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THIS INSTRUMENT  
PREPARED BY AND AFTER  
RECORDING RETURN TO:

97198749

Ronald S. Bailis  
General Counsel  
Republic Bank of  
Chicago  
1510 75th Street  
Darien, IL 60561

. DEPT-01 RECORDING 493.00  
. T#0012 TRAN 4387 03/21/97 14158400  
. #6107 + CG #-97-198749  
. COOK COUNTY RECORDER

This space reserved for Recorder.

## MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

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This Mortgage and Assignment of Leases and Rents and Security Agreement (the "Mortgage") is made August 1, 1996 between REPUBLIC BANK OF CHICAGO, not personally but as Trustee, under a certain Trust Agreement dated JANUARY 1, 1994 and known as Trust Number 1323 (hereinafter known individually and collectively as the "Mortgagor"), and ZIEBELL WATER SERVICES PRODUCTS, INC., 15750 SOUTH HARLEM AVENUE, ORLAND PARK, IL 60462 (hereinafter collectively known as the Mortgagee.)

### Article 1

#### DEFINITIONS

##### 1.1 Definitions

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

(a) Amount: Maximum principal balance of the Note not to exceed FOUR MILLION SEVEN HUNDRED FIFTEEN THOUSAND NINE HUNDRED THIRTY-EIGHT AND 80/100 AND NO/100 (\$4,715,938.80) DOLLARS.

(b) Assignment: The assignment, contained herein from Mortgagor to Mortgagee, of all of Mortgagor's rights, title and interest in and to the Leases and the Rents.

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BOX 333-CTI

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(c) Awards: All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.

(d) Beneficiary: Holder of the beneficial interest under the Trust ("beneficial interest") if the Mortgagor is a Trustee.

(e) Buildings: All buildings, improvements, alterations or appurtenances now, or at any time hereafter, located upon the Land or any part thereof.

(f) Default Interest Rate: The lesser of (i) the interest rate of the Applicable Interest Rate, as defined in the Mortgage Note secured by this Mortgage, plus four hundred basis points per annum, or (ii) the highest contract rate allowed by law.

(g) Event(s) of Default: The happenings and occurrences described in the Section of this Mortgage entitled Events of Default and as set forth in the Note and the other Loan Documents.

(h) Fixtures: All fixtures located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Buildings whether or not permanently affixed to the Mortgaged Property.

(i) Guarantor: The parties collectively including without limitation, each and all of the parties subject to the Guaranty, and/or any additional sureties or accommodation parties in connection with the Mortgage, Note, or the other Loan Documents.

(j) Guaranty: The guaranty, or collectively the guaranties, of even date executed by Guarantor guaranteeing the obligations of Mortgagor under this Mortgage, the Note and the other Loan Documents.

(k) Hazardous Materials: Any flammable explosives, radioactive materials, oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes,

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substances or materials under any applicable rule, regulation, ordinance or law.

(l) Impositions: All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the other Loan Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of its properties.

(m) Indebtedness: The principal of and interest on and all other amounts, payments and premiums due under the Note and all other indebtedness of Mortgagor to Mortgagee under and/or secured by the other Loan Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

(n) Land: The real estate described in Exhibit A attached hereto.

(o) Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

(p) Loan Agreement: The Loan Agreement, if any, by and between Mortgagor (and/or the Beneficiary, if any) and Mortgagee dated even date herewith.

(q) Loan Documents: The Mortgage, the Loan Agreement, if any, the Note and any and all other documents executed by Mortgagor or others, including, but not limited to any Guarantors, nor or hereafter securing the payment of the Indebtedness or the observance or performance of the Obligations.

(r) Mortgaged Property or Premises: The Land, the Buildings, the Fixtures, the Leases and the Rents together with:

(i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Buildings belonging or in any way

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appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof; and

(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents; and

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties.

(s) Mortgagee: Republic Bank of Chicago and its successors and assigns and the holders, from time to time, of the Note.

(t) Mortgagee's Address: The address of the Mortgagee as set forth in the Preamble hereto.

(u) Mortgagor: The entity(s) named as such in the preamble of this Mortgage, and his or its respective heirs, administrators, executors, successors and assigns and their successors in interest in and to the Mortgaged Property.

(v) Mortgagor's Address: The address of the Mortgagor is:

1510 75TH STREET  
DARIEN, IL 60561  
ATTN: Trust Department

(w) Note: The Mortgage Note dated or even date with this Mortgage made by Mortgagor payable to the order of Mortgagee, in the original principal Amount and secured in part, by this Mortgage, together with any and all extensions, renewals, modifications and amendments thereof.

(x) Obligations: Any and all of the covenants, promises and other obligations (other than the Indebtedness) made or owing by Mortgagor and others to or due to Mortgagee under and/or as set forth in the Note, Mortgage and/or the Loan Documents, and any and all extensions, renewals, modifications and amendments of any of the foregoing.

(y) Permitted Encumbrances: The encumbrances described, if any, with particularity, in Exhibit C attached hereto.

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(z) Personalty: All furniture, furnishings, equipment, machinery, trade fixtures and all other personal property (other than the Fixtures) owned by Mortgagor now or hereafter located in, upon or about the Land, the Buildings, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof, as more fully described in the attached Exhibit B (the "Assets"), if necessary.

(aa) Rents: All of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising from the use and enjoyment of all or any portion of the Mortgaged Property.

(bb) Security Agreement: The Security Agreement, contained in this Mortgage, and/or being a separate document, but included in the term Loan Documents, wherein and whereby Mortgagor grants a security interest in the Fixtures and Personalty to Mortgagee.

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## Article 2

### GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents hereby grants, bargains, sells, assigns, mortgages, conveys and warrants unto Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 Condominium Rights. In the event any of such Mortgaged Property is subject to a Declaration of Condominium or similar agreement, as additional security for the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor also grants to Mortgagee, its successors and assigns, all rights and easements appurtenant to any such subject units as forth in the applicable Declaration of Condominium or similar recorded document and any amendments or modifications thereto made from time to time.

2.3 Condition of Grant. Provided always, that if Mortgagor promptly shall pay the entire Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the other Loan Documents and the estate and rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Mortgagor, and, in case of failure of the Mortgagee to so release this Mortgage, all claims for statutory penalties are hereby waived.

2.3 Doctrine of Merger. Upon the foreclosure of this Mortgage, no assigned Lease shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

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## Article 3

### SECURITY INTEREST AND ASSIGNMENT OF LEASES AND RENTS

3.1 Security Agreement. This Mortgage shall be construed as a mortgage of a fee simple interest in real property and it shall also constitute a "Security Agreement" within the meaning of, and shall create a security interest under, the Uniform Commercial Code as adopted in the state in which the Mortgaged Property is located (the "UCC"), in the Fixtures and Personalty.

3.2 Security Interest. Mortgagor hereby grants to Mortgagee a security interest under the UCC in the Fixtures and Personalty and Mortgagee shall have all rights with respect thereto afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded to Mortgagee by the other Loan Documents.

3.3 Financing Statement. Mortgagor agrees to and shall execute and deliver to the Mortgagee, in form satisfactory to Mortgagee, such "Financing Statements", if any, and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's liens upon the Fixtures, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such liens.

3.4 Assignment of Leases and Rents. In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and the Rents, subject only to the permitted Encumbrances, if any. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the right, at Mortgagee's option at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment of Leases and Rents, so long as no Event of Default has occurred which remains uncured, Mortgagor shall have a license (such license to be deemed revoked upon the occurrence of an Event of Default) to collect, retain and enjoy all Rents

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provided that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any subsequent by Mortgagor shall be subject to the rights of Mortgagee hereunder. This Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 3.4 and the application of the Rents to the Indebtedness or the Obligations shall not cure or waive any Event of Default.

## Article 4

### COVENANTS

#### 4. Covenants

Until the entire indebtedness shall have been paid in full and the proper observance, performance and discharge of the Obligations, Mortgagor hereby covenants and agrees as follows (for purposes of this Article, all covenants and agreements of Mortgagor will be deemed to be covenants and agreements of the Guarantors):

4.1 Compliance with Laws. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to Mortgagor or to the Mortgaged Property, or any part thereof, or to the use or manner of use, of occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 Payment of Imposition. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid prior to the day before any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may be paid in installments, Mortgagor may pay the same in such installments.

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4.3 Repair. Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property, and Mortgagor will obtain the written consent of Mortgagee prior to (i) making any alterations or additions to the Mortgaged Property or (ii) removing any of the Buildings or Fixtures.

4.4 Insurance. Mortgagor will maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks as may be specified by Mortgagee, from time to time, in amounts and with insurers acceptable to Mortgagee but not less than the lesser of (a) the amount of the Indebtedness, or (b) 110% of the replacement value of the Buildings, Fixtures and Personalty. Mortgagor shall cause each insurance policy issued in connection therewith to provide (and the insurer issuing such policy to certify to Mortgagee) that (i) loss payments will be payable to Mortgagee as its interests may appear, such payments to be applied to the restoration, repair or replacement of the Mortgaged Property; provided, however, that if an Event of Default has occurred and is continuing or an event has occurred and is continuing which with the passage of time or the giving of notice would constitute an Event of Default, then such payments shall be applied to the payment of the Indebtedness; (ii) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (iii) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee until thirty (30) days after receipt by Mortgagee of such notice; and (iv) Mortgagee may, but shall not be obligated to, make premium payments to prevent such cancellation, and that such payments shall be accepted by the insurer. For purposes of this Section, replacement value of the Buildings, Fixtures and Personalty shall be equal to the cost of replacing the Buildings, Fixtures and Personalty, exclusive of the cost of excavation, foundations and footings below the lowest basement floor and shall be determined from time to time during the term of the Note (but no more recently than one in any 24 calendar months) at the written request of Mortgagee by an engineer, appraiser, architect or

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contractor designated by Mortgagee, approved in writing by Mortgagor, and paid by Mortgagor. In addition, Mortgagor shall furnish to Mortgagee duplicate executed copies of each such policy at the time of execution hereof, and copies of each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid; and furnish to Mortgagee on or before thirty (30) days after the close of each fiscal year of Mortgagor a statement of Mortgagor of the amounts of insurance maintained in compliance with this Subsection, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

#### 4.5 Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain Mortgagee's approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Prior to each payment or application of any insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Premises to the extent permitted herein (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore, or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and

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(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms hereof for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted herein, there shall have been delivered to the Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substances, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild such improvements for or on behalf of Mortgagor. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Note irrespective of whether such balance is then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth herein or Mortgagor shall fail to restore, repair or

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rebuild the improvements upon the Premises within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild such improvements as provided herein, then such failure shall constitute an Event of Default.

4.6 Performance of Leases and Other Agreements. Mortgagor will duly and punctually perform all covenants and agreements expressed as binding upon it under the Lease and other agreements to which it is a party with respect to the Mortgaged Property or any part thereof, and will use its best efforts to enforce or secure the performance of each and every obligation and undertaking of the respective lessees under the Lease, and will appear and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with the Lease or the obligations and undertakings of the lessor thereunder. Mortgagor will immediately notify Mortgagee in writing of any notice of default sent by Mortgagor to any lessee or received by Mortgagor from the Lessee thereunder.

4.7 Inspection. Mortgagor will permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property. Mortgagee shall have the right to enter onto the Mortgaged Property, at all times, upon reasonable notice, to inspect the Mortgaged Property for any legitimate purpose including, but not limited to inspecting for the existence of Hazardous Materials on the Mortgaged Property and to determine the compliance of the Mortgaged Property and its use with any law, rule or regulation including, but not limited to, relating to industrial hygiene or environmental conditions, including soil and ground water conditions and the compliance of the Mortgagor and the Mortgaged Property with any of the conditions and covenants set forth herein including, but not limited to, Hazardous Materials.

4.8 Hold Harmless. Mortgagor will employ legal counsel acceptable to the Mortgagee, which has no conflict of interest with Mortgagee, and Mortgagor will defend and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property, or the validity of the Note or the Loan Documents. Mortgagor shall appear in and defend (or pay the reasonable expenses of Mortgagee to defend, if Mortgagor elects to allow Mortgagee to handle such defense) any action or proceeding purporting to affect the security of this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and attorneys' fees) in any action or proceeding in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any

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obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under hereunder shall survive payment of the Indebtedness.

4.9 Books and Records. Mortgagor will maintain full and complete books of account and other records reflecting the results of its operations (in conjunction with its other operations as well as its operations of the Mortgaged Property), in accordance with generally accepted accounting principles, and furnish or cause to be furnished to Mortgagee such financial data and other information, including, without limitation, copies of all Leases, as Mortgagee shall, from time to time, reasonably request with respect to Mortgagor, the Guarantor, or the Beneficiary, if Mortgagor is a Trust, and the ownership and operation of the Mortgaged Property, and Mortgagee shall have the right, at reasonable times and upon reasonable notice, to audit the books of account and records of Mortgagor or the Beneficiary, if Mortgagor is a Trust.

4.10 Awards. Mortgagor will file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee, and Mortgagor hereby irrevocably authorizes and empowers Mortgagee, if Mortgagee so desires, to file such claim and collect any Awards and agrees that the proceeds of any Awards will be applied by Mortgagee in reduction of any portion of the Indebtedness as Mortgagee may determine in accordance with any Article related to such Awards hereunder.

4.11 Licenses. Mortgagor shall keep in full force and effect all licenses, permits and other governmental approvals which are necessary for operation of the Mortgaged Property and related facilities, and furnish evidence satisfactory to Mortgagee that the Mortgaged Property and the use thereof comply with all applicable zoning and building laws, regulations, ordinances and other applicable laws.

4.12 Junior Financing. Mortgagor shall not, without the prior written consent of Mortgagee, incur any additional indebtedness or create or permit to be created or to remain, any mortgage, pledge, lien, lease, encumbrance or charge on, or conditional sale or other title retention agreement, with respect to the Mortgaged Property or any part thereof or income therefrom, other than the Loan Documents and the Permitted Encumbrances.

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4.13 Representations and Warranties of Mortgagor. Mortgagor hereby represents and warrants to Mortgagee that:

(a) Each Mortgagor (and each Beneficiary, if Mortgagor is a Trust) are qualified to do business in every jurisdiction in which the nature of its business or properties make such qualification necessary, and is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to Mortgagor (or Beneficiary, as the case may be.)

(b) The Note, the Mortgage, the Loan Agreement, if any, and the other Loan Documents will not violate any provision of existing law (including, but not limited to, any law relating to usury), any order of any court or other agency or government, or any indenture, agreement or other instrument to which Mortgagor or any Guarantor is a party or by which Mortgagor or any Guarantor or any of their property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor or any Guarantor, except as contemplated by the Note and the other Loan Documents, and no action with respect thereto by any Mortgagor or Guarantor is required.

(c) No consent or approval of any regulatory body to the execution, delivery and performance of the Note and the other Loan Documents, the Guaranty or the transactions contemplated thereby is required by law.

(d) There are no suits, proceedings or investigations pending or to their knowledge, threatened against or affecting Mortgagor or any Guarantor, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Mortgagor or any Guarantor.

(e) No judgement, decree or order of any court or governmental or administrative agency or instrumentality has been issued against any Guarantor or Mortgagor (or Beneficiary, if Mortgagor is a Trust) which has or may have any material adverse effect on the business or condition of any Guarantor or Mortgagor (or Beneficiary, if Mortgagor is a Trust).

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(f) All information, reports, papers and data given to Mortgagee with respect to Mortgagor, each Beneficiary or others obligated under the terms of the Loan Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter thereof.

(g) Mortgagor has good and marketable title in fee simple to the Mortgaged Property and good and marketable title to the Fixtures, free and clear of any prior assignments, liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances.

(h) Mortgagor has not executed any prior collateral assignment of the Lease or of its right, title, interest therein, and Mortgagor has delivered to Mortgagee a true and complete copy of the Lease assigned hereunder, together with all amendments, supplements and other modifications, and to the best of Mortgagor's knowledge, no material default by Mortgagor or Lessee under the Lease remains uncured.

(i) The Permitted Encumbrances have not materially interfered with the operation of the Mortgaged Property, nor does Mortgagor reasonably foresee any material interference arising from the Permitted Encumbrances during the terms of the Note.

(j) Mortgagor and all Beneficiaries have each filed all Federal, state, country and municipal income tax returns required to have been filed by them, respectively, and have paid all taxes which have become due pursuant to any assessments received by them, respectively, and neither the Mortgagor (nor the Beneficiary, if Mortgagor is a Trust) nor any Guarantor knows of any basis for additional assessment with respect to such taxes.

(k) The Mortgaged Property is being, and will continue to be, used for commercial purposes.

(l) No release (a "Release") of Hazardous Material has occurred on the Mortgaged Property, except those Hazardous Materials set forth in the Permitted Encumbrances and acceptable to Mortgagee. Mortgagor has not received any notice and has no reason to believe that any such notice is forthcoming from any governmental agency or from any tenant under a Lease or from any other party with respect to any such Release.

Breach of such representations and warranties shall constitute an Event of Default hereunder. Mortgagor shall

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promptly give written notice to Mortgagee of any breach of any Representation or Warranty made hereunder.

**4.14 Mechanics Lien.** Mortgagor shall not permit or suffer and mechanics' lien claims to be filed or otherwise asserted against the Premises and Mortgagor shall promptly, and in any event within thirty (30) days after filing, discharge or cause to be discharged the same in case of the filing of any claims for lien or proceeding for the enforcement thereof; provided, however, that in connection with any such lien or claim which Mortgagor, may in good faith desire to contest, Mortgagor may contest the same by appropriate legal proceedings diligently prosecuted, but only if Mortgagor shall cause a title insurance company which is acceptable to Mortgagee and which is licensed to issue title insurance in the county where the Mortgaged Property is located (the "Title Company"), to issue an endorsement to the Title Policy insuring over the exception created by such lien (including furnishing such security or indemnity as the Title Company requires to issue such endorsement) or provide such other security and indemnification as may be reasonably acceptable to Lender.

#### **4.15 Hazardous Materials.**

(a) Without limiting the generality of Mortgagor's obligation to comply with all laws as earlier set forth herein, Mortgagor shall not cause or permit the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions, or use, generate, manufacture, store or dispose of any Hazardous Materials on, under or about the Mortgaged Property.

(b) Mortgagor shall indemnify and hold Mortgagee harmless from any loss, liability, cost, expense and/or claim (including without limitation the cost of any fines, remedial action, damage to the environment and cleanup and the fees of attorneys and other experts) arising from the use, Release or disposal of any Hazardous Materials on, under or about the Mortgaged Property or the transport of any hazardous Materials to or from the Mortgaged Property; and the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions; and the breach of any of the representations, warranties and covenants of Mortgagor with respect to Hazardous Materials set forth in this Mortgage.

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## Article 5

### EVENTS OF DEFAULT

#### 5. Events of Default

The term "Event(s) of Default", as used in the other Loan Documents and in the Note, shall mean the occurrence or happening, from time to time, of any one or more of the following:

5.1 Payment of Indebtedness. If Mortgagor shall default in the due and punctual payment of all or any portion of any instalment of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or by acceleration or otherwise, (the "Due Date").

5.2 Performance of Obligations. If Mortgagor shall default in the due observance or performance of any of the Obligations other than payment of money and such default shall not be curable, or if curable shall continue for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor, except that an Event of Default shall not be deemed to exist during said thirty (30) day period unless the priority, validity or enforceability of the lien created by this Mortgage or any of the other Loan Documents or the value of the Premises are impaired, threatened or jeopardized.

5.3 Bankruptcy, Receivership, Insolvency, Etc. If voluntary or involuntary proceedings under the Federal Bankruptcy Code, as amended, shall be commenced by or against Guarantor, Mortgagor or any Beneficiary thereof or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against any Guarantor, Mortgagor, or any Beneficiary with respect to all or any part of Guarantor's, Mortgagor's or any Beneficiary's property under the Federal Bankruptcy Code, as amended, or other law of the United States or of any state or other competent jurisdiction, and if such proceedings are instituted against Guarantor, Mortgagor or any Beneficiary or General Partner thereof, it shall consent thereto or shall fail to cause the same to be discharged within thirty (30) days.

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5.4 Laws Affecting Obligations and Indebtedness. If subsequent to the date of this Mortgage, any governmental entity in which the Mortgaged Property is located passes any law (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor unlawful, or (ii) which prohibits Mortgagee from exercising any of its material rights and remedies under the Loan Documents.

5.5 False Representation. If any representation or warranty made by Mortgagor or others in, under or pursuant to the Note, this Mortgage, or the other Loan Documents, shall prove to have been false or misleading in any material respect as of the date on which such representation or warranty was made, provided, however, Mortgagor shall have a period not to exceed thirty (30) days after written notice to cure same.

5.6 Destruction of Improvements. If any of the Buildings is demolished or removed or demolition or removal thereof is imminent, eminent domain proceedings excepted.

5.7 Default Under Other Mortgage. If the holder of any junior mortgage or any other lien on the Mortgaged Property (without hereby implying Mortgagee's consent to any such junior mortgage or lien) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, or if a default exists under any other note, mortgage or lien, on or related to the Mortgaged Property, and such default shall continue for a period of ten (10) days after written notice thereof by Mortgagee to Mortgagor, notwithstanding any provision in the other Loan Documents or in any other document to contrary with respect to notice and right to cure being provided to Mortgagee.

5.8 Loan Documents. If a default shall occur under any of the other Loan Documents.

5.9 Due On Sale. If, without the prior written consent of Mortgagee, there is (i) sale, transfer, agreement for deed, conveyance, assignment, hypothecation or encumbrance, whether voluntary or involuntary, of all or part of the Mortgaged Property or any interest therein, or (ii) any sale, assignment, pledge, encumbrance or transfer to a third party of all or any portion of any partnership shares in the Beneficiary, if any, or interest therein or any portion or the beneficial interest, if any or (iii) the seizure of the Mortgaged Property, or Fixtures or Personalty, attachment of any lien thereon, whether voluntary or involuntary, which has not been removed or bonded off to

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Mortgagee's satisfaction within ten (10) days of such attachment.

5.10 Judgement. If a final judgement for the payment of money in excess of \$10,000 shall be rendered against Mortgagor, Beneficiary or any Guarantor and the same shall remain unpaid for a period of thirty (30) consecutive days during which period execution shall not be effectively stayed.

5.11 Death of Guarantor or Beneficiary. The death, legal incompetency or termination of any Guarantor or Beneficiary.

## Article 6

### DEFAULT AND FORECLOSURE

6.1 Remedies. If an Event of Default shall occur Mortgagee may, at its option, exercise one or more or all of the following remedies:

6.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

6.1.2 Entry on Mortgaged Property. Enter upon the Mortgaged Property and take possession thereof and of all books, records, and accounts relating thereto.

6.1.3 Operation of Mortgaged Property. Hold, lease, operate or otherwise use or permit use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

6.1.4 Enforcement of Mortgage. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and

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pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

6.1.5 Foreclosure and Private Sale. Sell the Mortgaged Property, in whole or in part, (a) under the judgement or decree of a court of competent jurisdiction, or (b) at public auction (if permitted by the laws of the jurisdiction in which the Mortgaged Property is situated) in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law; and/sell the Personalty and/or the Fixtures, in whole or in part, at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law.

6.1.6 Receiver. Mortgagee shall be entitled, as a matter of strict right, and without regard to the value of occupancy of the security, or the solvency of the Mortgagor or of any Guarantor, or the adequacy of the Mortgaged Property as security for the Note, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct such receiver to have all the rights and powers permitted under the laws of the State where the Mortgaged Property is located. Mortgagor hereby waives any requirements on the receiver or Mortgagee to post any surety or other bond. Mortgagee or the receiver may also take possession of, and for these purposes use, any and all Personalty which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including the receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage.

Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Indebtedness in the order set forth in the applicable Section hereunder. The right to enter and take possession of the Mortgaged Property to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or

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otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

6.1.7 Additional Rights and Remedies. With or without notice, and without releasing Mortgagor from any Indebtedness or Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee deem necessary or desirable to protect the security hereof including, but without limitation to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate person to assist them.

6.1.8 Other. Exercise any other remedy specifically granted under the other Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

6.2 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgement obtained by virtue of the Note, this Mortgage or the other Loan Documents, or pursuant to any other judicial proceedings under this Mortgage or the other Loan Documents, may be sold in one parcel, as an entirety, or in such parcels, and in such manner and order as Mortgagee, in its sole discretion, may elect.

6.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, this Mortgage and in the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against the Mortgagor or any Guarantor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver

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or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

6.4 No Cure or Waiver. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

6.5 Payment of Costs, Expenses and Attorneys' Fees. Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee in exercising the remedies under the Note and other Loan Documents (including but without limit, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest at the greater of Defaulted Interest Rate or the highest rate payable under any Indebtedness and Obligations from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses and interest in addition to the amount of the other Indebtedness and Obligations as a credit bid, the equivalent of cash.

6.6 Waiver of Redemption, Notice and Marshaling Mortgagor hereby waives and releases (a) any and all statutory or equitable rights of redemption whether arising before or after the entry of a Judgement for Foreclosure and Sale, (b) all benefit that might accrue to Mortgagor and each Guarantor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisalment, valuation, stay of execution, exemption from civil process, moratorium, redemption or extension of time for payment; (c) unless specifically required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise, of any option or remedy under the Note or the

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other Loan Documents; (d) any right to have liens against Mortgaged Property marshaled; and (e) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Note or the other Loan Documents.

6.7 Power of Sale. Mortgagee acknowledges that a power of sale provision is not currently enforceable under the Illinois Mortgage Foreclosure Act (the "Foreclosure Act"). Mortgagor acknowledges that in the event the Foreclosure Act or any successor act is hereafter applicable hereto and/or amended to permit the enforcement of a power of sale provision (the "Amendment"), such Amendment, to the extent permitted by law, will be enforceable against Mortgagor and allow Mortgagee to proceed under the power of sale provision of the Foreclosure Act, so long as the Event of Default under which Mortgagee is proceeding occurs on or after the effective date of the Amendment, Mortgagee may elect to sell the Mortgaged Property by power of sale and, upon such election, such notice of Event of Default and election to sell shall be given as shall be required by the Amendment. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Mortgagee, or the selling officer as required by the Amendment, shall sell such property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots, parcels or interests, Mortgagee may designate the order in which the same shall be offered for sale or sold.

6.8 Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

(a) First, to the payment of reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing repairing, improving and selling the same (including, without limitation, payment of any Impositions or other taxes);

(b) Second, to the extent allowed by law, to the payment of attorneys' fees and other legal expenses, including expenses and fees incurred on appeals and legal expenses and fees of a receiver;

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(c) Third, to the payment of accrued and unpaid interest on the Indebtedness; and

(d) Fourth, to the payment of the balance of the Indebtedness. The balance, if any, shall be paid to the parties entitled to receive it.

**6.9 Strict Performance.** Any failure by Mortgagee to insist upon strict performance by Mortgagor or each Guarantor of any of the terms and provisions of the other Loan Documents or of the Note shall not be deemed to be a waiver of any of the terms or provisions of the other Loan Documents or the Note and Mortgagee shall have the right thereafter to insist upon strict performance of any and all such provisions by Mortgagor and/or each Guarantor.

**6.10 No Conditions Precedent to Exercise of Remedies.**

Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness (including all Guarantors) shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or any Guarantor or of any person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of the other Loan Documents or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the other Loan Documents or the Note without first having obtained the consent of Mortgagor, each Guarantor or such other person; and in the latter event Mortgagor, each Guarantor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

**6.11 Release of Collateral.** Mortgagee may release, regardless of consideration, any part of the security held for the Indebtedness or Obligations without, as to the remainder of the security in any way impairing or affecting the liens of the Loan Documents or their priority over any subordinate lien. Without affecting the liability of Mortgagor, each Guarantor or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security

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not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of said Note, and without notice or consent: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modifying or waiving any Obligation, or subordinating, modifying or otherwise dealing with the lien or change hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

6.12 Other Collateral. For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

6.13 Discontinuance of Proceedings. In the event Mortgagee shall have proceeded to enforce any rights under the Note or the other Loan Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor, each Guarantor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

## Article 7

### CONDEMNATION

7.1 Condemnation. To the extent of the outstanding Indebtedness, Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any award or payment in respect of (a) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (b) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projects outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (c) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property.

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Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims.

7.2 Application of Proceeds. All proceeds received by Mortgagee with respect to a taking of all or any part of the Mortgaged Property or with respect to damage to all or any part of the Mortgaged Property from governmental action not resulting in a taking of the Mortgaged Property, shall be applied as follows, in the order of priority indicated:

(a) To reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees incurred in connection with collecting the said proceeds;

(b) To the payment of accrued and unpaid interest on the Note;

(c) To the prepayment of the unpaid principal of the Note, without premium; and

(d) To the payment of the balance of the Indebtedness. The balance, if any, will be paid to Mortgagor.

## Article 8

### MISCELLANEOUS

8.1 Further Assurances. Mortgagor, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, financing statements, estoppel certificates and declarations of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the other Loan Documents, to facilitate the assignment or transfer of the Note and the other Loan Documents, and to subject to the liens of the other Loan Documents, any property intended by the terms thereof to be covered thereby, and any renewals, additions, substitutions, replacements or betterments thereto. Upon any failure by Mortgagor to execute and deliver such instruments, certificates and other documents on or before seven (7) days

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after receipt of written request therefor, Mortgagee may make, execute and record any and all such instruments, certificates and Mortgagee irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

**8.2 Recording and Filing.** Mortgagor, at its expense, will cause the other Loan Documents, all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

**8.3 Notice.** All notices, demands, request and other communications required under the other Loan Documents and the Note shall be in writing and shall be deemed to have been properly given if sent by U.S. certified or registered mail, postage prepaid, or personal delivery, addressed to the party for whom it is intended at Mortgagor's Address or the Mortgagee's Address, as the case may be. Any party may designate a change of address by written notice to the other, given at least five (5) business days before such change of address is to become effective.

**8.4 Mortgagee's Right to Perform the Obligations.** If Mortgagor shall fail to make any payment or perform any act required by the Note or the other Loan Documents, then, at any time thereafter, upon reasonable prior notice to or demand upon Mortgagor and without waiving or releasing any obligation or default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Mortgagee, and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with the interest thereon at the Defaulted Interest Rate, from the date of payment or incurring, shall constitute additions to the Indebtedness secured by the other Loan Documents, and shall be paid by Mortgagor to Mortgagee, on demand. If Mortgagee shall elect to pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee

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pursuant to the provisions hereof or by reason of the other Loan Documents, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Defaulted Interest Rate from the date of such expenditures, shall constitute additions to the Indebtedness and shall be secured by the other Loan Documents and shall be paid by Mortgagor to Mortgagee upon demand.

8.5 Covenants Running with the Land. All covenants contained in the other Loan Documents shall run with the Mortgaged Property.

8.6 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Note, this Mortgage, the other Loan Documents and remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. The other Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement for the change, waiver, discharge or termination is asserted.

8.8 Assumption. The loans evidenced by the Note and secured by this Mortgage is personal to Mortgagor, and Mortgagee made such loan to Mortgagor based upon the credit of Mortgagor and each Guarantor and Mortgagee's judgment of the ability of Mortgagor to repay the entire Indebtedness and therefore this Mortgage may not be assumed by any subsequent holder of an interest in the Mortgaged Property without Mortgagee's prior written consent. This Section does not limit the effect and generality of any due on sale restrictions set forth herein. Mortgagor shall notify Mortgagee promptly in writing of any transaction or event as described in any such due on sale provision herein.

8.9 Tax on Indebtedness or Mortgage. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Mortgagee the obligation to pay the whole, or any part, of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts as to affect the Mortgage or the Indebtedness, the entire unpaid balance of the Indebtedness shall, at the option of Mortgagee, after ten (10) days written notice to Mortgagor, become due to

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payable; provided, however, that if, in the opinion of Mortgagee's counsel, it shall be lawful for Mortgagor to pay such taxes, assessments, or charges, or to reimburse Mortgagee therefor, then there shall be no such acceleration of the time for payment of the unpaid balance of the Indebtedness if a mutually satisfactory agreement for reimbursement, in writing, is executed by Mortgagor and delivered to Mortgagee within the aforesaid period.

8.10 Maximum Rate of Interest. Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Note, the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In the event the total liability for payments of interest and payments in the nature of interest, including without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month or other interest payment period exceeds the limit imposed by the applicable usury laws, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor, to waive, reduce, or limit the collection of any sums (or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness.

8.11 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in the other Loan Documents and Note shall survive the making of the loan and the execution and delivery of the Note, and shall continue in full force and effect until the Indebtedness shall have been paid in full, except such obligations related to Awards as specified herein which shall survive.

8.12 Applicable Law. The Loan Documents shall be governed by and construed according to the laws of the State of Illinois.

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8.13 Loan Expenses. Mortgagor shall pay all costs and expenses in connection with the preparation, execution, delivery and performance of the Note and the other Loan Documents including, but not limited to, fees and disbursements of Mortgagor's and Mortgagee's counsel, recording costs and expenses, conveyance fee, documentary stamp, intangible and other taxes, surveys, appraisals and policies of title insurance, physical damage insurance, and liability insurance.

8.14 Tax Escrow. Unless Mortgagor has been advised that an Escrow as defined herein is to be established at an earlier time, in the event Mortgagor is delinquent in any payment required under the Note or the other Loan Documents, Mortgagee shall have the option upon fifteen (15) days' prior written notice to Mortgagor to require Mortgagor to pay to Mortgagee on each of the monthly due dates of interest payments, as set forth in the Note deposit, an amount equal to one-twelfth of the annual Impositions. Mortgagor shall also pay into such account such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund, at least 30 days prior to the due dates of the next instalment of such Impositions, for payment of such Impositions so as to realize the maximum discounts permitted by law. Mortgagee reserves the right to request a cushion of two (2) months in addition to such deposits, to be maintained in such account at all times to guaranty adequate funds.

8.15 Insurance Escrow. Unless Mortgagor has been advised that an Escrow as defined herein is to be established at an earlier time, in the event Mortgagor is delinquent in any payment required under the Note or the other Loan Documents, Mortgagee shall have the option upon fifteen (15) days' prior written notice to Mortgagor to require Mortgagor to pay to Mortgagee on each of the monthly due dates of interest payments, as set forth in the Note deposit, an amount equal to one-twelfth of the annual insurance premiums for such account such insurance as is required hereunder. Mortgagor shall also pay into such account such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund, at least 30 days prior to the due dates of the next instalment of such premiums, for payment of such premiums so as to realize the maximum discounts permitted by law.

8.16. Management of Escrows. Amounts held in Escrow hereunder by Mortgagee shall be non-interest bearing and may be commingled with Mortgagee's other funds. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance

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of such amounts then in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such amounts. Upon full payment of the Indebtedness, or, at the election of Mortgagee at any prior time, the balance of such amounts shall be paid over the Mortgagor and no other party shall have any right or claim thereto. Amounts held by Mortgagee in accordance herewith shall (a) be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under the Security Documents to pay Impositions and required insurance premiums, within the maximum discount period, where applicable and (b) not bear interest.

8.17 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee, pursuant to the other Loan Documents, including, but not limited to, any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute any warranty or representation with respect thereto by Mortgagee.

8.18 Headings. The article headings and the section and subsection captions are inserted for convenience or reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.19 Advances and/or Revolving Credit Loan. This Mortgage is given to secure the Indebtedness and/or, to secure a revolving credit loan in accordance with the Note and shall secure not only presently the existing Indebtedness under the Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee or Holder or otherwise, as are made within 20 years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total of such indebtedness (including disbursements that the Mortgagee, may, but shall not be obligated

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to, make under this Mortgage, the Loan Documents, or any other document with respect hereto) at any one time outstanding may be substantially less but shall not exceed the greater of Ten Million and No/100 (\$10,000,000) Dollars or Three Hundred (300%) Per Cent of the original principal balance as set forth on the Note, plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property and interest in such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1301 (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Land given priority by law and the Permitted Exceptions.

**8.20 Trustee Exculpation.** If the party executing this Mortgage is a Trustee then this Mortgage and each other instrument related hereto and so executed is executed by the Trustee, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Mortgage and the other Loan Documents shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage and the other Loan Documents, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Mortgage or the other Loan Documents.

Notwithstanding the foregoing, the Mortgagee shall not be precluded from: (a) recovering any condemnation awards or insurance proceeds attributable to the Mortgaged Property; (b) recovering any tenant security deposits, advance or pre-paid rents; (c) enforcing the personal liability of any Beneficiary who executed the Note and/or the other Loan Documents with respect to the payment of the Note and/or the performance of the other Loan Documents; and/or (d) enforcing the personal liability of any guarantor of the Note and/or the other Loan Documents.

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

REPUBLIC BANK OF CHICAGO, not individually, but as Trustee under Trust Agreement dated JANUARY 1, 1994 and known as Trust Number 1323.

*[Signature]* (SEAL)  
Trust Officer

Attest: *[Signature]* (SEAL)  
Secretary

97198749

This instrument is executed by Republic Bank of Chicago, not personally but as Trustee, under the express authority of the power and authority conferred upon and vested in it as such trustee. All of the statements, warranties and covenants set forth herein are made solely on information and belief of the independent inquiry or investigation of Republic Bank of Chicago and its duly organized agencies. Without limiting any provision to the contrary set forth in this instrument, any recourse against Republic Bank of Chicago shall be limited to the assets of the Republic Bank of Chicago and no personal liability shall be asserted or be enforceable against Republic Bank of Chicago by reason of the terms, covenants, agreements, covenants, warranties, representations, indemnifications, or other matters herein set forth, all such liability being expressly waived.

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## JOINDER

We, the undersigned Beneficiary(s), do hereby affirm, restate and join in all covenants, representations and warranties contained in this Mortgage.

IN WITNESS WHEREOF, we have executed this Joinder the day and date first above written.

CONTINENTAL FUN WORLD LIMITED PARTNERSHIP,  
AN ILLINOIS LIMITED PARTNERSHIP BY  
CONTINENTAL FUN WORLD, INC., ITS GENERAL PARTNER

By: *Matthew J. Secretary*

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## ACKNOWLEDGEMENT

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On MARCH 6, 1997, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the ~~TRUST OFFICER~~ SECRETARY on behalf of REPUBLIC BANK OF CHICAGO, not individually but as Trustee under a Trust Agreement dated JANUARY 1, 1994 and known as Trust No. 1323 the corporation therein named and acknowledged to me that the execution thereof was the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

(SEAL)

Irene M. Shamma

Notary Public in and for the State of Illinois

My commission expires:

OFFICIAL SEAL  
IRENE M. SHAMMA  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES SEPT 11, 1998

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## EXHIBITS

- A. Legal Description
- B. Description of Assets
- C. Permitted Exceptions

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## EXHIBIT A:

### PARCEL 6:

THAT PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, SOUTH OF THE INDIAN BOUNDARY LINE, OF FRACTIONAL SECTION 7 TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID FRACTIONAL SECTION 7, THENCE SOUTH 0 DEGREES 01 MINUTES 48 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHEAST 1/4 OF THE NORTHWEST 1/4, A DISTANCE OF 364.17 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 16 SECONDS WEST, ALONG A LINE 364.17 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST 1/4 OF THE NORTHWEST 1/4, A DISTANCE OF 1062.74 FEET TO A POINT OF CURVE; THENCE WESTERLY, ALONG A CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 750.00 FEET AND A CHORD THAT BEARS NORTH 82 DEGREES 10 MINUTES 10 SECONDS WEST, AN ARC LENGTH OF 230.43 FEET AND A CHORD DISTANCE OF 229.54 FEET TO A POINT OF COMPOUND CURVE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 930.74 FEET AND A CHORD THAT BEARS NORTH 67 DEGREES 46 MINUTES 09 SECONDS WEST AN ARC LENGTH OF 149.39 FEET AND A CHORD DISTANCE OF 149.23 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 23 DEGREES 34 MINUTES 09 SECONDS WEST 1169.97 FEET TO THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID FRACTIONAL SECTION 7; THENCE NORTH 89 DEGREES 59 MINUTES 41 SECONDS WEST, ALONG THE LAST DESCRIBED LINE, 606.07 FEET TO THE WEST LINE OF HARLEM AVENUE AS RECORDED IN DOCUMENT NUMBER 66L10329; THENCE NORTH 0 DEGREES 10 MINUTES 58 SECONDS EAST, ALONG THE LAST DESCRIBED LINE, 56.82 FEET TO A POINT IN A NON-TANGENT CURVED LINE, SAID CURVED LINE ALSO BEING THE SOUTHERLY LINE OF GEORGE BRENNAN HIGHWAY AS RECORDED IN DOCUMENT NUMBER 11068759; THENCE NORTHEASTERLY, ALONG THE LAST DESCRIBED CURVED LINE, BEING CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 949.80 FEET, AND A CHORD THAT BEARS NORTH 19 DEGREES 01 MINUTES 57 SECONDS EAST, AN ARC DISTANCE OF 234.43 FEET AND A CHORD DISTANCE OF 233.05 FEET TO A NON-TANGENT INTERSECTION WITH THE SOUTHERLY LINE OF GEORGE BRENNAN HIGHWAY AS RECORDED IN DOCUMENT NUMBER 11231373; THENCE NORTH 44 DEGREES 46 MINUTES 37 SECONDS EAST 1240.58 FEET TO A NON-TANGENT INTERSECTION WITH A CURVED LINE; THENCE SOUTHEASTERLY, ALONG A CURVED LINE BEING CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 930.74 FEET, AND A CHORD THAT BEARS SOUTH 57 DEGREES 16 MINUTES 51 SECONDS EAST, AN ARC DISTANCE OF 191.36 FEET AND A CHORD DISTANCE OF 191.03 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 31-07-261-003

31-67-200-073

COMMONLY KNOWN AS: ODYSSEY FUN WORLD, TINLEY PARK, IL

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## EXHIBIT B

### ASSETS SUBJECT TO LIEN

The term "Debtor" as used herein shall mean any Mortgagor, Beneficiary, Guarantor, Debtor, Pledgor, Hypothecator, and/or any other party granting the security interest described in the attached instrument or perfected thereby.

The term "owned by Debtor" as used herein shall mean presently owned or hereafter acquired by Debtor, or in which the Debtor may now or hereafter have any interest whatsoever.

The term "Assets" as used herein shall mean any and all of the following items owned by Debtor.

The term "Premises", if used herein, shall mean the Mortgaged Property as described in the attached Exhibit and/or Security Agreement and/or Mortgage as the case may be.

(a) All apparatus, machinery, devices, fixtures, communication devices, systems and equipment, fittings, appurtenances, equipment, appliances, furniture, furnishings, appointments, accessories, landscaping, plants and all similar items of every kind, nature or description and used in the operation or maintenance of the Premises and any other real property hereafter subject to the lien of the Mortgage or any business or operation conducted thereon. All fixtures and equipment now or hereafter installed for use in the operation of the buildings, structures and improvements now or hereafter on the Premises and any other real property hereafter subject to the lien of the Mortgage, and the machinery, appliances, fixtures and equipment pertaining thereto.

(b) Any and all contract rights, revenues, receivables, income, accounts, notes, lease rights, income streams, cash flows, interest, dividends, and accounts receivable and all similar items of every kind, nature or description and arising from or out of the Premises and any other real property hereafter subject to the lien of the Mortgage and the businesses and operations conducted thereon.

(c) Any and all goods and other personal property of every kind or description, whether tangible or intangible or choses in action, including without limitation, any and all inventory, contract rights, franchises, licenses, permits, documents, instruments and general intangibles, goods held for sale, lease or demonstration or to be furnished under contracts of service, goods leased to others, trade-ins and repossessions, raw materials, work in process and materials or supplies and any and all replacements and substitutions thereof or therefor, arising from or out of the Premises and any other real property hereafter subject to the lien of the Mortgage.

(d) Any and all construction contracts, subcontracts, architectural contracts, engineering contracts, service contracts, sales contracts, maintenance contracts, management contracts, structural and other governmental consents, permits and licenses, surveys, plans, specifications, warranties, guaranties, which any Debtor may own, or may subsequently directly or indirectly enter into, obtain or acquire in connection with the improvement, ownership, operation or maintenance of the Premises.

(e) If not otherwise described hereby, any and all rights in and to the Go-Karts, the Amusement Pools and the Mini-Golf Structure.

(e) Any and all additions and accessories to all of the foregoing and any and all proceeds, renewals, replacements and substitutions of all of the foregoing.

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