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Case No. CHI-19910
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[ILLINOIS]

TERM LOAN AND REVOLVING CREDIT MORTGAGE,
ASSIGNMENT OF LEASES, SECURITY AGREEMENT,
AND FIXTURE FILING

BY

ABC RAIL CORPORATION,

Mortgagor,

TO

DEPT-01 RECORDING #121.50
T#0011 TRAN 7400 10/05/93 11:54:00
#2686 # *-93-795437
COOK COUNTY RECORDER

BANQUE INDOSMEZ, NEW YORK BRANCH,
as Collateral Agent,

Mortgagee

Relating to Premises at:

1316 Washington Street
Chicago Heights, Illinois

\$45,000,000

Dated as of: September 30, 1993

93795437

This instrument prepared by:

Cahill Gordon & Reindel
80 Pine Street
New York, New York 10005
Attention: William B. Gannett, Esq.

Property Identification Number: 32-21-116-022
32-21-116-021
32-21-116-020

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TERM LOAN AND REVOLVING CREDIT MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING

TERM LOAN AND REVOLVING CREDIT MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), dated as of September 30, 1993, made by ABC RAIL CORPORATION, a Delaware corporation, having an office at 200 South Michigan Avenue, Chicago, Illinois 60604, as mortgagor, assignor and debtor (in such capacities and together with any successors in such capacities, "Mortgagor"), in favor of BANQUE INDOSUEZ, NEW YORK BRANCH, having an office at 1230 Avenue of the Americas, New York, New York 10023, as mortgagee, assignee and secured party (in such capacity and together with any successors in such capacities, "Mortgagee") as agent for the lending institutions (the "Banks") under the Credit Agreement (as hereinafter defined).

R E C I T A L S :

A. Pursuant to a certain credit agreement, dated as of the date hereof (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used and not defined herein have the meanings assigned to them in the Credit Agreement), by and among Mortgagor, the Banks and Banque Indosuez, New York Branch, as Agent for the Banks, the Banks have agreed (i) to make to or for the account of Mortgagor certain Term Loans up to an aggregate principal amount of \$22,000,000 and certain Revolving Loans up to an aggregate principal amount of \$23,000,000 and (ii) to issue certain Letters of Credit for the account of Mortgagor.

B. It is contemplated that Mortgagor may enter into one or more agreements ("Interest Rate Agreements") with one or more of the Banks fixing the interest rates with respect to Loans under the Credit Agreement (all obligations of Mortgagor now existing or hereafter arising under such Interest Rate Agreements, collectively, the "Interest Rate Obligations").

C. Mortgagor is the owner of the Mortgaged Property (as hereinafter defined).

D. It is a condition precedent to the obligations of the Banks to make the Loans under the Credit Agreement and a condition precedent to any Bank issuing Letters of Credit under the Credit Agreement or entering into the Interest Rate Agreements that Mortgagor execute and deliver the applicable Credit Documents, including this Mortgage.

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E. This Mortgage is given by Mortgagor in favor of Mortgagee for its benefit and the benefit of the Banks and the Agent (collectively, the "Secured Parties") to secure the payment and performance in full when due, whether at stated maturity, by acceleration or otherwise (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy or the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), of (i) all Obligations of Mortgagor now existing or hereafter arising under or in respect of the Credit Agreement and all Interest Rate Obligations of Mortgagor now existing or hereafter arising under or in respect of any Interest Rate Agreement (including, without limitation, Mortgagor's obligation to pay principal, interest and all other charges, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the Obligations contained in the Credit Agreement and the obligations contained in any Interest Rate Agreement), and (ii) without duplication of the amounts described in clause (i), all Obligations of Mortgagor now existing or hereafter arising pursuant to the terms and provisions contained in this Mortgage or in the other Security Documents (including, without limitation, with respect to all charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the Obligations contained in this Mortgage or in the other Security Documents), in each case whether in the regular course of business or otherwise (the obligations described in clauses (i) and (ii), collectively, the "Secured Obligations").

G R A N T I N G C L A U S E S .

For and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby grants, mortgages, bargains, sells, assigns and conveys to Mortgagee, and hereby grants to Mortgagee, a security interest in and upon all Mortgagor's right, title and interest in and to the following property, whether now owned or held or hereafter acquired (collectively, the "Mortgaged Property"):

A. Any and all present estates or interest of Mortgagor in the land described in Schedule A, together with all Mortgagor's reversionary rights in and to any and all easements, rights-of-way, sidewalks, strips and gores of land, drives, roads, curbs, streets, ways, alleys, passages, passageways, sewer rights, waters, water courses, water rights, and all power, air, light and other rights, estates, titles, interests, privileges, liberties,

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servitudes, licenses, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining thereto, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto (collectively, the "Land");

B. Any and all estates or interests of Mortgagor in the buildings, structures and other improvements and any and all Alterations (as hereinafter defined) now or hereafter located or erected on the Land, including, without limitation, attachments, walks and ways (collectively, the "Improvements"; together with the Land, the "Premises");

C. Any and all permits, certificates, approvals and authorizations, however characterized, issued or in any way furnished in connection with the Premises, whether necessary or not for the operation and use of the Premises, including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation;

D. Any and all interest of Mortgagor in all machinery, apparatus, equipment, fittings, fixtures, improvements and articles of personal property of every kind and nature whatsoever now or hereafter attached or affixed to the Premises or used in connection with the use and enjoyment of the Premises or the maintenance or preservation thereof, including, without limitation, all utility systems, fire sprinkler and alarm systems, HVAC equipment, boilers, electronic data processing, telecommunications or computer equipment, refrigeration, electronic monitoring, water or lighting systems, power, sanitation, waste removal, elevators, maintenance or other systems or equipment, and all other articles used or useful in connection with the use or operation of any part of the Premises (collectively, the "Equipment");

E. All Mortgagor's right, title and interest as landlord, franchisor, licensor or grantor, in all leases and subleases of space, franchise agreements, licenses, occupancy or concession agreements now existing or hereafter entered into relating in any manner to the Premises or the Equipment and any and all amendments, modifications, supplements and renewals of any thereof (each such lease, license or agreement, together with any such amendment, modification, supplement or renewal, a "Lease"), whether now in effect or hereafter coming into effect, including, without limitation, all rents, additional rents, cash, guaranties, letters of credit, bonds, sureties or securities deposited thereunder to secure performance of the lessee's, franchisee's, licensee's or obligee's obligations thereunder, revenues, earnings,

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profits and income, advance rental payments, payments incident to assignment, sublease or surrender of a Lease, claims for forfeited deposits and claims for damages, now due or hereafter to become due, with respect to any Lease, any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by Mortgagor under any Lease or otherwise, and any award in the event of the bankruptcy of any tenant under or guarantor of a Lease (collectively, the "Rents");

F. All general intangibles and contract rights relating to the Premises and the Equipment and all reserves, deferred payments, deposits, refunds and claims of every kind or character relating thereto (collectively, the "Contract Rights");

G. All drawings, plans, specifications, file materials, operating and maintenance records, catalogues, tenant lists, correspondence, advertising materials, operating manuals, warranties, guaranties, appraisals, studies and data relating to the Premises or the Equipment or the construction of any Alteration or the maintenance of any Permit (as hereinafter defined); and

H. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation or other awards or payments and refunds of real estate taxes and assessments, including interest thereon (collectively, "Proceeds");

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, for the purpose of securing the payment and performance of the Secured Obligations.

C O V E N A N T S :

Mortgagor warrants, represents and covenants to and for the benefit of Mortgagee as follows:

ARTICLE I

WARRANTIES, REPRESENTATIONS AND COVENANTS OF MORTGAGOR

SECTION 1.1 Payment. Mortgagor shall pay as and when the same shall become due, whether at its stated maturity, by acceleration or otherwise, each and every amount payable by Mortgagor under the Credit Documents and the Interest Rate Agreements.

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SECTION 1.2 Authority and Validity. Mortgagor represents, warrants and covenants that (i) Mortgagor is duly authorized to execute and deliver this Mortgage, the Interest Rate Agreements and the other Credit Documents to which Mortgagor is a party, and all corporate and governmental consents, authorizations and approvals necessary or required therefor have been duly and effectively taken or obtained, (ii) this Mortgage, the Interest Rate Agreements and the other Credit Documents to which Mortgagor is a party are legal, valid, binding and enforceable obligations of Mortgagor (except to the extent that enforceability may be affected or limited by applicable bankruptcy, insolvency and other similar debtor relief laws affecting the enforcement of creditor's rights generally) and (iii) Mortgagor has full corporate power and lawful authority to mortgage and grant a security interest in the Mortgaged Property as contemplated herein.

SECTION 1.3 Good Title.

1.3.1 Mortgagor represents, warrants and covenants that (i) Mortgagor has good and marketable fee simple title to the Premises and the landlord's interest and estate under or in respect of the Leases and good title to the interest it purports to own in and to each of the Permits (as hereinafter defined), the Equipment and the Contract Rights, in each case subject to no deed of trust, mortgage, pledge, security interest, encumbrance, lien, lease, license, easement, assignment, collateral assignment or charge of any kind, including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof, any filing or agreement to file a financing statement as debtor under the Uniform Commercial Code or any similar statute or any subordination arrangement in favor of any party other than Mortgagor (collectively, "Liens"; each, a "Lien"), except for those Liens identified on Schedule B (collectively, the "Prior Liens"), (ii) Mortgagor will keep in effect all rights and appurtenances to or that constitute a part of the Mortgaged Property, (iii) Mortgagor will protect, preserve and defend its interest in the Mortgaged Property and title thereto, (iv) Mortgagor will comply with each of the terms, conditions and provisions of any obligation of Mortgagor which is secured by the Mortgaged Property or the noncompliance with which may result in the imposition of a Lien on the Mortgaged Property, (v) Mortgagor will appear and defend the Lien and security interests created and evidenced hereby and the validity and priority of this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property or any of the rights of Mortgagee hereunder, (vi) this Mortgage creates and constitutes a valid and enforceable first Lien on the Mortgaged Property, and, to the extent any of the Mortgaged Property shall consist of personalty, a first

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security interest in the Mortgaged Property, which first Lien and first security interest are and will be subject only to (a) Prior Liens (but not to extensions, amendments, supplements or replacements of Prior Liens unless consented to by Mortgagee) and (b) Liens hereafter created and which, pursuant to the provisions of Section 1.12, are superior to the Lien and security interests created and evidenced hereby, and Mortgagor does now and will forever warrant and defend to Mortgagee and all its successors and assigns such title and the validity and priority of the Lien and security interests created and evidenced hereby against the claims of all persons and parties whomsoever, (vii) there has been issued and there remain in effect each and every certificate of occupancy or use or other Permit currently required for the existing use and occupancy by Mortgagor and its tenants of the Premises and (viii) Mortgagor has received no notice of violations of any local zoning, land use, set back or other development and use requirements of Governmental Authorities.

1.3.2 Mortgagor, promptly upon obtaining knowledge of the pendency of any proceedings for the eviction of Mortgagor from the Mortgaged Property or any part thereof by paramount title or otherwise questioning Mortgagor's title to the Mortgaged Property as warranted in this Mortgage, or of any condition that might reasonably be expected to give rise to any such proceedings, shall notify Mortgagee thereof. Mortgagee may participate in such proceedings, and Mortgagor will deliver or cause to be delivered to Mortgagee all instruments reasonably requested by Mortgagee to permit such participation. In any such proceedings Mortgagee may be represented by counsel satisfactory to Mortgagee at the expense of Mortgagor. If, upon the resolution of such proceedings, Mortgagor shall suffer a loss of the Mortgaged Property or any part thereof or interest therein and title insurance proceeds shall be payable in connection therewith, such proceeds are hereby assigned to and shall be paid to Mortgagee to be applied as Net Cash Proceeds in accordance with the provisions of Section 3.02(d)(a) of the Credit Agreement.

SECTION 1.4 Recording Documentation To Assure Security Interest; Fees and Expenses.

1.4.1 Mortgagor shall, forthwith after the execution and delivery of this Mortgage and thereafter, from time to time, cause this Mortgage and any financing statement, continuation statement or similar instrument relating to any thereof or to any property intended to be subject to the Lien of this Mortgage to be filed, registered and recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the validity and priority

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thereof or the Lien hereof purported to be created upon the Mortgaged Property and the interest and rights of Mortgagee therein. Mortgagor shall pay or cause to be paid all taxes (other than any income or franchise taxes which may be imposed on Mortgagee) and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all Federal or state stamp taxes or other taxes, duties and charges arising out of or in connection with the execution and delivery of such instruments.

1.4.2 Mortgagor shall, at the sole cost and expense of Mortgagor, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers, financing statements, continuation statements and assurances as Mortgagee shall from time to time request, which may be necessary in the reasonable judgment of Mortgagee from time to time to assure, perfect, convey, assign, mortgage, transfer and confirm unto Mortgagee, the property and rights hereby conveyed or assigned or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee or for carrying out the intention or facilitating the performance of the terms of this Mortgage or the filing, registering or recording of this Mortgage. In the event Mortgagor shall fail within 15 days after written demand to execute any instrument required to be executed by Mortgagor under this subsection 1.4.2, Mortgagee may execute the same as the attorney-in-fact for Mortgagor, such power of attorney being coupled with an interest and irrevocable.

SECTION 1.5 Payment of Taxes, Insurance Premiums, Assessments; Compliance with Law and Insurance Requirements.

1.5.1 Unless and to the extent contested by Mortgagor in accordance with the provisions of subsection 1.5.5 hereof, Mortgagor shall pay and discharge, or cause to be paid and discharged, from time to time when the same shall become due, all real estate and other taxes, special assessments, levies, permits, inspection and license fees, all premiums for insurance, all water and sewer rents and charges and all other public charges imposed upon or assessed against the Mortgaged Property or any part thereof or upon the Rents. Mortgagor shall, upon Mortgagee's written request, deliver to Mortgagee, receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property or any part thereof or the Rents.

1.5.2 From and after the occurrence and during the continuance of an Event of Default (as hereinafter defined), at

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the option and upon the request of Mortgagee, Mortgagor shall deposit with Mortgagee, on the first day of each month, an amount reasonably estimated by Mortgagee to be equal to one-twelfth of the annual taxes, assessments and other items required to be discharged by Mortgagor under subsection 1.5.1. Such amounts shall be held by Mortgagee without interest to Mortgagor and applied to the payment of the obligations in respect of which such amounts were deposited, in such priority as Mortgagee shall reasonably determine, on or before the respective dates on which such obligations or any part thereof would become delinquent. Nothing contained in this Section 1.5 shall (i) affect any right or remedy of Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay any such amount as provided above from its own funds and to add the amount so paid, together with interest at a rate per annum (the "Default Rate") equal to the highest rate then payable under the Credit Agreement during such time that any amount remains outstanding, to the Secured Obligations or (ii) relieve Mortgagor of its obligations to make or provide for the payment of the annual taxes, assessments and other charges required to be discharged by Mortgagor under subsection 1.5.1. Mortgagor hereby grants to Mortgagee a security interest in all sums held pursuant to this subsection 1.5.2 to secure payment and performance of the Secured Obligations. During the continuance of any Event of Default, Mortgagee may, at its option, apply all or any part of the sums held pursuant to this subsection 1.5.2 to payment and performance of the Secured Obligations. Mortgagor shall redeposit with Mortgagee an amount equal to all amounts so applied as a condition to the cure, if any, of such Event of Default in addition to fulfillment of any other required conditions.

1.5.3 Unless and to the extent contested by Mortgagor in accordance with the provisions of subsection 1.5.5, Mortgagor shall timely pay, or cause to be paid, all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions and social security benefits and all other claims, judgments, demands or amounts of any nature which, if unpaid, might result in, or permit the creation of, a Lien on the Mortgaged Property or any part thereof, or on the Rents or which might result in forfeiture of all or any part of the Mortgaged Property.

1.5.4 Mortgagor shall maintain, or cause to be maintained, in full force and effect all permits, certificates, authorizations, consents, approvals, licenses, franchises or other instruments now or hereafter required by any Governmental Authority to operate or use and occupy the Premises and the Equipment for its intended uses (collectively, "Permits"; each, a "Permit").

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Unless and to the extent contested by Mortgagor in accordance with the provisions of subsection 1.5.5 hereof, Mortgagor shall comply with all requirements set forth in the Permits and all requirements of any law, ordinance, rule, regulation or similar statute or case law (collectively, "Requirements of Law") of any Governmental Authority applicable to all or any part of the Mortgaged Property or the condition, use or occupancy of all or any part thereof or any recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force. Mortgagor shall not initiate, join in, or consent to any change in the zoning or any other permitted use classification of the Premises without the prior written consent of Mortgagee.

1.5.5 Mortgagor may at its own expense contest the amount or applicability of any of the obligations described in subsections 1.5.1, 1.5.3, 1.5.4 or 1.15.1 by appropriate legal proceedings, prosecution of which operates to prevent the collection or enforcement thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy such obligations; provided, however, that in connection with such contest, Mortgagor shall, at the option of Mortgagee, have made provision for the payment or performance of such contested obligation on Mortgagor's books if and to the extent required by GAAP or deposited with Mortgagee to hold for the benefit of Mortgagor a sum sufficient to pay and discharge such obligation and Mortgagee's estimate of all interest and penalties related thereto or furnished Mortgagee's title insurer with such security or indemnity as it may require to insure the Lien of this Mortgage over and against such contested obligation. Any such deposit (and any income earned thereon) not otherwise used to pay such obligation, interest or penalties shall be promptly returned to Mortgagor. Notwithstanding the foregoing provisions of this subsection 1.5.5, (i) no contest of any such obligations may be pursued by Mortgagor if such contest would expose Mortgagee or any Bank to any possible criminal liability or, unless Mortgagor shall have furnished a bond or other security therefor satisfactory to Mortgagee or such Bank, as the case may be, any additional civil liability for failure to comply with such obligations and (ii) if at any time payment or performance of any obligation contested by Mortgagor pursuant to this subsection 1.5.5 shall become necessary to prevent the delivery of a tax or similar deed conveying the Mortgaged Property or any portion thereof because of nonpayment or nonperformance, Mortgagor shall pay or perform the same, in sufficient time to prevent the delivery of such tax or similar deed or such termination or forfeiture.

1.5.6 Mortgagor shall not take any action that could be the basis for termination, revocation or denial of any insurance

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coverage required to be maintained under this Mortgage or that could be the basis for a defense to any claim under any insurance policy maintained in respect of the Premises or the Equipment and Mortgagor shall otherwise comply in all respects with the requirements of any insurer that issues a policy of insurance in respect of the Premises or the Equipment; provided, however, that Mortgagor may, at its own expense and after notice to Mortgagee, (i) contest the applicability or enforceability of any such requirements by appropriate legal proceedings, prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under Section 1.7 hereof or (ii) cause the insurance policy containing any such requirement to be replaced by a new policy complying with the provisions of Section 1.7.

1.5.7 Mortgagor shall, promptly upon receipt of any written notice regarding any failure by Mortgagor to pay or discharge any of the obligations described in subsection 1.5.1, 1.5.3, 1.5.4 or 1.5.6, furnish a copy of such notice to Mortgagee.

1.5.8 In the event that the proceeds of any tax claim are paid after Mortgagee has exercised its right to foreclose the Lien of this Mortgage, such proceeds shall be paid to Mortgagee to satisfy any deficiency remaining after such foreclosure. Mortgagee shall retain its interest in the proceeds of any tax claim during any redemption period. The amount of any such proceeds in excess of any deficiency claim of Mortgagee shall reasonably promptly be released to Mortgagor.

SECTION 1.6 Certain Tax Law Changes. In the event of the passage after the date of this Mortgage of any law deducting from the value of real property, for the purpose of taxation, amounts in respect of any Lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, any Interest Rate Agreement or any other Credit Document, Mortgagor shall promptly pay to, for or on behalf of Mortgagee such amount or amounts as may be necessary from time to time to pay such tax.

SECTION 1.7 Required Insurance Policies.

1.7.1 Mortgagor shall maintain in respect of the Premises and the Equipment the following insurance coverages:

- (i) Physical hazard insurance on an "all risk" basis covering, without limitation, hazards commonly

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covered by fire and extended coverage, lightning, wind-storm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief, in an amount equal to the full replacement cost of the Improvements and all Equipment, with such deductibles as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, with such deductibles as would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located. "Full replacement cost" means the Cost of Construction (as hereinafter defined) to replace the Improvements and the Equipment, exclusive of depreciation, excavation, foundation and footings, as determined from time to time (but not less frequently than once every twelve (12) months) by a Person (as hereinafter defined) selected by Mortgagor and reasonably acceptable to Mortgagee;

(ii) Comprehensive general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises and any adjoining streets, sidewalks and passageways, and covering any and all claims, including, without limitation, all legal liability to the extent insurable imposed upon Mortgagee and all court costs and attorneys' fees, arising out of or connected with the possession, use, leasing, operation or condition of the Premises with policy limits and deductibles in such amounts as from time to time would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located;

(iii) Worker's compensation insurance as required by the laws of the state where the Premises are located to protect Mortgagor and Mortgagee against claims for injuries sustained in the course of employment at the Premises;

(iv) Explosion insurance in respect of any boilers and similar apparatus located on the Premises or comprising any Equipment, with policy limits and deductibles in such amounts as Mortgagee may from time to time require, and, if Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a prudent operator of property similar in use and configuration to the Premises and the Equipment and located in the locality where the Premises and Equipment are located;

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(v) Business interruption insurance and/or loss of "rental value" insurance covering one year of loss, the term "rental value" to mean the sum of (a) the total estimated gross rental income from tenant occupation of the Improvements as furnished and equipped under Leases and (b) the total amount of all other charges which are the legal obligation of the tenants, lessees and sublessees of the Premises under Leases;

(vi) If the Premises are located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, each as amended, or any successor laws, flood insurance with policy limits and deductibles in such amounts as Mortgagee may from time to time reasonably require, and, if Mortgagee shall not have imposed any such requirements, in such amounts as would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located; and

(vii) Such other insurance, against such risks and with policy limits and deductibles in such amounts as Mortgagee may from time to time require, and, if no such requirements shall have been imposed, in such amounts as would be maintained by a prudent operator of property similar in use and configuration to the Premises and located in the locality where the Premises are located.

1.7.2 All insurance policies required by this Section 1.7 shall be in form satisfactory to Mortgagee. All insurance policies in respect of the coverages required by subsections 1.7.1(i), 1.7.1(iv), 1.7.1(v), 1.7.1(vi) and, if applicable, 1.7.1(vii) shall be in amounts at least sufficient to prevent coinsurance liability, and all losses thereunder shall be payable to Mortgagee, as loss payee, pursuant to a standard non-contributory New York mortgagee endorsement. All insurance policies in respect of the coverages required by subsections 1.7.1(ii) and, if applicable, 1.7.1(vii) shall name Mortgagee as an additional insured. Each policy of insurance required under this Section 1.7 shall provide that it may not be reduced, cancelled, terminated or modified in any manner that reduces the amount of coverage or discontinues the coverage of Mortgagee as loss payee or additional insured, as applicable, without at least thirty (30) days' prior written notice to Mortgagee and shall permit Mortgagee to pay any premium therefor within thirty (30) days after receipt of any notice stating that such premium has not been paid when due. All

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insurance policies required hereunder shall provide that all losses thereunder shall be payable notwithstanding any act or negligence of Mortgagor or its agents or employees which otherwise might have resulted in a forfeiture of all or a part of such insurance payments. The policy or policies of such insurance or certificates of insurance evidencing the required coverages, and all renewals or extensions thereof, shall be delivered to Mortgagee. Settlement of any claim under any of the insurance policies referred to in this Section 1.7, if such claim involves (in the reasonable judgment of Mortgagee) loss in excess of \$100,000 or more, shall require the prior written approval of Mortgagee, and Mortgagor shall use reasonable efforts to cause each such policy to contain a provision to such effect.

1.7.3 At least ten (10) days prior to the expiration of any insurance policy required by this Section 1.7, a policy or policies renewing or extending such expiring policy or renewal or extension certificates or other reasonable evidence of renewal or extension and that the applicable policies are in full force and effect shall be delivered to Mortgagee.

1.7.4 Mortgagor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those policies required to be maintained under this Section 1.7, unless Mortgagee is included thereon as a named insured and, if applicable, with loss payable to Mortgagee under an endorsement containing the provisions described in subsection 1.7.2. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance policy is obtained and shall promptly deliver to Mortgagee the policy or certificate evidencing such insurance.

1.7.5 Mortgagor shall, immediately upon receipt of any written notice of any failure by Mortgagor to pay any insurance premium in respect of any insurance policy required to be maintained under this Section 1.7, furnish a copy of such notice to Mortgagee.

1.7.6 In the event that the proceeds of any insurance claim are paid after Mortgagee has exercised its right to foreclose the Lien of this Mortgage, such proceeds shall be paid to Mortgagee to satisfy any deficiency remaining after such foreclosure. Mortgagee shall retain its interest in the policies of insurance required to be maintained pursuant to this Mortgage during any redemption period.

SECTION 1.8 Failure To Make Certain Payments. If Mortgagor shall fail to perform any of the covenants contained in this

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Mortgage, including, without limitation, Mortgagor's covenants to (i) pay the premiums in respect of all required insurance coverages, (ii) pay taxes and assessments, (iii) make repairs, (iv) discharge liens and encumbrances, or (v) pay or perform any obligations of Mortgagor under the Leases, Mortgagee may, but shall not be obligated to, make advances to perform such covenant on Mortgagor's behalf, and all sums so advanced shall be included in the Secured Obligations and, to the extent permitted by applicable law, shall be secured hereby. Mortgagor shall repay on demand all sums so advanced by Mortgagee on behalf of Mortgagor, with interest at the Default Rate from date of payment by Mortgagee to the date of reimbursement. Neither the provisions of this Section 1.8 nor any action taken by Mortgagee pursuant to the provisions of this Section 1.8 shall prevent any such failure to observe any covenant contained in this Mortgage (after the expiration of any applicable grace period) from constituting an Event of Default. Mortgagee shall not be bound to inquire into the validity of any tax, lien or imposition which Mortgagor fails to pay as and when required hereby and which Mortgagor does not contest in accordance with the terms hereof.

SECTION 1.9 Inspection. Mortgagor shall permit Mortgagee, by its agents, accountants, and attorneys, to visit and inspect the Premises at such reasonable times and upon reasonable notice as may be requested by Mortgagee.

SECTION 1.10 Mortgagor To Maintain Improvements. Mortgagor shall not commit or suffer any waste on the Premises or with respect to any Equipment or make any change in the use of the Premises or any Equipment. Mortgagor represents and warrants that (i) the Premises are served by all utilities required or necessary for the current use thereof, (ii) to the best of Mortgagor's knowledge, all streets necessary to serve the Premises are completed and serviceable and have been dedicated and accepted as such by the appropriate Governmental Authorities and (iii) Mortgagor has access to the Premises from public roads sufficient to allow Mortgagor and its tenants and invitees to conduct its and their businesses at the Premises in accordance with sound commercial practices. Mortgagor shall, at all times, maintain the Premises and Equipment in good, safe and insurable operating order, condition and repair and shall make all repairs, structural or nonstructural, when necessary. Mortgagor shall (a) not alter the occupancy or use of all or any part of the Premises without the prior written consent of Mortgagee, and (b) do all other acts which from the character or use of the Premises and Equipment may be necessary or appropriate to maintain and preserve their value. Mortgagor shall not remove, demolish or alter the design or structural character of any Improvement now or hereafter erected upon

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all or any part of the Premises, or permit any such removal, demolition or alteration, without the prior written consent of Mortgagee, except that items constituting Equipment may be removed if such removal is temporary and for the purpose of making repairs or such items are immediately replaced with similar items of Equipment having a value and utility for their intended purposes that is not less than the value and such utility of the Equipment so removed.

SECTION 1.11 Mortgageor's Obligations with Respect to Leases.

1.11.1 Subject to the provisions of Section 1.11.2 herein, Mortgageor will manage and operate the Mortgaged Property in a reasonably prudent manner and will not without the prior written consent of Mortgagee enter into any Lease of all or any part of the Premises

1.11.2 Mortgageor shall not:

(i) receive or collect, or permit the receipt or collection of, any rental or other payments under any Lease more than one month in advance of the respective period in respect of which they are to accrue, except that (a) in connection with the execution and delivery of any Lease or of any amendment to any Lease, rental payments thereunder may be collected and received in advance in an amount not in excess of one month's rent and/or a reasonable security deposit may be required thereunder and (b) Mortgageor may receive and collect escalation and other charges in accordance with the terms of each Lease;

(ii) assign, transfer or hypothecate (other than to Mortgagee hereunder) any rental or other payment under any Lease whether then due or to accrue in the future, the interest of Mortgageor as lessor under any Lease or the rents, issues, revenues, profits or other income of the Mortgaged Property;

(iii) enter into any Lease after the date hereof that does not contain terms to the effect as follows:

(a) such Lease and the rights of the tenant thereunder (including, without limitation, any options to purchase or rights of first offer or refusal) shall be subject and subordinate to the rights of Mortgagee under and the Lien of this Mortgage;

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(b) such Lease has been assigned as collateral security by Mortgagor as landlord thereunder to Mortgagee under this Mortgage;

(c) in the case of any foreclosure hereunder, the rights and remedies of the tenant in respect of any obligations of any successor landlord thereunder shall be limited to the equity interest of such successor landlord in the Premises and any successor landlord shall not (1) be liable for any act, omission or default of any prior landlord under the Lease or (2) be required to make or complete any tenant improvements or capital improvements or repair, restore, rebuild or replace the demised premises or any part thereof in the event of damage, casualty or condemnation or (3) be required to pay any amounts to tenant arising under the Lease prior to such successor landlord taking possession;

(d) the tenant's obligation to pay rent and any additional rent shall not be subject to any abatement, deduction, counterclaim or setoff as against any mortgagee or purchaser upon the foreclosure of any of the Premises or the giving or granting of a deed in lieu thereof by reason of a landlord default occurring prior to such foreclosure and such mortgagee or purchaser will not be bound by any advance payments of rent in excess of one month or any security deposits unless such security was actually received (or in the case of a letter of credit, was properly transferred in negotiable form);

(e) the tenant agrees to attend, at the option of Mortgagee or any purchaser of the Premises, upon a foreclosure of the Premises or the giving or granting of a deed in lieu thereof; and

(f) the tenant agrees to give notice to Mortgagee of any default by landlord under the Lease and Mortgagee shall have a reasonable time to cure, should Mortgagee so elect, any default of landlord prior to tenant exercising any rights of tenant to terminate or cancel such Lease.

(iv) enter into any amendment or modification of any Lease which would change the unexpired term thereof or decrease the amount of the rents or other amounts payable thereunder or impair the value or utility of the Mortgaged Property or the security provided by this Mortgage;

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(v) enter into any further lease or sublease of the property subject to any Lease without the prior written consent of Mortgagee, unless such Lease is not amended in any respect and the primary obligor under such Lease is not released in any respect from its responsibilities and liabilities under such Lease as a result of such lease or sublease;

(vi) terminate (whether by exercising any contractual right of Mortgagor to recapture leased space or otherwise) or permit the termination of any Lease or accept surrender of all or any portion of the space demised under any Lease prior to the end of the term thereof or accept assignment of any Lease to Mortgagor unless:

(a) the tenant under such Lease has not paid the equivalent of two months' rent and Mortgagor has made reasonable efforts to collect such rent; or

(b) Mortgagor shall deliver to Mortgagee an Officer's Certificate to the effect that Mortgagor has entered into a new Lease (or Leases) for the space covered by the terminated or assigned Lease with a term (or terms) which expire(s) no earlier than the date on which the terminated or assigned Lease was to expire (excluding renewal options), and with a tenant (or tenants) having a creditworthiness (as reasonably determined by Mortgagor) sufficient to pay the rent and other charges due under the new Lease (or Leases), and the tenant(s) shall have commenced paying rent, including all operating expenses and other amounts payable under the new Lease (or Leases) without any abatement or concession; or

(vii) waive, excuse, condone or in any manner discharge or release any tenants of or from the obligations of such tenants under their respective Leases or guarantors of tenants from obligations under any guarantees of the Leases except in the ordinary and prudent course of business with due regard for the security afforded Mortgagee thereby.

1.11.3 Mortgagor shall timely perform and observe all the terms, covenants and conditions required to be performed and observed by Mortgagor under each Lease and shall at all times do all things necessary to require performance by the lessee, franchisee, licensee or grantee under each Lease of all obligations, covenants and agreements by such party to be performed thereunder. Mortgagor shall promptly notify Mortgagee of the receipt of any notice from any lessee under any Lease claiming that Mortgagor is

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in default in the performance or observance of any of the terms, covenants or conditions thereof to be performed or observed by Mortgagor and will cause a copy of each such notice to be promptly delivered to Mortgagee.

SECTION 1.12 Transfer Restrictions. Except as provided in Section 1.11, Mortgagor may not, without the prior written consent of Mortgagee, further mortgage, encumber, hypothecate, sell, convey or assign all or any part of the Mortgaged Property or suffer any of the foregoing to occur by operation of law or otherwise. Notwithstanding the provisions of the foregoing sentence, so long as no Event of Default shall have occurred and be continuing, Mortgagor shall have the right to suffer, in respect of the Mortgaged Property, the Liens in respect of amounts payable or obligations to be performed by Mortgagor pursuant to subsections 1.5.1, 1.5.3 and 1.5.4; provided, however, that such amounts are not yet due and payable or are being contested in accordance with the provisions of subsection 1.5.5. Each of the Liens and other transfers permitted by this Section 1.12 shall in all respects be subject and subordinate in priority to the Lien and security interests created and evidenced hereby except to the extent the law or regulation creating or authorizing such Lien provides that such Lien must be superior to the Lien and security interest created and evidenced hereby.

SECTION 1.13 Destruction; Condemnation.

1.13.1 Destruction; Insurance Proceeds. If there shall occur any damage to, or loss or destruction of, the Improvements, Equipment, or any part of any thereof (each, a "Destruction"), Mortgagor shall promptly send to Mortgagee a notice setting forth the nature and extent of such Destruction. The proceeds of any insurance payable in respect of such Destruction are hereby assigned and shall be paid to Mortgagee. All such proceeds, together with any interest earned thereon, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction (the "Net Proceeds"), shall be applied in accordance with the provisions of subsections 1.13.3, 1.13.4 and 1.13.5.

1.13.2 Condemnation; Assignment of Award. If there shall occur any taking of the Mortgaged Property or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Mortgaged Property or any part thereof, by any governmental authority, civil or military (each, a "Taking"), Mortgagor shall promptly notify Mortgagee upon receiving notice of such Taking or commencement of

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proceedings therefor. Mortgagee may participate in any proceedings or negotiations which might result in any Taking, and Mortgagor shall deliver or cause to be delivered to Mortgagee all instruments requested by it to permit such participation. Mortgagee may be represented by counsel satisfactory to it at the reasonable expense of Mortgagor in connection with any such participation. Mortgagor shall pay all reasonable fees, costs and expenses incurred by Mortgagee in connection with any Taking and in seeking and obtaining any award or payment on account thereof. Any proceeds, award or payment in respect of any Taking are hereby assigned and shall be paid to Mortgagee. Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such proceeds, award or payment, together with any interest earned thereon, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking (the "Net Award"), shall be applied in accordance with the provisions of subsections 1.13.3, 1.13.4 and 1.13.5.

1.13.3 Restoration. So long as no Event of Default shall have occurred and be continuing, in the event there shall be a Net Award or Net Proceeds in an amount less than or equal to \$250,000, Mortgagor shall have the right, at Mortgagor's option, to apply such Net Award or Net Proceeds as Net Cash Proceeds in accordance with the provisions of Section 3.02(B)(a) of the Credit Agreement or to perform a restoration (each, a "Restoration") of the Premises and Equipment. In the event Mortgagor elects to perform a Restoration, Mortgagor shall give written notice (each, a "Restoration Election Notice") of such election to Mortgagee within 30 days after the date that Mortgagor receives notice of collection by Mortgagee of the applicable Net Proceeds or Net Award, as the case may be. In the event Mortgagee does not receive a Restoration Election Notice within such 30-day period, Mortgagee may apply any such Net Proceeds or Net Award held by Mortgagee as Net Cash Proceeds in accordance with the provisions of Section 3.02(B)(a) of the Credit Agreement or, at the option of Mortgagee, may continue to hold such Net Proceeds or Net Award as additional collateral to secure the performance by Mortgagor of the Secured Obligations. In the event Mortgagor elects to perform any Restoration contemplated by this subsection 1.13.3, Mortgagee shall release such Net Award or Net Proceeds to Mortgagor as soon as practicable following receipt of a Restoration Election Notice but in no event more than 15 days following such receipt. Mortgagor shall, within 15 days following the date of its receipt of any proceeds in respect of a Destruction or Taking, as the case may be, commence and diligently continue to perform the Restoration of that portion or portions of the Improvements and Equipment subject to such Destruction or affected by such Taking so that, upon the

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completion of the Restoration, the Premises and Equipment will be in substantially the same condition and shall be of at least equal value and utility for its intended purposes as the Premises and Equipment was immediately prior to such Destruction or Taking. Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Award or Net Proceeds is insufficient for such purpose.

1.13.4 Major Restoration. In the event there shall be a Net Award or Net Proceeds other than as described in subsection 1.13.3 Mortgagee shall have the option to apply such Net Award or Net Proceeds, as the case may be, as Net Cash Proceeds in accordance with the provisions of Section 3.02(B)(a) of the Credit Agreement or to require a Restoration of the Mortgaged Property. In the event a Restoration is to be performed under this subsection 1.13.4, Mortgagee shall not release any part of the Net Award or the Net Proceeds except in accordance with the provisions of subsection 1.13.5, and Mortgagor shall, prior to commencing any work to effect a Restoration of the Premises and Equipment, promptly (but in no event later than 90 days following any Destruction or Taking) furnish to Mortgagee:

(i) complete plans and specifications (the "Plans and Specifications") for the Restoration;

(ii) a certificate (an "Architect's Certificate") of an independent, reputable architect or engineer acceptable to Mortgagee and licensed in the state where the Premises is located (a) listing all permits and approvals required by law in connection with the Restoration and (b) stating (I) that all permits and approvals required by law to commence work in connection with the Restoration have been obtained, (II) that the Plans and Specifications have been reviewed and approved by the signatory thereto, (III) such signatory's estimate (an "Estimate") of the costs of completing the Restoration, and (IV) that upon completion of such Restoration in accordance with the Plans and Specifications, the value and utility of the Premises and the Equipment will be approximately equal to or greater than the value and utility thereof immediately prior to the Destruction or Taking relating to such Restoration; and

(iii) if the Estimate exceeds the Net Proceeds or Net Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit (a "Letter of Credit") or other irrevocable and unconditional commitment to provide funds (each, a "Commitment") for the payment of the excess cost of such Restoration, payable to or in favor of Mortgagee, as Collateral Agent, which bond, guaranty, Letter of Credit or Commitment (A) shall be

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signed by a surety or sureties or guarantor(s), as the case may be, acceptable to Mortgagee and, in the case of a Letter of Credit or Commitment, shall be provided by a bank or other financial institution having capital and surplus in excess of \$500 million as shown in its most recent available statement of financial condition and (B) shall be in an amount not less than the excess of the amount of the Estimate over the amount of the Net Award or Net Proceeds, as the case may be, then held by Mortgagee for application toward the cost of such Restoration.

Mortgagee shall have the right to review and approve the Plans and Specifications. Promptly upon any approval of the Plans and Specifications by Mortgagee, Mortgagor shall commence and diligently continue to perform the Restoration in accordance with such approved Plans and Specifications. Mortgagor shall so complete such Restoration with its own funds to the extent that the amount of any Net Award or Net Proceeds is insufficient for such purpose.

1.13.5 Restoration Advances Following Destruction or Taking of Mortgaged Property. In the event Mortgagor shall be required or permitted to perform a Restoration of the Premises and Equipment as provided in subsection 1.13.4, Mortgagee shall apply any Net Proceeds or the Net Award held by Mortgagee on account of the applicable Destruction or Taking to the payment of the cost of performing such Restoration and shall pay portions of the same, from time to time, to Mortgagor or, at Mortgagee's option, exercised from time to time, directly to the contractors, subcontractors, materialmen, laborers, engineers, architects, and other persons rendering services or material for such Restoration, subject to the following conditions:

(i) Each request for payment shall be made on at least 10 days' prior notice to Mortgagee and shall be accompanied by an Architect's Certificate stating (a) that all the Restoration work then completed has been done in compliance with the Plans and Specifications, as approved by Mortgagee, and in accordance with all provisions of law, (b) the sums requested are required to reimburse Mortgagor for payments by Mortgagor to, or are due to, the contractors, subcontractors, materialmen, laborers, engineers, architects, or other persons rendering services or materials for the Restoration, and that, when added to the sums, if any, previously paid out by Mortgagee, such sums do not exceed the cost of the Restoration to the date of such Architect's Certificate, (c) whether or not the Estimate continues to be accurate, and if not, what the entire cost of such Restoration is then estimated to be, and (d) that the amount of the Net Proceeds or Net Award, as the case may be, remaining after giving effect to such payment

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will be sufficient on completion of the Restoration to pay for the same in full (including, in detail, an estimate by trade of the remaining costs of completion);

(ii) Each request for payment shall be accompanied by an opinion of counsel to Mortgagor, which shall be independent counsel acceptable to Mortgagee, or a title insurance policy, binder or endorsement satisfactory to Mortgagee confirming that (a) all Liens (other than Prior Liens) covering that part of the Restoration previously paid for, if any, have been waived and (b) there has not been filed with respect to all or any part of the Premises any Lien (other than Prior Liens) which is not discharged of record and which could have priority over the Lien of this Mortgage in respect of any part of the Secured Obligations; and

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by an Architect's Certificate listing all certificates, permits, licenses, waivers, other documents, or any combination of the foregoing required by law in connection with or as a result of such Restoration and stating that all of the same have been obtained.

In the event that there shall be any surplus after application of the Net Award or the Net Proceeds to Restoration of the Improvements and the Equipment, such surplus shall be applied as Net Cash Proceeds in accordance with Section 3.02(B)(a) of the Credit Agreement or, at the option of Mortgagee, shall be held by Mortgagee as additional collateral to secure the performance by Mortgagor of the Secured Obligations.

SECTION 1.14 Alterations. Mortgagor shall not, without the prior written consent of Mortgagee, make any addition, modification or change (each, an "Alteration"), structural or nonstructural, to the Premises that costs more to effect than \$100,000. Whether or not Mortgagee has consented to the making of any Alteration, Mortgagor shall (i) complete each Alteration promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements and (ii) pay when due all claims for labor performed and materials furnished in connection with such Alteration, unless contested in accordance with the provisions of subsection 1.4.5.

SECTION 1.15 Hazardous Material.

1.15.1 Mortgagor represents and warrants that, except as included in the due diligence information made available or as otherwise disclosed to Mortgagee, (i) it has obtained all

permits, licenses and other authorizations which are required with respect to the ownership and operation of its business and the Mortgaged Property under any and all applicable Environmental Laws, (ii) unless and to the extent contested by Mortgagor in accordance with the provisions of subsection 1.5.5 hereof, it is in compliance with all terms and conditions of the required permits, licenses and authorizations, and is also in compliance with Environmental Laws, including, without limitation, all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws, (iii) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice of demand letter pending or threatened against it or any subsidiary under the Environmental Laws which could result in a material fine, penalty or other cost or expense, and (iv) there are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which Mortgagor reasonably expects may interfere with or prevent compliance with the Environmental Laws, or which Mortgagor reasonably expects may give rise to any common law or legal liability, including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any other Environmental Law or related common law theory or which otherwise form the basis of any claim, action, demand, suit, proceeding, hearing or notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Hazardous Materials which could result in a fine, penalty or other cost or expense.

1.15.2 Unless and to the extent contested by Mortgagor in accordance with the provisions of subsection 1.5.5 hereof and except as included in the due diligence information made available or otherwise disclosed to Mortgagee, Mortgagor shall (i) comply with any and all present and future Environmental Laws, (ii) not release, store, treat, handle, generate, discharge or dispose of any Hazardous Materials on, under or from the Mortgaged Property in violation of or in a manner that Mortgagor reasonably expects could result in any liability under any Environmental Law, and (iii) take all necessary steps to initiate and expeditiously complete all remedial, corrective and other action to eliminate any such effect. In the event Mortgagor fails to initiate within thirty (30) days after receipt of written notice from Mortgagee, and thereafter continue with due diligence, activities reasonably intended to satisfy the covenants in the preceding sentence, Mortgagee may, in addition to any other remedies set forth herein, as

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agent for and at Mortgagor's sole cost and expense, cause compliance with the covenants and Mortgagor shall provide to Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. The notice required by the preceding sentence shall identify the condition or conditions that do not comply with the covenants, along with the basis for alleging non-compliance with reasonable specificity (the "Non-Compliance Notice"). Any costs or expenses incurred by Mortgagee for such purpose shall be immediately due and payable by Mortgagor and shall bear interest at the Default Rate. Mortgagee shall have the right at any time that the Secured Obligations are outstanding but not more than once every year, at the sole cost and expense of Mortgagor, to conduct an environmental audit of the Mortgaged Property by such persons or firms appointed by Mortgagee, and Mortgagor shall cooperate in all respects in the conduct of such environmental audit, including, without limitation, by providing access to the Mortgaged Property and to all records relating thereto. To the extent that any environmental audit identifies conditions which do not satisfy the covenants of this subsection, Mortgagor agrees, within thirty (30) days after receipt of the Non-Compliance Notice, to initiate and thereafter continue with due diligence all reasonable steps to correct any failure to comply with such covenants. Mortgagor shall indemnify and hold Mortgagee and each Bank harmless from and against all loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees and disbursements and the allocated costs of staff counsel) that Mortgagee or such Bank may sustain by reason of the assertion against Mortgagee or such Bank by any party of any claim relating to such Hazardous Materials on, under or from the Mortgaged Property or actions taken with respect thereto as authorized hereunder. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment of this Mortgage.

SECTION 1.16 Asbestos. Mortgagor shall not install nor permit to be installed in or removed from the Mortgaged Property, friable asbestos or any asbestos-containing material (collectively, "ACM") except in compliance with all applicable Environmental Laws, and with respect to any ACM currently present in the Mortgaged Property, Mortgagor shall promptly either (i) remove any ACM which such Environmental Laws require to be removed, or (ii) otherwise comply with such Environmental Laws with respect to such ACM, all at Mortgagor's sole cost and expense. If Mortgagor fails to initiate within thirty (30) days after receipt of written notice from Mortgagee, and thereafter continue with due diligence, activities reasonably intended to satisfy the ACM covenants in the previous sentence, Mortgagee may, in addition to any other remedies set forth herein, take whatever steps it deems necessary or appropriate to cause compliance with the foregoing ACM covenants

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and Mortgagor shall provide to Mortgagee and its agents and employees access to the Mortgaged Property for such purpose. The notice required by the preceding sentence shall identify the condition or conditions that do not comply with the foregoing ACM covenants, along with the basis for alleging non-compliance with reasonable specificity. Any costs or expenses incurred by Mortgagee for such purpose shall be immediately due and payable by Mortgagor and bear interest at the Default Rate. Mortgagor shall indemnify and hold Mortgagee and each Bank harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and disbursements and the allocated costs of staff counsel) that Mortgagee or such Bank may sustain, as a result of the presence of any ACM and any removal thereof or compliance with all applicable Environmental Laws. The foregoing indemnification shall survive repayment of all Secured Obligations and any release or assignment of this Mortgage.

SECTION 1.17 Books and Records, Other Information.

1.17.1 Mortgagor shall keep proper books of record and account, in which full, true and correct entries shall be made of all dealings or transactions of or in relation to the Mortgaged Property and the business and affairs of the Mortgagor relating to the Mortgaged Property. Mortgagee and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Mortgagor relating to the operation of the Mortgaged Property.

1.17.2 Mortgagor shall, at any and all times, within a reasonable time after written request by Mortgagee, furnish or cause to be furnished to Mortgagee, in such manner and in such detail as may be reasonably requested by Mortgagee, additional information with respect to the Mortgaged Property.

SECTION 1.18 No Claims Against Mortgagee. Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Mortgagee in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien of this Mortgage.

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SECTION 1.19 Utility Services. Mortgagor shall pay, or cause to be paid, when due all charges for all public or private utility services, all public or private rail and highway services, all public or private communication services, all sprinkler systems, and all protective services, any other services of whatever kind or nature at any time rendered to or in connection with the Premises or any part thereof, shall comply in all material respects with all contracts relating to any such services, and shall do all other things required for the maintenance and continuance of all such services to the extent required to fulfill the obligations set forth in Section 1.10.

ARTICLE II

ASSIGNMENT OF LEASES; SECURITY AGREEMENT;
ASSIGNMENT AGREEMENT

SECTION 2.1 Assignment of Leases, Rents, Issues and Profits.

2.1.1 Mortgagor absolutely, presently and irrevocably assigns, transfers and sets over to Mortgagee, and grants to Mortgagee subject to the terms and conditions hereof, all Mortgagor's estate, right, title, interest, claim and demand as landlord to collect rent and other sums due under all existing Leases and any other Leases, including, without limitation, all extensions of the terms of the Leases (such assigned rights, "Mortgagor's Interest"), as follows:

(i) the immediate and continuing right to receive and collect Rents payable by all tenants or other parties pursuant to the Leases;

(ii) all claims, rights, powers, privileges and remedies of Mortgagor, whether provided for in any Lease or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of any tenant to perform or comply with any term of any Lease;

(iii) all rights to take all actions upon the happening of a default under any Lease as shall be permitted by such Lease or by law, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity; and

(iv) the full power and authority, in the name of Mortgagor or otherwise, to enforce, collect, receive and receipt for any and all of the foregoing and to do any and all other

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acts and things whatsoever which Mortgagor or any landlord is or may be entitled to do under the Leases.

2.1.2 Any Rents receivable by Mortgagee hereunder, after payment of all proper costs and charges, shall be applied to all amounts due and owing under and as provided in this Mortgage and the Credit Agreement. Mortgagee shall be accountable to Mortgagor only for Rents actually received by Mortgagee pursuant to this assignment. The collection of such Rents and the application thereof shall not cure or waive any Event or Default or waive, modify or affect notice of Event of Default or invalidate any act done pursuant to such notice.

2.1.3 So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a license to collect and apply the Rents and to enforce the obligations of tenants under the Leases. Immediately upon the occurrence and during the continuance of any Event of Default, the license granted in the immediately preceding sentence shall cease and terminate, with or, to the extent permitted by law, without any notice, action or proceeding or the intervention of a receiver appointed by a court. Upon such Event of Default and during the continuance thereof, Mortgagee may, to the fullest extent permitted by the Leases, (i) exercise any of Mortgagor's rights under the Leases, (ii) enforce the Leases, (iii) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all Rents or other payments that may then be or may thereafter become due, owing or payable with respect to the Leases, and (iv) generally, do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Leases, as fully as allowed or authorized by Mortgagor's Interest.

2.1.4 Upon the occurrence and during the continuance of an Event of Default, Mortgagor shall, at the direction of Mortgagee, further authorize and direct the tenant under each Lease to pay directly to, or as directed by, Mortgagee all Rents accruing or due under its Lease without proof to the tenant of the occurrence and continuance of such Event of Default. Mortgagor hereby authorizes the tenant under each Lease to rely upon and comply with any notice or demand from Mortgagee for payment of Rents to Mortgagee and Mortgagor shall have no claim against any tenant for Rents paid by such tenant to Mortgagee pursuant to such notice or demand.

2.1.5 Mortgagor at its sole cost and expense shall use commercially reasonable efforts to enforce the Leases in accordance with their terms. Neither this Mortgage nor any action or

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inaction on the part of Mortgagee shall release any tenant under any Lease, any guarantor of any Lease or Mortgagor from any of their respective obligations under the Leases or constitute an assumption of any such obligation on the part of Mortgagee. No action or failure to act on the part of Mortgagor shall adversely affect or limit the rights of Mortgagee under this Mortgage or, through this Mortgage, under the Leases.

2.1.6 All rights, powers and privileges of Mortgagee herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and Mortgagor shall not take any action under the Leases or otherwise which is inconsistent with this Mortgage or any of the terms hereof and any such action inconsistent herewith or therewith shall be void. Mortgagor shall, from time to time, upon request of Mortgagee, execute all instruments and further assurances and all supplemental instruments and take all such action as Mortgagee from time to time may reasonably request in order to perfect, preserve and protect the interests intended to be assigned to Mortgagee hereby.

2.1.7 Mortgagor shall not, unilaterally or by agreement, subordinate, amend, modify, extend, discharge, terminate, surrender, waive or otherwise change any term of any of the Leases in any manner which would violate this Mortgage. If the Leases shall be amended as permitted hereby, they shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto.

2.1.8 Nothing contained herein shall operate or be construed to (i) obligate Mortgagee to perform any of the terms, covenants or conditions contained in the Leases or otherwise to impose any obligation upon Mortgagee with respect to the Leases (including, without limitation, any obligation arising out of any covenant of quiet enjoyment contained in the Leases in the event that any tenant under a Lease shall have been joined as a party defendant in any action by which the estate of such tenant shall be terminated) or (ii) place upon Mortgagee any responsibility for the operation, control, care, management or repair of the Premises.

SECTION 2.2 Security Interest in Personal Property.

2.2.1 This Mortgage shall constitute a security agreement and shall create and evidence a security interest in and Lien upon all the Equipment and in all the other items of Mortgaged Property in which a security interest may be granted or a common law pledge created pursuant to the Uniform Commercial Code as in

effect in the state in which the Premises are located or under the common law in such state (collectively, "Personal Property").

2.2.2 Upon the occurrence of any Event of Default, in addition to the remedies set forth in Article III, Mortgagee shall have the power to sell the Personal Property in accordance with the Uniform Commercial Code as enacted in the state in which the Premises are located or under other applicable law. It shall not be necessary that any Personal Property offered be physically present at any such sale or constructively in the possession of Mortgagee or the person conducting the sale.

2.2.3 Upon the occurrence and during the continuance of any Event of Default, Mortgagee may sell the Personal Property or any part thereof at public or private sale with notice to Mortgagor as hereinafter provided. The proceeds of any such sale, after deducting all reasonable expenses of Mortgagee in taking, storing, repairing and selling the Personal Property (including, without limitation, reasonable attorneys' fees and legal expenses), shall be applied in the manner set forth in subsection 3.3.3. At any sale, public or private, of the Personal Property or any part thereof, Mortgagee may purchase any or all of the Personal Property offered at such sale.

2.2.4 Mortgagee shall give Mortgagor reasonable notice of any sale of any of the Personal Property pursuant to the provisions of this Section 2.2. Notwithstanding the provisions of Section 5.2, any such notice shall conclusively be deemed to be reasonable and effective if such notice is mailed at least five (5) days prior to any sale, by first class or certified mail, postage prepaid, to Mortgagor at its address determined in accordance with the provisions of Section 5.2.

ARTICLE III

EVENTS OF DEFAULT AND REMEDIES

SECTION 3.1 Events of Default. It shall be an Event of Default hereunder if there shall have occurred and be continuing an Event of Default under the Credit Agreement.

SECTION 3.2 Remedies in Case of an Event of Default. If any Event of Default shall have occurred and be continuing, Mortgagee may at its option, in addition to any other action permitted under this Mortgage or the Credit Agreement or by law, statute or in equity, take one or more of the following actions:

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3.2.1 by written notice to Mortgagor, declare the entire unpaid amount of the Secured Obligations to be due and payable immediately;

3.2.2 personally, or by its agents or attorneys, (i) enter into and upon and take possession of all or any part of the Premises together with the books, records and accounts of Mortgagor relating thereto and, exclude Mortgagor, its agents and servants wholly therefrom, (ii) use, operate, manage and control the Premises and the Equipment and conduct the business thereof, (iii) maintain and restore the Premises and the Equipment, (iv) make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as Mortgagee may deem advisable, (v) manage, lease and operate the Premises and carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise, or (vi) collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof. Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management except that any amounts so received by Mortgagee shall be applied as follows:

FIRST: to pay reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) of so entering upon, taking possession of, holding, operating and managing the Mortgaged Property or any part thereof, and any taxes, assessments or other charges which Mortgagee may consider necessary or desirable to pay, and any other amounts due to Mortgagee;

SECOND: without duplication of amounts applied pursuant to clause FIRST above, to pay all amounts of the Secured Obligations then due and owing, in accordance with the priority of payments set forth in the Credit Agreement; and

THIRD: the balance, if any, to the Person lawfully entitled to such amounts, if all conditions to the release of this Mortgage shall have been fulfilled, but if any such condition shall not have been fulfilled, to be held by Mortgagee and thereafter applied to any future payments required to be made in accordance with clauses FIRST and SECOND above.

3.2.3 with or without entry, personally or by its agents or attorneys, (i) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales in one or more parcels, in accordance with the

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provisions of Section 3.3, or (ii) institute and prosecute proceedings for the complete or partial foreclosure of the Lien and security interests created and evidenced hereby; or

3.2.4 take such steps to protect and enforce its rights whether by action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement in the Credit Agreement and the other Credit Documents, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

SECTION 3.3 Sale of Mortgaged Property if Event of Default Occurs; Proceeds of Sale.

3.3.1 If any Event of Default shall have occurred and be continuing, Mortgagee may institute an action to foreclose this Mortgage or take such other action as may be permitted and available to Mortgagee at law or in equity for the enforcement of the Credit Agreement and realization on the Mortgaged Property and proceeds thereon through power of sale or to final judgment and execution thereof for the Secured Obligations, and in furtherance thereof Mortgagee may sell the Mortgaged Property at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law or statute or in equity. Mortgagee may execute and deliver to the purchaser at such sale a conveyance of the Mortgaged Property in fee simple and an assignment or conveyance of all Mortgagor's Interest in the Leases and the Mortgaged Property, each of which conveyances and assignments shall contain recitals as to the Event of Default upon which the execution of the power of sale herein granted depends, and Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney in fact of Mortgagor to make any such recitals, sale, assignment and conveyance, and all of the acts of Mortgagee as such attorney in fact are hereby ratified and confirmed. Mortgagor agrees that such recitals shall be binding and conclusive upon Mortgagor and that any assignment or conveyance to be made by Mortgagee shall divest Mortgagor of all right, title, interest, equity and right of redemption, including any statutory redemption, in and to the Mortgaged Property. The power and agency hereby granted are coupled with an interest and are irrevocable by death or dissolution, or otherwise, and are in addition to any and all other remedies which Mortgagee may have hereunder, at law or in equity. So long as the Secured Obligations, or any part thereof, remain unpaid, Mortgagor agrees that possession of the Mortgaged Property by Mortgagor, or any person claiming under Mortgagor, shall be as

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tenant, and, in case of a sale under power or upon foreclosure as provided in this Mortgage, Mortgagor and any person in possession under Mortgagor, as to whose interest such sale was not made subject, shall, at the option of the purchaser at such sale, then become and be tenants holding over, and shall forthwith deliver possession to such purchaser, or be summarily dispossessed in accordance with the laws applicable to tenants holding over. In case of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels in such manner or order as Mortgagee in its sole discretion may elect. One or more exercises of powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or all amounts secured hereby are paid in full.

3.3.2 In the event of any sale made under or by virtue of this Article III, the entire principal of, and interest in respect of the Secured Obligations, if not previously due and payable, shall, at the option of Mortgagee, immediately become due and payable, anything in this Mortgage to the contrary notwithstanding.

3.3.3 The proceeds of any sale made under or by virtue of this Article III, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied as follows:

FIRST: to pay the costs and expenses incurred by Mortgagee in enforcing its remedies under this Mortgage;

SECOND: to pay the costs and expenses of the sale and of any receiver of the Mortgaged Property or any part thereof appointed pursuant to subsection 3.5.2;

THIRD: without duplication of the amounts applied pursuant to clauses FIRST and SECOND above, to pay all amounts of the Secured Obligations then due and owing in accordance with the priority of payments set forth in the Credit Agreement; and

FOURTH: the balance, if any, to the Person lawfully entitled thereto (including Mortgagor).

3.3.4 Mortgagee (on behalf of any Bank or on its own behalf) or any Bank or any of their respective Affiliates may bid for and acquire the Mortgaged Property or any part thereof at any

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sale made under or by virtue of this Article III and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the purchase price the unpaid amounts (whether or not then due) owing to Mortgagee, or such Bank in respect of the Secured Obligations, after deducting from the sales price the expense of the sale and the reasonable costs of the action or proceedings and any other sums that Mortgagee or such Bank is authorized to deduct under this Mortgage.

3.3.5 Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

3.3.6 If the Premises is comprised of more than one parcel of land, Mortgagee may take any of the actions authorized by this Section 3.3 in respect of any or a number of individual parcels.

SECTION 3.4 Additional Remedies in Case of an Event of Default.

3.4.1 Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure or absolute conveyance pursuant to, this Mortgage. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, Mortgagee shall be entitled to prove the whole amount of principal and interest and other payments, charges and costs due in respect of the Secured Obligations to the full amount thereof without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property; provided, however, that in no case shall Mortgagee receive a greater amount than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor.

3.4.2 Any recovery of any judgment by Mortgagee and any levy of any execution under any judgment upon the Mortgaged Property shall not affect in any manner or to any extent the Lien and

security interests created and evidenced hereby upon the Mortgaged Property or any part thereof, or any conveyances, powers, rights and remedies of Mortgagee hereunder, but such conveyances, powers, rights and remedies shall continue unimpaired as before.

3.4.3 Any moneys collected by Mortgagee under this Section 3.4 shall be applied in accordance with the provisions of subsection 3.3.3.

SECTION 3.5 Legal Proceedings After an Event of Default.

3.5.1 After the occurrence of any Event of Default and immediately upon the commencement of any action, suit or legal proceedings to obtain judgment for the Secured Obligations or any part thereof, or of any proceedings to foreclose the Lien and security interest created and evidenced hereby or otherwise enforce the provisions of this Mortgage or of any other proceedings in aid of the enforcement of this Mortgage, Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

3.5.2 Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall be entitled forthwith as a matter of right, concurrently or independently of any other right or remedy hereunder either before or after declaring the Secured Obligations or any part thereof to be due and payable, to the appointment of a receiver without giving notice to any party and without regard to the adequacy or inadequacy of any security for the Secured Obligations or the solvency or insolvency of any person or entity then legally or equitably liable for the Secured Obligations or any portion thereof. Mortgagor hereby consents to the appointment of such receiver. Notwithstanding the appointment of any receiver, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by or payable or deliverable under the terms of the Credit Agreement to Mortgagee.

3.5.3 Mortgagor shall not (i) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (ii) claim, take or insist on any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales of the Mortgaged Property which may be made pursuant to this Mortgage, or pursuant to any decree, judgment or

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order of any court of competent jurisdiction, or (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. To the extent permitted by applicable law, Mortgagor hereby expressly (i) waives all benefit or advantage of any such law or laws, including, without limitation, any statute of limitations applicable to this Mortgage, (ii) waives and Mortgagee by acceptance of this Mortgage waives any and all rights to trial by jury in any action or proceeding relating to the enforcement of this Mortgage, (iii) waives any objection which it may now or hereafter have to the laying of venue of any action, suit or proceeding brought in connection with this Mortgage and further waives and agrees not to plead that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum, and (iv) covenants not to hinder, delay or impede the execution of any power granted or delegated to Mortgagee by this Mortgage, but to suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SECTION 3.6 Remedies Not Exclusive. No remedy conferred upon or reserved to Mortgagee by this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Mortgage or now or hereafter existing at law or in equity. Any delay or omission of Mortgagee to exercise any right or power accruing on any Event of Default shall not impair any such right or power and shall not be construed to be a waiver of or acquiescence in any such Event of Default. Every power and remedy given by this Mortgage may be exercised from time to time concurrently or independently, when and as often as may be deemed expedient by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. If Mortgagee accepts any moneys required to be paid by Mortgagor under this Mortgage after the same become due, such acceptance shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums secured by this Mortgage or to declare an Event of Default with regard to subsequent defaults. If Mortgagee accepts any moneys required to be paid by Mortgagor under this Mortgage in an amount less than the sum then due, such acceptance shall be deemed an acceptance on account only and on the condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay the entire sum then due shall be and continue to be a default hereunder notwithstanding acceptance of such amount on account.

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ARTICLE IV

CERTAIN DEFINITIONS

The following terms shall have the following respective meanings:

"Cost of Construction" means the sum, so far as it relates to the reconstructing, renewing, restoring or replacing of the Improvements, of (i) obligations incurred or assumed by Mortgagor or undertaken by tenants pursuant to the terms of the Leases for labor, materials and other expenses and to contractors, builders and materialmen; (ii) the cost of contract bonds and of insurance of all kinds that may reasonably be deemed by Mortgagor to be desirable or necessary during the course of construction; (iii) the expenses incurred or assumed by Mortgagor for test borings, surveys, estimates, any Plans and Specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary for proper construction; (iv) ad valorem property taxes levied upon the Premises during performance of any Restoration; and (v) any costs or other charges in connection with obtaining title insurance and counsel opinions that may be required or necessary in connection with a Restoration.

"Governmental Authority" shall mean any federal, state, local or foreign court, agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever or any governmental or quasi-governmental unit, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Mortgagor or the Mortgaged Property.

ARTICLE V

MISCELLANEOUS

SECTION 5.1 Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The invalidity of any provision of this Mortgage in any one jurisdiction shall not affect or impair in any manner the validity of such provision in any other jurisdiction.

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SECTION 5.2 Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable courier delivery service, or by prepaid telex, TWX or telegram (with messenger delivery specified in the case of a telegram), or by telecopier, and shall be deemed to be given for purposes of this Mortgage when delivered in person, received by telecopy or telex or two (2) Business Days after depositing it in the United States mail, registered or certified with postage prepaid and properly addressed. Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this Section 5.2, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties at their respective addresses (or to their respective telex, TWX or telecopier numbers) indicated below:

If to Mortgagor:

ABC RAIL CORPORATION
200 South Michigan Avenue
Chicago, Illinois 60604-2402
Attention: Donald C. MacDonald
Telephone: (312) 322-0360
Telecopier: (312) 322-0397

If to Mortgagee:

BANQUE INDOSUEZ, NEW YORK BRANCH
1230 Avenue of the Americas
New York, New York 10020

Attention: R. Haynes Chidsey
Telephone: (212) 408-5600
Telecopier: (212) 408-5958

SECTION 5.3 Covenants To Run with the Land. All of the grants, covenants, terms, provisions and conditions in this Mortgage shall run with the Land and shall apply to, and bind the successors and assigns of Mortgagor. If there shall be more than one mortgagor, the covenants and warranties hereof shall be joint and several.

SECTION 5.4 Captions; Gender and Number. The captions and section headings of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof. All terms contained herein shall be construed whenever the context

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of this Mortgage so requires, so that the singular includes the plural and so that the masculine includes the feminine.

SECTION 5.5 Limitation on Interest Payable. It is the intention of the parties to conform strictly to the usury laws, whether state or federal, that are applicable to the transaction of which this Mortgage is a part. All agreements between Mortgagor and Mortgagee whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid by Mortgagor for the use, forbearance or detention of the money to be loaned under the Credit Agreement or any related document, or for the payment or performance of any covenant or obligation contained herein or in the Credit Agreement or any related document, exceed the maximum amount permissible under applicable federal or state usury laws. If under any circumstances whatsoever fulfillment of any such provision, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity. If under any circumstances Mortgagor shall have paid an amount deemed interest by applicable law which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing in respect of the Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and any other amounts due hereunder, the excess shall be refunded to Mortgagor. All sums paid or agreed to be paid for the use, forbearance or detention of the principal under any extension of credit by Mortgagee shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, prorated, allocated and spread from the date of this Mortgage until payment in full of the Secured Obligations so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof.

SECTION 5.6 Indemnification; Reimbursement. Mortgagor agrees to indemnify, pay and hold harmless Mortgagee and each of the Secured Parties and the officers, directors, employees, agents and affiliates of Mortgagee and each of the Secured Parties (collectively called the "Indemnitees") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial

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proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto), which may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Mortgage, any Interest Rate Agreement or any other Credit Document (including, without limitation, any misrepresentation by Mortgagor in this Mortgage, any Interest Rate Agreement or any other Credit Document) (the "indemnified liabilities"); provided that Mortgagor shall have no obligation to an Indemnitee hereunder with respect to indemnified liabilities if it has been determined by a final decision (after all appeals and the expiration of time to appeal) by a court of competent jurisdiction that such indemnified liability arose from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Mortgagor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them. The obligations of Mortgagor contained in this Section 5.6 shall survive the termination of this Mortgage and the discharge of Mortgagor's other obligations under this Agreement, any Interest Rate Agreement and the other Credit Documents. Any amount paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Mortgaged Property.

SECTION 5.7 Choice of Law. The terms and provisions of this Mortgage and the enforcement hereof shall be governed by and construed in accordance with the laws of the state in which the Premises are located (except where the laws or conflict of laws rules of such state would otherwise require).

SECTION 5.8 No Merger. The rights and estate created by this Mortgage shall not, under any circumstances, be held to have merged into any other estate or interest now owned or hereafter acquired by Mortgagee unless Mortgagee shall have consented to such merger in writing.

SECTION 5.9 Changes in Writing. This Mortgage may not be modified, amended, discharged or waived in whole or in part except by an instrument in writing executed in accordance with the Credit Agreement and signed by (i) Mortgagor, to the extent any modification, amendment, discharge or waiver is sought to be enforced against Mortgagor, and (ii) Mortgagee, to the extent any modification, amendment, discharge or waiver is sought to be enforced against Mortgagee.

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SECTION 5.10 No Credit for Payment of Taxes or Impositions. Mortgagor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and Mortgagor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any tax or other impositions on the Mortgaged Property or any part thereof.

SECTION 5.11 Stamp and Other Taxes. Subject to the provisions of subsection 1.5.5 relating to permitted contests, Mortgagor shall pay any United States documentary stamp taxes, with interest and fines and penalties, and any mortgage recording taxes, with interest and fines and penalties, that may hereafter be levied, imposed or assessed under or upon or by reason of this Mortgage or the Secured Obligations or any instrument or transaction affecting or relating to either thereof and in default thereof Mortgagee may advance the same and the amount so advanced shall be payable by Mortgagor to Mortgagee within ten (10) days after demand therefor, together with interest thereon at the Default Rate.

SECTION 5.12 Estoppel Certificates. Mortgagor shall, from time to time, upon thirty (30) days' prior written request of Mortgagee, execute, acknowledge and deliver to Mortgagee a certificate signed by an authorized officer or officers stating that this Mortgage, the Credit Agreement, each Interest Rate Agreement and the other Credit Documents are unmodified and in full force and effect (or, if there have been modifications, that this Mortgage, the Credit Agreement, such Interest Rate Agreement or such Credit Document, as applicable, is in full force and effect as modified and setting forth such modifications) and stating the date to which principal and interest have been paid on the Loans.

SECTION 5.13 Additional Security. Without notice to or consent of Mortgagor and without impairment of the Lien and rights created by this Mortgage, Mortgagee may accept (but Mortgagor shall not be obligated to furnish) from Mortgagor or from any other Person or Persons, additional security for the Secured Obligations. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Mortgagee from resorting, first, to such additional security, and, second, to the security created by this Mortgage without affecting Mortgagee's Lien and rights under this Mortgage.

SECTION 5.14 Release. The Mortgaged Property shall be released from the Lien of this Mortgage in accordance with the provisions of the Credit Agreement or at such time as all Loans and reimbursement obligations in respect of Letters of Credit

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outstanding from time to time have been paid in full (without regard to the obligations which survive the payment thereof) and the Commitments of the Banks to make any Loan or issue any Letter of Credit under the Credit Agreement shall have expired or been sooner terminated. Mortgagee, on the written request and at the expense of Mortgagor, will execute and deliver such proper instruments of release and satisfaction or assignment as may reasonably be requested to evidence such release or assignment, and any such instrument, when duly executed by Mortgagee and duly recorded by Mortgagor in the places where this Mortgage is recorded, shall conclusively evidence the release or assignment of this Mortgage.

SECTION 5.15 Certain Expenses of Mortgagee. If any action, suit or other proceeding affecting the Mortgaged Property or any part thereof be commenced, in which action, suit or proceeding Mortgagee is made a party or participates or in which the right to use the Mortgaged Property or any part thereof is threatened, or in which it becomes necessary in the judgment of Mortgagee to defend or uphold the Lien of this Mortgage (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Improvements with any Requirements of Law), then all amounts paid or incurred by Mortgagee for the expense of any such action, suit or other proceeding or to protect its rights therein (whether or not it is made or becomes a party thereto) or otherwise to enforce or defend the rights and Lien created by this Mortgage, shall be paid by Mortgagor upon demand together with interest at the Default Rate from the date of the payment or incurring thereof to the date of repayment, and any such amount and the interest thereon shall be a Lien on the Mortgaged Property, prior to any right, or right to, interest in, or claim upon the Mortgaged Property attaching or accruing subsequent to or otherwise subordinate to the Lien of this Mortgage, and the same shall be deemed to be secured hereby. All other amounts paid, advanced or incurred by Mortgagee in order to secure and protect the Lien of this Mortgage or other security provided hereunder shall be a like Lien on the Mortgaged Property and be deemed to be secured hereby.

SECTION 5.16 Expenses of Collection. In the event this Mortgage or any other instrument evidencing the Secured Obligations is placed in the hands of counsel for collection of any amount payable hereunder or thereunder or for the enforcement of any of the provisions hereof or thereof, Mortgagor agrees to pay all reasonable costs associated therewith incurred by Mortgagee, either with or without the institution of an action, suit or other proceeding, in addition to all costs, disbursements and allowances provided by law, all such costs to be paid upon demand, together with interest thereon at the Default Rate from the date of notice

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or incurring thereof to the date of repayment, and the same shall be deemed to be secured hereby.

SECTION 5.17 Business Days. In the event any time period or any date provided in this Mortgage ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 5.18 Relationship. The relationship of Mortgagee to Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagor and mortgagee and nothing contained in the Credit Agreement, this Mortgage, any Interest Rate Agreement or any other document or instrument now existing and delivered in connection therewith or otherwise in connection with the Secured Obligations is intended to create, or shall in any event or under any circumstance be construed as creating a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between Mortgagee and Mortgagor other than as lender and borrower and mortgagor and mortgagee.

SECTION 5.19 Concerning Mortgagee.

5.19.1 Mortgagee shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Mortgage and its duties hereunder, upon advice of counsel selected by it.

5.19.2 With respect to any of its rights and obligations as a Bank, Mortgagee shall have and may exercise the same rights and powers hereunder. The term "Banks," "Bank" or any similar terms shall, unless the context clearly otherwise indicates, include Mortgagee in its individual capacity as a Bank. Mortgagee may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with Mortgagor or any entity related to or affiliated with Mortgagor to the same extent as if Mortgagee were not acting as collateral agent.

5.19.3 Mortgagor shall recognize as the beneficiary under this instrument any party who has succeeded to the interest of Mortgagee pursuant to the terms of the Credit Agreement.

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5.19.4 If any item of Mortgaged Property also constitutes collateral granted to Mortgagee under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions of this Mortgage and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, Mortgagee, in its sole discretion, shall select which provision or provisions shall control.

5.19.5 Mortgagee may resign from the performance of all its functions and duties hereunder at any time in accordance with the provisions of the Credit Agreement. Such resignation shall take effect upon the appointment of a successor Mortgagee pursuant to the provisions of the Credit Agreement.

SECTION 5.20 Future Advances. This Mortgage may secure future advances. The maximum aggregate amount of all advances of principal under the Credit Agreement that may be outstanding hereunder at any time is \$45,000,000.

SECTION 5.21 Mortgagee's Right To Sever Indebtedness.

5.21.1 Mortgagor acknowledges that (a) the Mortgaged Property does not constitute the sole source of security for the payment and performance of the Secured Obligations and that the Secured Obligations are also secured by property of Mortgagor in other jurisdictions (all such property, collectively, the "Collateral"), (b) the number of such jurisdictions and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a separate credit agreement or interest rate agreement and (c) Mortgagor intends that Mortgagee have the same rights with respect to the Mortgaged Property, in foreclosure or otherwise, that Mortgagee would have had if each item of Collateral had been secured, mortgaged or pledged pursuant to a separate credit agreement or interest rate agreement, mortgage or security document. In furtherance of such intent, Mortgagor agrees that Mortgagee may at any time by notice (an "Allocation Notice") to Mortgagor allocate a portion (the "Allocated Indebtedness") of the Secured Obligations to the Mortgaged Property and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Mortgaged Property, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate loan obligation of Mortgagor unrelated to the other transactions contemplated by the Credit Agreement, any Interest Rate Agreement

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or any other Credit Document or any document related to either thereof. To the extent that the proceeds on any foreclosure of the Mortgaged Property shall exceed the Allocated Indebtedness, such proceeds shall belong to Mortgagor and shall not be available hereunder to satisfy any Secured Obligations of Mortgagor other than the Allocated Indebtedness. In any action or proceeding to foreclose the Lien of this Mortgage or in connection with any power of sale foreclosure or other remedy exercised under this Mortgage commenced after the giving by Mortgagee of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and Mortgagor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding.

5.21.2 Mortgagor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that foreclosure of the Lien of this Mortgage or other remedy exercised under this Mortgage constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable a deficiency judgment or any subsequent remedy because Mortgagee elected to proceed with a power of sale foreclosure or such other remedy or because of any failure by Mortgagee to comply with laws that prescribe conditions to the entitlement to a deficiency judgment. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that Mortgagee is not entitled to a deficiency judgment, Mortgagor shall not (a) introduce in any other jurisdiction such judgment as a defense to enforcement against Mortgagor of any remedy in the Credit Agreement, any Interest Rate Agreement or any other Credit Document or (b) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered.

5.21.3 In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 5.21, including, without limitation, any amendment to this Mortgage, any substitute promissory note or affidavit or certificate of any kind, Mortgagee may execute, deliver or record such instrument as the attorney-in-fact of Mortgagor. Such power of attorney is coupled with an interest and is irrevocable.

SECTION 5.22 Transfer Act. Mortgagor represents and warrants to Mortgagee that the transaction contemplated in this Mortgage is subject to and within the scope of the Illinois Responsible Property Transfer Act of 1988 (765 ILCS Act 90) (the "Act"). Pursuant to subsection 4(b) of the Act, Mortgagor and

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Mortgagee hereby waive the time periods specified in subsection 4(a) of the Act, and the parties hereto acknowledge that they are each aware of the purpose and intent of the disclosure document required under the Act.

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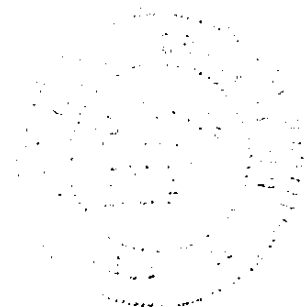
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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered under seal the day and year first above written.

ABC RAIL CORPORATION,
Mortgagor

By: 
Name: D. CHISHOLM MACDONALD
Title: CHIEF FINANCIAL OFFICER

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1316 Washington Street
Chicago Heights, Illinois

Schedule A

Lots 38, 39, 40, 41 and 42 in Block 1 in Subdivision of that portion of Lots 1 and 3 in Block 240 in Chicago Heights lying South of a line drawn 33 feet North of and parallel to the East and West center line of the South 1/2 of the Northwest 1/4 of Section 21, Township 35 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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Report of the Board of
County Commissioners

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1. Taxes for the year(s) 1993 which are not yet payable.
2. Instrument contained in Deed recorded January 16, 1917 as Document Number 6031835.
3. Instrument contained in Deed recorded September 14, 1917 as Document Number 6191443.
4. Encroachment by concrete wall of the adjoining property on to southeasterly corner of the subject premises, as disclosed by a survey.
5. Concrete pad and manhole located on southeasterly corner of Lot 41 of the subject premises, as disclosed by a survey.
6. Encroachment of a concrete walk located on the land herein onto public alley northwest and adjoining as disclosed by survey made by Giovanni Postacchini dated September 18, 1993 Project No. 93-10-12.
7. Note for Information: Environmental Disclosure Document for Transfer of Real Property recorded _____, 1993 as Document No. _____.

Prior Liens

Schedule B

1316 Washington Street
Chicago Heights, IL

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