

UNOFFICIAL COPY

96387735

. DEPT-01 RECORDING \$93.00
. T50012 TRAN 0708 05/22/96 10:30:00
. 47442 ÷ ER *-96-387735
. COOK COUNTY RECORDER

7602113 D1 944
MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING

93.00
(Illinois)
#6
(I.A.10)

Prepared by and after recording, please return to:

Helen D. Shapiro, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601

BOX 333-CT1

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TABLE OF CONTENTS

	Page
RECITALS	1
CONVEYANCE	3
COVENANTS	5
ARTICLE I WARRANTIES, REPRESENTATIONS AND COVENANTS OF MORTGAGOR	6
SECTION 1.1 Payment of Loans	6
SECTION 1.2 Good Title	6
SECTION 1.3 Further Documentation to Assure Lien; Fees and Expenses	6
SECTION 1.4 Payment of Taxes, Insurance Premiums, Assessments; Compliance with Law and Insurance Requirements	7
SECTION 1.5 Payment of Certain Taxes	10
SECTION 1.6 Required Insurance Policies	10
SECTION 1.7 Failure to Make Certain Payments	11
SECTION 1.8 Inspection	12
SECTION 1.9 Mortgagor to Maintain Improvements	12
SECTION 1.10 Mortgagor's Obligations with Respect to Leases	12
SECTION 1.11 Transfer Restrictions	14
SECTION 1.12 Destruction; Condemnation	14
SECTION 1.13 Restoration	15
SECTION 1.14 Operating Agreements	18
SECTION 1.15 Alterations	18
SECTION 1.16 Indemnity	18
ARTICLE II ASSIGNMENT OF RENTS; SECURITY AGREEMENT	18
SECTION 2.1 Assignment of Leases, Rents, Issues and Profits	18
SECTION 2.2 Security Interest in Personal Property	19
ARTICLE III EVENTS OF DEFAULT AND REMEDIES	21
SECTION 3.1 Events of Default	21
SECTION 3.2 Remedies in Case of an Event of Default	21
SECTION 3.3 Sale of Mortgaged Property if Event of Default Occurs; Proceeds of Sale	23
SECTION 3.4 Mortgagee's Additional Remedies in Case of an Event of Default	25
SECTION 3.5 Legal Proceedings after an Event of Default	25
SECTION 3.6 Remedies Not Exclusive	26
ARTICLE IV MISCELLANEOUS	27
SECTION 4.1 Severability	27
SECTION 4.2 Notices	27

96387735

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SECTION 4.3	Covenants to Run with the Mortgaged Property	28
SECTION 4.4	Captions; Gender and Number	28
SECTION 4.5	Limitation on Interest Payable	28
SECTION 4.6	Indemnification; Reimbursement	29
SECTION 4.7	Governing Law	29
SECTION 4.8	No Merger	30
SECTION 4.9	Counterparts	30
SECTION 4.10	Changes in Writing	30
SECTION 4.11	Riders	30
SECTION 4.12	Business Loans	30
SECTION 4.13	Future Advances	30
SECTION 4.14	Maximum Secured Indebtedness	31

Property of Cook County Clerk's Office

96387735

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(Illinois)

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("Mortgage"), dated as of May 17, 1996, made by JOHN SEXTON & CO., a Delaware corporation ("Mortgagor"), having its principal place of business at 1050 Warrenville Road, Lisle, Illinois 60532, in favor of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association, in its capacity as administrative agent for the "Lenders" (as such term is defined in that certain Credit Agreement (as hereinafter defined) ["Mortgagee"]), having an office at 231 S. LaSalle Street, Chicago, Illinois 60697.

R E C I T A L S:

1. Mortgagor is the fee simple owner: (a) of the real property described in Schedule A hereto; (b) of the landlord's interests in the Leases (as herein defined); and (c) of the Improvements and Personal Property (each as hereinafter defined).

2. Rykoff-Sexton, Inc., a Delaware corporation ("Parent"), Mortgagee, the Lenders, and The Chase Manhattan Bank, N.A., a national banking association, as documentation agent, are parties to that certain Credit Agreement dated of even date herewith (said Credit Agreement together with any and all renewals, amendments, modifications, supplements, restatements, extensions for any period, increases or rearrangements thereof being referred to as the "Credit Agreement"), pursuant to which the Lenders have made and may in the future make term and revolving loans and advances and other financial accommodations to Parent as set forth therein (collectively, "Loans", each, a "Loan") in an aggregate principal amount, at any one time outstanding, not to exceed Four Hundred Eighty-Five Million Dollars (\$485,000,000.00) exclusive of interest accrued thereon and other amounts owing pursuant to the terms and conditions set forth in the Credit Agreement.

3. The Loans are in the form of: (a) term loans ("Term Loans") in the aggregate principal amount of Three Hundred Thirty Five Million and 00/100 Dollars (\$335,000,000.00), consisting of: (i) term loans in the aggregate principal amount of One Hundred Fifty Million and 00/100 Dollars (the "Tranche A Term Loans"); (ii) term loans in the aggregate principal amount of One Hundred Twenty Five Million and 00/100 Dollars (the "Tranche B Term Loans"); and (iii) term loans in the aggregate principal amount of Sixty Million and 00/100 Dollars (the "Tranche C Term Loans"), said Term Loans evidenced by "Term Notes" (as such term is defined in the Credit Agreement); and (b) revolving loans ("Revolving Loans"), swing line loans ("Swing Line Loans") and letter of credit obligations ("L/C Obligations") in an aggregate principal amount not to exceed One Hundred Fifty Million Dollars (\$150,000,000.00) at any time

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

outstanding, under which advances, payments and readvances may be made from time to time, evidenced by "Revolving Notes", "Swing Line Notes" and "Letters of Credit" (as such terms are defined in the Credit Agreement) (the Term Notes, Revolving Notes and Swing Line Notes are hereinafter collectively called "Notes"). Each of the Notes bears interest as therein provided. The final maturities of the Notes are at various dates on or before April 30, 2003.

4. Mortgagor, in its capacity as a "Subsidiary" (as such term is defined in the Credit Agreement), certain of the other "Subsidiaries" (as such term is defined in the Credit Agreement) and Mortgagee have of even date herewith entered into that certain: (i) Subsidiaries Guaranty Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Subsidiaries Guaranty Agreement"), pursuant to which Mortgagor and the other Subsidiaries from time to time signatories to the Subsidiaries Guaranty Agreement have guaranteed the "Obligations" (as such term is defined in the Credit Agreement) of the Parent, subject to the terms, conditions and limitations forth in said Subsidiaries Guaranty Agreement; (ii) Subsidiaries Pledge Agreement; and (iii) Subsidiaries Security Agreement; and, as more fully set forth in the Subsidiaries Guaranty Agreement, Mortgagor and each of the other Subsidiaries signatory from time to time to the Subsidiaries Guaranty Agreement will derive substantial and direct benefits (which benefits are hereby acknowledged by the Mortgagor) from the Loans and other benefits to be provided to the Parent under the Credit Agreement.

5. This Mortgage is being given by Mortgagor to secure (a) the payment by the Parent of all "Obligations", as defined in the Credit Agreement pursuant to the terms of the Credit Agreement, as the same may be amended, restated, modified, supplemented or extended from time to time; (b) performance of all terms, covenants, conditions, agreements and liabilities contained in the Subsidiaries Guaranty Agreement; (c) the payment of any further or subsequent advances made to preserve the lien of this Mortgage; and (d) performance of all terms, covenants, conditions, agreements and liabilities contained in this Mortgage and the other Loan Documents to which Mortgagor is a party. All of the foregoing payment and performance obligations in clauses (a), (b), (c) and (d) of the preceding sentence are hereinafter collectively called the "Liabilities", provided, however, that, notwithstanding any provision herein contained to the contrary, liability hereunder shall be limited to an amount not to exceed the amount which could then be recovered by Mortgagee without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law (the "Mortgagor's Liabilities Limitations").

6. The terms of the Credit Agreement are incorporated by reference herein as though set forth in full detail. In the

of record

95387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

event of any conflict between the terms and provisions of this Mortgage and the Credit Agreement, the terms and provisions of the Credit Agreement shall govern and control. Except as otherwise provided herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Credit Agreement.

7. This Mortgage is given in part to secure the Revolving Loans, Swing Line Loans and L/C Obligations, as well as the Term Loans, and secures not only the Liabilities existing on the date hereof (subject to the Mortgagor's Liabilities Limitations), but all such future advances, whether such advances are obligatory or to be made at the option of the Parent and the Lenders, or otherwise as are made from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage (subject, in all events, to the Mortgagor's Liabilities Limitations), and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage as to third persons without actual notice thereof shall be valid as to all Liabilities and future advances from the time this Mortgage is filed for record in the Office of the Recorder of Deeds (the "Recorder") of the County set forth on Exhibit A attached hereto.

CONVEYANCE:

Mortgagor, to secure the payment of the Liabilities to the Mortgagee and the performance of the covenants and agreements herein contained and in consideration of the further sum of One Dollar (\$1.00) unto Mortgagor in hand well and truly paid by the Mortgagee at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, and intending to be legally and firmly bound hereby, grants, bargains, sells, assigns, aliens, releases, transfers, remises, conveys and mortgages unto the Mortgagee and its successors and assigns forever, and hereby represents and warrants to the Mortgagee and grants to the Mortgagee and its successors and assigns forever a continuing security interest in and to all of the following rights, interests, claims and property (collectively, "Mortgaged Property"), whether now owned or held or hereafter acquired:

A. The fee simple estate in all of Mortgagor's interest in the land legally described in Schedule A, together with any and all easements, rights-of-way, sidewalks, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, 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, and reversions, remainder and remainders, income, rents, issues, revenues and profits thereof (collectively, the "Land");

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

B. The fee simple estate in and to all buildings, structures and other improvements and any and all alterations or additions thereto now or hereafter located or erected on the Land, including, without limitation, attachments, walks, ways, parking facilities and light stanchions (collectively, the "Improvements") (Improvements together with the Land, collectively the "Premises");

C. To the extent assignable, any and all permits, certificates, approvals and authorizations however characterized, issued or in any way furnished, whether necessary or not for the operation and use of the Premises, including, without limitation, building permits, certificates of occupancy, environmental certificates, licenses or permits, certificates of operation, warranties and guarantees;

D. 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 Improvements or the Land or used primarily, from time to time, in connection with the use and enjoyment of the Premises or the maintenance or preservation thereof, together with all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, freezers, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Section 2.2 hereof (collectively, the "Personal Property");

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

E. The Mortgagor's leasehold estate, right, title and interest in all leases of space, licenses, occupancy or concession agreements (collectively, "Leases," each, a "Lease") now existing or hereafter entered into relating to the Land or the Improvements and any and all amendments, modifications, supplements and renewals of Leases, whether now in effect or hereafter coming into effect, including, without limitation, all rents, additional rents, cash or securities deposited thereunder to secure performance of the lessee's obligations thereunder, revenues, earnings, 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;

F. All of the estate, right, title and interest of Mortgagor in and to (i) all judgments, insurance proceeds, awards of damages and settlements resulting from condemnation proceedings or the taking of the Premises, or any part thereof, under the power of eminent domain or for any damage (whether caused by such taking or otherwise) to the Premises, or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the Premises or any part thereof; and (except as otherwise provided herein or in the Credit Agreement) Mortgagee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor, and to apply the same as provided herein and in the Credit Agreement, (ii) all contract rights, general intangibles, actions and rights in action relating to the Premises including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Premises and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Premises. The rights and interests described in this paragraph shall hereinafter be called the "Intangibles"; and

G. 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 awards with respect thereto, including interest thereon and any and all awards or payments and interest thereon;

TO HAVE AND TO HOLD the Mortgaged Property unto itself; provided, however, that if there shall cause to be paid in full all amounts secured by this Mortgage, the Mortgagee shall release the Mortgaged Property from the Lien (as hereinafter defined) of this Mortgage.

C O V E N A N T S:

Mortgagor hereby covenants and agrees as follows:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE I

WARRANTIES, REPRESENTATIONS AND COVENANTS OF MORTGAGOR

SECTION 1.1 Payment of Loans. Mortgagor shall duly and punctually pay or cause to be paid in the manner specified in the Credit Agreement, the principal, interest, and all other sums due or to become due or required to be paid under or in respect of any Liabilities.

SECTION 1.2 Good Title. Mortgagor represents, warrants and covenants that: (i) on and as of the date hereof, it has a good and valid fee simple interest in the Premises and good title to the Personal Property subject to no mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof, or any subordination arrangement in favor of any party other than Mortgagor (collectively, "Liens"; each, a "Lien"), except for: (i) those liens and encumbrances listed as exceptions to title on Schedule B of the ALTA Loan Policy issued by Chicago Title Insurance Company in favor of the Mortgagee insuring this Mortgage (the "Permitted Exceptions"); and (ii) those certain Permitted Liens (as such term is defined in Section 7.01 of the Credit Agreement to the extent the Permitted Liens encumber any portion of the Mortgaged Property (each of the matters set forth in subclauses (i) and (ii) of this sentence collectively, the "Prior Liens"), this Mortgage creates and constitutes a valid and enforceable first mortgage lien on and first security interest in the Mortgaged Property, subject only to Prior Liens (but not to extensions, amendments, supplements or replacements of Prior Liens unless consented to by Mortgagee) and Mortgagor does now and will forever warrant and defend to Mortgagee such title and the validity and priority of the Lien hereby created and evidenced against the lawful claims of all persons and parties whomsoever.

SECTION 1.3 Further Documentation to Assure Lien: Fees and Expenses. (a) 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, consents and assurances as the Mortgagee shall from time to time require, which are necessary in the judgment of the Mortgagee from time to time to assure, perfect, convey, assign, 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 to facilitate the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage.

(b) Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Personal Property, any Uniform Commercial Code financing statements and continuation statements, and any instrument of further assurance required by Mortgagee to be filed, registered or recorded pursuant to this Mortgage.

SECTION 1.4 Payment of Taxes, Insurance Premiums, Assessments; Compliance with Law and Insurance Requirements.

(a) Unless contested in accordance with Section 1.4(e), Mortgagor shall pay and discharge, 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 revenues, rents, issues, income and profits of the Mortgaged Property, including, without limitation, those arising in respect of the occupancy, use or possession thereof.

(b) Upon the occurrence of an Event of Default, at the option of Mortgagee, to be exercised by notice to Mortgagor, Mortgagor shall deposit with Mortgagee, on the first day of each month, an amount estimated by Mortgagee to be equal to one-twelfth (1/12th) of the annual taxes, assessments and other items required to be discharged by Mortgagor under Section 1.4(a). 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 order or priority as Mortgagee shall determine, on or before the respective dates on which the same or any part thereof would become delinquent. Nothing contained in this Section 1.4 shall affect any right or remedy of Mortgagee under any provision of this Mortgage or under any provision of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Default Rate (as defined below), to the other amounts outstanding in respect of any Loan or Obligation. Nothing contained in this Section 1.4 shall 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 Section 1.4(a).

(c) Unless contested in accordance with Section 1.4(e), Mortgagor shall timely pay all lawful claims and demands of mechanics, materialmen, laborers, government agencies administering worker's compensation insurance, old age pensions, 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 revenues, rents, issues, income and profits arising therefrom.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(d) Mortgagor has obtained and shall take all action necessary to maintain in force and effect all certificates, permits, consents, approvals, licenses, franchises or other instruments including those required by the Credit Agreement (collectively, the "Permits") required by any federal, state, municipal or local government or quasi-governmental agency or authority to operate or use and occupy the Premises or any lease held by Mortgagor. Unless contested in accordance with Section 1.4(e), Mortgagor shall comply promptly with all requirements set forth in any of the Permits and all requirements of any law, ordinance, rule, regulation or requirement of any federal, state, municipal or local government or quasi-governmental agency or 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 restriction imposed upon the Mortgaged Property by any duly recorded deed of restriction, declaration, covenant running with the land or otherwise, now or hereafter in force.

(e) Mortgagor may at its own expense contest the amount or applicability of any of the obligations described in Sections 1.4(a), 1.4(c), and 1.4(d) by appropriate legal proceedings, prosecution of which operates to prevent the collection and enforcement thereof or the sale or forfeiture or demolition of the Mortgaged Property or any part thereof to satisfy the same; provided, however, (i) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any such obligations have been increased by any interest, penalties, or costs; (ii) Mortgagor has obtained a title insurance endorsement over such contested obligations insuring the Mortgagee against loss or damage by reason of the existence of such contested obligations, or has obtained a surety bond in favor of Mortgagee, or Mortgagor has deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee in its reasonable discretion that is sufficient in Mortgagee's judgment to pay in full such contested obligations (or to bring the Mortgaged Property in compliance with the obligations under Section 1.4(d)) and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested obligations, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable; (iii) Mortgagor shall not be exposed to any criminal or civil liability by virtue of such contest and such contest shall, in the judgment of the Mortgagee, be reasonable; (iv) Mortgagor shall diligently prosecute the contest of such contested obligations by appropriate legal proceedings and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall, effective upon the fifth (5th) day after Mortgagor's receipt of Mortgagee's notice(s), invoice(s) or bill(s) to Mortgagor of any such expenses, constitute so much additional

96387735

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Indebtedness bearing interest at a rate per annum equal to the lesser of (A) the then applicable Base Rate under the Credit Agreement plus two percent (2%) or (B) the highest rate permitted by applicable law (the "Default Rate") until paid, and payable upon demand); and (v) in the event Mortgagor fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such contested obligations, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such contested obligations, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, deposit with or, in the event Mortgagee has applied funds on deposit and that such funds were insufficient, pay Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full. Mortgagee may, but shall not be required to, pay such deficiency in said deposit for contested obligations and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such contested obligations; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness and, in the event Mortgagor has not reimbursed Mortgagee within five (5) days of receipt of written notice of such expenditure by Mortgagee, all such amounts shall bear interest from the date of Mortgagor's receipt of Mortgagee's aforesaid written notice at the Default Rate until paid. In any event, Mortgagor shall cause the contested obligations to be fully satisfied and discharged immediately upon final determination of the contest and prior to the time that any sale, forfeiture or demolition of all or any part of the Mortgaged Property could result.

(f) Mortgagor shall not in its use and occupancy of the Premises (including, without limitation, in the making of any Alterations (as hereinafter defined)) take any action that would be the basis for termination, revocation or denial of any insurance coverage required to be maintained under this Mortgage or that would be the basis for a successful defense to any claim under any insurance policy maintained in respect of the Premises

(g) Mortgagor shall, immediately upon receipt of any written notice regarding any failure by Mortgagor to pay or discharge any of the obligations described in Section 1.4.(a), 1.4(c), 1.4(d) or 1.4(f), furnish a copy of such notice to Mortgagee.

(h) In addition to any other debt or obligation secured hereby, this Mortgage shall also secure unpaid balances of advances made by the holder hereof after this Mortgage is delivered to the Recorder for record for the payment of taxes, assessments,

96387733

96387733

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

insurance premiums or costs incurred for the protection of the Mortgaged Property.

SECTION 1.5 Payment of Certain Taxes. If the United States, the state in which the Land is located or any political subdivision thereof shall levy, assess or charge any tax, imposition or assessment upon this Mortgage, the Credit Agreement, the Obligations, or any other Loan Document or the interest of the Mortgagee in the Mortgaged Property, other than income taxes levied or assessed upon the Mortgagee, Mortgagor shall pay all such taxes, assessments and impositions to, for, or on account of the Mortgagee when due and payable and shall furnish to the Mortgagee proof of such payment satisfactory to Mortgagee.

SECTION 1.6 Required Insurance Policies.

(a) Mortgagor shall keep and maintain such insurance coverages in respect of the Improvements and Personal Property as required by the Credit Agreement, and in addition the following:

(i) Fire, theft and physical hazard insurance on an "all risk" basis covering fire and extended coverage in an amount equal to the full replacement cost of the Improvements and Personal Property. "Full replacement cost" means the cost to replace the Improvements and the Personal Property, exclusive of architectural fees, excavation, foundation and footings, as determined from time to time (but not less frequently than once each eighteen (18) months) by a person reasonably satisfactory to the Mortgagee.

(ii) Liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Premises with such policy limits as are required in the Credit Agreement.

(iii) Worker's compensation, general liability and automobile liability insurance as required by the laws of each state where the Premises are located, or, to the extent permitted by local law, appropriate self insurance arrangements, 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 with such policy limits as are required in the Credit Agreement.

(v) If all or part of the Premises shall be leased to or occupied by a person or persons other than Mortgagor, rental value insurance in an amount necessary to provide full coverage of not less than one hundred ten percent

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(110%) of one year's base rental income for all Leases with terms in excess of one year and with annual base rentals in excess of \$100,000 which amount shall be revised annually to reflect any increase or decrease in such base rental income.

(vi) Business interruption insurance with such policy limits as are required in the Credit Agreement.

To the extent any conflict arises between the foregoing provisions and the Credit Agreement, the provisions of the Credit Agreement regarding insurance shall govern and prevail.

(b) All insurance policies required by this Section 1.6 shall be in form and issued by companies reasonably satisfactory to Mortgagee and shall comply with all provisions of the Credit Agreement. All insurance policies in respect of the coverages required by Section 1.6 shall contain an endorsement naming Mortgagee as loss payee, shall be in amounts at least sufficient to prevent coinsurance and all losses thereunder shall be payable to Mortgagee as sole loss payee. Each policy of insurance required under this Section 1.6 shall provide that it may not be cancelled or otherwise terminated 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. The policy or policies of such insurance or certificates of insurance evidencing the required coverages shall be delivered to Mortgagee. Settlement of any claim under any of the insurance policies to in this Section 1.6 shall be in accordance with the Credit Agreement and shall otherwise require Mortgagee's prior written approval.

(c) 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 1.6, unless Mortgagee is included thereon as a named insured and, if applicable, with loss payable to Mortgagee as sole loss payee, under a standard mortgagee endorsement of the character described in Section 1.6(b) hereof and the policy evidencing such insurance otherwise complies with the requirements of Section 1.6(b). 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.

(d) Mortgagor shall, immediately upon receipt of any written notice of any failure by Mortgagor to pay any insurance premium in respect of any insurance required to be maintained under this Section 1.6, furnish a copy of such notice to Mortgagee.

SECTION 1.7 Failure to Make Certain Payments. If Mortgagor shall fail to perform any of the covenants contained in this Mortgage or any Loan Document, Mortgagee may make advances to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

perform the same on its behalf after notice and the opportunity to cure, if any, as provided in this Mortgage or the Loan Documents, and all sums so advanced shall be included in the Liabilities and be secured hereby. Mortgagor shall repay on demand all sums so advanced by Mortgagee on behalf of Mortgagor, with interest at the Default Rate. The provisions of this Section 1.7 or any action taken by Mortgagee pursuant to the provisions of this Section 1.7 shall not prevent any such failure to observe any covenant contained in this Mortgage from constituting an Event of Default.

SECTION 1.8 Inspection. Mortgagor shall permit Mortgagee, by its agents, accountants and attorneys, to visit and inspect the Premises at such reasonable times as may be reasonably requested by Mortgagee.

SECTION 1.9 Mortgagor to Maintain Improvements. Mortgagor shall not commit any waste on the Premises or make any change in the use of the Improvements or Personal Property or use any of the Land for purposes not related to the current use of the Premises without the Mortgagee's prior written consent. Mortgagor shall, at all times (a) maintain the Premises free from waste and in good operating order, condition and repair; (b) pay all operating costs of the Premises; (c) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (d) comply with all material requirements of law relating to the Premises or any part thereof by any governmental authority; and (e) comply with any restrictions of record with respect to the Premises and the use thereof and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy. Except as otherwise provided in Section 1.14, the Premises shall not be demolished or altered. No Personal Property shall be removed without the prior written consent of Mortgagee except to the extent specifically permitted under the Credit Agreement.

SECTION 1.10 Mortgagor's Obligations with Respect to Leases.

(a) Except as set forth in the second paragraph of this Section 1.10(a), Mortgagor shall not without the Mortgagee's prior written consent: (i) execute any assignment of any Lease or of the rents or any part thereof from the Premises other than the assignment herein to Mortgagee; (ii) except where the lessee under any Lease is in default thereunder, terminate or consent to the cancellation or surrender of a Lease; (iii) modify any Lease having an unexpired term of two (2) years or more so as to change the unexpired term thereof or, in respect of the Leases, so as to decrease the amount of the rents payable thereunder; (iv) accept any prepayments of any installment of rents to become due under any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Lease, for a period exceeding one month, (v) permit the deferral of or waive or postpone the payment of any rental payment under any Lease; (vi) permit any transfer or assignment of any Lease or the sublease of the property subject to any Lease without the written consent of Mortgagee (except the Mortgagee's prior written consent shall not be required in such instances where the Lessee thereunder shall not be released); or (vii) modify any Lease in any fashion which will impair the value of the Mortgaged Property or the security provided by this Mortgage.

Notwithstanding anything in Section 1.10(a) hereinabove, Mortgagor shall have the right to lease all or a material portion of the Property in the event Mortgagor elects to vacate in its entirety the Mortgaged Property as the result of Mortgagor's election to relocate in its entirety to another location (the "Relocation Site") the business conducted by Mortgagor at the Property as of the date of this Mortgage to such Relocation Site, provided, however: (i) any such Lease shall be effective only upon the relocation by Mortgagor to the Relocation Site; and (ii) Mortgagee shall have provided to Mortgagor its written consent to any such Lease, which written consent shall not be unreasonably withheld provided:

- (1) Mortgagor shall submit to Mortgagee at least thirty (30) days prior to the proposed effective date of the Lease a written notice which includes sufficient information to permit Mortgagee to determine the identity, character and financial condition of the proposed lessee;
- (2) The lessee is engaged in a business which is in compliance with all applicable laws governing the use of the Mortgaged Property;
- (3) In the reasonable judgment of Mortgagee the lessee is financially able to comply with the obligations under the proposed Lease;
- (4) The terms of the Lease comply with the terms of subsections 1.10(a)(iv), (v), (vi) and (vii) above, and contained subordination, non-disturbance and attornment clause in form reasonably satisfactory to Mortgagee; and
- (5) Mortgagor pays to Mortgagee any reasonable attorneys' fees and expenses incurred by Mortgagee in connection with the review of any such requested consent.

No assignment or sublease by Mortgagor shall release Mortgagor of any obligations under this Mortgage. If Mortgagee has

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

not provided Mortgagor with written notice of Mortgagee's approval or disapproval (which notice shall, in the event of disapproval, state the basis for such disapproval) within thirty (30) days after Mortgagor's submittal of the written notice required under this subsection 1.10(a) (which written notice shall contain all supporting documentation as is required by subclauses (1) through (5) of this subparagraph in order to provide Mortgagee with such information as Mortgagee deems reasonably necessary in order for Mortgagee to review said written notice and supporting documentation), then and in such event Mortgagee shall be deemed to have consented to said Lease.

(b) Mortgagor shall at all times timely and faithfully perform, or cause to be performed, all of the material covenants, conditions and agreements contained in all Leases to be kept and performed thereunder and shall at all times do all things necessary to compel performance by the lessee under each Lease of all obligations, covenants and agreements by, such lessee to be performed thereunder, which action shall not be deemed to require Mortgagor to terminate a Lease in the event of the occurrence under such Lease of a non-material default which Mortgagor has elected to waive.

(c) Mortgagor shall furnish to Mortgagee, within thirty (30) days after each request by Mortgagee to do so (which request shall not, absent an Event of Default be more often than once each calendar year), a written statement in respect of any or all of the Leases setting forth the space occupied, the rentals payable thereunder, and such other information as the requesting party may reasonably request.

SECTION 1.11 Transfer Restrictions. Except to the extent otherwise permitted hereunder or in the Credit Agreement, Mortgagor may not, without Mortgagee's prior written consent, further mortgage, encumber, hypothecate, sell, convey or assign, whether by land installment contract or otherwise, all or any part of the Mortgaged Property or Mortgagor's interest in the Mortgaged Property or lease or sublease the Mortgaged Property or any part thereof or suffer any of the foregoing to occur.

Each of the Liens and other transfers permitted by this Section shall in all respects be subordinate in priority to the Lien of this Mortgage.

SECTION 1.12 Destruction; Condemnation.

(a) **Destruction; Assignment of Proceeds.** In case of any damage to, or loss or destruction of, Improvements and Personal Property or any part 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

assigned and shall be paid to Mortgagee. All such proceeds, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Destruction ("Net Proceeds"), shall be applied in accordance with the provisions of Section 1.13 hereafter.

(b) Condemnation; Assignment of Award. In the event of 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 hereof, by any governmental authority, civil or military (each, a "Taking"), Mortgagor shall promptly notify Mortgagee upon receiving notice of such Taking or commencement of proceedings therefor. All proceeds or any award or payment in respect of any Taking are hereby assigned and shall be paid to Mortgagee and Mortgagor shall take all steps necessary to notify the condemning authority of such assignment. Such award or payment, less the amount of any expenses incurred in litigating, arbitrating, compromising or settling any claim arising out of such Taking ("Net Award"), shall be applied in accordance with the provisions of Section 1.13 hereafter.

Section 1.13 Restoration. Each of a Destruction or Taking shall be deemed to constitute an "Event of Loss" (as such term is defined in the Credit Agreement) and shall be governed by the terms and provisions of the Credit Agreement. To the extent otherwise permitted by the Credit Agreement, each of the following terms and provisions shall govern the disposition of Net Awards and Net Proceeds.

(a) Provided no Event of Default shall have occurred and be continuing, Mortgagor shall have the right, at Mortgagor's option, to elect that such Net Award or Net Proceeds be applied to payment of amounts outstanding in respect of the Obligations or to restore the Premises provided the use of such Net Award or Net Proceeds does not violate the terms and provisions of the Credit Agreement governing the use of "Net Proceeds" (as such term is defined in the Credit Agreement). In the event Mortgagor elects to restore the Premises, Mortgagor shall give written notice ("Restoration Election Notice") of such election to Mortgagee within one hundred twenty (120) days of the date of collection by Mortgagee of the Net Proceeds or Net Award, as the case may be. In the event Mortgagee does not receive a Restoration Election Notice within such one hundred twenty (120) day period, Mortgagee shall apply the Net Proceeds or Net Award to the prepayment of the Obligations in the manner set forth in the Credit Agreement. In the event Mortgagor shall elect to restore the Premises, and the Estimate (as such term is defined in Subsection 1.12(b)(ii) below) for said Restoration (as such term is hereinbelow in this paragraph defined) is less than One Million Dollars (\$1,000,000.00), Mortgagee shall release the Net Award or Net Proceeds to Mortgagor

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and Mortgagor shall, within thirty (30) days following the date of its Restoration Election Notice commence and diligently continue to perform the restoration ("Restoration") of that portion or portions of the Mortgaged Property subject to such Destruction or affected by such Taking so that, upon the completion of the Restoration, the Mortgaged Property will be in substantially the same condition and shall be of at least equal value and utility for its intended purposes as the Mortgaged Property was immediately prior to such Destruction or Taking.

(b) In the event the Estimate for said Restoration exceeds One Million Dollars (\$1,000,000.00), Mortgagee shall not release any part of the Net Award or the Net Proceeds except in accordance with the provisions of this subsection, and Mortgagor shall, prior to commencing any work to effect Restoration of the Premises, promptly (but in no event later than six (6) months following any Destruction or Taking), furnish to Mortgagee:

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

(ii) a certificate ("Architect's Certificate") of an independent, reputable architect or engineer licensed in the State stating (a) that the Plans and Specifications have been reviewed and approved by the signatory thereto, (b) listing all permits and approvals required by law in connection with the Restoration, and (c) stating that all permits and approvals required by law to commence work in connection with the Restoration have been obtained; and (d) such signatory's estimate ("Estimate") of the costs of completing the Restoration; and

(iii) if the Estimate exceeds the Net Proceeds or the Net Award, as the case may be, by ten percent (10%) of the amount of Net Proceeds or Net Award, as the case may be, a surety bond for, guarantee of, or irrevocable letter of credit ("Letter of Credit") or other irrevocable and unconditional commitment to provide funds ("Commitment") for the payment of such Restoration, payable to or in favor of Mortgagee, which bond, guarantee, Letter of Credit or Commitment: (a) shall be signed by a surety or sureties or guarantor(s), as the case may be, acceptable to Mortgagee, in the exercise of Mortgagee's reasonable judgment, 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 Two Hundred Million and no/100 Dollars (\$200,000,000.00) as shown in its most recent available statement of financial condition and (b) shall be in an amount not less than the Estimate minus the amount of the Net Proceeds or the Net Award, as the case may be, then held by Mortgagee for application toward the cost of such Restoration.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee shall have the right to review and approve the Plans and Specifications, which approval shall not be unreasonably withheld. Promptly upon 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.

(c) In the event the Restoration is being performed pursuant to subsection 1.12(b) above, Mortgagee shall pay said Net Proceeds or the Net Award towards the cost of said Restoration 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 five (5) business 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 substantially in compliance with the approved Plans and Specifications 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 estimate 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, together with the amount of any surety, guarantee, Letter of Credit or Commitment as referred to in subsection (b) above received by Mortgagee, will be sufficient on completion of the Restoration to pay for the same in full (giving in reasonable detail, an estimate by trade of the remaining costs of completion);

(ii) Each request for payment shall be accompanied by an endorsement or other coverage reasonably acceptable to Mortgagee from a title insurance company reasonably acceptable to Mortgagee which issues mortgagee form title insurance policies, insuring Mortgagee that (A) all mechanic's or similar liens and claims for lien which could arise from 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 parts of the Mortgaged Property any mechanic's or similar liens or claims for liens that are not discharged of record in respect of any part of the Restoration; and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iii) The final request for any payment after the Restoration has been completed shall be accompanied by the final Architect's Certificate confirming that 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 have been obtained and listing each of the same.

In the event there shall be any surplus after application of the Net Award or the Net Proceeds to Restoration of the Premises, such surplus shall belong and be paid to Mortgagee on behalf of the Lenders to be applied in accordance with Section 2.07 of the Credit Agreement.

SECTION 1.14 Operating Agreements. Mortgagor shall provide to Mortgagee, from time to time as requested by Mortgagee, certified copies of every management, operating and other similar agreement covering all or substantially all of the Premises. Each such agreement shall be in form and substance acceptable to Mortgagee and, except to the extent such agreement is a Permitted Lien, shall be subordinate and subject to the Lien of this Mortgage.

SECTION 1.15 Alterations. Mortgagor shall have the right to make such additions, modifications or changes (each, an "Alteration") to the Premises, without Mortgagee's prior written consent as may be deemed necessary or desirable by Mortgagor; provided, however, that Mortgagor shall: (i) complete all Alterations promptly, in a good and workmanlike manner and in compliance with all applicable local laws, ordinances and requirements; (ii) warrant that said Alteration shall not reduce or impair the value of the Mortgaged Property; and (iii) pay when due all claims for labor performed and materials furnished in connection with any Alteration, unless contested in accordance with the provisions of Section 1.4(e). Mortgagor shall not remove or demolish the Improvements in whole or substantial part without the Mortgagee's prior written consent unless pursuant to performance of an Alteration.

SECTION 1.16 Indemnity. Section 10.05 of the Credit Agreement is incorporated herein as if set forth herein verbatim.

ARTICLE II

ASSIGNMENT OF RENTS; SECURITY AGREEMENT

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

(a) Mortgagor hereby irrevocably grants, transfers and assigns to Mortgagee all of Mortgagor's right, title and

96387735

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

interest, whether now existing or hereafter acquired, in the Leases, including, as applicable, the right, power and authority to collect the rents, issues, income and profits of the Mortgaged Property. The assignment set forth in the foregoing sentence shall be unconditional and irrevocable except as provided to the contrary in Section 2.1(b).

(b) Notwithstanding the provisions of Section 2.1(a), Mortgagor shall have the right, prior to occurrence of any Event of Default, to collect and retain all rents, issues and profits relating to the Mortgaged Property as the same become due and payable. Upon occurrence of any Default or Event of Default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the Liabilities, (i) enter upon and take possession of the Premises and/or (ii) in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, to all or any part of the Liabilities, and in such order as Mortgagee may determine.

(c) Mortgagee's right to collect the rents, issues and profits upon an Event of Default by Mortgagor pursuant to this Section 2.1 is in no manner conditional upon Mortgagee first taking possession of the Premises. Should Mortgagee enter and take possession of the Premises and/or collect the rents, issues and profits and apply the same as provided for herein, such act shall not cure or waive any Event of Default or notice thereof hereunder or invalidate any act done pursuant to such notice. Nothing contained herein, nor any collection of rents, issues and profits by Mortgagee or a receiver, shall be construed to make Mortgagee a "mortgagee-in-possession" so long as Mortgagee has not itself entered into actual possession of the Premises.

(d) Nothing herein shall be construed to impose any liability or obligation on Mortgagee under or with respect to any Lease. Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all liabilities, losses and damages (including, without limitation, reasonable attorneys' fees and the allocated costs of staff counsel) incurred under any Lease or by reason of the provisions of this Section 2.1.

SECTION 2.2 Security Interest in Personal Property.

(a) This Mortgage shall constitute a security agreement for the purposes of the Uniform Commercial Code, as enacted in the state where the Premises is located ("Code"), and shall create and evidence a security interest in all sums at any time on deposit for the benefit of the Mortgagee or held by the Mortgagee pursuant to this Mortgage, any Loan Document or the Credit Agreement as well as all of the Personal Property, which

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Personal Property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code). Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Personal Property, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, the Prior Liens and liens and encumbrances, if any, expressly permitted by the Credit Agreement. The Personal Property is to be used by Mortgagor solely for business purposes. The Personal Property will be kept at the Land and will not, except as otherwise permitted by the Loan Documents, be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Personal Property may be affixed to the Land but will not be affixed to any other real estate.

(b) Mortgagor, immediately upon the execution and delivery of this Mortgage, and thereafter from time to time, shall cause this Mortgage, any security instrument creating or evidencing the Lien hereof in the Personal Property, and each instrument of further assurance, including Uniform Commercial Code financing statements and continuation statements, to be filed, registered or 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 perfect, preserve and protect the Lien hereof upon the Personal Property. Mortgagor hereby appoints and authorizes Mortgagee to act on behalf of Mortgagor upon Mortgagor's failure to comply with the provisions of this Section 2.2(b) within fifteen (15) days of receipt of notice from Mortgagee of said failure of compliance (except when earlier notice of said failure is otherwise required by any applicable law).

(c) Upon the occurrence and continuance of any Event of Default, in addition to the remedies set forth in Article III, Mortgagee shall have the power to foreclose Mortgagor's right of redemption in the Personal Property by sale of the Personal Property in accordance with the Code to the extent permitted by the Code. 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.

(d) 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 expenses of Mortgagee in taking, storing, repairing and selling the Personal Property (including, without limitation, reasonable attorneys' fees and the allocated costs of staff counsel) shall be applied in the manner set forth in Section 3.3(c). 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.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(e) Mortgagee shall give Mortgagor such notice of any sale of any of the Personal Property pursuant to the provisions of this Section 2.2 as is required by the Code, or, if no such notice is required to be given by the Code, by the Security Agreement or, if no such notice is required to be given by the Security Agreement, any such notice shall conclusively be deemed, to the extent allowed by law, to be reasonable and effective if such notice is mailed at least four (4) business days prior to any sale, by first class or certified mail, postage prepaid, to Mortgagor at its address above set forth, or to such other addresses Mortgagor may hereafter designate in writing to Mortgagee.

(f) The terms and provisions contained in this Section 2.2 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(g) This Mortgage is intended to be a "fixture filing" within the purview of Sections 9-313 and 9-402 of the Code with respect to the Personal Property and the goods described herein upon recording in the real estate records of the proper office, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder where the Premises are located.

ARTICLE III

EVENTS OF DEFAULT AND REMEDIES

SECTION 3.1 Events of Default. An "Event of Default" shall be the occurrence of an Event of Default under the Credit Agreement.

SECTION 3.2 Remedies in Case of an Event of Default. Upon the occurrence of an Event of Default, in addition to any rights and remedies provided for in the Credit Agreement and Security Agreement and, further, to the extent permitted by applicable law, Mortgagee may take one or more of the following actions:

(a) by written notice to Mortgagor, declare the entire unpaid amount of the Liabilities to be due and payable immediately;

(b) personally, or by its agents or attorneys, enter into and upon all or any part of the Premises and each and every part thereof, and exclude Mortgagor, its agents and servants wholly therefrom; and then use, operate, manage and control the Premises and conduct the business thereof, either personally or by its agents, attorneys or receivers or by a referee appointed by a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

duly acting court on the application of Mortgagee and on every such entry, from time to time, may maintain and restore the Mortgaged Property, and likewise, from time to time, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful Alterations thereto and thereon as Mortgagee may deem advisable; and in every such case Mortgagee shall have the right to manage, lease and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and its attorneys, counsel, agents, clerks, servants and other employees, Mortgagee shall apply the moneys arising as aforesaid in accordance with the provisions of Section 3.3(b) hereinbelow;

(c) with or without entry, personally or by its agents, to the extent permitted by law, (i) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law, or (ii) institute and prosecute proceedings for the complete or partial foreclosure of this Mortgage under and pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.), as the same may be amended from time to time (the "Act");

(d) 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 Loan 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;

(e) upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after foreclosure sale pursuant to the Act; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant, which receiver shall have all of the power and duties prescribed by the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Act. Mortgagee or any employee or Mortgagee thereof may be appointed as such receiver. Such receiver shall have the power to take possession, control, and care of the Mortgaged Property and to collect all rents thereof during the pendency of such foreclosure suit and, in the event of a sale and a deficiency, where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management, and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court with such rights and powers as are provided herein.

SECTION 3.3 Sale of Mortgaged Property if Event of Default Occurs: Proceeds of Sale. (a) On the completion of any sale or sales by Mortgagee made under or by virtue of this Article III, and except as required by applicable law, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument or instruments conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Upon the occurrence of an Event of Default, Mortgagee is hereby irrevocably appointed the true and lawful agent and attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, and Mortgagor hereby ratifies and confirms all that Mortgagee, acting as its attorney, or any such substitute shall lawfully do by virtue hereof. This power of attorney is coupled with the interest of Mortgagee created by this Mortgage. Mortgagor shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all instruments as may be reasonably requested for such purpose. Except as otherwise provided by applicable law, any such sale or sales made under or by virtue of this Article III shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(b) 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

provisions of this Article III or otherwise, shall be applied as follows:

First: to the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and attorneys, and of any judicial or private proceedings in which such sale may be made, and of all other expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest at the Default Rate on such costs, expenses and liabilities and on all advances made by Mortgagee from the date any such cost, expense or liability is past due or unpaid or any such advance is made, in each case until paid in full;

Second: to the payment of any other fees, costs or other expenses constituting obligations under the Loan Documents other than amounts payable under subparagraph "First" above, together with interest on each such amount at the interest rate(s) applicable to the Obligations pursuant to and in accordance with the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full;

Third: to the payment of: (i) any interest then due, owing or unpaid in respect of any Loan or any other Liabilities secured by this Mortgage; and (ii) with respect to any Rate Contracts to which a Lender is a party, the interest due and owing in respect of any amounts payable thereunder, in each case together with, to the maximum extent permitted by law, interest thereon at the interest rate(s) applicable to the Obligations pursuant to and in accordance with the Credit Agreement from the date such amount is due, owing or unpaid until paid in full;

Fourth: to the payment of the whole amount of principal then due, owing or unpaid in respect of any Loan, or any other Liabilities secured by this Mortgage, to be applied in accordance with the Credit Agreement, with interest on such unpaid principal at the interest rate(s) applicable to the Obligations pursuant to and in accordance with the Credit Agreement from and after the happening of any Event of Default until paid in full; and

Fifth: the surplus, if any, to be paid to whomever lawfully may be entitled to receive such surplus.

(c) Mortgagee may bid for and acquire the Mortgaged Property or any part thereof at any 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 due and owing in respect of any Loans, Obligations or any other Liabilities after deducting from the sales price the expenses of the sale and the costs of the action or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

proceedings and any other sums that Mortgagee is authorized to deduct under this Mortgage.

(d) 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, except as otherwise provided by any applicable provisions of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

SECTION 3.4 Mortgagee's Additional Remedies in Case of an Event of Default. (a) 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 of the Lien of 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 due in respect of the Obligations to the full amount thereof and all other payments, charges and costs due under this Mortgage 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 under this Mortgage than the aggregate of such principal, interest and such other payments, charges and costs (with interest at the Default Rate) from the aggregate amount of the proceeds of the sale of the Mortgaged Property and the distribution from the estate of Mortgagor.

(b) The obtaining 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 of this Mortgage upon the Mortgaged Property or any part thereof, or any Liens, powers, rights and remedies of Mortgagee hereunder, but such Liens, powers, rights and remedies shall continue unimpaired as before until the judgment or levy is satisfied.

(c) Any moneys collected by Mortgagee under this Section 3.4 shall be applied in accordance with the provisions of Section 3.3(c) hereof.

SECTION 3.5 Legal Proceedings after an Event of Default. (a) 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 Liabilities or any part thereof, or of any proceedings to foreclose this Mortgage or of any other proceedings in aid of the enforcement of this Mortgage,

96387737

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor shall enter its voluntary appearance in such action, suit or proceeding.

(b) Mortgagor shall not 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, which may affect the covenants and terms of performance of this Mortgage, nor 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 order of any court of competent jurisdiction. Mortgagor shall not, 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. Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and 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. Mortgagor, for itself and all who may claim under it, waives, to the extent permitted by law, all right to have the Mortgaged Property marshaled on any foreclosure of this Mortgage. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term may be defined in Section 15-1201 of the Act or residential real estate as may be defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all right of redemption as may be provided under Section 15-1601(b) of the Act.

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 as often as may be deemed expedient by Mortgagee. If Mortgagee accepts any moneys required to be paid by Mortgagor under this Mortgage after the same becomes 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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 an Event of Default notwithstanding acceptance of amount on account.

ARTICLE IV

MISCELLANEOUS

SECTION 4.1 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, at the option of Mortgagee, 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.

SECTION 4.2 Notices. Except as otherwise set forth in the Credit Agreement, all notices, requests, and other communications provided for hereunder shall be in writing (including, unless the context expressly otherwise provides, by facsimile transmission, provided that any matter transmitted by the Mortgagor by facsimile (i) shall be immediately confirmed by a telephone call to the recipient at the number specified on the applicable signature page hereof, and (ii) shall be followed promptly by a hard copy original thereof) and mailed, faxed or delivered, to the address or facsimile number specified for notices hereinbelow; or, as directed to the Mortgagor or the Mortgagee, to such other address as shall be designated by such party in a written notice to the other parties, and as directed to each other party, at such other address as shall be designated by such party in a written notice to the Mortgagor and the Mortgagee:

(i) If to Mortgagor:

John Sexton & Co.
c/o Rykoff-Sexton, Inc.
1050 Warrenville Road
Lisle, Illinois 60532-5201
Attn: General Counsel
Tel. No. (708) 964-1414
Telecopier No. (708) 971-7900

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

With a copy to:

Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago, Illinois 60601
Attn: Robert J. Graves, Esq.
Tel. No. (312) 782-3939
Telecopier No. (312) 782-8585

(ii) If to Mortgagee:

Bank of America National Trust and
Savings Association
231 South LaSalle Street
Chicago, Illinois 60697
Attn: Mr. Mark Kelley
Tel. No. (312) 828-6981
Telecopier No. (312) 838-3864

With a copy to:

Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601
Attn: Bruce A. Toth, Esq.
Tel. No. (312) 558-5600
Telecopier No. (312) 558-5700

All such notices, requests and communications shall when transmitted by overnight delivery, or faxed, be effective when delivered for overnight (next day) delivery, or transmitted by facsimile machine, respectively, or if mailed, upon the third Business Day after the date deposited into the U.S. mail, or if delivered, upon delivery.

SECTION 4.3 Covenants to Run with the Mortgaged Property. All of the grants, covenants, terms, provisions and conditions in this Mortgage shall run with the Mortgaged Property and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagor.

SECTION 4.4 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 of this Mortgage so requires, so that the singular shall be construed as the plural and so that the masculine shall be construed as the feminine.

SECTION 4.5 Limitation on Interest Payable. It is the intention of the parties to conform strictly to the usury laws,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

whether state or Federal, that are applicable to the respective Loan Documents. 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 any of the Loan Documents or otherwise, or for the payment or performance of any covenant or obligation contained herein, or in any Loan Document exceed the maximum amount permissible under applicable Federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or of any Loan Document, 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 any Loans or any other Liabilities 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 Loans or any other Liabilities 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 Liabilities so that the actual rate of interest on account of such principal amounts is uniform throughout the term hereof.

SECTION 4.6 Indemnification; Reimbursement. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary to defend or uphold the Lien of this Mortgage, Mortgagor shall, on demand, reimburse Mortgagee for all reasonable expenses (including, without limitation, reasonable attorneys fees and the allocated costs of staff counsel) incurred by Mortgagee in any such action or proceeding. In any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness, the provisions of law relating to the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant. The provisions of this Section 4.6 shall not be construed in limitation of any other provision in any Loan Document.

SECTION 4.7 Governing Law. The grant of this Mortgage, the creation of Mortgagee's rights and interests hereunder, the publication and perfection of the lien, security interest and other rights and interests granted or otherwise arising hereunder and the exercise of Mortgagee's rights, powers and remedies relating to the Mortgaged Property (whether

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

specifically provided in this Mortgage or provided by applicable law) shall be governed by and construed in accordance with the internal laws of the state in which the Land is located, without regard to principles of conflicts of law. Otherwise, to the extent permitted by applicable law, this Mortgage and the other Loan Documents (including, without limitation, terms relating to usury considerations and terms relating to Mortgagor's liability for any deficiency following any foreclosure of this Mortgage or any other transfer of all or any part of the Mortgaged Property in extinguishment of any part of the Obligations) shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws.

SECTION 4.8 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 4.9 Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original. All such counterparts shall together constitute but one and the same instrument.

SECTION 4.10 Changes in Writing. Except as otherwise permitted by Section 3.3 above, this Mortgage may not be modified, amended, discharged or waived in whole or in part except by an instrument in writing signed by Mortgagor and Mortgagee.

SECTION 4.11 Riders. Any and all riders attached hereto are incorporated in this Mortgage by this reference.

SECTION 4.12 Business Loans. Mortgagor certifies and agrees that the proceeds of the Notes secured by this Mortgage will be held for the purposes specified in Section 4 of the Illinois Interest Act (815 ILCS 205/1 et seq.), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of that Section.

SECTION 4.13 Future Advances. As set forth in Recital 6 to this Mortgage, this Mortgage also secured the payment of and includes all future or further advances as shall be made at all times, regardless of whether the proceeds of the Loans have been disbursed, by the Mortgagee herein, on behalf of itself and the Lenders, to and for the benefit of the Mortgagor, to the same extent as if such future advances were made on the date of the execution of this Mortgage. To such extent as may be provided in the Loan Documents and subject to the terms and provisions set forth therein, Mortgagee has bound itself and by the acceptance hereof does hereby bind itself to make advances pursuant to and subject to the terms of the Loan Documents. The parties hereby

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Act.

SECTION 4.14 Maximum Secured Indebtedness. The maximum amount of the Liabilities secured by this Mortgage is Nine Hundred Million (\$900,000,000.00) Dollars.

Property of Cook County Clerk's Office

96387735

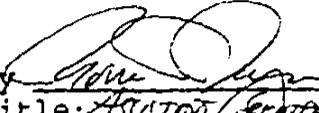
UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage has been duly executed
by Mortgagor as of the date first written above.

JOHN SEXTON & CO.
a Delaware corporation
("Mortgagor")

By 
Title: ASSTON/Grady

Property of Cook County Clerk's Office

96387735

HDS1641.1/D1/May 15, 1996/NETWORK/cc/IIISi

UNOFFICIAL COPY

200

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Illinois)
COUNTY OF Cook)

SS.:

On this 16th day of May, 1996, before me, the undersigned, a Notary Public in and for the State of Illinois, personally appeared Thomas J. Flanagan to me personally known, who, being by me duly sworn, did say that (s)he is the Asst. Secretary of John Sexton & Co., a Delaware corporation, that the instrument was signed and sealed on behalf of the corporation by authority of the Board of Directors; and that the foregoing officer acknowledged execution of the instrument to be the voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Shirley Riley
Notary Public

My term expires: 3/1/97

96-287735

96-287735

UNOFFICIAL COPY

290

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SITE I.A.10/ELK GROVE VILLAGE, IL
(Cook County)

SCHEDULE A

(1225 Arthur Avenue)

Legal Description

LOT 1 IN WESTERBERG RESUBDIVISION OF LOT 316 IN CENTEX INDUSTRIAL PARK UNIT 192
BEING A SUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE
11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF LOT 276 IN CENTEX INDUSTRIAL PARK
UNIT 197, BEING A SUBDIVISION IN THE SOUTH 1/2 OF SECTION 34, AFORESAID, IN COOK
COUNTY, ILLINOIS

TAX PARCEL NO. 08-34-402-041-0000

PROPERTY ADDRESS: 1225 Arthur Avenue, Elk Grove Village, Illinois

UNOFFICIAL COPY



Property of Cook County Clerk's Office

96387735