever.

11.15. Subrogation. If any or all of the proceeds of the Indebtedness or the Obligations have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind (including liens securing the payment of any Impositions), such proceeds have been advanced by Mortgagee at Mortgagor's request, and, to the extent of such funds so used, the Indebtedness and Obligations in this Mortgage shall be subrogated to and extend to all of the rights, claims, liens, titles and interests heretofore existing against the Mortgaged Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former rights, claims, liens, titles and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of Mortgagee and shall be merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and satisfaction of the Obligations.

11.16. Business or Commercial Purpose. Mortgagor warrants that the extension of credit evidenced by the Note secured hereby is solely for business or commercial purposes, other than agricultural purposes. The Mortgagor further warrants that the credit transaction evidenced by the Note is specifically exempted under Regulation Z issued by the Board of Governors of the Federal Reserve System and Title I (Truth in Lending Act) of the Consumer Credit Protection Act and that no disclosures are required to be given under such regulations and federal laws in connection with the above transaction.

11.17. Not Acting as Agent. Mortgagor warrants and represents that it does not hold title as agent or trustee for a noncorporate entity.

11.18. Compliance with Legal Requirements; Indemnification. Except as disclosed in the schedule attached hereto as Exhibit "C" and made a part hereof for all purposes, to Mortgagor's knowledge, Mortgagor represents and warrants that the Improvements comply with all applicable Legal Requirements, including, without limitation, (i) those concerning architectural barriers and access for the disabled, including, but not limited to, the Americans With Disabilities Act as codified in 42 U.S.C.A. Section 12101-12213 and in the regulations set forth in 28 C.F.R. Part 36, and (ii) those concerning the regulation of the existence of lead based paint, including, but not limited to, the Residential Lead-Based Paint Hazard Reduction Act. Mortgagor hereby covenants that Mortgagor shall comply and cause all occupants of the Mortgaged Property to comply with the provisions of all applicable Legal Requirements. It shall constitute an Event of Default hereunder and Mortgagee shall be entitled to exercise all remedies available to it hereunder if any of the above representations shall prove to be false, inaccurate or misleading or if Mortgagor shall fail to comply with the covenants set forth above. Mortgagor hereby agrees to defend, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns (the "Indemnified Parties") from and against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims or remediation of defective conditions) incurred by the Indemnified Parties as a result of or in connection with any violation of any applicable Legal Requirements or as result of or in connection with activities prohibited under this Section 11.18. Mortgagor shall bear, pay and discharge, as and when the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise, against the Indemnified Parties, shall hold the Indemnified Parties harmless against all claims, losses, damages, liabilities, costs and expenses, and shall assume the burden and expense of defending all suits, administrative proceedings and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in this Section 11.18. This indemnification shall remain in full force and effect and shall survive the repayment of the Indebtedness and the satisfaction of the documents securing the same, as well as the exercise of any remedy by Mortgagee hereunder or under any of the other Loan Documents, including a foreclosure of this Mortgage or the acceptance of a deed in lieu of foreclosure.

11.19. Joint and Several. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the grantors named in Section 1.1(r) hereof or any of them. The obligations of Mortgagor hereunder shall be joint and several. If any Mortgagor, or any signatory who signs on behalf of any Mortgagor, is a corporation, partnership or other legal entity, Mortgagor and any such signatory, and the person or persons signing for Mortgagor and any such signatory, represent and warrant to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives. If Mortgagor is an individual, no power of attorney granted by Mortgagor herein shall terminate on Mortgagor's disability. The release by Mortgagee of any party under this Mortgage shall not operate to release any other party hereunder.

11.20. WAIVER OF JURY TRIAL. MORTGAGOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR

OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF MORTGAGEE, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

11.21. Mortgagor's Successors. If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Mortgagor (other than through a Permitted Transfer), Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Indebtedness in the same manner as with Mortgagor, without in any way initiating or discharging Mortgagor's liability hereunder or for the payment of the Indebtedness or performance of the Obligations secured hereby. No transfer of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Indebtedness given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the Indebtedness or performance of the Obligations secured hereby or the Liability of any other person hereunder for the payment of the Indebtedness. Each Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Mortgaged Property, with or without notice to such Mortgagor, and no such modifications shall impair the Obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Mortgaged Property.

11.22. Application of Payments to Certain Indebtedness. If any part of the Indebtedness cannot be lawfully secured by this Mortgage to the full extent of such indebtedness, or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

11.23. Release of Mortgage. If all of the Indebtedness be paid as the same becomes due and payable and all obligations, if any, of Mortgagee for further advances and all letters of credit have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be timely released by Mortgagee in due form at Mortgagor's cost.

11.24. No Partnership, etc. The relationship between Mortgagee and Mortgagor is solely that of lender and borrower. Mortgagee does not have any fiduciary or other special relationship with Mortgagor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Mortgagor and Mortgagee or in any way make Mortgagee a co-principal with Mortgagor with reference to the Mortgaged Property. All agreed contractual duties between or among Mortgagee and Mortgagor are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

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11.25. Time of the Essence. Mortgagor acknowledges that time is of the essence in regard to the payment of the Indebtedness and the performance of all obligations under this Mortgage and the Loan Documents.

11.26. Usury. Mortgagor hereby represents and covenants that the proceeds of the Note will be used for the purposes specified in Subparagraph 1(c) contained in Section 205/4 of Chapter 815 of the Illinois Compiled Statutes (1993), and that the Indebtedness hereby constitutes a "business loan" within the meaning of that Section.

[Signatures on following page]

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Property of Cook County Clerk's Office

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11/10/2011

11/10/2011
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Property of Cook County Clerk's Office

11/10/2011
11/10/2011
11/10/2011
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11/10/2011

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EXHIBIT "A"

09200550

The Land

PARCEL 1: The South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ and the South $13\frac{1}{3}$ acres of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 North, Range 14, East of the third principal meridian, (except that part thereof described as follows: commencing at the point of intersection of the North line of the South $13\frac{1}{3}$ acres aforesaid and the West line of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid; thence South along the West line of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid, a distance of 436.48 feet more or less to the South line of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid; thence East along the South line of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid, a distance of 129 feet; thence North 22 feet; thence East 155 feet; thence Northeasterly along a line making an angle of 45 degrees measured counterclockwise with the prolongation of the last mentioned line to its intersection with a line 300 feet East of and parallel with the West line of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid; thence North along the last mentioned parallel line a distance of 398.0 feet more or less, to the North line of the South $13\frac{1}{3}$ acres of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid; thence West along the North line of said South $13\frac{1}{3}$ acres of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29 aforesaid to the point of beginning) and (except that part falling in Halsted Street) and (except the South 50 feet deeded to the County of Cook) all in Cook County, Illinois,

Excepting therefrom the East 510.0 feet of the South $13\frac{1}{3}$ acres of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 North, Range 14, East of the third principal meridian, in Cook County, Illinois.

PARCEL 2: The East 510 feet of the South $13\frac{1}{3}$ acres of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 37 North, Range 14, East of the third principal meridian, in Cook County, Illinois.

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EXHIBIT "B"

List of Personalty

1. All buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the real property described on Exhibit "A" attached hereto (i.e., the "Land"); including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Land in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty constituting the Land and not severable wholly or in part without material injury to the freehold of the Land (i.e., together with replacements and additions thereto, the "Improvements"); and
2. All compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to a (i) taking or damaging of the Land or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Land or the Improvements for any reason whatsoever; and
3. Return premiums or other payments upon any insurance any time provided for the benefit of or naming Mortgagee, and refunds or rebates of taxes or assessments on the Land; and
4. All the right, title and interest of Mortgagor in, to and under all written and oral leases and rental agreements (i.e., the "Leases") now or hereafter affecting the Land including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Mortgagor may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding; and the leasehold estate in the event this Instrument is on a leasehold; and
5. Plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Mortgagor's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Land or at some other location; and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements; and

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6. All contracts, accounts, rights, claims or causes of action pertaining to or affecting the Land or the Improvements, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Land or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Mortgagor with proceeds to satisfy the loan evidenced by the Note or improve the Land or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees; and

7. All books, records, surveys, reports and other documents related to the Land, the Improvements, the Leases, or other items of collateral described herein; and

8. All additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.

All of the foregoing described collateral is exclusive of any furniture, furnishings or trade fixtures owned and supplied by tenants of the Land.

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EXHIBIT "C"

1. Certain environmental matters described in that certain Phase I Environmental Site Assessment Update dated November 30, 1999, from Conestoga-Rovers & Associates regarding Cedar Park Funeral Home.
2. Certain environmental matters described in that certain Phase I Environmental Site Assessment Update dated November 30, 1999, from Conestoga-Rovers & Associates regarding Cedar Park Cemetery.

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