

UNOFFICIAL COPY

89522810 2 8 1 9

BOX 333-60

This Instrument Prepared By And Upon Recordation Return To:

Douglas E. Waxbach
Burke, Wilson & McIlvaine
500 West Madison Street, Suite 3700
Chicago, Illinois 60606

\$29.00

JUNIOR COLLATERAL ASSIGNMENT OF LEASES AND SECURITY AGREEMENT

THIS JUNIOR COLLATERAL ASSIGNMENT OF LEASES AND SECURITY AGREEMENT (this "Assignment"), is made as of the 28 day of November, 1989, by (i) THE FISHER BUILDING LIMITED PARTNERSHIP, an Illinois limited partnership (said limited partnership being herein referred to as "Beneficiary"), and (ii) AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated October 23, 1979, and known as Trust No. 48032 (said bank, in its capacity as Trustee aforesaid is herein referred to as "Trustee" and said Trust Agreement as the "Trust Agreement"), Beneficiary and Trustee are sometimes herein collectively referred to herein as "Assignor" to (iii) TEXTRON FINANCIAL CORPORATION, a Delaware corporation (said corporation being herein referred to as "Assignee").

RECITALS:

A. Trustee is the record owner of certain real property situated in Cook County, Illinois and more particularly described in Exhibit A attached hereto and made a part hereof (the "Premises").

B. Beneficiary is the sole beneficiary and holder of 100% of the beneficial interest, with full power of direction in and under the Trust Agreement.

C. Pursuant to the terms of a certain Loan Commitment dated as of August 1, 1989 (the "Loan Commitment") Assignee has made to Trustee, and Trustee at the direction of Beneficiary has accepted from Assignee, a loan in the principal sum of \$2,600,000 (the "Principal Sum").

D. Assignee requires, and Assignor is willing to grant, as additional and further security for the "Liabilities" (as such term defined in Paragraph 2 hereof), including without limitation, the Principal Sum, accrued interest thereon, plus any "Deferred Amounts", as such term is defined in the Note (the aggregate of the Principal Sum and Deferred Amounts is hereinafter referred to as the "Credit") an assignment of all of Assignor's right, title and interest in, to and under all "Operating Agreements" and "Operating Income" (as each of the foregoing terms is herein defined), upon the terms and conditions hereinafter set forth.

E. The Credit is evidenced by a note of even date herewith (the "Note"), executed and delivered by Trustee to the order of Assignee, and is secured by (i) a Junior Mortgage, Security

12 2 7 1 9 89

89522810

Agreement and Financing Statement of even date herewith (the "Mortgage") made and executed by Assignor in favor of Assignee, conveying, assigning and mortgaging the Premises and other property appurtenant or incidental thereto and (ii) certain other security documents and instruments (the "Other Security Documents") set forth on Exhibit B attached to and made a part of this Assignment, which security documents and instruments, together with the Loan Commitment, the Note, the Mortgage and this Assignment, all extensions and renewals of the Note and all documents and instruments heretofore or hereafter given as security for or to guarantee the payment of, or made in connection with the negotiation, origination or extension of, or to perfect or continue the security interest thereby created to secure the Liabilities are herein collectively referred to as the "Loan Documents."

NOW, THEREFORE, to secure the payment, performance and observance of the Liabilities and also in consideration of the sum of Ten Dollars (\$10.00) in hand paid to Assignor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby covenants and agrees with Assignee as follows:

1. Assignment; Grant of Security Interest. Assignor hereby assigns, transfers, pledges, hypothecates, sets over and delivers unto Assignee, and grants to Assignee a security interest in and to, all the right, title and interest of Assignor, in, to and under all of the following together with all rights, interests, powers, privileges and preferences appertaining or incidental thereto (the same being herein sometimes collectively referred to as the "Collateral"):

(i) All leases, agreements for use and/or occupancy, licenses, concessionaire agreements and other similar documents and instruments, and all amendments, extensions and renewals thereof respectively, if any, with tenants, occupants and users in respect of all or any part or parts of the Premises heretofore, now or hereafter made or agreed to by or on behalf of Assignor or any predecessors of Assignor, or by Assignee under the powers herein granted, all agreements which relate to the use, occupancy, operation, management, maintenance or enjoyment of the Premises, including, but not limited to, utility contracts, maintenance agreements, management agreements, including, without limitation, that certain Building Management Contract with Murdoch & Coll, Inc. dated as of January 1, 1987 (the "Management Contract") and any agreements guaranteeing the performance of the obligations contained in any of the foregoing, all being herein collectively referred to as "Operating Agreements"; and

(ii) All of the rents, earnings, income, issues, revenues, contract rights, royalties, profits, distributions and receivables of any and every kind and description

UNOFFICIAL COPY

8 9 5 2 2 3 1 0

howsoever derived, which may now be due or hereafter become due, under or by virtue of any and all of the Operating Agreements now or hereafter existing in respect of the Premises, or any part or parts thereof, or otherwise, including, without limitation, all damages received upon the occurrence of a default under the Operating Agreements and all proceeds payable under any policy or policies of insurance covering loss of rents or income with respect thereto, all being herein collectively referred to as "Operating Income";

(iii) All security deposits, reserves or deposits for taxes and insurance, and other monies or equivalents thereof made or given to secure the payment, performance and observance of the covenants, agreements, conditions and obligations on the part of Tenants to be paid, performed and observed under or pursuant to the Operating Agreements or otherwise, all being herein collectively referred to as "Security Deposits";

(iv) All guaranties made by any person(s) guaranteeing the payment of rents and/or the performance and observance of the covenants, agreements, conditions and obligations on the part of Tenants to be paid, performed and observed under or pursuant to any of the Operating Agreements or otherwise, and all amendments, reaffirmations, extensions and renewals thereof, respectively, if any, all being herein collectively referred to as "Guaranties";

it being the intention to hereby establish, to the fullest extent permitted by law, subject to the provisions of Paragraph 4 hereof, an absolute transfer and assignment unto Assignee of all of Assignor's right, title and interest in and under all of the Operating Agreements and Operating Income, subject to the prior assignment and security interest of Bankers Life Insurance Company (the "Senior Lender") in and to the Collateral.

2. Liabilities. This Assignment, and the rights and interests herein granted and assigned to Assignee, are made and given to secure the prompt payment or full and faithful performance of each and all of the following (the same being herein sometimes collectively referred to as the "Liabilities"):

(a) the Credit and all accrued interest thereon, as and when due, in accordance with the Note;

(b) all other indebtedness, sums and obligations which Assignor or any other person now or hereafter obligated or liable in any way for the Liabilities (any such other person being herein referred to as "Other Obligor") is obligated to pay under, pursuant to or in connection with this Assignment and the Loan Documents;

UNOFFICIAL COPY

0 7 5 1 2 3 1 0

(c) the covenants, agreements, conditions, representations, warranties and provisions contained in this Assignment and the Loan Documents;

(d) all future advances and expenditures that may be made by Assignee, at its election, to or for the account of Assignor or any Other Obligor, including, without limitation, advances or expenditures by Assignee to pay or discharge insurance premiums, costs of repair to and maintenance of the Premises, taxes and any other liens, claims, security interests or encumbrances affecting the Premises, whether the obligation of Assignor or any Other Obligor, all with interest thereon at the "Default Rate" (as such term is defined in the Note); and

(e) all costs and expenses, including without limitation, court costs and attorneys' fees and expenses paid, suffered or incurred by Assignee in connection with or arising out of the enforcement, realization and/or protection of (i) this Assignment, and the rights and interests herein granted and assigned to Assignee, (ii) the Liabilities, (iii) the Collateral and (iv) the Premises, all with interest thereon at the Default Rate.

3. Rights, Powers and Remedies of Assignor. Assignor does hereby authorize and appoint Assignee its true and lawful attorney, with full power of substitution and with full power for Assignee, in its own name and stead or in the name and stead of Assignor, which authorization and appointment are irrevocable and coupled with an interest; provided that until the occurrence of an "Event of Default" (as such term is herein defined), Assignee agrees to forbear from exercising the rights, powers and remedies hereinafter set forth:

A. To take possession of, and to hold, operate, manage and control, the Premises and to conduct the business thereof either personally or by its agents; to make and complete itself or by purchase, at the expense of the Premises and Assignor, (i) all repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises and (ii) all construction, replacement or rebuilding then in progress on the Premises; and to purchase, cancel, modify, amend or otherwise control and deal with any and all policies of insurance of any and all kinds now or hereafter covering or affecting the Premises, all as may be deemed appropriate by Assignee in its discretion;

B. To rent, lease or let all or any portion of the Premises to any party or parties at such rents and upon such terms as Assignee shall, in its discretion, determine, including leases for terms expiring beyond the maturity of the Liabilities and/or the period of redemption, if any,

allowed in the event of foreclosure upon the Mortgage; to cancel, alter or modify the terms and provisions of any and all of the Operating Agreements as Assignee may, in its discretion, determine; to demand, collect and receive all of the Operating Income arising from or accruing at any time hereafter, and that are now due or may hereafter become due under each and every of the Operating Agreements now or hereafter existing in respect of the Premises;

C. To endorse the name of Assignor on, or to execute in the name of Assignee, and to deposit in bank accounts for collection, any and all checks, notes and other instruments received in payment of any and all Operating Income; and to execute or give any and all receipts or other similar instruments in respect thereof in the name of Assignor or in the name of Assignee;

D. To use such measures, legal or equitable, as may be deemed appropriate by Assignee, in its discretion, to enforce (i) any and all covenants, agreements, conditions, and obligations of any party under any of the Operating Agreements now or hereafter existing in respect of the Premises, or any part thereof, (ii) the payment of Operating Income, and (iii) the collection or realization of any security given in connection therewith, or to secure or maintain possession of the Premises, or any portion thereof, including without limitation, actions for the recovery of Operating Income and actions in forcible detainer; to make adjustment of claims and to institute, prosecute, settle or compromise, either in the name of Assignor or in the name of Assignee, proceedings at law or in equity in order to protect the Premises, to recover Operating Income, or other proceeds respecting the Premises, or to abate any nuisance on the Premises and in connection therewith, execute and render any and all documents, papers and instruments; and

E. To otherwise act in Assignor's name, place and stead, and exercise all rights, powers and remedies available to Assignor under each and every of the Operating Agreements.

4. Application of Operating Income. Assignor hereby grants to Assignee full power and authority to exercise, without notice to Assignor (notice thereof being hereby expressly waived by Assignor), each and every of the rights, interests, privileges and powers herein granted and assigned at any and all times hereafter, with full right and power to use and apply, to the extent thereof, the Operating Income to the payment of any of the Liabilities, in such order as Assignee may determine on account of the following, but without in any manner limiting the generality of the rights, powers, privileges and authority conferred on Assignee by this Assignment; provided Assignee agrees to forbear from exercising

89522810

such rights, powers, privileges and authority until the occurrence or existence of an Event of Default:

(a) to the payment of the operating expenses of the Premises, including, without limitation, (i) cost of management (which shall include reasonable compensation to Assignee and agent or agents, if management be delegated to an agent or agents), (ii) established claims for damages, if any, (iii) court costs and attorneys' fees and expenses incurred by Assignee in connection with any and all actions and things which, by this Assignment, Assignee may do or cause to be done, and (iv) premiums on fire, liability and property insurance and on insurance against such other hazards, casualties and risks as Assignee may, in its discretion, deem appropriate;

(b) to the payment of taxes and special assessments now due or hereafter becoming due on the Premises;

(c) to the payment of costs for the completion of construction, replacement or rebuilding then in progress on the Premises, or any part thereof, or for repairs to and decoration, rehabilitation and improvement of the Premises, or any part thereof, including without limitation, the costs from time to time of installing or replacing furniture, fixtures, equipment, and appliances, and heating, air-conditioning, ventilating, gas and electric fixtures, components and systems therein, and constructing tenant improvements, and of placing the Premises in such condition as will, in the judgment of Assignee, make the Premises economically viable;

(d) to the payment of all Liabilities; and

(e) to the payment of any deficiency which may result from any foreclosure as provided in the Mortgage.

After payment in full of the foregoing items, the balance, if any, of the Operating Income shall be paid to Assignor, or to such other person or entity then entitled thereto pursuant to the laws of the State of Illinois.

5. Remedies Cumulative. It is understood and agreed that the rights, powers and privileges herein granted and assigned to Assignee shall be deemed special remedies given to Assignee and shall not be deemed exclusive of any of the rights, powers and remedies provided in the Loan Documents, but shall be deemed additional remedies and cumulative with all such other rights, powers and remedies, and each and all such rights, powers and remedies may be pursued or exercised singly, successively or simultaneously, at such time or times or in such order as Assignee may, in its sole discretion, elect. No failure on the part of Assignee to exercise,

UNOFFICIAL COPY

8 9 5 : 2 3 1 0

and no delay in exercising, any rights, powers, privileges, interests, remedies or authorizations hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such rights, powers, privileges, interests, remedies or authorizations by Assignee preclude any other further or future exercise thereof or the exercise of any other rights, powers, privileges, interests, remedies or authorizations.

6. Release. It is expressly understood that no judgment or decree which may be entered on any of the Liabilities shall operate to abrogate or lessen the effect of this Assignment, but that this Assignment shall continue in full force and effect until any and all Liabilities, in whatever form the Liabilities may be, and any and all costs and expenses incurred and sustained by virtue of the authority herein contained have been fully and finally paid and discharged from the Operating Income, or by Assignor, any Other Obligor, or any of them, or from any other source, or until such time as this Assignment may be voluntarily released. This Assignment shall remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to a foreclosure decree, unless the Liabilities are fully and finally paid and discharged before the expiration of the period of redemption, if any.

7. Assignor's Representations. Assignor hereby represents and warrants to and covenants with Assignee that:

(i) Except as previously disclosed in writing to Assignee, there are no Operating Agreements written or otherwise, now in existence or in force with respect to the Premises, or any part thereof;

(ii) Assignor is the sole and absolute owner of all the Collateral, free and clear of all liens, claims, security interests and encumbrances except as heretofore granted to the Senior Lender;

(iii) Assignor will not, at any time during the term of this Assignment, sell, pledge, assign, transfer, set over or otherwise encumber, or permit or suffer to be sold, pledged, assigned, transferred, set over or otherwise encumbered, the Collateral or perform or omit to perform any act or execute any other document or instrument which might prevent Assignee from fully exercising and enjoying its rights, powers, privileges and benefits under this Assignment except as may be given to the Senior Lender;

(iv) Assignor has full right and power and lawful authority to execute and deliver, and to pay, perform and observe all their covenants, conditions and obligations under, this Assignment and assign, transfer and set over to Assignee all the Collateral, together with all the rights, interests,

89522810

powers, privileges and authority herein granted, assigned and conferred upon Assignee:

(v) This Assignment constitutes a legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with the terms hereof:

(vi) The payment of Operating Income to accrue for any period of the Premises has not been nor will be, nor will be expected or suffered to be, deferred, waived, released, discontinued, discharged, compromised or otherwise adjusted except as heretofore disclosed in writing to Assignee in connection with Operating Agreements existing at the time of execution of this Assignment, nor have rents been paid, or will rents be paid by any tenant more than thirty (30) days prior to the due date thereof:

(vii) Each of the Operating Agreements is valid, binding and enforceable in accordance with its terms, and none have been altered, modified, amended, terminated, cancelled, surrendered, renewed or extended, and no term or condition thereof has been waived or released in any manner whatsoever, except as previously disclosed, in writing, to Assignee:

(viii) To the best knowledge of Assignor, there is no material default now existing under any of the Operating Agreements and no events presently exist under or in connection with any of the Operating Agreements, which events would, with the giving of notice or the lapse of time or both, constitute a material default thereunder:

(ix) Assignor will, at Assignor's expense, observe and perform, or cause to be paid, observed and performed, each and every covenant, condition and obligation on its part to be paid, observed and performed under the Operating Agreements and enforce (excluding enforcement by termination of any of the Operating Agreements, except as consented by Assignee, which consent shall not be unreasonably withheld) the observance and performance of each and every covenant, condition and obligation to be observed and performed under all Operating Agreements; and

(x) Assignor shall give prompt notice to Assignee of each notice received by Assignor, or either of them, asserting or claiming that a default on its part has occurred under any of the Operating Agreements together with a complete copy of each such notice.

8. Covenants of Assignor. Assignor shall not, from and after the date of this Assignment, without the prior written consent of Assignee which consent shall not be unreasonably withheld or delayed: (i) make or enter into any Operating Agreements other

89522810

than lease agreements in the ordinary course of business or (ii) cancel or terminate or materially modify or amend or otherwise alter the terms and provisions of any of the Operating Agreements, or (iii) consent or permit or exercise any option under the Operating Agreements. If, without the prior written consent or approval of Assignee, any of the foregoing acts or actions shall be committed or permitted by Assignor, then any such acts or actions shall not be binding upon Assignee, and unless subsequently confirmed or ratified expressly in writing by Assignee, shall be deemed null and void, and further, shall, at the option of Assignee, constitute an Event of Default under this Assignment.

9. Mortgagee-In-Possession. Nothing herein contained shall be construed as constituting Assignee a trustee or mortgagee-in-possession. In the exercise of the powers herein granted and assigned to Assignee, no liability shall be asserted or enforced against Assignee, Assignor, for itself and for and on behalf of all persons claiming or to claim hereafter by, through or under Assignor, hereby expressly waiving and releasing Assignee from all such liability except for any such liability arising out of the gross negligence or willful misconduct of Assignee.

10. Indemnification. Assignee shall not be in any way: (i) responsible for the control, care and management of the Premises, or any part thereof, or for any waste committed or permitted on the Premises, or any part thereof, (ii) obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability under the Operating Agreements, or under or by reason of this Assignment, and (iii) liable by reason of any dangerous or defective condition of the Premises, or any part thereof, resulting in loss, damage or injury to the property or person of any party to any of the Operating Agreements or of any other person. Assignor shall and does hereby agree to pay and to indemnify, save, protect and hold forever harmless Assignee and its directors, officers, employees or agents (collectively, "Assignee's Indemnitees") of and from any and all loss, cost, damage, expense, claim, demand and liability, including without limitation, court costs and reasonable attorneys' fees and expenses, which Assignee's Indemnitees, or any of them, may or might incur, suffer or sustain or for which Assignee's Indemnitees, or any of them, may become obligated or liable, in any way, by reason of, in connection with or resulting from (a) this Assignment and the rights, powers and interests herein granted and assigned to Assignee, (b) any alleged obligations or undertakings on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Operating Agreements any failure or alleged failure by Assignor to pay, perform or observe any covenants, conditions and obligations on the part of Assignor to be paid, performed and observed under the Operating Agreements or (c) any loss, damage or injury to the property or person of any party to any of the Operating Agreements or of any other person on or about the Premises or any part

19522810

thereof. If any of Assignee's Indemnitees shall be subject to any liability indemnified hereunder, and such liability is not paid or satisfied by Assignor within three (3) business days after demand therefor by any of Assignee's Indemnitees so affected, then the amount thereof shall be so much additional Liabilities and shall bear interest from the date incurred until reimbursement is received at the Default Rate, and Assignee shall have, in addition to any other right, power or remedy available to Assignee, the same rights, powers and remedies in the event of the failure to pay promptly any such amount by Assignor as in the case of a default by Assignor in the payment of the Liabilities. The indemnity of Assignor under this Paragraph 10 shall survive any termination, release or satisfaction of this Assignment.

11. Waiver of Liability. Assignee shall not, in any way, be responsible for failure to do any or all of the things for which rights, interests, powers or authority is herein granted and assigned to Assignee; and Assignee shall not be liable, in any way, for the collectability, collection or non-collection of any amounts due or payable under any of the Operating Agreements, nor shall Assignee be required to make an accounting for the benefit of Assignor, except for monies actually received by Assignee in accordance with the terms hereof, Assignor, for itself and for and on behalf of all persons claiming or to claim hereafter by, through or under Assignor, hereby expressly waiving, and releasing Assignee from, any and all such responsibility, liability and requirement.

12. Payment to Assignee. Assignor further specifically authorizes and directs each of the tenants, users, licensees, occupants, concessionaires and operators under each and all of the Operating Agreements, including, without limitation, the manager under the Management Contract now or hereafter existing in respect of the Premises, or any part thereof, to pay all unpaid sums agreed upon under the Operating Agreements to Assignee upon receipt of written demand from Assignee stating that an Event of Default exists and directing that payment of such sums be made to Assignee or such other person(s) as Assignee may designate. Assignor acknowledges and agrees that (i) each and every tenant or operator under the Operating Agreements other than Assignee shall have the right to rely upon any such demand, and the statements and directions therein contained, of Assignee, and shall pay the sum due thereunder to Assignee, without any obligation or right on the part of such person to inquire as to validity or propriety of any such demand by Assignee and notwithstanding any notice from or claim of Assignor to the contrary, and (ii) Assignor shall have no right, claim or recourse against any such person, and all such persons are hereby relieved of all duty, liability and obligation to Assignor, in respect of all sums so paid to Assignee.

13. Future Operating Agreements. Assignor further agrees to assign and transfer to Assignee all future Operating Agreements and to execute and deliver, at the request of Assignee, all such

89522810

UNOFFICIAL COPY

further assurances and assignments of the Operating Agreements and Operating Income as Assignee shall from time to time require. Upon request by Assignee, Assignor shall deliver to Assignee duplicate originals (or if permitted by Assignee, true and complete copies thereof so certified by Assignor) of each and all of the Operating Agreements in existence from time to time.

14. Present Assignment. Although it is the intention of the parties that this Assignment shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that until an Event of Default shall occur or exist, Assignor shall have the right and privilege to collect and retain the Operating Income, to enforce the collection thereof by appropriate action or proceeding in the name of Assignor, and to otherwise operate the Premises, but only in strict compliance with the terms, covenants and conditions herein contained. The foregoing rights and privileges of Assignor shall, upon the occurrence or existence of any Event of Default, automatically and immediately cease and terminate, without notice to Assignor (notice as to any such Event of Default being hereby expressly waived by Assignor).

15. Parity of Security. This Assignment and the Loan Documents (collectively, the "Security Documents" for the purpose of this Paragraph only) constitute equal security for the payment and discharge of the Liabilities, and none of the liens or security interests evidenced by the Security Documents shall be deemed to have preference or priority over any other of the liens or security interests evidenced by the Security Documents, and in the event of a default by Assignor under the Note or the Security Documents, Assignee may realize upon the security given under the Security Documents, singly, successively or cumulatively, at such times and such order as Assignee may, in its sole discretion, elect.

16. No Subordination. Nothing herein contained, nor the exercise by Assignee of any of the rights, powers, privileges, interests, remedies and authority herein granted and assigned, shall be, or shall be construed to be, an affirmation by Assignee of any of the Operating Agreements or of any option to renew or extend the same, or an assumption of liability under, or a subordination of the lien of the Mortgage or of the liens, rights and interests created by this Assignment and the Loan Documents to, any of the Operating Agreements or any such option.

17. Security Interest. Assignor hereby grants to Assignee a security interest in the Operating Agreements and Operating Income pursuant to the Uniform Commercial Code of the State of Illinois (the "Code"), and this Assignment shall operate as a security agreement under the Code, thereby entitling Assignee to all the benefits, rights and remedies therein conferred upon a secured party (as such term is defined in the Code). Assignor will, at the request of Assignee, execute or join with Assignee in

executing and, at Assignor's own expense, file and refile under the Code, such financing statements, amendments thereto, continuation statements and other documents in such states and in such offices as Assignee may deem necessary or appropriate and wherever required or permitted by law in order to perfect and preserve Assignee's security interest in the Operating Income and hereby authorizes Assignee to file financing statements, amendments thereto and continuation statements relative to all or any part of the Operating Agreements and Operating Income without the signature of Assignor where permitted by law.

18. Event of Default. Assignor hereby agrees that the occurrence or existence of any of the following events or conditions shall constitute an event of default (herein referred to singularly as "Event of Default" and collectively as "Events of Default"):

(i) Any representation or warranty made by Assignor or any Other Obligor, or their respective agents, in this Assignment, the Note or any of the Loan Documents or in any other agreement, instrument or statement contemplated hereby or thereby, made or delivered pursuant hereto or thereto or in connection herewith or therewith, shall be breached or violated, or prove to be false, misleading or inaccurate, in any material respect and such breach or violation shall adversely affect the Credit or any security therefor;

(ii) Regardless of cause or reason, any failure to pay, perform or discharge, when and as due, any Liabilities; and

(iii) An "Event of Default" (as such term is therein defined or used) shall occur or exist under, pursuant to or in connection with the Note or any of the Loan Documents and such event of default is not cured or corrected within any applicable grace or curative period provided thereunder.

19. Remedies. Upon the occurrence or existence of any one or more of the Events of Default, then at the option of Assignee and without demand or notice to Assignor (demand and notice as to any Event of Default being hereby expressly waived by Assignor, except for such notices as may be provided in Paragraph 18 hereof), Assignee shall, to the fullest extent permitted by law, be entitled to exercise (i) all the rights, powers and remedies, if any, available under the Code then in effect, (ii) any and all other rights, powers and remedies as permitted in this Assignment, the Note and the Loan Documents and (iii) all such other rights and remedies as may be provided at law or in equity.

20. Incorporation of Loan Documents. All the terms, covenants, conditions, representations and provisions and all the warranties contained in the Note and the Loan Documents are, by this reference, adopted and incorporated into this Assignment to

UNOFFICIAL COPY

0 2 5 . 2 3 1 0

the same full extent and with the same binding force and effect as if all such terms, covenants, conditions, representations, provisions and warranties were herein stated in full, it being the express intent that this Assignment and the Loan Documents each complement and supplement the others to the extent necessary or required to protect, preserve and confirm the rights, powers, interests and remedies of Assignee in respect of the Liabilities.

21. No Merger. Each of the Operating Agreements shall remain in full force and effect irrespective of any merger of the interest of any of the parties under any of the Operating Agreements.

22. Notices. All notices, demands and other communications required or desired to be given hereunder shall be in writing signed by Assignee or Assignor, or their respective authorized agents or attorneys, as the case may be, and shall be deemed to have been properly given if (i) served in person, (ii) if mailed by United States registered or certified mail, full postage prepaid, return receipt requested, (iii) if sent by Western Union Telegram or (iv) if sent by special courier (Federal Express or like service), addressed as follows:

If to Assignee: Textron Financial Corporation
Real Estate Finances Division
Summerfield Commons Office Park
7585 Washington Road, Suite 233
Pittsburgh, PA 15341
Attn: Vice President -
Investment Control

with a copy to: Textron Financial Corporation
10 Dorrance Street
P.O. Box 6687
Providence, RI 02940-6687
Attn: Senior Vice President -
General Counsel

with a copy to
Assignee's Counsel: Burke, Wilson & McIlvaine
500 West Madison Street, Suite 3700
Chicago, Illinois 60606
Attn: Christopher R. Manning, Esq.

If to Assignor: The Fisher Building Limited
Partnership
c/o Murdoch & Coll, Inc.
188 W. Randolph, Suite 300
Chicago, Illinois 60601
Attn: Todd Lillibridge

89522810

UNOFFICIAL COPY

3 9 5 2 2 3 1 0

With a copy to:

Nagelberg, Goodman, Smith & Berger
303 West Madison Street, 17th Floor
Chicago, Illinois 60606
Attn: Suzanne Bessette-Smith, Esq.

or to such other address in the United States of America as may from time to time be designated by the party to be addressed, by notice to the others in the manner hereinabove provided. Any such notices, demands or other communication mailed as provided in this paragraph shall be deemed to have been given and received on the earlier of (a) the date of actual receipt of such notice, demand or other communication, (b) the third (3rd) business day following the day of mailing by U.S. registered or certified mail of such notice, demand or other communication, (c) date of actual delivery of such demand, notice or other communication, in the form of a telegram, by Western Union, or (d) date of actual delivery of such demand, notice or other communication if by special courier (Federal Express or like service). If such demand, notice or other communication is given or received by more than one of the foregoing methods on different dates, such demand, notice or other communication shall be deemed given or received on the earlier of such dates. The delivery or receipt by other parties of copies of any demand, notice or other communication hereunder is merely an accommodation and is not necessary or required to make effective the giving or receipt by Assignee or Assignor of any demand, notice or other communication.

23. Miscellaneous.

(a) This Assignment, and all the provisions hereof, shall extend to and be binding upon Assignor, its successors and assigns, and upon any party or parties from time to time permitted to hold title to or have an interest in the Premises, except that the benefits and privileges accruing to Assignor hereunder shall only extend and inure to such of the successors and assigns of Assignor or such party or parties as may be permitted pursuant to the Mortgage. This Assignment and all the rights, powers, privileges and immunities herein assigned and granted to Assignee shall extend and inure to the benefit of the successors and assigns (including all holders, now or hereafter, of the Note) of Assignee. The terms "Assignor" and "Assignee" and all personal pronouns as herein used shall be taken to include the singular or plural, and the masculine, feminine or neuter gender, as may be applicable.

(b) All the Liabilities and obligations of Assignor hereunder are, and shall be, at all times, joint and several.

(c) This Assignment shall in all respects be construed and enforced in accordance with, and governed by, the laws of the State of Illinois. This Assignment may not be amended or modified, nor may any of the interests and rights hereby

8:52:2810

assigned be released, except by a writing signed by or on behalf of the party to be bound thereby.

(d) Assignor agrees to pay, on demand of Assignee, all costs and expenses, including without limitation court costs and reasonable attorneys' fees and expenses, paid, sustained or incurred by Assignee in connection with the enforcement of this Assignment, with interest thereon, from the date on which such costs and expenses are so paid, sustained or incurred by Assignee to the date of receipt of payment thereof from Assignor, at the Default Rate.

(e) Whenever possible, each provision of this Assignment and the application thereof shall be interpreted in such a manner as to be effective, valid and enforceable under applicable law, but if any provisions of this Assignment, or the application thereof to any persons or circumstances, shall be invalid, illegal or unenforceable in any respect under such law, such provision or application shall be ineffective to the extent of such invalidity, illegality or unenforceability, without rendering invalid, illegal or unenforceable the remainder of such provision or the remaining provisions of this Assignment, or the application of such invalid, illegal or unenforceable provision to persons or circumstances other than those to which such provision is invalid, illegal or unenforceable.

(f) The recitals to this Assignment are hereby incorporated into and made a part of this Assignment and shall be deemed covenants, representations and warranties binding upon Assignor.

(g) The covenants, representations and warranties made by Assignor under this Assignment are, and shall be deemed to be, of continuing force and effect until all the Liabilities have been fully and finally paid, discharged and performed.

24. Exculpation.

A. No personal liability shall be asserted or be enforceable against the Beneficiary, because or in respect of this Assignment or the making, issue, transfer or enforcement hereof, all such liability of the Beneficiary, if any, being expressly waived by Assignor, except as set forth in the Guaranty, and the sole remedies of Assignor against Beneficiary, shall be as provided in the Mortgage, the Loan Documents and any other documents given to secure the Note, in accordance with the terms and provisions contained therein, and/or by action to enforce the personal liability of the Beneficiary under the Guaranty.

UNOFFICIAL COPY

09512310

B. This Assignment is executed by American National Bank and Trust Company of Chicago, not personally or individually but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein shall be construed as creating any liability on said American National Bank and Trust Company of Chicago to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained (including specifically any indemnification provisions), all such liability, if any, being expressly waived by Assignee and by every person now or hereafter claiming any right or security hereunder.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by a duly authorized general partner as of the date and year first above written.

ASSIGNOR:

THE FISHER BUILDING LIMITED PARTNERSHIP, an Illinois limited partnership

By: Murdoch & Coll, Inc., an Illinois corporation, General Partner

By: [Signature]
Title: General Partner

Attest: [Signature]
Title: Secretary

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee aforesaid

By: [Signature]
Title: Secretary

Attest: [Signature]
Title: ASSISTANT SECRETARY

49522810

UNOFFICIAL COPY

8 9 5 2 2 8 1 0

STATE OF IL)
)
COUNTY OF Cook) SS:

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Peter H. Johnson and ~~XXXXXXXXXXXX~~, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as SECRETARY and ASSISTANT SECRETARY of Murdoch & Coll, Inc., an Illinois corporation, the general partner of THE FISHER BUILDING LIMITED PARTNERSHIP, an Illinois limited partnership, party to the foregoing instrument, as their free and voluntary act and as the free and voluntary act of said partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 2nd day of November, 1989.

L. M. Lorenzki

Notary Public

My Commission expires:



COOK COUNTY ILLINOIS

NOV 30 1989

89522810

89522810

County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOTS 18, 19 AND 24 (EXCEPT THAT PART OF SAID LOTS TAKEN FOR DEARBORN STREET) IN GEORGE W. SNOW'S SUBDIVISION OF BLOCK 139 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

*Plat # 17-16-234-006
17-16-234-005
343 S. W. 2nd St. Chicago*

Property of Cook County Clerk's Office

89522810

EXHIBIT B

OTHER SECURITY DOCUMENTS

1. Junior Collateral Assignment of Leases and Security Agreement of even date herewith, made by Assignor in favor of Assignee assigning for collateral purposes, all of Assignor's right, title and interest in and to the Operating Agreements and Operating Income in respect of the Premises.
2. UCC Financing Statement (Form 1) with Assignor as debtor, and Assignee, as secured party in respect of the collateral described in the Collateral Assignment.
3. UCC Financing Statement (Form 2) with Assignor as debtor and Assignee as secured party in respect of the Collateral described in the Collateral Assignment.
4. Junior Security Agreement dated of even date herewith, made by the Assignor in favor of Assignee as additional and further security for payment of the Note and the other and additional Liabilities.
5. UCC Financing Statement (Form 1) with Assignor, as debtor, and Assignee, as secured party, in respect of the Collateral described in the Security Agreement.
6. UCC Financing Statement (Form 2) with the Assignor, as debtor, and Assignee, as secured party, in respect of the Collateral described in the Security Agreement.
7. Guaranty Agreement dated of even date herewith, made by The Fisher Building Limited Partnership in favor of Assignee guaranteeing the payment of the Credit and all accrued interest.
8. Junior Collateral Assignment of Beneficial Interest and Security Agreement made by Beneficiary in favor of Assignee assigning and granting a security interest in the beneficial interest in the Trust.
9. Junior Mortgage and Security Agreement and Financing Statement dated of even date herewith made by Trustee and in favor of Assignee with respect to the Property to secure the Note.
10. Loan Agreement of even date herewith made by Assignor, Assignee and The Fisher Building Limited Partnership.

Any term herein used but not defined shall have the same meaning as assigned to such term in the instrument to which this Exhibit is attached.

89522810