

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made this 16th day of October, 1989, by and between CHICAGO TITLE AND TRUST COMPANY, not individually but as Trustee ("Trustee") under Trust Agreement dated the 4th day of April, 1986 and known as Trust Number 1087719 ("Trust"), whose address is 111 West Washington, Chicago, Illinois and THOMAS H. BAUR, an individual residing in Illinois ("Beneficiary"), whose address is 1945 North Fremont, Chicago, Illinois 60614 (Trustee and Beneficiary hereinafter collectively referred to as "Borrower"), and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, ("Lender"), whose address is 33 North LaSalle Street, Chicago, Illinois 60690.

\$62.00

WITNESSETH THAT:

WHEREAS, Trustee is indebted to Lender in the principal sum of One Hundred Thirty-One Thousand Six Hundred Five and 25/100 Dollars (\$131,605.25), as evidenced by Trustee's Installment Note of even date herewith (herein called "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on October 16, 1994. The Loan bears interest at a variable rate of the Base Rate, as that term is defined in the Note plus one-fourth (1/4) percent, which Note contains provisions for acceleration in event of default, matures as stated therein, and provides for payment of interest as set forth therein, payment of costs of collection, including attorneys' fees in the event of default, waives demand, presentment for payment, protest, notice of nonpayment and protest, and the terms of which are hereby incorporated by reference and made a part hereof and a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, Beneficiary, pursuant to that certain guaranty the liability under which shall not exceed \$5,500,000.00 ("Guaranty") of even date herewith, the terms of which are incorporated herein by this reference and a copy of which is attached hereto as Exhibit "C", has guaranteed the payment and performance by MEDIATECH, INC., an Illinois corporation, and MEDIATECH OF NEW YORK, INC., a New York corporation (collectively "Mediatech"), of all liabilities and obligations of Mediatech pursuant to that certain loan and security agreement ("Loan Agreement") of even date herewith, executed by Mediatech and Lender.

THIS INSTRUMENT PREPARED BY AND SHALL BE RETURNED TO:

STREET ADDRESS:

DANIEL D. DREW, ESQ.
MALK HARRIS & MILLER
212 EAST OHIO STREET
SUITE 500
CHICAGO, ILLINOIS 60611

1740 North Marshfield
Chicago, Illinois 60622

PERMANENT PROPERTY TAX NUMBER

14-31-422-018
14-31-422-019

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12-29-890 Da ZIMMELMAN

Box 333 1
0307 JAZ

NOW, THEREFORE, Borrower, in order to secure to Lender the repayment of the indebtedness evidenced by the Note and the Guaranty, and the performance of the covenants and agreements of Borrower contained herein, does hereby grant, sell, transfer, assign, convey and confirm and mortgage unto Lender the property located at 1740 North Marshfield, Chicago, Illinois, which property is legally described in Exhibit "A" attached hereto; together with all buildings, structures and other improvements and chattels now on said land or that may hereafter be erected or placed thereon; all elevators, motors and machinery; also together with all mineral oil and gas rights and interests; also together with all shrubbery and trees now growing or that hereafter may be planted or grown thereon; and also together with all crops and/or produce of any kind now growing or that may be hereafter growing, grown or produced upon said land or any part thereof; and also development rights or credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock;

Also together with all and each of the ways, easements and other rights, and all tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all rights in any abutting public or private streets and alleys and in any submerged lands adjacent thereto (hereinafter referred to as the "Premises");

And all present and future rents, issues, avails, profits and proceeds (hereinafter referred to as the "Rents") of or from the Premises, the "Leases" and/or and the "Equipment" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising;

And all present and future permits, licenses and franchises and similar agreements of or from the Premises (collectively, the "Licenses"), leases, agreements, tenancies, licenses and franchises (hereinafter collectively referred to as the "Leases") of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, including, without limitation, those Licenses and Leases issued by any governmental authority, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessees' performances thereunder;

And all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto;

And all present and future apparatus, machinery, equipment, fixtures and articles of personal property of any and every kind and nature whatsoever used, attached to, installed or located in or on the Premises, or required for use in or on or in connection with the Premises or the management, maintenance, operation or

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business thereof and all replacements thereof and accessions thereto to the extent owned by Borrower (hereinafter referred to as the "Equipment"), including, but not limited to, any such item of Equipment now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, laundry service and all other related or other such services (all of the immediately above mentioned items of Equipment being deemed to be a part of the Premises, whether physically attached thereto or not);

And all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment;

And all proceeds of each and every of the foregoing.

Borrower hereby grants to Lender a continuing security interest in (i) that portion of the Mortgaged Property (as hereinafter defined) constituting property or interests in property, whether real or personal, tangible or intangible, now owned or existing and hereafter acquired and arising, which are subject to the priority and perfection of security interest provisions of the Illinois Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law; and (ii) the Equipment and all proceeds thereof to secure payment of the indebtedness and obligations secured by the Mortgage.

TO HAVE AND TO HOLD the above described property and interests in property ("Mortgaged Property") unto Lender, its successors and assigns, forever;

PROVIDED ALWAYS, that upon full payment of the Note secured hereby, or extensions or renewals thereof, in whole or in part, release or performance of the Guaranty and payment in full of "Borrower's Liabilities" (as hereinafter defined), and secured hereby, and Borrower faithfully and promptly having complied with and performed "Borrower's Obligations" (as hereinafter defined), then these presents shall be void.

AND THIS INDENTURE FURTHER WITNESSETH:

1. DEFINITIONS

1.01 Wherever used in this Mortgage, "Borrower's Liabilities" means any and all of the following: (i) the payment of any and all monies, including, but not limited to, the payment, when due or declared due in accordance with the terms of the Note, of the principal sum of the Note, together with the interest described therein, now and/or hereafter owed or to become owing by Trustee to Lender under and/or pursuant to the terms and provisions of the Note; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising

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due or payable from Borrower to Lender under and/or pursuant to the terms and provisions of this Mortgage; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising due or payable from Beneficiary to Lender under and/or pursuant to the terms and provisions of the Guaranty. For purposes hereof, the Note, this Mortgage, the Guaranty and all documents defined as Loan Documents in the Loan Agreement are the "Loan Documents" and are incorporated herein by this reference.

1.02 Wherever used in this Mortgage, "Borrower's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Borrower of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provisions to be performed, discharged, observed or complied with by Borrower or any other third party contained in the Loan Documents.

1.03 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

2. CONVEYANCE; COLLATERAL ASSIGNMENT OF LICENSES; EXECUTION AND DELIVERY OF DOCUMENTS

2.01 To secure the payment by Borrower of Borrower's Liabilities and the performance by Borrower of Borrower's Obligations, Borrower hereby does grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, convey, remise, release and otherwise mortgage to Lender, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage.

2.02 Borrower, immediately upon request by Lender, at Borrower's sole expense, will or will cause to be made, executed and delivered to Lender, in form and substance acceptable to Lender, all "Loan Documents" (as hereinafter defined) that Lender is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this by this Mortgage, the Note or the Loan Agreements or required to perfect or continue to be perfected, as valid liens or encumbrances, the liens or encumbrances granted herein or in the Loan Documents by Borrower to Lender upon the Mortgaged Property. As used in the paragraph, "Loan Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, financing statements, assignment of insurance, loss payable clause, mortgage title insurance policy, letters of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

2.03 Without limiting Lender's right and powers hereunder except as herein set forth, from and after a Default under the Note and/or and Event of Default hereunder or under any of the Loan Documents, Lender shall have the right, in its sole discretion, to exercise all rights of Borrower under all Licenses and to retain, use and enjoy the same, or to sell, assign or transfer the same (with appropriate governmental consents, where necessary) in connection with the enforcement of its rights and remedies under this Mortgage. Borrower hereby irrevocably constitutes and appoints Lender as its agent to demand, receive and enforce Borrower's rights with respect to the Licenses, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Lender with the same effect as if done by Borrower if this assignment had not been made. Lender does not hereby assume any of Borrower's obligations or duties under or in connection with any of said Licenses.

3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.01 Borrower represents and Beneficiary warrants to Lender as follows:

A. Borrower promptly will pay, or cause to be paid, when due or declared due, Borrower's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and every of Borrower's Obligations.

B. Borrower now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Note and the Loan Documents to Lender, to encumber the Mortgaged Property to Lender as provided herein or in the Loan Documents to perform all of Mortgager's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Note and the Loan Documents.

C. The execution, delivery and performance by Borrower of and under this Mortgage, the Note and the Loan Documents does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, trust agreement, note, judgment, order, award, decree or other restriction to which Borrower or any of the Mortgaged Property is or hereafter shall become a party or by which Borrower or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Borrower or any of the Mortgaged Property.

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D. All of the Licenses necessary for the operation of the Mortgaged Property are and shall at all times remain in full force and effect. Borrower has made no previous assignment of the Licenses and Borrower agrees not to further assign or to otherwise encumber its interest in such Licenses during the term of this Mortgage.

E. To the best of Borrower's knowledge, all of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and valid and enforceable in accordance with their terms. All parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, and revealed by Borrower to Lender in writing, no advance payments have been or shall be made thereunder. Borrower shall perform its obligation under the Leases and shall not permit any tenant default under the Leases to exist. Borrower shall not enter into, amend or terminate any Lease without Lender's prior written consent.

F. There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Lender's lien thereon, the collectibility of the Note, the ability of Borrower to repay the Note or the financial condition of the Mortgaged Property or the operation or business thereof.

G. Borrower and the Mortgaged Property possess and hold and shall maintain licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property.

H. There does not exist any default or breach of or under any agreement, instrument or document for borrowed money by which Borrower or the Mortgaged Property is bound or obligated.

I. The location, existence, use and condition of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, all environmental laws, rules and regulations as described in Paragraph 3.05 hereof, and all covenants and restrictions of record.

J. Borrower, subject to the rights of tenants in possession, is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

K. Any management contract for the Mortgaged Property shall provide that it may be cancelled by Lender following thirty (30) days written notice after an Event of Default as defined herein.

L. Borrower will save and hold Lender harmless of and from any and all damage, loss, cost and expense, including, but not limited to, reasonable attorneys' and paralegals' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed and/or pending, in or to which Lender is or may become or may have to become a party by reason of or arising from or on account of or in connection with Borrower's Liabilities and/or Borrower's Obligations, this Mortgage, the Note or the Loan Documents. Notwithstanding anything to the foregoing to the contrary, Borrowers shall not be liable to pay Lender or any other party any fees and/or expenses paid or incurred by Lender in connection with any litigation instituted by Borrowers against Lender, which litigation results in a final order of a court of competent jurisdiction finding Lender liable to Borrowers for damages caused by Lender to Borrowers.

M. Borrower shall not allow any changes in the use for which all or any part of the Premises was intended at the time this Mortgage was executed, Borrower shall not initiate or acquiesce in a change in the zoning classification of the Premises without Lender's prior written consent.

3.02 Borrower represents and Beneficiary warrants to Lender as follows:

A. Borrower is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levys, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances") except (I) the Encumbrances of Lender, (II) those Encumbrances described on Exhibit "D" attached hereto and made a part hereof, and (III) existing Leases to a tenant or tenants in possession of all or portions of the Premises.

B. Electric, gas, sewer, water facilities and any other necessary utilities are, and at all times hereafter shall be, available in sufficient capacity to service the

Mortgaged Property, and any easements necessary to the furnishing of such utilities services have been obtained and duly recorded.

C. The proceeds of the loan evidenced by the Note and secured hereby will be used solely for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404, and the principal obligation evidenced by the Note constitutes a "business loan" within the definition and purview of said section.

3.03 Borrower represents and Beneficiary warrants to Lender as follows:

A. Borrower will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Borrower shall pay for and complete, within a reasonable time, any building or improvement; to which Lender has given its prior written consent upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of Lender diminishes its value, and promptly shall repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Borrower shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof. Borrower shall permit Lender, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times. Borrower shall not grant any license or easement burdening the Mortgaged Property or agree to or accept the modification, amendment, or termination of any license or easement affecting the Mortgaged Property without the prior written consent of Lender, which consent shall not be unreasonably withheld.

B. Borrower shall keep and maintain at all times at Borrower's address stated above, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Premises and copies of all written contracts, leases and other instruments which affect the Premises. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender, within one hundred and

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twenty (120) days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Premises and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Premises, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid.

C. Borrower promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and all other municipal or governmental charges, impositions, levies, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Lender upon request duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency; provided, however, that if Borrower in good faith and by appropriate legal action shall contest the validity of any such item or the amount thereof, and shall have established on its books or by deposit of cash with Lender, as Lender may elect, a reserve for the payment thereof in such amount as Lender may elect, a reserve for the payment thereof in such amount as Lender may reasonably require, then Borrower shall not be required to pay the item or to produce the required receipts: (a) while the reserve is maintained, and (b) so long as the contest operates to prevent collection, including enforcement of any lien securing payment thereof, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Borrower.

D. Borrower shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics' liens and other similar liens or claims for liens) of any and every kind and nature, except those described in Paragraph 3.02(A) above, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Lender, shall deliver to Lender evidence satisfactory to Lender of the payment and discharge thereof. To prevent an Event of Default hereunder, Borrower may indemnify Lender, by a means determined solely by and acceptable to Lender, against loss by reason of such an Encumbrance which Borrower may desire to contest. If, in accordance with the terms of

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this Mortgage, Lender makes payment of any such Encumbrance, Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

E. Notwithstanding anything contained to the contrary in Paragraphs 3.03(C) and (D) above, Borrower shall have the right to contest in good faith the validity or amount of any tax or assessment or lien imposed upon or affecting the Mortgaged Premises or arising from any work performed at or materials furnished to the Mortgaged Premises which right, however, is conditioned upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the Mortgaged Premises or any part thereof or interest therein to satisfy the same, (ii) Borrower giving Lender written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanics' lien claim, shall mean within five (5) days after Borrower receives actual notice of the filing thereof, (iii) at Lender's request Borrower making and thereafter maintaining with lender or such other depository as Lender may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Lender's sole discretion, be acceptable to Lender, and in either case having a present value equal to the amount herein specified) in an amount not less than one hundred fifty percent (150%) of the amount which, in Lender's reasonable opinion, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Borrower or in the event Borrower fails to prosecute such contest as herein required, and (iv) Borrower diligently prosecuting such contest by appropriate legal proceedings. In the event Borrower shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Lender may, at its option and after written notice to Borrower, liquidate the collateral deposited with Lender, and apply the proceeds thereof and other monies deposited with Lender in payment of, or on account of, such taxes, assessments or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

F. The Note secured by the Mortgaged Property is not assumable. Without the prior written consent of Lender, Trustee and/or Beneficiary shall not, at any time or times hereafter, (1) sell (including any sale or other

transfer pursuant to installment contract for sale or sale under articles of agreement), grant an option to purchase, lease under any master lease, enter into a lease for substantially all of the Mortgaged Property, except for the existing lease encumbering the Mortgaged Property, exchange, assign, convey, further encumber, hypothecate or otherwise transfer the Mortgaged Property and/or any part or interest in, the Mortgaged Property, assign, transfer or encumber (including any collateral assignments), the beneficial interest in any land trust which holds title to the Mortgaged Property; (2) issue, sell convey, assign or create a security interest in or otherwise transfer, pledge or hypothecate any general partnership interest held by Beneficiary in 110 Development Company, except for the Pledge of Partnership Interest of even date herewith; (3) obtain any loan or incur any obligation of character whether direct or indirect, the repayment or performance of which is secured by a lien on the Mortgaged Property or any interest therein. Any of the foregoing acts, occurrences or events described in clauses (1) through (3) shall be deemed to be a "Sale" hereunder and under the Note, and the Loan Documents. Lender may, in its sole and absolute discretion, withhold consent to any Sale, or condition any such consent upon the payment of a fee, the partial payment of the Note, and increase in the interest rate, and increase in payments, a shortening of the terms of the Note, and increase in collateral, or all or any of the foregoing requirements, together with any other requirements it may wish to impose. The foregoing list is not intended in any way to limit the requirements Lender may impose nor is it intended to imply that Lender is obligated to consent to any Sale.

G. All present and future items of fixtures, equipment, furnishings or other tangible personal property (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.02(A) above and Borrower will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.02(A) above. Within five (5) days after request by Lender, Borrower will execute and deliver to Lender a security agreement and financing statements, in form and substance acceptable to Lender, covering all such property. Borrower and Lender agree that a carbon, photographic or other reproduction of the Mortgage, any security agreement executed by Borrower or a financing statement shall be sufficient as a financing statement.

H. Within one hundred twenty (120) days of the end of each fiscal year of Beneficiary there shall be submitted by Beneficiary to Lender, upon request by Lender executed annual financial statements of Beneficiary prepared by an accountant acceptable to Lender in accordance with generally accepted accounting principles.

3.04 If Borrower, immediately after written demand from Lender, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or otherwise defaults in the performance of Borrower's Obligations, Lender, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Lender in taking such action, together with interest thereon at the Default Rate as defined in the Note from the date of Lender's payment thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute a part of Borrower's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Lender shall not be deemed to relieve Borrower from an Event of Default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Lender and not obligatory upon Lender and Lender shall not in any case be liable to borrower for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Lender may rely upon any bills delivered to it by Borrower or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

3.05 Beneficiary hereby agrees to indemnify and save Lender, its successors and assigns, harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) incurred by Lender on account of claims or demands of every nature, kind and description for loss or damage to property, or injury to or death of every person, caused by, or connected in any manner with the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release, from the Mortgaged Property or any other property owned by Borrower or into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any "Hazardous Material" (defined below), including without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material, or the construction, operation, administration or inspection of the Mortgaged Property, whether due in whole or in part to the negligence of the Borrower, any contractor or contractors, subcontractor or subcontractors, or

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to the negligence of their respective partners, agents or employees ("the Indemnified Matters"). At its own cost and expense, Borrower hereby agrees to hold Lender and its employees, agents, representatives, successors or assigns (the Indemnified Parties") harmless as well as defend and pay all costs and expenses (including reasonable attorneys' fees) of any and all suits or other legal proceedings that may be brought or instituted against the Indemnified Parties on any Indemnified Matters, and pay and satisfy any judgement that may be rendered against the Indemnified Parties in any such suit or legal proceeding, or the amount of any compromise or settlement that may result therefrom. For purposes hereof, "Hazardous Material" means any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, or any other hazardous, toxic or dangerous waste, substance or material. The agreements of Borrower contained herein shall survive the payment in full of all of Borrower's Liabilities and Borrower's Obligations and release of this Mortgage.

4. TAXES, INSURANCE AND CONDEMNATION

4.01 A. Borrower, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance): (i) against loss or damage by, or resulting from, fire and such other hazards, casualties and contingencies as Lender, from time to time, may require in companies, form, amounts and for such periods as is satisfactory to Lender; (ii) with flood insurance whenever required under the National Flood Insurance Program; (iii) with comprehensive general public liability insurance with combined single limit for bodily injury or property damage in an amount acceptable to Lender with respect to any one accident or disaster; (iv) sprinkler insurance and boiler insurance, if applicable; (v) earthquake insurance, if applicable; (vi) loss of rent insurance for Leases of one year or longer; and (v) such other insurance as may be reasonably required by Lender from time to time. All such policies and renewals thereof (hereinafter referred to as the "Policies") shall contain standard Lender loss payable clauses naming Lender as "Lender", as well as a standard waiver of subrogation endorsement and a non-contributory standard Lender clause and shall be delivered, as issued, to Lender, with premiums therefor paid in full by Borrower. All Policies shall provide that they are non-cancellable by the insurer without first giving at least thirty (30) days prior written notice to Lender of any intended cancellation. Borrower will give immediate written notice to Lender of any loss or damage to the Mortgaged Property caused by any casualty. In case of Policies about to expire, Borrower will deliver to and deposit with Lender renewal policies not less than thirty (30) days prior to the respective dates of expiration, Borrower will deliver and deposit with Lender receipts for the

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payment of the premiums on all Policies. In the event of foreclosure of the Mortgage, or assignment hereof by Lender or transfer of title to the Mortgaged Property in extinguishment of Borrower's Liabilities, all right, title and interest of Borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

B. (a) Full and sole power is hereby conferred on Lender:

- (i) to settle and compromise all claims under all Policies in excess of \$25,000.00;
- (ii) to demand, receive and receipt for monies becoming due and/or payable under all Policies;
- (iii) to execute, in the name of Borrower or in the name of Lender, any proof of loss notices or other instruments in connection with all claims under all Policies; and
- (iv) to assign all Policies to any holder of Borrower's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(b) In the event of payment under any of the Policies, the proceeds of the Policies shall be paid by the insurer to Lender, and Lender, in its sole and absolute discretion, may:

- (i) apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees and paralegals' fees, either
 - a. toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof, in which event Lender must give its prior written approval to all plans and specifications for the alteration, reconstruction, repair or restoration of the Mortgaged Property; or
 - b. as a payment on account of Borrower's Liabilities (without affecting the amount or time of each subsequent payment required to be made by Borrower to Lender under the Note), whether or not then due or payable; or
- (ii) deliver such proceeds, wholly or partially, to Borrower.

(c) All insurance proceeds at any time or times hereafter disbursed to or for the benefit of the Borrower in any way, manner or respect affecting, arising from or relating to, the Mortgaged Property, or any portion thereof, are hereby assigned to Lender as additional security for the payment of the Borrower's Liabilities (and for such purpose Borrower hereby grants to Lender a security interest therein).

(d) The provisions of Paragraph 4.01(B)(b) notwithstanding, the proceeds of such insurance shall be released to Borrower, on such terms as Lender shall determine to protect the amount and validity of the lien granted hereunder, for the purpose of repairing or restoring the Mortgaged Property, provided (i) there is no Event of Default hereunder at such time; and (ii) such proceeds, together with other funds of Borrower deposited with Lender, are sufficient to fully repair or restore the Mortgaged Property.

4.02 A. All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to the Lender as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a security interest therein);

B. Lender shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Borrower's name, in Lender's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(i) to apply the same, or any part thereof, to Borrower's Liabilities, whether or not then matured and without affecting the amount or time of subsequent payments required to be made by Borrower to Lender under the Note;

(ii) to use the same, or any part thereof, to satisfy, perform or discharge any of Borrower's Obligations;

(iii) to use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Lender, and Lender must give its prior written approval to the plans and specifications for any such replacement, repair or restoration; or

03504132

(iv) to release the same to Borrower.

C. Borrower, immediately upon request by Lender, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to Lender of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.02(A) above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Borrower shall continue to pay all of Borrower's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Lender, and any reduction in Borrower's Liabilities resulting from the application by Lender of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Lender of such award or payment, the Mortgaged Property shall have been sold upon the exercise of Lender's remedies under this Mortgage, Lender shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with the lower of legal interest or the Default Rate as described in the Note thereon, whether or not a deficiency judgement on this Mortgage shall have been sought or recovered or denied, and with the reasonable attorneys' and paralegals' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of such award or payment.

D. The provisions of Paragraph 4.02 notwithstanding, the proceeds of such awards shall be released to Borrower, on such reasonable terms as Lender shall determine to protect the validity, priority and enforceability of the lien granted hereunder and the amount secured thereby, for the purpose of repairing or restoring the Mortgaged Property, provided (i) there is no Event of Default hereunder at the time of any such taking and at the time the proceeds therefrom become payable; and (ii) such proceeds, together with other funds of Borrower deposited with Lender, are sufficient to fully repair or restore the Mortgaged Property.

4.03 A. If requested by Lender in writing and with thirty (30) days advance notice, Borrower shall deposit with Lender on the first (1st) day of each month hereafter until Borrower's Liabilities are fully paid, a sum equal to one-twelfth 1/12 of (i) one hundred percent (100%) of the total annual impositions, levies, taxes and assessments arising with respect to the Mortgaged Property for the most recent ascertainable tax year and (ii) the total amount of annual premiums for all policies required to be obtained and maintained by Borrower pursuant to this Mortgage with respect to the Mortgaged Property. Subject to the provisions of this paragraph and provided that Borrower is not default in the timely payment of any payment of principal, interest or other monies due or declared due under the Note and is not in default under the Loan Documents and there is no Event of Default

hereunder, Lender shall pay, when and to whom due and payable under applicable contracts or law, all of the aforesaid impositions, levies, taxes, assessments and premiums. Notwithstanding the foregoing, Lender does not hereby assume any of Borrower's obligations under said contracts or laws to make such payments and nothing contained herein, in the Note or the Loan Documents shall require Lender to perform any such obligations of Borrower except for the making of specified terms. Upon occurrence or existence of a default under the Note, the Loan Documents, or an Event of Default hereunder, Lender shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all of such payments. Any such payments made by Lender, together with interest thereon at the Default Rate described in the Note from the date of Lender's payment (s) thereof until repaid by borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and, until paid, shall constitute a part of Borrower's Liabilities secured by this Mortgage.

B. If the deposits required hereunder are insufficient to pay the impositions, levies, taxes, assessments for which they are provided, on or before thirty (30) days before the same shall become due and payable, Borrower shall deposit with Lender such additional monies as are necessary to pay, in full, such obligations.

C. Upon the occurrence or existence of an Event of Default hereunder, Lender, at its option and in its sole discretion, may apply any monies held pursuant to Sub-Paragraph (A) above an amount of any of Borrower's Liabilities, in such order or priority as Lender may elect.

D. Upon payment, in full, of Borrower's Liabilities, Lender shall deliver any remaining of the aforesaid deposits to Borrower or the then owner of the Mortgaged Property.

E. All of the aforesaid deposits hereby are pledged, as additional security for the payment of Borrower's Liabilities (and for such purpose, Borrower hereby grants to Lender a continuing security interest therein), to be applied by Lender for the purposes hereinabove set forth and shall not be subject to the control of Borrower; provided, however, that Lender shall not be liable for failure to pay, when due, any such impositions, levies, taxes assessments or premiums unless Borrower, prior to the occurrence or existence of and Event of Default, shall have requested Lender, in writing, to pay same and deliver to Lender appropriate evidence of payment or statements therefor.

5. GENERAL PROVISIONS

5.01 Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note of this Mortgage shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower, if required, under Paragraph 4.03(A) hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) interest payable on advances made pursuant to

Paragraph 5.02 hereof; (v) principal of advances made pursuant to Paragraph 5.02 hereof; (vi) interest payable on any Future Advance (as defined below), provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vii) principal of any Future Advance, provided that if more than one Future Advance is outstanding. Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (viii) any other sums secured by this Mortgage in such order as Lender, at Lender's option, may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to Paragraph 5.02 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this Paragraph 5.01.

5.02 If Borrowers fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the Premises or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, bankruptcy, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Premises to make repairs, and (iii) procurement for satisfactory insurance as provided in Paragraph 4.01 hereof.

5.03 From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or Beneficiary's heirs, personal representatives or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Mortgage, extend the time for payment of Borrower's Liabilities or any part thereof, reduce the payments thereon, release anyone liable on any of such indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of Borrower's Liabilities, release from the lien of this Mortgage any part of the Premises, take or release other or additional security, reconvey any part of the Premises, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Paragraph 5.03 shall not affect the obligation of Borrower to pay the sums secured by this Mortgage and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not affect the lien or priority of lien hereof on the Premises. Borrower shall pay Lender a reasonable service charge,

89504132

together with such title insurance premiums and attorneys' fees as may be incurred a Lender's option, for any such action if taken at Borrower's request.

5.04 Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Lender's receipt of any awards, proceeds or damages under Paragraph 4.01 and 4.02 hereof operate the cure or waive Borrower's default in payment of sums secured by this Mortgage.

5.05 Borrower shall within ten days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Mortgage and any right of set-off, counterclaim or other defense which exists against such sums and the obligations of this Mortgage.

5.06 This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Premises. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Mortgage, including the covenants to pay when due of all sums secured by this Mortgage, Lender shall have the remedies of a secured party under the Uniform Commercial Code, and, at Lender's option, may also invoke the remedies provided in Section 6 of this Mortgage as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and

any items of personal property specified above as part of the Premises separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Section 6 of this Mortgage.

5.07 Except as may be otherwise agreed upon by Lender, the Leases of the Premises shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Premises; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request, that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornments. However, Lender can unilaterally subordinate the Mortgage to any of the Leases by executing and recording a unilateral declaration of subordination.

5.08 Notwithstanding the existence of any other security interest in the Premises held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of Borrower's Liabilities are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Mortgage and any party who now or hereafter acquires a security interest in the Premises and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

5.09 Upon request of Borrower, Lender, at Lender's option so long as this Mortgage secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note (US \$131,605.25) and the liability under the Guaranty plus the additional sum of US \$500,000.00.

6. DEFAULT

6.01 The occurrence or existence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(a) Failure or neglect of Borrower to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Mortgage, which is required to be performed, kept or observed by Borrower within the time, if any, specified therefor.

(b) Failure to pay any of Borrower's Liabilities when the same are due and payable or declared due and payable.

(c) Failure of Borrower to promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Borrower's Obligations, under this Mortgage within ten (10) days after mailing of notice by Lender of same in accordance with Paragraph 6.01 hereof.

(d) if any of Borrower's assets are seized, attached, subjected to a writ or distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated within thirty (30) days thereafter; provided however that if said default is not susceptible to being cured within said thirty (30) days, Lender shall not declare an Event of Default as long as Borrower is diligently and continuously attempting to cure said default but in not event shall the grace period granted to Borrower under this paragraph be more than sixty (60) days from the date of said seizure, attachment or other action as aforesaid;

(e) if a petition under the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation shall be filed by Borrower, or if any Borrower shall make an assignment for the benefit of creditors, or if any case or proceeding is filed by Borrower for its dissolution or liquidation;

(f) if Borrower is enjoined, restrained or in any way prevented by court order from conducting all or any material part of Borrower's business affairs or if a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation is filed against Borrower or if any case or proceeding is filed against Borrower for Borrower's dissolution or liquidation and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or filing thereof; provided, however, if said default is not susceptible to being cured within said thirty (30) days, Lender shall not declare an Event of Default so long as Borrower is diligently and continuously attempting to cure said default but in no event shall the grace period granted to Borrower under this section be more than sixty (60) days from the date of said injunction, restraint or petition;

(g) if a notice of lien, levy or assessment is filed of record with respect to all or any of Borrower's assets by the United States or any department, agency, or instrumentality thereof or by any state, county,

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municipal or other governmental agency, or if any taxes or debts owing at any time hereafter to any of them become a lien or encumbrance upon any of Borrower's assets and the same is not released within thirty (30) days after the same becomes a lien or encumbrance; provided, however, if said default is not susceptible to being cured within said thirty (30) days, Lender shall not declare an Event of Default so long as Borrower is diligently and continuously attempting to cure said default, but in no event shall the grace period granted to Borrower under this section be more than ninety (90) days from the date said debt becomes a lien or encumbrance or one-hundred twenty (120) days from the date said taxes become a lien or encumbrance, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon any of Borrower's assets;

(h) The occurrence of a Sale as defined in Paragraph 3.03(E) hereof without the written consent of Lender.

(i) Death of Thomas H. Baur.

(j) The occurrence or existence of a "Default" or "Event of Default" as defined in any of the Loan Documents including but not limited to the Loan Agreement, or a default or event of default under any other agreement, instrument, or document evidencing and/or securing and/or guarantying all or any portion of the indebtedness secured hereby, which is not cured within any applicable grace or cure periods, if any.

6.02 Upon the occurrence or existence of an Event of Default, Lender, after notice and demand insofar as required hereby, or by applicable law, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

(a) Declare all of Borrower's Liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of an Event of Default and the exercise of such option, Borrower's Liabilities shall bear interest at the Default Rate as described in the Note from the date of such Event of Default until paid in full).

(b) Either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or located on the Mortgaged Property, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Borrower might do if in possession thereof,

including, without limitation, the making of all repairs and replacements deemed necessary by Lender and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' and paralegals' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Borrower's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to the Borrower at the address of Borrower last appearing on the records of Lender. Borrower agrees to surrender possession of the Mortgaged Property to Lender immediately upon the occurrence of an Event of Default. If Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such Event of Default, such possession shall be as a tenant of Lender, and Borrower agrees to pay to Lender, or to any receiver appointed as provided below, after such Event of Default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of this sub-paragraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Borrower may be dispossessed by the usual summary proceedings. In the event Borrower shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(c) File one or more suits at law or in equity for the foreclosure of the lien of this Mortgage and to collect Borrower's Liabilities. At its option, Lender may foreclose the lien of this Mortgage upon less than all of the Mortgaged Property and specifically reserves the right to bring future foreclosure actions with respect to the balance of the Mortgaged Property or portions thereof. In the event of the commencement of any such suit by Lender, Lender shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale

and a deficiency, during the full statutory period of redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Borrower's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one property.

(d) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State of Illinois (including all remedies and rights of a secured party under the Uniform Commercial Code of the State of Illinois), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor or otherwise available in equity or under the Loan Documents.

6.03 Upon the occurrence or existence of an Event of Default under this Mortgage, there will be added to and included as part of Borrower's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: the costs, charges, expenses and attorneys' and paralegals' fees and expenses and other fees specified in Paragraph 6.04 below; any and all expenditures which may be paid or incurred by or on behalf of Lender for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, and similar data and assurances with respect to the title to the Mortgaged Property; interest at the Default Rate, as provided in the Note upon a default thereunder; all prepayment or like premiums, if any, provided for in the Note; and all other fees, costs and expenses which Lender deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, prepayment or like premiums, fees and other expenditures shall be a part of Borrower's Liabilities, secured by this Mortgage, payable on demand and, except for the aforesaid interest at the Default Rate as defined in the Note shall bear interest at the Default rate as defined in the Note from the date of Lender's payment thereof until repaid to Lender. Notwithstanding anything to the foregoing to the contrary, Borrowers shall not be liable to pay Lender or any other party any fees and/or expenses paid or incurred by Lender in connection with any litigation instituted by Borrowers against Lender, which litigation results in a final order of a court of competent jurisdiction finding Lender liable to Borrowers for damages caused by Lender to Borrowers.

89504132

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6.04 If foreclosure proceedings are instituted upon this Mortgage, or if Lender shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to this Mortgage, the Note, the Loan documents, or Borrower's Liabilities, or if Lender shall incur or pay any expenses, costs, charges or attorneys' and paralegals' fees and expenses by reason of the employment of counsel for advise with respect to this Mortgage, the Note, the Loan Documents, or any other of Borrower's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Lender's attorneys' and paralegals' fees and expenses shall be part of Borrower's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the Default Rate as defined in the Note from the date of Lender's payment thereof until repaid to Lender.

6.05 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraphs 6.03 and 6.04 above, secondly, to the balance of Borrower's Liabilities, and thirdly, the surplus, if any, to Borrower.

6.06 BORROWER, ON BEHALF OF ITSELF, ITS SUCCESSORS AND ASSIGNS, AND EACH AND EVERY PERSON IT MAY LEGALLY BIND ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE: (i) DOES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS OF APPRAISEMENT, VALUATION, STAY, EXTENSION AND (TO THE EXTENT PERMITTED BY LAW) REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE; AND (ii) DOES HEREBY AGREE THAT WHEN SALE IS HAD UNDER ANY DECREE OF FORECLOSURE OF THIS MORTGAGE, UPON CONFIRMATION OF SUCH SALE, THE MASTER IN CHANCERY OR OTHER OFFICER MAKING SUCH SALE, OR HIS SUCCESSOR IN OFFICE, SHALL BE AND IS AUTHORIZED IMMEDIATELY TO EXECUTE AND DELIVER TO PURCHASER AT SUCH SALE A DEED CONVEYING THE MORTGAGED PROPERTY, SHOWING THE AMOUNT PAID THEREFOR, OR IF PURCHASED BY THE PERSON IN WHOSE FAVOR THE ORDER OR DECREE IS ENTERED, THE AMOUNT OF HIS BID THEREFOR.

6.07 In the event that any provisions in this Mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law (Chapter 110, Section 15-1101 et seq., Illinois Revised Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render enforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing

89504132

all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgement of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgement of foreclosure.

6.08 Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Borrower for itself and all who claim through or under it waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. The Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

6.09 Lender shall have the right from time to time to sue for any sums, whether interest, principal or any other sums required to be paid by or for the account of Borrower under the terms of this Mortgage, the Note or the Loan Documents, as the same become due under the Note, or any other of Borrower's Liabilities, shall be due and without prejudice to the right of the Lender thereafter to bring an action of foreclosure, or any other action, for an Event of Default by the Borrower existing at the time such earlier action was commenced.

6.10 No right or remedy of Lender hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Note may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of an Event of Default by Borrower hereunder, or acquiescence therein, nor will it affect any subsequent Event of Default hereunder by Borrower hereunder by Borrower of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Lender. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Borrower and Lender.

6.11 Lender shall release this Mortgage by proper instrument upon payment and discharge of all of Borrower's Liabilities, including all prepayment or like premiums, if any, provided for in the Note and payment of all costs, expenses and fees, including reasonable attorneys' and paralegals' fees, incurred by Lender for the preparation, execution and/or recording of such release.

6.12 Upon occurrence or existence of an Event of Default and following acceleration by Lender of the maturity of Borrower's Liabilities as provided herein, a tender of payment thereof by Borrower, or any other party, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Lender's exercise of any of its other rights or remedies under this Mortgage, the Note, the Loan Documents or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Borrower of the Note and, therefore, such payment must, to the extent permitted by applicable law, include the interest at the Default Rate payable upon Event of Default, contained in the Note.

6.13 A. Any agreements between Borrower and Lender are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loan evidenced by the Note or otherwise, shall the amount paid or agreed to be paid to Lender for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

B. If fulfillment of any provision herein or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful rate, the ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Lender shall ever receive as interest an amount which would exceed such highest lawful rate, the amount which may be deemed excessive interest shall be applied to the principal of Borrower's Liabilities and not to interest.

C. The terms and provisions of this paragraph shall control all other terms and provisions contained herein, in the Note or in the Loan Documents.

6.14 Any failure of Lender to insist upon the strict performance by Borrower of any of the terms and provisions of this Mortgage, the Loan Documents or the Note shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by Borrower. Neither Borrower, nor any other person now or hereafter obligated for the payment of the whole or any part of reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Lender to comply with any request of Borrower, or of any other person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this

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Mortgage, the Loan Documents or the Note, or by reason of the release, regardless of consideration of the whole or any part of the security held for Borrower's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Lender extending the time of payment or modifying the terms thereof without first having obtained the consent of Borrower or such other person, and, in the latter event, Borrower, and all such other persons, shall remain liable on account of Borrower's Liabilities and shall remain liable to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Lender. Lender, without notice, may release, regardless of consideration, any part of the security held for Borrower's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of Borrower's Liabilities to any other security therefor held by the Lender in such order and manner as Lender may elect.

6.15 Upon and after the occurrence or existence of an Event of Default under this Mortgage, Lender shall not be obligated to accept any cure or attempted cure by Borrower, except to the extent required by applicable law or in this Mortgage; however, if Lender accepts such cure, Lender shall not exercise its rights or remedies under this Paragraph 6 of this Mortgage unless and until a separate or additional Event of Default then exists hereunder.

6.16 It is understood and agreed that neither the exercise by Lender of any of its rights or remedies under this Mortgage shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Lender, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Mortgaged Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Mortgaged Property or any part thereof by such receiver, shall not be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

7. MISCELLANEOUS

7.01 Every provision for notice, demand or request required in this Mortgage, or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (or mailed or sent by nationwide commercial courier (such as Federal Express) to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall

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direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. If sent by commercial courier, such notice, demand or request shall be deemed to have been made on the first business day after delivery to the courier. Notices shall be sent to Borrower and Lender as follows:

To Trustee: LASALLE NATIONAL BANK
135 South LaSalle
Chicago, Illinois 60603

To Beneficiary: THOMAS H. BAUR
1945 North Fremont
Chicago, Illinois 60614

With Copy To: Louis P. Vitullo, Esq.
Alan Roth, Esq.
WILDMAN, HARROLD ALLEN & DIXON
One IBM Plaza
Chicago, Illinois 60611

To Lender: AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO
33 North LaSalle Street
Chicago, Illinois 60690
Attn: Paul Carlisle

With Copy To: DANIEL D. DREW, ESQ.
MALK HARRIS & MILLER
212 East Ohio, Suite 500
Chicago, Illinois 60611

7.02 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.03 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns, or personal representatives, as the case may be, of the Borrower and Lender.

7.04 This Mortgage, having been negotiated, executed and delivered in the State of Illinois, shall be governed as to validity, interpretation, construction, effect and in all other respects (including the legality of the interest charged under the Note and described herein), by the laws and decisions of the State of Illinois.

7.05 In this Mortgage, the use of the word "including" shall not be deemed to limit the generality of the terms or clause to which it has reference, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto. The captions and

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headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

7.06 Wherever a power of attorney is conferred upon Lender hereunder, it is understood and agreed that such power of attorney is conferred with full power of substitution, and Lender may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof to one or more sub-agents.

7.07 The pleading of any statute of limitations or laches as a defense to any and all obligations secured by this Mortgage is hereby waived to the fullest extent permitted by law.

7.08 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.09 Nothing herein shall be deemed or construed, nor shall the exercise by Lender of any of its rights, privileges, or remedies conferred under the Mortgage, the Note or Loan Documents, to render Lender and Borrower as joint venturers or partners in any way with respect to the Mortgaged Property.

7.10 All of Borrower's Liabilities and Borrower's Obligations are joint and several and are enforceable individually against Beneficiary notwithstanding any disclaimer of liability contained herein relating to the Trustee.

EXCULPATION

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Chicago Title and Trust company, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or

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agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, Beneficiary has cause to be executed and Chicago Title and Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

CHICAGO TITLE AND TRUST COMPANY,
as Trustee as aforesaid and not personally.

IN WITNESS WHEREOF, Chicago Title and Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

CHICAGO TITLE AND TRUST COMPANY, as Trustee as aforesaid and not personally.

By Maayla Estep ASSISTANT VICE-PRESIDENT
Attest Maayla Estep ASSISTANT SECRETARY

Corporate Seal

STATE OF ILLINOIS.
COUNTY OF COOK

SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above named Assistant Vice President and Assistant Secretary of the CHICAGO TITLE AND TRUST COMPANY, Grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

“OFFICIAL SEAL”
Sheila Davenport
Notary Public, State of Illinois
My Commission Expires 9/21/91

Given under my hand and Notarial Seal this 17 day of OCT 1989.
Sheila Davenport
Notary Public

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CHICAGO TITLE AND TRUST COMPANY, Grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said Company, caused the corporate seal of said Company to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ___ day of October, 1989.

NOTARY PUBLIC

COOK COUNTY, ILLINOIS
OCT 24 PM 3:06

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NOV 24 PM 3:06
COOK COUNTY, ILLINOIS

NOTARY PUBLIC

GIVEN under my hand and Notarial Seal this _____ day of October, 1989.

I, the undersigned, a Notary Public in and for said County, and State aforesaid, do hereby certify, that the above named Assistant Vice President and Assistant Secretary of the CHICAGO TITLE AND TRUST COMPANY, grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said company, caused the corporate seal of said company to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

STATE OF ILLINOIS
COUNTY OF COOK

THOMAS H. BAUR, Beneficiary

Thomas H. Baur

IN WITNESS WHEREOF, Beneficiary has cause to be executed and Chicago Title and Trust Company, not personally but as Trustee as aforesaid, has caused these presents to be signed by its Assistant Vice-President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above

agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Evelyn Buchanan, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that THOMAS H. BAUR, an individual residing in Illinois, personally known to me whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument and executed same as his free and voluntary act for the use and purpose therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of October, 1989.

Evelyn Buchanan
Notary Public



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EXHIBIT "A"

LEGAL DESCRIPTION OF 1740 MARSHFIELD, CHICAGO, ILLINOIS

LOTS 1 TO 6 BOTH INCLUSIVE AND THE NORTH 12 3/4 INCHES OF LOT 7, ALL IN DILLARD'S RESUBDIVISION OF LOTS 70 TO 87 BOTH INCLUSIVE, AND LOTS 99 TO 116 BOTH INCLUSIVE IN J.G. KENNON'S SUBDIVISION OF BLOCK 24 IN SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN 14-00-422-018
14-31-422-019

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SECURED INSTALLMENT NOTE

\$131,605.25

Chicago, Illinois
October 16, 1989

FOR VALUE RECEIVED, the undersigned, CHICAGO TITLE AND TRUST COMPANY, an Illinois corporation, not personally but as Trustee under a Trust Agreement dated the 4th day of April, 1986 and known as Trust Number 1087719 ("Trustee") and THOMAS H. BAUR, an individual residing in Illinois ("Baur") (Trustee and Baur are hereinafter sometimes collectively referred to as "Maker"), hereby jointly and severally promise to pay to the order of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, (hereinafter referred to as "Lender"), at 33 North LaSalle Street, Chicago, Illinois or such other place or places as Lender from time to time may designate in writing, the principal sum of One Hundred Thirty-One Thousand Six Hundred Five and 25/100 Dollars (\$131,605.25), in lawful money of the United States of America, together with interest on the unpaid principal balance thereof from time to time outstanding at the rates or in the amounts described below.

1. Certain Definitions. For the purposes hereof, the terms set forth below shall have the following meanings:

- A. "Base Rate" shall mean the per annum rate of interest announced or published publicly from time to time by Lender at its principal place of business in Chicago, Illinois as its "base rate" or equivalent rate of interest, which rate is not necessarily the lowest rate of interest charged by Lender with respect to commercial loans.
- B. "Loan Agreement" shall mean that certain Loan and Security Agreement entered into by MEDITECH, INC., an Illinois corporation, and MEDITECH OF NEW YORK, INC., a New York corporation, and Lender, of even date herewith the terms of which are incorporated herein by this reference.
- C. "Loan Documents" shall mean this Note, the Loan Agreement, the Mortgage and all other documents defined as Loan Documents in the Loan Agreement, the terms of which are incorporated herein by this reference.
- D. "Maturity Date" shall mean the earlier of:
- (i) October 16, 1994; or
 - (ii) The date on which the principal balance hereof shall be declared due and payable by the Lender as the result of any default hereunder.

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- E. "Mortgage" shall mean that certain Mortgage and Security Agreement dated of even date herewith executed by Maker, pledging the Property and certain personalty as security for Maker's obligations.
- F. "Property" shall mean that certain tract of land situated in Cook County, Illinois, and commonly known as 1740 North Marshfield, Chicago, Illinois, as more particularly described in the Mortgage, together with all improvements as defined in the Mortgage.

2. Calculation and Payment of Principal and Interest.

A. This Note shall be payable in equal monthly installments of principal in the amount of Seven Hundred Thirty and No/100 Dollars (\$730.00) plus accrued interest, commencing on the thirtieth (30th) day following the date of disbursement, with the balance of all principal and accrued interest or other indebtedness due hereunder, if not sooner paid, due and payable on the Maturity Date.

B. Unpaid principal hereunder shall bear interest prior to any Event of Default (as defined below) at the variable rate of interest equal to the Base Rate plus one-fourth percent ($\frac{1}{4}\%$) per annum.

C. Interest on this Note (i) shall be calculated on the basis of 360 day year and (ii) be charged for the actual number of days within the period for which interest is being charged. In the event that such basis of a 360 day year should be or become illegal the basis for computing interest hereunder shall be a 365 day year.

D. All payments on account of the indebtedness evidenced by this Note shall be first applied to any charges hereunder, then to interest accrued on the unpaid principal balance and the remainder applied to outstanding principal.

E. This Note may at any time and from time to time be prepaid in whole or in part without penalty. Any partial payments shall first be applied first to any charges hereunder, then to interest accrued on the unpaid principal balance, the remainder shall be applied to outstanding principal.

3. Security. This Note is secured by the Mortgage.

The terms of the Mortgage shall include, among other items the following:

The Note secured by the Mortgaged Property is not assumable. Without the prior written consent of Lender, Trustee and/or Beneficiary shall not, at any time or times hereafter, (1) sell (including any sale or other transfer pursuant to installment contract for sale or sale under articles of agreement), grant an option to

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purchase, lease under any master lease, enter into a lease for substantially all of the Mortgaged Property, except for the existing lease encumbering the Mortgaged Property, exchange, assign, convey, further encumber, hypothecate or otherwise transfer the Mortgaged Property and/or any part or interest in, the Mortgaged Property, assign, transfer or encumber the beneficial interest in any land trust which holds title to the Mortgaged Property; (2) issue, sell convey, assign or create a security interest in or otherwise transfer, pledge or hypothecate any general partnership interest in 110 Development Company, except for the Pledge of Partnership Interest of even date herewith; (3) obtain any loan or incur any obligation of character whether direct or indirect, the repayment or performance of which is secured by a lien on the Mortgaged Property or any interest therein. Any of the foregoing acts, occurrences or events described in clauses (1) through (3) shall be deemed to be a "Sale" hereunder and under the Note, and the Loan Documents. Lender may, in its sole and absolute discretion, withhold consent to any Sale, or condition any such consent upon the payment of a fee, the partial payment of the Note, an increase in the interest rate, an increase in payments, a shortening of the terms of the Note, an increase in collateral, or all or any of the foregoing requirements, together with any other requirements it may wish to impose. The foregoing list is not intended in any way to limit the requirements Lender may impose nor is it intended to imply that Lender is obligated to consent to any Sale.

4. **Acceleration for Default; Waivers.** The occurrence of any one of the following events shall constitute a default by Maker ("Event of Default") under this Note: (a) if Maker fails to pay any amount due hereunder within five (5) days of when the same is due and payable; or (b) the occurrence of a default or an Event of Default pursuant to the terms of any Loan Document, which is not cured within the time, if any, specified therefor in such agreement, instrument or document. If an Event of Default is not cured within the time as provided in the Loan Documents all installments of this Note, together with all other monies owing hereunder by Maker to Lender immediately will be due and payable, without notice, at the election of Lender. The acceptance by Lender of any payment, partial or otherwise, made hereunder after the time when it becomes due as herein set forth will not establish a custom or constitute a waiver by Lender of any right to enforce prompt payment hereof. To the extent permitted by applicable law, Maker hereby waives the application of any and all of its rights and powers under all statutes of limitation and similar statutes and laws as to this Note and all portions hereof. Demand, presentment for payment, protest and notice of nonpayment and protest hereby are waived by Maker and every endorser and/or guarantor hereof.

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5. Default Rate of Interest. If any installment of this Note, or any portion thereof, is not paid on the due date thereof, then the outstanding principal balance hereof shall bear interest at the "Default Rate" (as hereinafter defined) from and after the occurrence of the Default until (i) such installment is paid in full, or (ii) in the event the payment of this Note is accelerated, all indebtedness evidenced hereby and other sums payable under the Loan Documents to Lender shall bear interest at the Default Rate until paid or otherwise satisfied in full. The "Default Rate" shall be a variable rate equal to four and one-fourth percentage (4¼%) points over the Base Rate in effect as of the date of the Default.

6. Fees and Expenses. If any installment of this Note, or any portion thereof, or any other monies owing hereunder or under the Loan Documents by Maker to Lender, is not paid at the time and place specified therefor, and Lender employs counsel for advice with respect thereto or to this Note, the Loan Documents or the Property, or to intervene, file a petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to this Note, the Loan Documents or the Property, or to attempt to collect this Note or said other monies from, or to enforce this Note or the Mortgage against Maker or any other party, then, in any such event and to the extent permitted by law, all of the attorneys' fees arising from such services, and all expenses, costs and charges relating thereto, shall be an additional liability owing hereunder by Maker to Lender, payable on demand and bearing interest, until payment thereof to Lender, at the Default Rate until paid in full and shall be secured by the lien of the Mortgage. Notwithstanding anything in the foregoing to the contrary, Maker shall not be liable to pay to Lender or any other party any fees and/or expenses paid or incurred by Lender in connection with any litigation instituted by Maker against Lender which litigation results in a final order of a court of competent jurisdiction finding Lender liable to Maker for damages caused by Lender to Maker.

7. Maximum Interest. All agreements between Maker and Lender expressly are limited so that in no contingency or event whatsoever, whether by reason of disbursement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid by Maker to Lender for the use, detention or forbearance of the amounts to be disbursed hereunder exceed the highest lawful rate of interest permissible under the law which a court of competent jurisdiction, by a final non-appealable order, determines is applicable hereto ("Highest Lawful Rate"). If fulfillment of any provision herein contained at the time performance of such provision becomes due involves exceeding the Highest Lawful Rate, then ipso facto, the obligation to fulfill the same shall be reduced to such Highest Lawful Rate. If by any circumstance Lender shall ever receive as interest an amount which may deemed excessive interest same shall be applied to the principal of the indebtedness evidenced hereby and not to interest. The terms and provisions of this paragraph shall control all other terms and provisions

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contained herein, or in the Loan Documents. If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or circumstances shall not be affected thereby, the provisions of this Note being severable in any such instance.

8. Other security. It is agreed that the granting to Maker or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note, or the Loan Documents or for the performance of any term, provision, covenant or agreement of this Note, or the Loan Documents, or the taking or releasing of security or collateral for the payment of this Note or the exercising or failure to exercise any right or power under this Note, or the Loan Documents, shall not in any way release or affect the liability of Maker, or any guarantor hereof, or any other party obligated to pay the indebtedness evidenced by this Note.

9. Amendments. This Note may not be amended or modified, nor shall any revision hereof be effective, except by an instrument in writing expressing such intention executed by Lender and directed to Maker.

10. Notices. Any notice, communication or demand required or permitted under this Note shall be in writing. Any such notice, communication or demand shall be deemed to have been duly given or served if delivered by personal service or sent by registered or certified mail, return receipt requested, to the party to which it is directed, addressed as follows:

If to Maker:

Thomas H. Paul
1945 North Fremont
Chicago, Illinois 60614

With Copy To:

Louis P. Vitullo, Esq.
Alan Roth, Esq.
WILDMAN, HARROLD ALLEN & DIXON
One IBM Plaza
Chicago, Illinois 60611

If to Lender:

AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO
33 North LaSalle Street
Chicago, Illinois 60690
ATTN: Paul Carlisle

With Copy to:

Daniel D. Drew, Esq.
MALK HARRIS & MILLER
212 East Ohio Street
Suite 500
Chicago, Illinois 60611

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A notice, demand or other communication shall be deemed received on the date of the personal receipt if delivered personally or, if mailed, five (5) days after dispatch.

11. Choice of Law; Service of Process. This Note shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all respects, including, but not limited to, the legality of the interest charged hereunder, by the statutes, laws and decision of the State of Illinois. Maker, in order to induce Lender to accept this Note and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF ILLINOIS, AND CONSENTS THAT ALL SERVICE OF PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO THE MAKER AT THOMAS H. BAUR C/O LOUIS P. VITULLO, ONE IBM PLAZA, CHICAGO, ILLINOIS 60611 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN POSTED AS AFORESAID, AND FURTHER MAKER WAIVES, AT THE OPTION OF LENDER, ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

12. Exculpation.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Chicago Title and Trust

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company, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

CHICAGO TITLE AND TRUST COMPANY,
as Trustee as aforesaid and not personally.

Attest:

By: _____
Title: _____

By: _____
Title: _____

THOMAS H. BAUR

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GUARANTY AGREEMENT

OF

THOMAS H. BAUR

FOR VALUE RECEIVED and in consideration of monies advanced to or for the benefit of Mediatech, Inc., an Illinois corporation, and Mediatech of New York, Inc., a New York corporation, (collectively "Borrower"), by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Lender") in connection with that certain installment note (the "Term Note") executed by Borrower and made payable to Lender dated October 16, 1989, in the original principal amount of Two Million Six Hundred Ninety-Five Thousand Seven Hundred Fifty-Nine and 22/100 Dollars (\$2,695,759.22) and that certain secured revolving promissory note (the "Credit Line Note") executed by Borrower and made payable to Lender dated October 16, 1989 in the maximum amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) (the Term Note and Credit Line Note are herein collectively referred to as the "Note"), the undersigned, THOMAS H. BAUR, whose address is 1954 North Fremont, Chicago, Illinois 60614 ("Guarantor"), does hereby unconditionally and irrevocably, guaranty (a) the full and prompt payment to Lender when due or declared due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter, of all amounts due or to become due under the Note (including, without limitation, principal and interest), (b) the payment of all of Borrowers' Liabilities and performance of all of Borrowers' Obligations as those terms are defined in that certain Loan and Security Agreement ("Loan Agreement") of even date herewith executed by Borrower and Lender, (c) the performance of Borrower pursuant to any Loan Document as that term is defined in the Loan Agreement, and (d) the payment or performance of any and all renewal, extensions and rearrangements of all or any part of the indebtedness, obligations and liabilities hereinabove described (all of the foregoing are hereinafter referred to as "the Liabilities"). In addition to the Liabilities, Guarantor further agrees to pay all costs, reasonable attorneys' fees and paralegals' fees and expenses, and other expenses paid or incurred in attempting to collect all or any portion of the Liabilities from, or in prosecuting any action against the Borrower or Guarantor.

This Guaranty is secured by that certain mortgage and security agreement ("Mortgage and Security Agreement") of even date herewith executed by Guarantor, granting a security interest to Lender in the real estate commonly known as 1740 North Marshfield, Chicago, Illinois and all improvements located thereon and that certain pledge of partnership interest ("Pledge Agreement") of even date herewith executed by Guarantor, pledging as collateral herefor all of Guarantor's interest in 110 Development Company, an Illinois limited partnership.

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Notwithstanding anything herein contained to the contrary, the liability of Guarantor hereunder shall be limited to the payment by Guarantor of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00), provided however said amount shall be exclusive of and in addition to any amounts which may be recovered by Lender pursuant to any security interest granted herefor, including but not limited to the Mortgage and Security Agreement and Pledge Agreement.

Guarantor hereby agrees that Guarantor's obligations under this Guaranty shall be absolute and unconditional, irrespective of (i) the validity or enforceability of the Note, the Mortgage and Security Agreement, the Pledge Agreement or any Liabilities; (ii) the absence of any attempt to collect the Liabilities from the Borrower or other action to enforce the same; (iii) the existence of any other Guarantor or party agreeing to guaranty prompt payment of amounts due pursuant to the Note or any other performance of Borrower due to Lender; (iv) the waiver or consent by the Lender with respect to any provision of the Note or any other agreement, now or hereafter executed by the Borrower and delivered to the Lender; (v) failure by the Lender to take any steps to preserve its rights to any security or collateral for the Liabilities; (vi) a foreclosure sale or other disposition of any collateral given to secure the Liabilities; or (vii) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of the Borrower, notice of dishonor with respect to the Liabilities of the Borrower and all demands whatsoever, and covenants that this Guaranty will not be discharged except by complete payment and performance of the Liabilities as defined herein or any other charges as may be otherwise provided herein. Upon an Event of Default, as defined below or in any Loan Document, the Lender may, at its sole election, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount or any portion of the Liabilities without first proceeding against the Borrower, any other person, firm, entity, or corporation, or any security or collateral for the Liabilities. Lender shall have the exclusive right to determine the application of payments and credits, if any, from Guarantor, the Borrower or from any other person, firm, entity or corporation, on account of the Liabilities or of any other liability of Borrower to Lender.

Lender is hereby authorized, without notice or demand and without affecting the liability of Guarantor hereunder, from time to time (i) renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, the Liabilities or otherwise modify, amend or change the terms of the Note or other agreements, documents or instruments now or hereafter executed by the Borrower and delivered to Lender; (ii) accept partial payment of this Guaranty, any other guaranties of the Liabilities or other liabilities of Borrower and the Liabilities guaranteed hereby, and

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exchange, enforce, waive and release any such security or collateral; (iii) take and hold security or collateral for the payment of this Guaranty, any other guaranties of the Liabilities or other liabilities of Borrower and the Liabilities guaranteed hereby, and exchange, enforce, waive and release any such security or collateral; (iv) apply such security or collateral and direct the order or manner of sale thereof as, in its discretion, it may determine; (v) settle, release, compromise, collect or otherwise liquidate the Liabilities and any security or collateral therefor in any manner; and (vi) extend credit to Borrower in excess of the Liabilities described herein, without affecting or impairing the obligations of Guarantor hereunder. Lender may, without notice, assign this Guaranty in whole or in part.

Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other guarantors of the payment of the Note and of all other circumstances bearing upon the risk of nonpayment of the Liabilities that diligent inquiry would reveal, and Guarantor hereby agrees that Lender shall have no duty to advise Guarantor of information known to Lender regarding such condition or any such circumstances.

This is a continuing guaranty and shall continue to apply without regard to the form or amount of the Liabilities which Borrower may create, renew, extend or alter in whole or in part, without notice to Guarantor. The circumstance that at any time or from time to time the Liabilities may be paid or performed in full shall not affect the obligation of Guarantor with respect to indebtedness, obligations or Liabilities of Borrower to Lender incurred or arising thereafter. If Guarantor is or becomes liable for any indebtedness owing by Borrower to Lender by endorsement or otherwise, other than the Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may ever have against Guarantor. The exercise by Lender of any rights or remedy hereunder or under any concurrent or subsequent exercise of any other right or remedy hereunder, under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Without in any way diminishing the generality of the foregoing, it is specifically understood that this Guaranty is given by Guarantor as an additional guaranty to any and all other guaranties heretofore or hereafter executed and delivered to Lender by Guarantor in favor of Lender relating to indebtedness of Borrower to Lender, and nothing herein shall ever be deemed to replace or be in lieu of any other of such previous or subsequent guaranties. In the event of default by Borrower in payment or performance of the Liabilities, or any part thereof, when such indebtedness becomes due, either by its terms or as the result of the exercise of any power to accelerate, Guarantor shall, without notice or demand, and without any notice having been given to Guarantor of the acceptance by Lender of this Guaranty and without any notice having been given to Guarantor of the creating or incurring of such

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indebtedness, pay the amount due from Borrower to Lender on such indebtedness, at its office in Chicago, Illinois, or at such other place as may be designated, in writing, by Lender. It shall not be necessary for Lender, in order to enforce such payment by Guarantor, first, to institute suit or exhaust its remedies against Borrower or others liable on such indebtedness, or to enforce its rights against any collateral which shall ever have been given to secure such indebtedness.

Guarantor consents and agrees that Lender shall be under no obligation to marshal any assets in favor of Guarantor or against or in payment of any or all of the Liabilities. Guarantor further agrees that to the extent that the Borrower or any guarantor makes a payment or payments to Lender, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the Liabilities or part thereof intended to be satisfied shall be revived and continued in full force and effect as if said payment had not been made.

Until Guarantor's Liabilities under this Guaranty shall have been paid in full, Guarantor hereby waives any right to enforce any remedy which Lender now has or may hereafter have against the Borrower, and Guarantor hereby waives any benefit of, and any right to participate in, any security or collateral given to Lender to secure payment of the Liabilities. Guarantor further agrees that any and all claims of Guarantor against the Borrower, arising by reason of any payment by Guarantor to Lender pursuant to the provisions hereof or otherwise, shall be subordinate and subject in right of payment to the prior payment, in full, of all principal and interest, all costs of collection (including attorneys' and paralegals' fees) and any other liabilities or obligations owing to Lender by Borrower which may arise with respect to the Note. Guarantor waives all setoffs and counterclaims and all presentments, demands for performance, notices of dishonor, and notices of acceptance of this Guaranty. Guarantor further waives all notices of the existence, creation or incurring of new or additional indebtedness, arising in connection with the Liabilities to the Borrower or otherwise, and also waives all notices that the principal amount, or any portion thereof, and/or any interest on the Note is due, notices of any and all proceedings to collect from Borrower, or from anyone else, and, to the extent permitted by law, notices of exchange, sale, surrender or other handling of any security or collateral given to Lender to secure payment of the Liabilities. In addition, Guarantor hereby waives to the fullest extent permitted by law (a) any defense arising as a result of Lender's election, in any proceeding instituted under the United States Bankruptcy Code, of the application of Section 1111(b)(2) of the United States Bankruptcy Code, and (b) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code.

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No delay on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude any further exercise thereof; nor shall any modification or waiver of any of the provisions of this Guaranty be binding upon Lender except as expressly set forth in a writing duly signed and delivered on Lender's behalf by an authorized officer thereof. Lender's failure at any time or times hereafter to require strict performance by Borrower or Guarantor of any of the provisions, warranties, terms and conditions contained in the Note or in any other Loan Document now or at any time or times hereafter executed by Borrower or Guarantor and delivered to Lender shall not waive, affect or diminish any right of Lender at any time or times hereafter to demand strict performance therewith and such right shall not be deemed to have been waived by any act or knowledge of Lender, its agents, officers or employees, unless such waiver is contained in an instrument in writing signed by an officer of Lender and directed to Borrower specifying such waiver. No waiver by Lender of any default shall operate as a waiver of any other default or the same default on a future occasion, and no action by Lender permitted hereunder shall in any way affect or impair Lender's rights or the obligations of Guarantor under this Guaranty. Any determination by a court of competent jurisdiction of the amount of any principal and/or interest owing by the Borrower to Lender shall be conclusive and binding on Guarantor irrespective of whether or not Guarantor was a party to the suit or action in which such determination was made.

This Guaranty shall be binding upon Guarantor and upon Guarantor's successors and assigns, heirs, devisees, and personal representatives and shall inure to the benefit of Lender's successors and assigns; all references herein to Borrower and to Guarantor shall be deemed to include their respective successors and assigns. The word Guarantor shall be deemed to include all of the understanding contained herein and the obligation of Guarantor shall be joint and several with respect to any other guarantor of the Liabilities. All references herein to the singular shall be deemed to include the plural where the context so requires.

The Lender may, without demand or notice of any kind, after an Event of Default, appropriate and apply toward the payment of such amount, and in such order of application as the Lender may from time to time elect, any property, balances, credits, deposits, accounts or monies of the Guarantor in the possession or control of the Lender for any purpose.

Guarantor acknowledges and warrants that Guarantor has derived or expects to derive financial and other advantage and benefit, directly or indirectly, from the Liabilities and each and every advance thereof and from each and every renewal, extension, release of collateral or other relinquishment of legal rights made or granted or to be made or granted by Lender to Borrower. Guarantor further acknowledges that his execution of this Agreement is a condition precedent to Lender making the subject loan to Borrower.

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Guarantor hereby warrants and represents unto Lender the following:

- A. Guarantor has received or will receive, direct or indirect benefit from the making of this Guaranty;
- B. Guarantor is the sole shareholder and President of Mediatech of New York, Inc. and owns approximately 90% of the outstanding shares and is the President of Mediatech, Inc.
- C. Guarantor is familiar with Borrower's business affairs, books and records, has the ability to influence Borrower's decision making process, and warrants that Borrower is in sound financial condition and will perform in accordance with the terms and conditions of the various loans documents.
- D. This Guaranty constitutes a legal, valid and binding obligation of Guarantor, and is fully enforceable against Guarantor in accordance with its terms;
- E. Any and all balance sheets, net worth statements and other financial data that have heretofore been given to Lender with respect to Guarantor fairly and accurately present the financial condition of Guarantor as of the date thereof and, since the date thereof and there has been no material adverse change in the financial condition of Guarantor; and
- F. Except as may be set out on any exhibit attached hereto, (i) there are no legal proceedings, claims or demands pending against, or to the knowledge of Guarantor threatened against, Guarantor or any of Guarantor's assets, (ii) Guarantor is not in breach or default of any legal requirement, contract or commitment, and (iii) no event (including specifically Guarantor's execution and delivery of this Guaranty) has occurred which, with the lapse of time or action by a third party, could result in Guarantor's breach or default under any legal requirements, contract or commitment.

Guarantor acknowledges that Lender is relying upon Guarantor's covenants, representations and warranties herein in entering the loan transaction with Borrower, and undertakes to perform its obligations hereunder promptly and in good faith.

If any provision of this Guaranty 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 this Guaranty nor the application of such provision to any other persons or circumstances shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

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No provision herein shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess interest in such respect is provided for herein the provisions of this paragraph shall govern, and Guarantor shall not be obligated to pay the amount of such interest to the extent that it is in excess of the amount permitted by law. The intention of the parties is to conform strictly to the usury laws now in force, and this Guaranty shall be held subject to reduction of the interest charged to the amount allowed under said usury laws as now or hereafter construed by the courts having jurisdiction.

The occurrence of any one of the following events shall, at the election of Lender, be deemed a default by Guarantor ("Event of Default") under this Guaranty: (a) if Guarantor fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Guaranty, which is required to be performed, kept or observed by Guarantor within the time, if any, specified therefor; (b) if Guarantor fails to pay any of the Liabilities when the same are due and payable or declared due and payable; (c) if Guarantor fails to pay in whole or in part any other obligation due from Guarantor to Lender, including but not limited to that certain Secured Installment Note of even date herewith executed by Guarantor with Lender as holder, which note is also secured by the Mortgage and Security Agreement; (d) if any of Guarantor's assets are seized, attached, subjected to a writ or distress warrant, or are levied upon, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not terminated within thirty (30) days thereafter; provided however that if said default is not susceptible to being cured within said thirty (30) days, Lender shall not declare an Event of Default as long as Guarantor is diligently and continuously attempting to cure said default but in no event shall the grace period granted to Guarantor under this paragraph be more than sixty (60) days from the date of said seizure, attachment or other action as aforesaid; (e) if a petition under the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation shall be filed by Guarantor, or if any Guarantor shall make an assignment for the benefit of creditors, or if any case or proceeding is filed by Guarantor for its dissolution or liquidation; (f) if Guarantor is enjoined, restrained or in any way prevented by court order from conducting all or any material part of Guarantor's business affairs or if a petition under any section or chapter of the Bankruptcy Reform Act of 1978, as amended, or any similar law or regulation is filed against Guarantor or if any case or proceeding is filed against Guarantor for Guarantor's dissolution or liquidation and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or filing thereof; provided, however, if said default is not susceptible to being cured within said thirty (30) days, Lender shall not declare an Event of Default so long as Guarantor is diligently and continuously attempting to cure said default but in no event shall the grace period granted to Guarantor under this section be more than sixty (60) days from the date of said injunction, restraint

89504132

or petition; (g) if a notice of lien, levy or assessment is filed of record with respect to all or any of Guarantor's assets by the United States or any department, agency, or instrumentality thereof or by any state, county, municipal or other governmental agency, or if any taxes or debts owing at any time hereafter to any of them become a lien or encumbrance upon any of Guarantor's assets and the same is not released within thirty (30) days after the same becomes a lien or encumbrance; provided, however, if said default is not susceptible to being cured within said thirty (30) days, Lender shall not declare an Event of Default so long as Guarantor is diligently and continuously attempting to cure said default, but in no event shall the grace period granted to Guarantor under this section be more than ninety (90) days from the date said debt becomes a lien or encumbrance or one-hundred twenty (120) days from the date said taxes become a lien or encumbrance, or if any taxes or debts owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon any of Guarantor's assets; (h) the death or incompetency of Guarantor.

Following an Event of Default, and even if such Event of Default occurs at a time when any of the Liabilities may not then be due and payable, Guarantor agrees to pay to Lender, upon demand, the full amount which would be payable hereunder by Guarantor if all Liabilities were then due and payable. Guarantor agrees that Lender, in its discretion, may (i) compound or settle with any one or more other guarantors for such consideration as the Lender may deem proper; (ii) release one or more other guarantors from liability, and that no such action shall impair the rights of Lender to collect the Liabilities (or the unpaid balance thereof) from Guarantor; and (iii) proceed directly against Guarantor under this Agreement without first proceeding against Borrower or any of the collateral or exhausting any of its remedies against Borrower.

The parties hereto agree that, in lieu of any right to indemnification that Guarantor might have against Borrower, which right is hereby waived, Guarantor shall be subrogated to the rights of Lender to the extent Guarantor fully satisfies and discharges Borrower's obligations under the Loan Agreement and loan documents. This right of subrogation shall be Guarantor's sole remedy against Borrower.

THIS GUARANTY HAS BEEN DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE AT CHICAGO, ILLINOIS, AND SHALL BE INTERPRETED, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED, IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, AND AS PART OF THE CONSIDERATION FOR LENDER'S LENDING MONIES TO THE BORROWER AND ACCEPTANCE OF THIS GUARANTY, GUARANTOR WAIVES, AT THE OPTION OF LENDER, ANY OBJECTION BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY ACTION INSTITUTED HEREUNDER IN THE CITY OF CHICAGO, STATE OF ILLINOIS AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

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Every provision for notice, demand or request required in this Guaranty or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon, or mailed or sent by a recognized nationwide commercial courier, to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made by certified or registered mail, return receipt requested, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth above or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. If sent by commercial courier, such notice, demand or request shall be deemed to have been made on the first (1st) business day after delivery to the courier.

Wherever possible each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered at Chicago, Illinois as of this ___ day of October, 1989.

THOMAS H. BAUR

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that THOMAS H. BAUR, an individual residing in Illinois, personally known to me whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument and executed same as his free and voluntary act for the use and purpose therein set forth.

GIVEN under my hand and Notarial Seal this ___ day of October, 1989.

Notary Public

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EXHIBIT "D"

Encumbrances

1. PARTY WALL RIGHTS OF OWNERS OF ADJOINING LAND RELATING TO A PARTY WALL BETWEEN THE (NORTH PARCEL OF LOTS 1, 2, 3 AND 4 (EXCEPT THE SOUTH 11.61 FEET OF LOT 4) AND THE SOUTH PARCEL OF LOTS 5 AND 6 AND THE SOUTH 11.61 OF LOT 4 AND LOT 6 AND THE NORTH 12 3/4 OF LOT 7) AS ESTABLISHED BY AGREEMENT MADE BY CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST, AS TRUSTEE UNDER TRUST NO. 48-61358-2 WITH STEVAN SEGVIC DATED DECEMBER 15, 1975 AND RECORDED DECEMBER 31, 1975 AS DOCUMENT 23341888.
2. ENCROACHMENT OF THE 8 3/4 INCH CONCRETE HEADER OVER ONTO THE PUBLIC ALLEY NORTH AND ADJOINING THE LAND BY ABOUT 14 3/8 INCHES RANGING TO 16 1/4 INCHES, FOR A DISTANCE OF ABOUT 125.25 FEET, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1975 AND UPDATED APRIL 3, 1986.

ENCROACHMENT ENDORSEMENT 1 APPROVED FOR POLICY.
3. ENCROACHMENT OF THE WEST BRICK WALLS OF THE TWO 2-STORY BRICK BUILDINGS LOCATED MAINLY ON THE LAND OVER ONTO THE PUBLIC ALLEY WEST AND ADJOINING THE LAND BY ABOUT 2 1/8 INCHES TO 3 1/8 INCHES, FOR A DISTANCE OF ABOUT 120 FEET, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1985 AND UPDATED APRIL 3, 1986.

ENCROACHMENT ENDORSEMENT 1 APPROVED FOR POLICY.
4. ENCROACHMENT OF THE 9 INCH CONCRETE HEADER OVER ONTO THE PUBLIC ALLEY WEST AND ADJOINING THE LAND BY ABOUT 13 INCHES, FOR A DISTANCE OF ABOUT 150 FEET, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1975 AND UPDATED APRIL 3, 1986.

ENCROACHMENT ENDORSEMENT 1 APPROVED FOR POLICY.
5. ENCROACHMENT OF THE 4 STONE SILLS ATTACHED TO THE 2-STORY BRICK BUILDING LOCATED MAINLY ON THE LAND OVER ONTO THE PROPERTY SOUTH AND ADJOINING BY ABOUT 5/8 INCHES RANGING TO 2 7/8 INCHES, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1975 AND UPDATED APRIL 3, 1986.

ENCROACHMENT ENDORSEMENT 1 APPROVED FOR POLICY.
6. ENCROACHMENT OF 6 INCH BRICK CORNICE AT THE ROOF OF THE TWO 2-STORY BRICK BUILDINGS LOCATED MAINLY ON THE LAND OVER ONTO THE PUBLIC WALK EAST AND ADJOINING THE LAND BY ABOUT 6 INCHES, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1975 AND UPDATED APRIL 3, 1986.

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7. ENCROACHMENT OF THE 3 FOOT EAVE BELOW THE ROOF OF THE TWO 2-STORY BRICK BUILDINGS LOCATED MAINLY ON THE LAND OVER ONTO THE PUBLIC WALK EAST AND ADJOINING THE LAND BY ABOUT 3 FEET, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1975 AND UPDATED APRIL 3, 1986.

ENCROACHMENT ENDORSEMENT 1 APPROVED FOR POLICY.

8. ENCROACHMENT OF THE CONCRETE CURBS EXTENDING FROM THE TWO 2-STORY BRICK BUILDINGS LOCATED MAINLY ON THE LAND OVER ONTO THE PUBLIC WALK EAST AND ADJOINING THE LAND BY ABOUT 6 INCHES, FOR MOST OF THE LENGTH OF THE TWO BUILDINGS, AS DISCLOSED BY NATIONAL SURVEY SERVICE SURVEY DATED DECEMBER 1, 1975 AND UPDATED APRIL 3, 1986.

ENCROACHMENT ENDORSEMENT 1 APPROVED FOR POLICY.

9. REAL ESTATE TAXES FOR 1989 AND SUBSEQUENT YEARS.

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