

UNOFFICIAL COPY

99730300

1999-08-02 11:35:23
Cook County Recorder 71.50



99730300

**FUTURE ADVANCE MORTGAGE
 AND
 SECURITY AGREEMENT
 TO
 BANK OF AMERICA, N.A., A NATIONAL BANKING ASSOCIATION
 ("Mortgagee")**

THIS FUTURE ADVANCE MORTGAGE AND SECURITY AGREEMENT (referred to herein as "this instrument"), executed as of the 20th day of August, 1999, by and between **800 BIERMANN, L.L.C.**, a Delaware limited liability company whose address is % Angelo, Gordon & Co., L.P., 245 Park Avenue, 26th Floor, New York, New York 10167 (collectively, if more than one, the "Mortgagor"), and Mortgagee (as defined above), whose address is 7800 Forsyth Boulevard, Suite 450, St. Louis, Missouri 63105.

WITNESSETH:

Mortgagor, for and in consideration of the loans, advances or other financial accommodations by Mortgagee giving rise to the debt herein described and the sum of One Dollar (\$1.00) in hand paid, the receipt and adequacy of which are hereby acknowledged, **GRANTS, BARGAINS AND SELLS, CONVEYS AND CONFIRMS, ASSIGNS, TRANSFERS, PLEDGES, MORTGAGES AND WARRANTS** to Mortgagee the following real property, whether now owned or held or hereafter acquired by Mortgagor and whether now or hereafter existing (the "Mortgaged Property"), subject to those easements, covenants, conditions, and restrictions of record as of the date hereof which are approved by Mortgagee, to have and to hold the Mortgaged Property, with all rights, appurtenances and privileges thereunto belonging, unto the Mortgagee, its successors and assigns forever.

NA 26720 UKB 1/3

P.I.N. 03-35-104-005-0000

THIS MORTGAGE IS INTENDED TO SECURE FUTURE ADVANCES AND FUTURE OBLIGATIONS PURSUANT TO AND IS GOVERNED BY SECTION 15-1302(b)(1) OF THE ILLINOIS CODE OF CIVIL PROCEDURE (ILL. REV. STAT. CH. 110, PARAGRAPH 15-1302(b)(1)).

The Mortgaged Property is the following:

(1) all of the following described land (the "Land") situated in the County of Cook, State of Illinois:

See legal description on Exhibit "A" Attached Hereto and Made a Part Hereof

(2) all improvements and fixtures (the "Improvements") now or hereafter existing or constructed upon the Land, including, but not limited to, buildings and other structures;

(3) all of the hereditaments, easements, licenses, privileges, rights-of-way, water rights, uses and other appurtenances to the Land and Improvements;

(4) all right, title and interest, if any, of Mortgagor in and to nearby ways, roads, streets, boulevards, avenues or other public thoroughfares;

(5) all right, title and interest of Mortgagor in and to the rents, income, issues, profits and revenues of all of the foregoing, including, but not limited to, rents and royalties payable with respect to oil, gas or minerals located on or under the Land.

(6) all right, title and interest, if any, of Mortgagor in and to all building permits, occupancy permits, and other governmental licenses, all trademarks, trade names and logos used in connection with the operation of the Mortgaged Property, and leasing and management agreements relating to the Mortgaged Property and all warranties relating to the workmanship, construction and materials relating to the improvements located on the Mortgaged Property.

(7) all right, title and interest of Mortgagor in those items set forth on Exhibit B hereto and to the Uniform Commercial Code Financing Statement between Mortgagor and Mortgagee of even date herewith which are not otherwise set forth in subparagraphs (1) through (6) above.

This Mortgage is made to secure all of the following (the "Obligations"), and, to the extent allowed by law, advances made by Mortgagee or obligations incurred by Mortgagee, for the reasonable protection of the security interest in the Collateral, including, but not limited to, amounts for taxes, insurance, repair, maintenance and preservation of the Collateral, completion of improvements on the Mortgaged Property and expenses of collection, sale and foreclosure hereunder and that the same shall have priority over any intervening or subsequent liens and encumbrances:

UNOFFICIAL COPY

99730300

(1) The payment of all amounts due, including, but not limited to, principal, interest, fees and expenses, from time to time (whether at stated maturity, by acceleration or otherwise) and obligations arising under the following documents, all of which are incorporated herein by reference:

- (a) a promissory note of Mortgagor in the principal amount of \$5,100,000.00 dated of even date with this Mortgage, with a final payment of principal and interest due on July 1, 2002, and a Credit Facility Agreement (the "Loan Agreement"), and
- (b) this instrument, an Assignment of Rents and Lessor's Interest in Leases and Contract Rights, Uniform Commercial Code Financing Statements, and all additional security agreements, mortgages, assignments or other loan and security instruments which are executed and delivered to Mortgagee to evidence and/or secure obligations of Mortgagor under the document(s) described in clause (a) above;
- (c) Hedge Agreement (as defined in the Loan Agreement) of even date herewith between Mortgagor and Mortgagee;

The term "Documents" shall mean, unless otherwise specified, all of the documents referred to in clauses (a) and (b) above and "Document" shall mean any one of such documents. Each Document shall be equal and without preference over another.

(2) Any and all other indebtedness of Mortgagor to Mortgagee, whether now existing or hereafter created, absolute or contingent, direct or indirect, joint or several, secured or unsecured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise or acquired by Mortgagee outright, conditionally or as collateral security from another, and whether or not made pursuant to commitment and whether or not presently contemplated by Mortgagor and Mortgagee, including, but not limited to, the obligation of Mortgagor to repay future advances by Mortgagee, and the obligation to repay advances by Mortgagee under any letters of credit issued for Mortgagor's account, other than any such other indebtedness which was incurred by Mortgagor for personal, family or household purposes, or is secured by Mortgagor's dwelling;

(3) Any and all extensions, renewals, amendments, replacements, restatements, refinances, refundings or modifications (including, but not limited to, modifications to interest rates or other payments terms) of any of the foregoing; and

(4) The observance and performance by Mortgagor of each and every term, covenant, condition and agreement required by the Documents to be observed and performed by Mortgagor.

Mortgagor further covenants, agrees, represents and warrants as follows:

1. **Defined Terms.** All capitalized terms used in this instrument shall have the meanings defined in the Sections where they are first used or if not therein defined, the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Charter Documents" means the certificate or articles of incorporation and bylaws of a corporation, the constitution, certificate or articles of association and bylaws of an unincorporated association, the partnership agreement of a general partnership and certificate of partnership of a limited partnership, the trust instruments under which a trust exists, and the Articles of Organization and Operating Agreement of a limited liability company.

"Contaminants" means any pollutants, hazardous or toxic substances or wastes, or contaminated materials including asbestos, urea formaldehyde, petroleum products, pesticides, PCBs and all other materials and substances designated or regulated as hazardous or toxic substances or wastes, pollutants or contaminated materials under any Environmental Laws or regulation promulgated thereunder. This definition shall not include usual and ordinary cleaning compounds and office supplies in normal quantities for the office building encumbered by this Mortgage.

"Default Rate" means an interest rate of four percent (4%) in excess of the Stated Rate (as defined in the Note).

"Environmental Enforcement Action" means any action, proceeding or investigation instituted by the U. S. Environmental Protection Agency, the Illinois Environmental Protection Agency or any other federal, state or local governmental agency related to any suspected or actual violation of any Environmental Laws or Contaminants with respect to the Property and/or any business conducted thereon.

"Environmental Laws" means the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Toxic Substances Control Act, the Occupational Safety and Health Act and any other federal, state or local environmental statute, rule or regulation as enacted or amended from time to time and all licenses, orders, permits, certificates or like authorizations promulgated under any of the foregoing.

"Environmental Release" means any spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Contaminant which causes the Property not to be in compliance with any applicable Environmental Laws.

"Mortgagee" means the Mortgagee identified as such in this instrument and any subsequent holder of any of the Documents or the other Obligations.

"Phase I Environmental Assessment" means a review by an environmental engineering or consulting firm reasonably acceptable to lender of all data and other information available regarding the status of the compliance of the Property with applicable Environmental Laws including (i) a review of the history of the Property, (ii) physical examination of the Property including identification of any above ground or underground storage tanks (but not including physical testing within the scope of a Phase II Environmental Assessment), (iii) examination of the condition and use of adjoining real property (including identifying the location of private and public wells and other potential sources of Contaminants), (iv) a statement of the ground water classification of the Property, (v) review of all industrial or transport or storage processes conducted on the Property which involve the handling, processing, use, transport, generation, disposal or treatment of a Contaminant, (vi) contact with and review of the records of the applicable region of the United States Environmental Protection Agency and appropriate state agencies and authorities, (vii) review of local or municipal records and, (viii) conversations with appropriate state and town officials.

"Phase II Environmental Assessment" means a Phase I Environmental Assessment supplemented with subsurface investigation of the Property and surrounding areas and, if applicable, with appropriate biological, physical and chemical testing of water, soil, materials and air samples for suspected Contaminants.

2. **Security Interest.** Mortgagor also grants to Mortgagee to secure the Obligations a security interest in all fixtures, goods and other personal property now owned or hereafter acquired by Mortgagor that are intended to be used or are actually used in the operation or maintenance of the Land and Improvements, and all replacements thereof, substitutions therefor and accessions thereto and cash and non-cash proceeds thereof (the "Personal Property Collateral"). This instrument constitutes a "security agreement" as that term is used in the Uniform Commercial Code in effect where the Mortgaged Property is located. The Personal Property Collateral and the Mortgaged Property are hereinafter collectively referred to as the "Collateral".

3. **Assignment of Rents.** Mortgagor hereby assigns to Mortgagee all of the rents, issues, income, profits and revenues arising from the Mortgaged Property, its interest as lessor in all existing and future leases of all or any part of the Mortgaged Property, and its interest as licensor in all existing and future licenses pertaining to the Mortgaged Property. Such assignment shall not be construed as a consent by Mortgagee to any such lease or license or impose upon Mortgagee any obligations with respect thereto. This assignment is absolute and effective immediately; provided, however, that until a Default occurs, Mortgagor may receive the rents, issues, income, profits and revenues arising from the Mortgaged Property, but shall hold the same as a trust fund to be applied to the Obligations as they become due before using the same for any other purpose. Mortgagor shall not terminate or cancel any such lease or license, nor terminate or accept a surrender or cancellation of any such lease or license, nor reduce the rent or fees payable thereunder, nor accept any prepayment of rent or fees (except such amount as may be required by the terms of the relevant lease or license to be prepaid for a period of not more than one month) without first obtaining the written consent of Mortgagee on each occasion. Mortgagor shall perform all of its obligations as lessor or licensor under such leases and licenses. Mortgagor

is simultaneously executing an Assignment of Rents and Lessor's Interests in Leases and Contract Rights in favor of Mortgagee (the "Assignment"). In the event of any conflict between the terms of this paragraph and the terms of the Assignment, the terms of the Assignment shall control.

4. **Escrow of Taxes, Assessments and Insurance.** Upon demand of Mortgagee, Mortgagor shall pay to Mortgagee on the first day of each calendar quarter, one-fourth (1/4th) of the annual charge against the Mortgaged Property for state, county and municipal taxes and assessments, general and special, and one-fourth (1/4th) of the annual cost of insurance required to be maintained herein, all as estimated by Mortgagee; and upon Mortgagee's demand in writing shall promptly deposit with Mortgagee any amount in excess of said payments which shall be required to pay any such taxes, assessments or insurance when the same shall be due. These payments shall be held in trust by Mortgagee, shall not bear interest and shall be applied by Mortgagee to payment of general and special taxes and assessments and insurance premiums as they become due. In the event the sums to be paid by Mortgagor shall not be sufficient to pay any such general or special tax or assessment or insurance premium when due, Mortgagor shall, immediately upon notice from Mortgagee, pay the deficiency to Mortgagee, which shall then pay the general or special tax or assessment or insurance premium then due. In case of a Default, the above funds deposited with Mortgagee shall constitute additional security for all Obligations secured hereby and may be applied by Mortgagee against the same.

5. **Representations and Warranties.** Mortgagor represents and warrants to Mortgagee that:

5.1. **Power and Authority.** Mortgagor has full power, authority and legal capacity to execute this instrument and perform Mortgagor's obligations hereunder. If Mortgagor is not an individual,

5.1.1. Mortgagor is duly organized and exists in good standing under the laws of the state of its organization; Mortgagor has submitted all filings to become duly qualified to do business in the state where any of the Collateral is located and the nature or extent of its business or properties there require it to be qualified to do business as a foreign entity and will diligently pursue the same to completion within sixty (60) days from the date hereof; and Mortgagor has the power and authority to own and use the Collateral as it is now being used.

5.1.2. The persons who have executed this instrument have been duly authorized to execute and deliver this instrument on behalf of Mortgagor; and this instrument has been duly authorized by all requisite action of Mortgagor and its shareholders, partners or other persons whose action is required for such authority to exist.

5.2. **Consents, Permits and Approvals.** No consent of any Mortgagee, and no consent, permit, license, approval or authorization of, or registration, declaration or filing with or notice to, any governmental authority is required in connection with the execution and delivery of this instrument or the performance by Mortgagor of its obligations hereunder, or the validity or enforceability against Mortgagor of this instrument.

5.3. Legal Restraint. The execution and delivery of this instrument and the performance by Mortgagor of its obligations hereunder does not and will not violate any provision of any law, rule or regulation or of any order, judgment, award or decree of any court, arbitrator or governmental authority, the Charter Documents of Mortgagor or any security issued by Mortgagor if Mortgagor is not an individual, or any agreement, indenture or undertaking to which Mortgagor is a party or by which Mortgagor or the Collateral is bound or affected.

5.4. Title to Collateral. Mortgagor has marketable fee simple title to the Mortgaged Property, and owns the Personal Property Collateral, free and clear of all easements, covenants, restrictions, conditions, encumbrances, liens and claims except those approved by Mortgagee (if any).

5.5. Environmental Representations. To the best of Mortgagor's knowledge, information and belief and except as set forth in the Phase One Environmental Report delivered to Mortgagee by Mortgagor:

5.5.1. The Mortgaged Property is free of any Contaminants (as defined herein) and neither Mortgagor nor any other person (including, but not limited to, prior owners, occupiers and tenants) has ever caused or permitted any Contaminant to be manufactured, placed, generated, stored, held, transferred, processed, produced, transported or disposed on, at, through or under the Mortgaged Property.

5.5.2. Neither Mortgagor nor any other person (including, but not limited to, prior owners, occupiers and tenants) has ever caused or permitted any Contaminants to be manufactured, placed, stored, located or disposed of on, under or at any other real property owned, occupied (under leases or licenses or otherwise) or operated by the Mortgagor.

5.5.3. No lien has or is currently attached to any revenues or any real or personal property owned by Mortgagor including, but not limited to, the Mortgaged Property as a result of any governmental entity expending monies as a result of any alleged Environmental Release or the existence of on, thorough or under the Mortgaged Property of a Contaminant or a breach of an Environmental Law.

5.5.4. Mortgagor has caused no condition to exist (by its action or inaction, intentional or unintentional) and to the best of Mortgagor's knowledge, after reasonable inquiry, no condition does exist, as to any parcel of property contiguous with the Mortgaged Property or located within five hundred (500) yards of the perimeter of the Mortgaged Property which would require disclosure under this Section if such property were the Mortgaged Property.

5.5.5. Neither Mortgagor nor any other person (including, but not limited to, prior owners, occupants and tenants) has received any notice or advice of any Environmental Enforcement Action.

5.5.6. Mortgagor has conducted or caused to be conducted by a consultant acceptable to Mortgagee a site assessment of the Mortgaged Property to determine the presence of conditions indicating the presence of Contaminants on the Mortgaged Property or violations of Environmental Laws with respect to the Mortgaged Property. Mortgagor's consultant has found no evidence of the presence of such Contaminants or the violation of such Environmental Laws. A copy of said consultant's report has been delivered to Mortgagee and Mortgagee has been authorized by Mortgagor and its consultant to rely upon said report in agreeing to make the loan secured by this Mortgage.

Mortgagor hereby agrees to indemnify, defend and hold Mortgagee harmless from and against any claims, damages, actions, liabilities, causes of action, suits, investigations and judgments of any nature whatsoever, including, without limitation, attorney's fees and expenses, incurred by Mortgagee in connection with any breach of the representations and warranties set forth in this paragraph. The foregoing indemnity shall survive the payoff of the Note secured by this Mortgage.

5.6 Environmental Covenants. Mortgagor covenants and agrees that:

5.6.1. Mortgagor will keep the Mortgaged Property and any other real property owned, occupied or operated by Mortgagor free of any Contaminants.

5.6.2. Mortgagor will not use the Mortgaged Property or any other real property owned, operated or occupied by Mortgagor for the manufacture, placement, generation, storage, location or disposal of any Contaminants nor permit the Mortgaged Property or any other property owned, occupied or operated by it to be used in such a manner.

5.6.3. Mortgagor shall not cause or permit to exist as a result of any intentional or unintentional action or omission on its part or for which it is responsible under applicable Environmental Laws an Environmental Release of any Contaminant.

5.6.4. In the event of any Environmental Release of a Contaminant onto the Mortgaged Property or to any other property owned, occupied or leased by it or for which it is otherwise responsible under applicable Environmental Law, it shall promptly remediate such Environmental Release in accordance with the provisions of all Environmental Laws of governmental entities and authorities having jurisdiction.

5.6.5. Mortgagor shall provide notice in writing to Mortgagee of any of the following within three (3) business days:

a. An Environmental Release of any Contaminant on the Mortgaged Property or onto any other real property owned, occupied or operated by it or for which Environmental Release it is or may be responsible or with respect to which such

responsibility is asserted by a governmental agency or in any private cause of action, by a party to such suit under applicable law; or

b. Any notice of any pending or threatened Environmental Enforcement Action with respect to Mortgagor or the Mortgaged Property including copies of complaints, orders, citations or notices from any person or entity including, without limitation, Environmental Protection Agency and applicable state agencies.

5.6.6. In the event Mortgagor leases or enters into any operating agreement pursuant to which any Mortgagee may operate any business or control any portion of the Mortgaged Property, Mortgagor shall cause to be included in any such lease or operating agreement, representations, warranties and covenants substantially similar to the representations, warranties and covenants contained in this Mortgage.

5.6.7. Mortgagor hereby agrees that any reporting obligations created under federal, state or local Environmental Laws and regulations shall be the obligation of Mortgagor and not the Mortgagee.

5.7. Mortgagee's Environmental Rights. In addition to any other rights Mortgagee has, Mortgagee shall have the following additional rights and remedies with respect to the environmental status of the Mortgaged Property:

5.7.1. In the event Mortgagor fails to take such action within ten (10) days after written notice from Mortgagee (or, if such action reasonably requires longer than ten (10) days to complete, in the event Mortgagor fails to commence to take such action within such ten (10) day period and diligently pursue the same to completion thereafter), Mortgagee shall have the right, but not the obligation, and without limitation of Mortgagee's other rights under this Mortgage, to enter onto the Mortgaged Property to conduct tests or to take such other actions as it deems necessary or advisable to cleanup, remediate, encapsulate, remove, resolve or minimize the impact of, or otherwise deal with, any Contaminants or Environmental Enforcement Actions or breaches of Environmental Laws pertaining to the Mortgaged Property or any part thereof which could result in an order, suit or other action against Mortgagor and/or which, in the sole opinion of Mortgagee, could jeopardize its security under this Mortgage. All reasonable costs and expenses incurred by Mortgagee in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Mortgagor upon demand.

5.7.2. Mortgagee shall have the right, in its sole discretion, in the event there is any indication of an environmental problem in the Mortgaged Property, to require Mortgagor to periodically (but not more frequently than annually unless an Environmental Enforcement Action is then outstanding in which case this limitation will not apply) perform (at Mortgagor's expense) environmental assessments satisfactory to Mortgagee, of the Mortgaged Property. Said assessment must be by an environmental consultant satisfactory to Mortgagee. Should Mortgagor fail to perform said Environmental Assessment within thirty (30) days of the Mortgagee's written request,

Mortgagee shall have the right, but not the obligation, to retain an environmental consultant to perform said Environmental Assessment. All costs and expenses incurred by Mortgagee in the exercise of such rights shall be secured by this Mortgage and shall be payable by Mortgagor upon demand or charged to Mortgagor's loan balance at the discretion of Mortgagee.

5.7.3. Mortgagee's rights under this Article shall be exercised by it in its sole discretion and for the benefit of Mortgagee only. Mortgagee shall have no obligation to enter into the Mortgaged Property or to take any other action which it is authorized by this Article to take for the protection of its security. Any action which it may elect to take hereunder shall be for its own benefit and all Mortgagee beneficiary rights are hereby expressly negated. Mortgagee shall have no responsibility for the conduct of Mortgagor's environmental practices on the Mortgaged Property or in any other location. Any action or inaction by Mortgagee hereunder shall not be deemed to constitute the taking of control over Mortgagee waste disposal, waste management, or other environmental practices with respect to the Mortgaged Property or any other property.

6. Covenants. Mortgagor covenants and agrees with Mortgagee as follows:

6.1. Payment of Principal and Interest. Mortgagor will pay the indebtedness evidenced by the Documents in accordance with the terms thereof.

6.2. Payment of Lienable Charges and Claims. Mortgagor shall pay (or shall deposit in escrow with Mortgagee sufficient sums to pay), before they become delinquent, all taxes, penalties, assessments, charges and other amounts which, if not so paid, will result in the imposition of a lien on any of the Collateral, and Mortgagor shall pay all claims of contractors, subcontractors, materialmen, laborers and suppliers which, if not paid, will entitle the claimant to impose a mechanic or materialman's lien upon any of the Collateral, except such of the foregoing as are being diligently contested in good faith by Mortgagor by appropriate proceedings and for which Mortgagor has obtained a bond to protect the interest of Mortgagee from a bonding company acceptable to Mortgagee or established reserves acceptable to Mortgagee; provided, however, that, if in the reasonable judgment of Mortgagee, the lien or security interest created by this instrument is materially endangered or any material part of the Collateral is subject to imminent loss or diminution in value as a result of such contest, then Mortgagor shall pay the same immediately upon demand by Mortgagee. Mortgagor shall furnish to Mortgagee upon its request evidence of its compliance with this Section.

6.3. Preservation of Collateral. Mortgagor shall not commit or allow waste of the Collateral and shall repair and maintain the Collateral so as to keep it in the same condition as existed on the date hereof, ordinary wear and tear alone excepted.

6.4. Compliance with Laws. Mortgagor shall comply with all laws, rules, regulations and codes, including, but not limited to, fire and building codes of federal, state and local authorities applicable to the Collateral or the use of the Collateral, and with the requirements

of every board of fire underwriters or similar body whose requirements apply to similar property in the area where any of the Collateral is located.

6.5. Alterations. Mortgagor shall not commit or allow any alteration, demolition or removal of any of the Improvements which would materially impair the value of the Collateral without the prior written consent of Mortgagee.

6.6. Inspection by Mortgagee. Mortgagee may at any time upon reasonable prior notice inspect the Collateral and all books and records of Mortgagor pertaining to the Collateral. Mortgagor shall give Mortgagee access to the Collateral to exercise any of Mortgagee's rights and remedies under this instrument.

6.7. Insurance. Mortgagor shall at all times keep the Collateral insured, in insurance companies and under forms of insurance acceptable to Mortgagee, against fire, extended coverage and other perils as Mortgagee may from time to time require ("Casualty Insurance"). If Mortgagor regularly carries on a business using any of the Collateral, however, Mortgagor may omit from the coverage of such insurance any items of the Collateral which are not of a character usually insured by others carrying on a similar business. Mortgagor shall also at all times carry insurance, in insurance companies acceptable to Mortgagee, against liability on account of damage to persons or property ("Liability Insurance"), (the Casualty Insurance, Liability Insurance and any other insurance required herein to be maintained by Mortgagor are sometimes hereinafter referred to collectively as the "Insurance"). If Mortgagor regularly carries on a business using any of the Collateral, the Liability Insurance shall include product liability insurance and insurance required under all applicable workers' compensation laws and shall cover all other liabilities common to Mortgagor's business, in such manner and to such extent as such coverage is usually carried by others conducting a similar business. All policies of Liability Insurance shall name Mortgagee as an additional insured. All policies of Casualty Insurance shall reflect Mortgagee's interest therein as a mortgagee under a standard New York or Union mortgagee clause. All policies of Insurance shall contain a clause providing that such policies may not be canceled without thirty (30) days' prior written notice to Mortgagee. Mortgagor shall furnish to Mortgagee upon its request at any time certificates evidencing the existence of the Insurance. Such certificates shall specify the names of the insurers, the limits of coverage, the expiration dates and the types of coverage, and shall reflect that Mortgagee is an additional insured or that the proceeds thereof are payable to Mortgagor and Mortgagee as their interests may appear, as applicable. Mortgagee is authorized, but not obligated, as the attorney-in-fact for Mortgagor, (i) to adjust and compromise proceeds payable under the policies of Insurance without the consent of Mortgagor, (ii) to collect, receive and give receipts for such proceeds in the name of Mortgagor and Mortgagee, and (iii) to endorse Mortgagor's name upon any instrument in payment thereof. This power granted Mortgagee shall be deemed coupled with an interest and shall be irrevocable. Unless the proceeds of Insurance are \$100,000.00 or less (in which event, Borrower shall be entitled to receive said proceeds and apply same to restoration), Mortgagee may, at Mortgagee's sole option, apply the proceeds of Insurance to the Obligations, and shall pay the portion not so applied to Mortgagor. If the area where the Improvements are located is now or in the future designated as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973 (as amended), and if the community where the Improvements are located is participating in the

National Flood Insurance Program, Mortgagor shall obtain and continuously maintain a National Flood Insurance Program Standard Flood Insurance Policy or equivalent covering the Mortgaged Property. Mortgagee may, from time to time, require such additional insurance as Mortgagee may determine is reasonably necessary to protect Mortgagee's lien and security interest hereunder or to assure repayment of the Obligations.

The following notice is given pursuant to the Illinois Collateral Protection Act. For the purpose of this paragraph, the terms "you" and "your" shall refer to Mortgagor and the terms "we" and "us" shall refer to Mortgagee. UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

6.8. Condemnation. Mortgagor hereby assigns to Mortgagee all awards and payments, including any interest thereon, and the right to receive the same, which may be made with respect to the Collateral as a result of (i) condemnation or the exercise of the right of eminent domain by any public or quasi-public authority, (ii) the alteration of the grade of any street or (iii) any other injury to or decrease in the value of the Collateral. Mortgagor agrees to execute and deliver such further instruments as may be requested by Mortgagee to confirm this assignment and sufficient for the purpose of assigning all proceeds from such awards or payments to Mortgagee. Mortgagee is authorized, but not obligated, as the attorney-in-fact for Mortgagor, to collect, receive and give receipts for such awards and payments. This power granted Mortgagee shall be deemed coupled with an interest and shall be irrevocable. Mortgagee may, at Mortgagee's sole option, apply such awards and payments to the Obligations, and shall pay the portion not so applied to Mortgagor.

6.9. Mortgagee's Right to Cause Performance of Covenants. If Mortgagor fails to maintain and pay (or shall deposit in escrow with Mortgagee sufficient sums to pay) the premiums for Insurance as required in Section 6.7, to pay all taxes, penalties, assessments, charges, and claims as required in Section 6.2, or to repair and maintain any of the Collateral as required in Section 6.3, or if Mortgagor fails to keep or perform any of Mortgagor's other covenants herein, Mortgagee may cause such repairs and maintenance to be made, obtain such Insurance, pay such taxes, penalties, assessments, charges or claims, or cause such other covenants to be performed.

Mortgagor shall pay to Mortgagee on demand all reasonable amounts paid by Mortgagee for the foregoing and the amount of all expenses incurred by Mortgagee in connection therewith, together with interest thereon from the date when incurred at the Default Rate. Such amounts and interest shall be secured by this instrument and shall be a lien on and security interest in the Collateral prior to any right, title, interest, lien or claim in or upon the Collateral subordinate to the lien of this instrument. Any such payments by Mortgagee shall not be deemed a waiver of any Default. Mortgagee shall not be obligated to exercise Mortgagee's rights under this Section and shall not be liable to Mortgagor for any failure to do so.

6.10. Costs of Preserving or Enforcing This Instrument. Mortgagor shall (to the extent permitted by law) pay to Mortgagee on demand the amount of all costs and expenses, including reasonable attorneys' fees and disbursements and appraisal fees, incurred by Mortgagee in connection with (i) amendment, interpretation or enforcement of this instrument, Mortgagee's rights or remedies under this instrument, or the priority of the lien and security interest of this instrument, (ii) collection of any of the Obligations, or (iii) any title examination or title insurance commitment or policy relating to the Mortgaged Property, together with interest thereon from the date when incurred at the Default Rate. Such amounts and interest shall be secured by this instrument and shall be a lien on and security interest in the Collateral prior to any right, title, interest, lien or claim in or upon the Collateral subordinate to the lien of this instrument.

6.11. Change in Tax Law. If, after the date of this instrument, any law becomes effective where any of the Collateral is located that imposes a tax on Mortgagee or any of the Obligations based upon or as a consequence of the amount value or existence of this instrument or any of the Obligations, Mortgagee shall have the right to declare that the Obligations, including all accrued interest, shall be immediately due and payable, provided, however, that Mortgagee shall not have such right if Mortgagor is permitted by law to pay the whole of such tax in addition to the Obligations, in which event Mortgagor shall reimburse Mortgagee for such tax upon demand and the amount thereof shall be secured by this instrument and shall be a lien on and security interest in the Collateral prior to any right, title, interest, lien or claim in or upon the Collateral subordinate to the lien of this instrument.

6.12. Certifications. Mortgagor, upon the request of Mortgagee, shall certify to Mortgagee or to any proposed assignee of this instrument, by a writing duly acknowledged, whether any offsets or defenses are alleged to exist against the Obligations and the names and addresses of any lessees or licensees of the Mortgaged Property or any part thereof, together with a summary of the material terms of their respective leases or licenses, the rents and fees payable thereunder and whether any default exists thereunder. Mortgagee may request such a certificate from Mortgagor at any time and from time to time. Such certificate shall be executed and delivered to Mortgagee within ten (10) business days of such request.

6.13. Indemnity. Mortgagor shall (to the extent permitted by law) protect, defend, and indemnify Mortgagee, and hold Mortgagee harmless from and against, any claims, actions or proceedings against Mortgagee and any loss, cost, damage or expense, including, but not limited to, reasonable attorneys' fees and disbursements, incurred by Mortgagee, arising out of or in any way related to a breach of the representations, warranties, covenants or agreements of Mortgagor herein.

Mortgagee shall have the right, jointly with Mortgagor, to negotiate and settle any such claims, actions or proceedings.

6.14. Defense of Title. Mortgagor shall execute and deliver to Mortgagee, at Mortgagor's sole expense, such further assurances of title to the Collateral that are necessary to evidence, preserve or protect the lien and security interest created by this instrument. Mortgagor shall, at its sole expense, warrant and defend title to the Collateral and the priority of the lien and security interest created by this instrument against all claims and demands whatsoever.

6.15. Maintain Existence. Mortgagor will maintain in good standing its corporate (if Mortgagor is a corporation) its limited liability company (if Mortgagor is a limited liability company), its trust (if Mortgagor is a trust) or partnership (if Mortgagor is a partnership) existence and its authority to transact business in all jurisdictions where the nature of its business or properties requires it to be so authorized.

6.16. Illinois Responsible Property Act and Illinois Mine Subsidence Disclosure Act. Mortgagor represents and warrants that the Mortgaged Property is not subject to the Illinois Responsible Property Act and that no disclosure is required thereunder. Mortgagor further represents that it has made no claims for mine subsidence on or with respect to the Mortgaged Property as contemplated by the Illinois Mine Subsidence Disclosure Act, and Mortgagor hereby indemnifies and holds harmless Mortgagee from any and all liability under such Acts with respect to the Mortgaged Property and this Mortgage.

7. Financial Statements.

7.1. Mortgagor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Mortgaged Property and the operation thereof, and will permit all such books and records to be inspected and copied, and the Mortgaged Property to be inspected and photographed, by Mortgagee and its representatives during normal business hours and at any other reasonable times.

7.2. Mortgagor will furnish to Mortgagee all financial statements required by the Loan Agreement.

7.3. Mortgagor will furnish to Mortgagee at Mortgagor's expense, all evidence which Mortgagee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Mortgaged Property or the books and records of Mortgagor, or the procuring of documents and financial and other information, by or on behalf of Mortgagee, shall be for Mortgagee's protection only, and shall not constitute any assumption of responsibility to Mortgagor or anyone else with regard to the condition, construction, maintenance or operation of the Mortgaged Property nor Mortgagee's approval of any certification given to Mortgagee nor relieve Mortgagor of any of Mortgagor's obligations.

8. Waiver of Rights. Except to the extent contrary to applicable law, Mortgagor hereby releases and waives the benefit of all laws now existing or hereafter enacted that provide for appraisal

before sale of the items of the Collateral being sold or that provide for the extension of the time for the enforcement of the collection of the Obligations or that create or extend the period for redemption of any of the Collateral from any sale thereof to collect the Obligations.

9. **Default.** Any one or more of the following shall constitute a "Default" under this instrument:

9.1. **Payment of Obligations Evidenced by the Documents or Other Obligations.** Nonpayment, whether by acceleration or otherwise, of: (i) any principal or interest payment on the Obligations, or (ii) failure to fund escrows, after ten (10) days written notice is mailed to Mortgagor, whether evidenced by the Documents or constituting any fee or other amount due from Mortgagor to Mortgagee hereunder.

9.2. **Obligations and Other Material Agreements.** A default or event of default (other than a payment default) by Mortgagor with respect to any of the Obligations or default under any material agreement to which Mortgagor is a party which continues uncured beyond any applicable grace or cure period.

9.3. **Payment or Acceleration of Other Indebtedness.** Nonpayment, when due, of any other indebtedness of Mortgagor to Mortgagee which continues unwaived beyond any applicable grace period or acceleration of any other indebtedness of Mortgagor prior to the stated maturity thereof.

9.4. **Representations and Warranties.** Any representation or warranty made by Mortgagor herein or in any other agreement, instrument or other paper delivered to Mortgagee proves to have been untrue or misleading in any material respect at the time when made or deemed to be made.

9.5. **Covenants, Terms or Agreements.** A default by Mortgagor in the due observance or performance of any covenant, term or agreement contained herein (other than a breach which would constitute a Default under Sections 9.1 through 9.4 hereof or for which another cure period is specifically provided) which continues uncured for a period of thirty (30) days following notice to Mortgagor.

9.6. **Disposal of Collateral.** After the date hereof, any conveyance, further encumbrance, exchange or other transfer or disposal, or agreement to transfer or dispose, without Mortgagee's prior written consent, of any Collateral, or any transfer or assignment of any membership interests in the Mortgagor if such transfer or assignment would result in forty-nine percent (49%) or more of the membership interests in Mortgagor being owned or controlled by one or more persons or entities which are not owned by, affiliated with or controlled by Angelo, Gordon & Company.

9.7. **Loss of Collateral.** Uninsured loss (excluding insurance deductibles as approved by Mortgagee), theft, damage or destruction to or of any item of the Collateral.

9.8. Bankruptcy, Insolvency, Etc. Mortgagor (i) fails to pay or admits in writing Mortgagor's inability to pay, Mortgagor's debts as they become due or otherwise become insolvent (however evidenced); (ii) makes an assignment for the benefit of creditors; (iii) is adjudicated insolvent or bankrupt, (iv) petitions or applies to any tribunal for a receiver or trustee of Mortgagor or any substantial part of Mortgagor's property, or allows any such receivership or trusteeship imposed without Mortgagor's consent to continue undischarged for a period of sixty (60) days; (v) files a petition in bankruptcy or commences any other proceeding relating to Mortgagor under any reorganization, arrangement, adjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (vi) has commenced against it any such proceeding which remains undismissed for a period of sixty (60) days; or (vii) by any act authorizes, consents to or acquiesces in any of the foregoing.

9.9. Judgments, Attachment, Etc. Any one or more judgments or orders against Mortgagor or any attachment or other levy against any of the Collateral remains unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days.

9.10. Liquidation or Dissolution. Mortgagor, if other than an individual, is liquidated or dissolved or Mortgagor otherwise fails to maintain its standing as a limited liability company in good standing in its state of organization or its authority to transact business is revoked, suspended or relinquished in any state where the nature of its business or properties requires it to be so authorized and not restored within thirty (30) days thereafter.

9.11. Condemnation; Eminent Domain. Any court or governmental authority condemns or otherwise appropriates the Collateral or any part thereof and such appropriation or condemnation renders the remainder of the Collateral unusable for its intended purpose.

10. Remedies Upon Default. If a Default occurs, Mortgagee shall have the right to do one or more of the following:

10.1. Mortgagee may, at its option and without notice or demand to Mortgagor except as otherwise required by applicable law, declare all of the Obligations immediately due and payable regardless of the stated maturity thereof.

10.2. Mortgagee may, at its option and without notice or demand to Mortgagor except as otherwise required by applicable law, take immediate possession of some or all of the Collateral, with or without appointment of a receiver or application therefor, and lease or rent the same either in its own name or in the name of Mortgagor, and make demand for and receive the rents, income, issues, profits and any other revenues thereof and apply the same, after payment of (to the extent permitted by law) all costs and expenses incurred by Mortgagee in doing the foregoing, including, but not limited to, reasonable attorneys' fees and disbursements, to the Obligations. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact to manage, repair, maintain, lease and rent the Collateral and collect all rents, income, issues, profits and any other revenues thereof, with full power and authority to bring suit to collect the same and to give receipts therefor; provided, however, that Mortgagee shall not be obligated to do so. This power granted Mortgagee shall be deemed coupled with an interest and shall be irrevocable.

10.3. Mortgagee may institute an action of foreclosure on this instrument or to institute other proceedings according to law for foreclosure, and prosecute the same to judgment, execution and sale, for the collection of the Obligations and (to the extent permitted by law) all costs and expenses of such proceedings, including, but not limited to, reasonable attorneys' fees and disbursements.

10.4. Mortgagee may exercise in respect of the Personal Property Collateral all of the rights and remedies available to a secured party upon default under the applicable provisions of the Uniform Commercial Code then in effect where the Personal Property Collateral is located.

10.5. Mortgagee may exercise such other rights and remedies for collection of the Obligations as may be available at law or in equity.

11. **Appointment of Receiver.** In any action or proceeding for foreclosure, or upon actual or threatened waste to any part of the Collateral, or upon the occurrence of a Default, Mortgagee shall be entitled to the appointment of a receiver to take possession of, and to operate, maintain, and manage the Collateral and to collect the rents, income, issues, profits and revenues from the Collateral and pay the same over to Mortgagee for application to the Obligations. Mortgagee shall be entitled to the appointment of such a receiver as a matter of right without regard to the value of the Collateral as security for the Obligations or the solvency of Mortgagor or anyone else who may be liable for the payment or performance of the Obligations.

12. **WAIVER OF RIGHTS AND DEFENSES.** TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, REDEMPTION, REINSTATEMENT, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS", NOW EXISTING OR HERE AFTEN ENACTED, IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR, FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT, HEREBY WHOLLY WAIVES THE PERIOD OF REDEMPTION AND ANY RIGHT OF REDEMPTION OR REINSTATEMENT PROVIDED UNDER ANY EXISTING OR FUTURE LAW IN THE EVENT OF A FORECLOSURE OF THIS MORTGAGE. MORTGAGOR, FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT, WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTIES AND ESTATES COMPRISING THE MORTGAGED PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THIS MORTGAGE AND AGREES THAT ANY COURT HAVING JURISDICTION OVER SUCH FORECLOSURE MAY ORDER THE MORTGAGED PROPERTY SOLD AS AN ENTIRETY.

13. **Other Matters Relating to Enforcement of Remedies.** The term "Sale" in this Section 13 refers to a non-judicial sale of an item of Collateral by Mortgagee or Mortgagee's agent ("Non-Judicial Sale") or a sale of an item of the Collateral made pursuant to judicial proceedings for foreclosure (a "Judicial Sale"), as applicable under the circumstances. The term "Selling Official" in this Section 13 refers to a Trustee, Mortgagee or Mortgagee's agent (in the case of a Non-Judicial

Sale) and to the public officer who conducts the sale under execution or order of the court (in the case of a Judicial Sale).

13.1. Upon any Sale of any item of the Collateral, it shall not be necessary for the Selling Official to have present or constructively in his possession any of the Collateral.

13.2. Upon the completion of every Sale, the Selling Official shall execute and deliver to each purchaser a bill of sale or deed of conveyance, as appropriate, for the items of the Collateral that are sold. Mortgagor hereby grants every such Selling Official the power as the attorney-in-fact of Mortgagor to execute and deliver in Mortgagor's name all deeds, bills of sale and conveyances necessary to convey and transfer to the purchaser all of Mortgagor's rights, title and interest in the items of the Collateral that are sold. Mortgagor hereby ratifies and confirms all that its said attorney-in-fact lawfully does pursuant to such power. Nevertheless, Mortgagor, if so requested by Selling Official or by any purchaser, shall ratify any such sale by executing and delivering to such Selling Official or to such purchaser, as applicable, such deeds, bills of sale or other instruments of conveyance and transfer as may be specified in any such request.

13.3. The recitals contained in any instrument of conveyance or transfer made by a Selling Official to any purchaser at any Sale shall, to the extent permitted by law, conclusively establish the truth and accuracy of the matters stated therein, including, but not limited to, the amount of the Obligations, the occurrence of a Default, and the advertisement and conduct of such Sale in the manner provided herein or under applicable law. All prerequisites to such Sale shall be presumed from such recitals to have been satisfied and performed.

13.4. To the extent permitted by applicable law, every Sale, or sale made as contemplated by Section 10.3 and/or 10.4, shall operate to divest all rights, title and interest of Mortgagor in and to the items of the Collateral that are sold, and shall be a perpetual bar, both at law and in equity, against Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and against everyone else claiming the item sold either from, through or under Mortgagor or Mortgagor's heirs, executors, administrators, personal representatives, successors or assigns.

13.5. A receipt from any person authorized to receive the purchase money paid at any Sale, or sale made as contemplated by Section 10.3 or 10.4, shall be sufficient discharge therefor to the purchaser. After paying such purchase money and receiving such receipt, neither such purchaser nor such purchaser's heirs, executors, administrators, personal representatives, successors or assigns shall have any responsibility or liability respecting the application of such purchase money or any loss, misapplication or non-application of any of such purchase money, or to inquire as to the authorization, necessity, expediency or regularity of any such sale.

13.6. In any Sale or sale made as contemplated by Section 10.3 or 10.4, the Mortgagee may bid for and purchase any of the Collateral being sold, and shall be entitled, upon presentment of the relevant Documents and documents evidencing the same, to apply the amount of the Obligations held by it against the purchase price for the items of the Collateral so purchased. The amount so applied shall be credited against the Documents and other Obligations in the same order as provided in Section 14.

UNOFFICIAL COPY

99730300

14. **Application of Sale Proceeds.** The purchase money, proceeds or avails of any Sale of Collateral, together with any other sums received by Mortgagee in any proceedings for the enforcement hereof, shall, except as herein expressly provided to the contrary, be applied as follows:

First: To the payment of the reasonable costs and expenses of any such Sale, including compensation to Mortgagee, its agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, including, without limitation, the cost of obtaining title reports and/or insurance, together with interest thereon as provided herein, and all taxes and other charges, except any taxes or other charges subject to which the Collateral shall have been sold.

Second: To the payment in full of the monetary Obligations (including principal, interest, premium and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of the Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its reasonable judgment for the payment of sums which would have been paid by application under clauses *First* through *Third* above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of any withholding tax in accordance with applicable Federal, state or local law.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

15. **Partial Release.** Any part of the Collateral may be released by Mortgagee from the lien and security interest created by this instrument. Any such partial release shall be at the sole option of Mortgagee; Mortgagee shall not be obligated to grant partial releases. Any such partial release shall not affect the lien and security interest created by this instrument as to the remainder of the Collateral.

16. **Full Release.** When the Obligations are paid in full and all of Mortgagor's covenants and agreements in this instrument are fully performed, this instrument shall be released of record at the cost of Mortgagor.

17. **Secures Future Advances.** This Mortgage also secures the payment of and includes all future or further advances as shall be made at all times under the terms of the Documents to the same full extent as if such future advances were made on the date of execution of this Mortgage. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid principal indebtedness so secured at any one time shall not exceed Five Million One Hundred Thousand and No/100 Dollars (\$5,100,000.00) together with accrued and unpaid interest thereon and any and all payments and disbursements made by Mortgagee to (a) preserve or

restore the Mortgaged Property and/or Collateral, (b) preserve the lien of this Mortgage or the priority thereof and (c) enforce this Mortgage together with reasonable attorneys' fees, loan commissions, service charges, liquidated damages, expenses, and court costs incurred by Mortgagee in the collection of any or all of such indebtedness. Mortgagor and Mortgagee hereby acknowledge and intend that all 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 Illinois Code of Civil Procedure (Ill. Rev. Stat. Ch. 110, ¶ 15-1302(b)(1)).

18. Joint and Several Liability. [Intentionally omitted]

19. Governing Law. This instrument and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois, without regard to choice or conflict of laws rules.

20. Additional or Other Security. Mortgagee may take additional security for the Obligations, and Mortgagee may resort for the payment of the Obligations to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect, without releasing or impairing the lien and security interest created by this instrument.

21. Effect of Extensions and Modifications. Mortgagee, at its sole option, may extend the time for the payment or performance of the Obligations, or reduce the payments of principal or interest thereof, or accept a modification or renewal of the Documents or other Obligations (including such as effect an increase in the interest rate thereof), without the consent of any endorser, guarantor or other party to the Documents or any other document evidencing any of the Obligations. Any such extension, reduction, modification or renewal shall not impair or affect the priority of the lien and security interest created by this instrument, or limited, release, discharge or affect the liability of Mortgagor, any endorser, guarantor or other party to the Documents or any other document evidencing the Obligations, except in accordance with the strict terms and tenor of any such extension, reduction, modification or renewal, and regardless of whether Mortgagor consents to any such extension, reduction, modification or renewal where a subsequent owner of the Mortgaged Property and Mortgagee are the parties to the extension, reduction, modification or renewal.

22. Mortgagee's Rights Non-Exclusive. The rights and remedies of Mortgagee under this instrument are in addition to the rights and remedies of Mortgagee at law and in equity. The exercise of any of Mortgagee's rights or remedies shall not be deemed to be an election of one right or remedy over another or to prevent Mortgagee from exercising any other of Mortgagee's rights or remedies.

23. Partial Invalidity. If any provision of this instrument is held to be invalid or unenforceable, the rest of this instrument shall remain fully valid and enforceable.

24. Waivers and Amendments. No failure by Mortgagee to insist upon the strict and timely performance of any of the provisions of this instrument shall be deemed a waiver thereof. Mortgagee, notwithstanding any such failure, shall have the right to insist upon the strict and timely performance by Mortgagor of any and all terms and provisions of this instrument to be performed by Mortgagor. No waiver by Mortgagee shall be effective unless it is in writing and signed by an

authorized officer of Mortgagee. No such waiver shall operate as a waiver of any other matter or of a similar matter at a future time. This instrument may not be modified or amended except by a duly recorded writing executed by both Mortgagor and an authorized officer of Mortgagee.

25. Notices. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by delivery service or by electronic transmission. Any notice directed to a party to this Agreement shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, seventy-two (72) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Agreement or such other address as that party, from time to time, may specify by notice to the other parties. Notices to Borrower shall also include a copy to:

Amerimar Enterprises, Inc.
210 West Rittenhouse Square, Suite 1900
Philadelphia, Pennsylvania 19103
Attention: Gerald Marshall
Phone: (215) 893-6000

Terri Adler, Esq.
Duval & Stachenfeld, L.L.P.
405 Lexington Avenue, 32nd Floor
New York, New York 10174
Phone: (212) 883-1700

Notices to Lender shall include a copy to:

Paster, West & Kraner, p.c.
100 S. Brentwood Blvd., Suite 401
Clayton, Missouri 63105
Attn: Robert T. West
Phone: (314) 721-7080

26. Captions. Section captions in this instrument are for convenience only and shall not affect the interpretation or construction of this instrument.

27. Binding Effect. This instrument shall bind Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and shall inure to the benefit of Mortgagee and Mortgagee's successors and assigns.

28. Arbitration. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this instrument or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), as promulgated from time to time by the Rules of Practice

UNOFFICIAL COPY

99730300

and Procedure for the Arbitration of Commercial Disputes of Judicial Arbitration and Mediation Services, Inc., predecessor in interest to Endispute, Inc., doing business as "J.A.M.S./Endispute" and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this instrument may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this agreement applies in any court having jurisdiction over such action.

A. Special Rules. The arbitration shall be conducted in St. Louis, Missouri and administered by J.A.M.S./Endispute who will appoint an arbitrator; if J.A.M.S./Endispute is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) calendar days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) calendar days.

B. Reservation of Rights. Nothing in this instrument shall be deemed to limit the right of Mortgagee (a) to exercise self-help remedies such as (but not limited to) setoff, or (b) to foreclose against any real or personal property collateral, or (c) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. Mortgagee may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this instrument.

UNOFFICIAL COPY

99730300

IN WITNESS WHEREOF, this Mortgage has been executed as of the day and year first above written.

THIS INSTRUMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

800 BIERMANN, L.L.C., a Delaware limited liability company

By: AG Asset Manager, Inc., a Delaware corporation, General Manager

By: Andrew E Jacobs
Name: ANDREW JACOBS
Title: VICE PRESIDENT

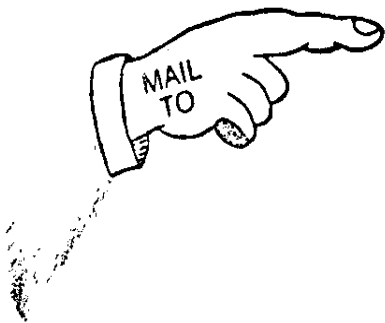
Mortgagor's Notice Address:

c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, New York 10167

Telephone Number: (212) 692-2000

FAX Number: (212) 867-5436

PREPARED BY : LISA GREENMAN KRANER
AND MAIL TO : PASTER WEST : KRANER
100 SO. BRENTWOOD BLVD.
SUITE 401
CLAYTON, MO. 63105



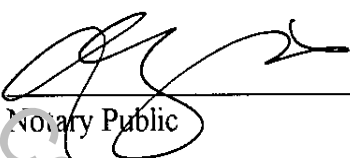
UNOFFICIAL COPY

99730300

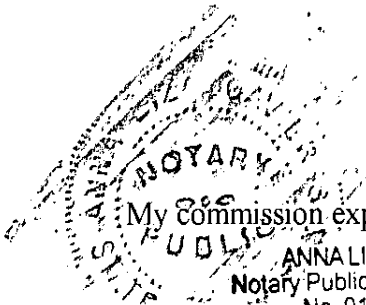
STATE OF NEW YORK)
)
COUNTY OF New York) SS.

On this 28th day of July, 1999, before me personally came Andrew Jacobs, to me personally known, who, being by me duly sworn, did say that he/she resides at 75 West End Avenue; that he/she is the Vice President of **AG ASSET MANAGER, INC.**, a corporation of the State of Delaware, which corporation is the General Manager of **800 BIERMANN, L.L.C.**, a limited liability company of the State of Delaware, which is the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by authority of the board of directors of said corporation in its capacity as General Manager of **800 BIERMANN, L.L.C.**, a limited liability company of the State of Delaware.

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



Notary Public


NOTARY PUBLIC
My commission expires:
ANNA LIZA GAVIERES
Notary Public, State of New York
No. 01GA6011346
Qualified in New York County
Commission Expires 08/03/2000

Clerk of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A"

99730300

(Legal Description)

ALL THAT REAL PROPERTY LOCATED IN THE CITY OF MOUNT PROSPECT, STATE OF ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 1 IN KENSINGTON CENTER RESUBDIVISION 1 OF LOT 7 IN KENSINGTON CENTER, PHASE ONE, AND LOTS 1, 4 AND 5 IN KENSINGTON CENTER PHASE TWO, BEING A SUBDIVISION IN PART OF THE NORTH WEST QUARTER OF SECTION 35, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID SUBDIVISION RECORDED OCTOBER 2, 1979 AS DOCUMENT NUMBER 25173362 AND JUNE 2, 1980 AS DOCUMENT NUMBER 25472808, RESPECTIVELY, AND SAID SUBDIVISION BEING RECORDED NOVEMBER 25, 1980 AS DOCUMENT NUMBER 25681628 IN COOK COUNTY, ILLINOIS.

P.I.N. 03-35-104-005-0000

PROPERTY : 800 BIERMANN COURT
ADDRESS MT. PROSPECT, IL.

UNOFFICIAL COPY

99730300

EXHIBIT "B"

All of the right, title and interest of Mortgagor, in and to: (1) all rents, revenues, income, issues, profits and security deposits received in connection with the real property described on Exhibit A attached to this Mortgage; (2) all fixtures, fixed assets, construction materials and supplies (whether or not incorporated into any buildings or improvements and whether or not stored on the Land) and personalty now or at any time hereafter annexed, affixed or attached to the Mortgaged Property and/or said buildings, improvements or structures thereon and all other personal property now owned or hereafter acquired by Mortgagor and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof or thereto; (3) all right, title and interest of Mortgagor in and to all plans, specifications, drawings, computations, sketches, test data, survey results, models, photographs, renderings of or relating to the Mortgaged Property and any security and like deposits, general intangibles and other materials, now owned or hereafter acquired, used or intended to be used in connection with the Mortgaged Property; (4) all right, title and interest of Mortgagor, as licensor or licensee, permittor or permittee, assignor or assignee or contractor or contractee, in, under and to all licenses, permits and contract rights now or hereafter held by Mortgagor pertaining to the Mortgaged Property or pertaining to all contracting or architectural services in connection with the Mortgaged Property, together with all amendments, modifications, supplements, general conditions and addenda thereto and work product resulting therefrom; (5) all right, title and interest of Mortgagor in, under and to all security deposits, escrow payments, sale contracts, earnest money deposits, building and other permits, governmental and other authorizations, licenses or commitments issued by various governmental agencies, utility companies, lending institutions or other entities, franchises, advertisements, rights, agreements and all other intangible and tangible personal property now or hereafter issued used in connection with or required with respect to the Mortgaged Property or the use thereof; (6) all right, title and interest of Mortgagor in, under and to any and all (i) surveys, soil reports and samples obtained or prepared in connection with the Land, and (ii) budgets and financial projections and information, utility allowances, trademarks, trade names, logos and any and all agreements and contract rights, and any parking agreements, operating agreements, easements and reciprocal easements regarding, pertaining to, used in connection with or required with respect to the Mortgaged Property or the use thereof; (7) all of Mortgagor's contract rights under and all receivables now or hereafter owing to Mortgagor under all existing and future leases of space or other occupancy agreements in all buildings now or hereafter located on the Mortgaged Property; and (8) all extensions, improvements, betterments, replacements, renewals of, additions and accessions to, and all cash and non-cash proceeds and products, immediate or remote, of any of the foregoing, including insurance proceeds. All of the foregoing are herein referred to as the "Personal Property Collateral."

Together with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the "Collateral" (as defined below) as a result of: (a) the exercise of the right of eminent domain or other taking of the Mortgaged Property or part thereof, or for conveyance in lieu of the exercise of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to or decrease in the value of the Mortgaged Property, to the extent of all amounts which may be secured by this Mortgage, at the date of receipt of any such award or payment by Mortgagee, and of the reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. All of the foregoing, together with the Mortgaged Property and the Personal Property Collateral, are herein referred to as the "Collateral."