

UNOFFICIAL COPY

99269151

12970064 21 001 Page 1 of 42

1999-03-19 15:07:56

Cook County Recorder 103.50



JUNIOR MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND
FINANCING STATEMENT

[188 W. Randolph]

Dated as of March 18, 1999

between

CORUS BANK, N.A.,
a national banking association,
having its address at

3959 N. Lincoln Avenue
Chicago, Illinois 60613

(the "Mortgagee")

and

TELEGRAPH PROPERTIES LIMITED PARTNERSHIP,
an Illinois limited partnership
having its address at

330 South Wells Street, Suite 711
Chicago, Illinois 60604

(the "Mortgagor")

288
971100576

THIS INSTRUMENT WAS
PREPARED BY AND UPON
RECORDING RETURN TO:

Michael M. Kaplan
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, Illinois 60603
312/701-7039



JUNIOR MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND
FINANCING STATEMENT

THIS JUNIOR MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING and FINANCING STATEMENT (herein sometimes called "Mortgage") is made as of March 18, 1999 by and between TELEGRAPH PROPERTIES LIMITED PARTNERSHIP, an Illinois limited partnership, and having its office at 330 South Wells Street, Suite 711, Chicago, Illinois 60604 (the "Mortgagor") and CORUS BANK, N.A., a national banking association located at 3959 N. Lincoln Avenue, Fifth Floor, Chicago, Illinois 60613 (the "Mortgagee").

R E C I T A L S :

Mortgagor hereby represents, warrants and covenants to the Mortgagee, as follows:

A. The Mortgagor. The Mortgagor is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Illinois.

B. The Loan. Leon Greenblatt, Andrew Jahelka and Richard Nichols, who each have a substantial ownership interest in Mortgagor and a financial interest in the Premises (defined hereinafter), have entered into a certain Credit Facility with Mortgagee dated as of July 30, 1998, as amended (the "Credit Facility"). The Credit Facility is cross-defaulted with a loan from Mortgagee to Banco Panamericano, Inc., in the amount of \$2,315,000.00 (the "Loan"). The Loan is evidenced by a certain Promissory Note dated July 30, 1998, as amended (the "Note"). The Note has a maturity date of August 3, 1999. The rate of interest on the Loan varies from time to time in accordance with a formula set forth in the Note. Mortgagee has agreed to release certain collateral securing the Note and to accept as a substitute this Mortgage and certain additional collateral.

C. Other Loan Documents. The Note, this Mortgage, the Pledge Agreement (as defined in the Note) and all other instruments, documents and agreements executed by the Mortgagor and delivered to the Mortgagee in connection with the Note are hereinafter referred to as the "Loan Documents".

D. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following: the principal of, interest on and any and all other amounts which may at any time be or become due or owing in connection with the Loan, all indebtedness of any kind arising under, and all amounts of any kind which may at any time be or become due or owing to Mortgagee under or with respect to the Note or any of the other Loan Documents; all of the covenants, obligations and agreements (and the truth of all representations and warranties) contained in or made pursuant to the Loan Documents; any and all advances, costs or expenses paid or incurred by the Mortgagee to protect any or all of the Collateral (hereinafter defined), perform any obligation of the Mortgagor hereunder or collect any amount owing to the Mortgagee which is secured hereby; (provided, however, that the maximum amount included within the Note on account of principal shall not exceed \$4,630,000.00 plus the total amount of all advances made by the Mortgagee to protect the Collateral and the security interest and lien created hereby, and the total amount of all advances made under the Facility Agreement), all of the other Liabilities; interest on all of the foregoing; and all costs (including, without limitation, attorneys' fees and expenses and the allocated cost of in-house counsel) of enforcement of and collection under any and all of the Loan Documents.

E. The Collateral. For purposes of this Mortgage, the term "Collateral" means and includes all of the following:

1. Real Estate. All of the land described on Exhibit A hereto (the "Land"), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

2. Improvements and Fixtures. All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate (with the exclusion of any of the foregoing items which are (i) not owned by Mortgagor, or (ii) are currently pledged to another lender in connection with any other financing), including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

3. Personal Property. All building materials, goods, construction materials, appliances (including stoves, refrigerators, water fountains and coolers, fans, heaters, incinerators, compactors, dishwashers, clothes washers and dryers, water heaters and similar equipment), supplies, blinds, window shades, carpeting, floor coverings, elevators, growing plants, fire sprinklers and alarms, control devices, equipment (including motor vehicles and all window cleaning, building cleaning, swimming pool, recreational, monitoring, garbage, air conditioning, pest control and other equipment), tools, light fixtures, non-structural additions to the Premises (defined hereinafter) and all other tangible property of any kind or character now or hereafter owned by the Mortgagor and used in connection with the maintenance of the Improvements as opposed to the business conducted thereon, any construction undertaken in or on the Premises, the maintenance of the Premises or the convenience of any guests, licensees or invitees of the Mortgagor, all regardless of whether located in or on the Premises (all of the foregoing is herein referred to collectively as the "Goods");

4. Intangibles. To the extent that they relate to the Premises, all option rights, purchase contracts, contract rights, all building permits, governmental permits, licenses and authorizations and any other agreements now or in the future existing respecting the operations of the Improvements (all of the foregoing is herein referred to collectively as the "Intangibles");

5. Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Premises (all of the foregoing is herein collectively called the "Rents");

6. Leases. All rights of the Mortgagor under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

7. Plans. All rights of the Mortgagor to plans and specifications, designs, drawings and other matters prepared for any construction or improvements in or on the Premises, (all of the foregoing is herein called the "Plans");

8. Contracts for Construction. All rights of the Mortgagor under any contracts executed by the Mortgagor as owner with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Premises, and any other agreements now or in the future existing respecting the construction and equipping of the Improvements (including any agreements with soils, mechanical and structural engineers, landscape architects, and other contractors or consultants, and any subcontracts to the construction contract) (all of the foregoing is herein referred to collectively as the "Contracts for Construction");

9. Contracts for Sale or Financing. All rights of the Mortgagor as seller under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has or may hereafter have, with the consent of the Mortgagee, obtained the agreement of any person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Collateral or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale"); and

10. Other Property. All other property or rights of the Mortgagor of any of the types stated above related to the Premises, and all proceeds (including, without limitation, insurance and condemnation proceeds) of any of the foregoing. (All of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises".)

G R A N T

NOW THEREFORE, for and in consideration of Mortgagee's agreement to release certain collateral securing the Note, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

THE MORTGAGOR HEREBY MORTGAGES, CONVEYS, GRANTS, BARGAINS, SELLS, TRANSFERS, ASSIGNS AND WARRANTS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, AND GRANTS TO THE MORTGAGEE A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State or other jurisdiction in which the Real Estate is located providing for the exemption of homesteads from sale on execution or otherwise.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple; that it has good and lawful right to sell, mortgage and convey the Premises; and that it and its successors and assigns will forever warrant and defend the Premises against all claims and demands whatsoever.

I. COVENANTS AND AGREEMENTS OF MORTGAGOR

Further to secure the full, timely and proper payment and performance of the Liabilities, the Mortgagor hereby covenants and agrees with, and warrants to, the Mortgagee as follows:

1. Payment of Liabilities. The Mortgagor agrees that this Mortgage secures the timely payment of all sums due under the Note and any of the other Loan Documents and all other Liabilities (including fees and charges).

2. Payment of Taxes. The Mortgagor will pay before delinquent, all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the other Loan Documents, whether levied against the Mortgagor or the Mortgagee or otherwise,

and will submit to the Mortgagee upon request all receipts showing payment of all of such taxes, assessments and charges.

3. Maintenance and Repair. The Mortgagor will: not abandon the Premises; provided, however, that vacation of such Premises will not be a breach of this covenant, not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage; not remove or demolish any of the Improvements without the consent of Mortgagee, which consent shall not be unreasonably withheld or delayed; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises (except that Mortgagor shall be entitled to contest, in good faith, any such claim as hereinafter provided in Section 16); not make any changes, additions or alterations to the Premises, except for leasehold improvements Mortgagor is obligated to make under the Leases, and except as required by any applicable governmental requirement or as otherwise approved in writing by the Mortgagee, which approval shall not be unreasonably withheld or delayed; maintain, preserve and keep the Goods and the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; promptly restore and replace any of the Improvements or Goods which are destroyed or damaged; not commit, suffer, or permit waste of any part of the Premises (provided, however, that improvements to the Premises made with the approval of Mortgagee shall not be deemed to constitute "waste"); and maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

4. Sales; Liens. Except to the extent otherwise provided herein and in the other Loan Documents, the Mortgagor will not: sell, assign, transfer, convey, lease or otherwise dispose of, or permit to be sold, assigned, transferred, conveyed, leased or otherwise disposed of, the Collateral or any part thereof or any interest (whether legal, beneficial or otherwise) or estate in any thereof (except that Mortgagor may enter into customary Leases for space at the Premises in the ordinary course of business); remove any of the Collateral from the Premises or from the State in which the Real Estate is located; or create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever upon the Collateral or any part thereof, except those of current taxes not delinquent and the Permitted Exceptions.

5. Access by Mortgagee. The Mortgagor will at all times, upon the reasonable request of Mortgagee: deliver to the Mortgagee certified copies of all leases, agreements creating or evidencing Intangibles, Plans, Contracts for Construction, Contracts for Sale, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral;

permit access by the Mortgagee to its books and records, construction progress reports, tenant registers, sales records, offices, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as the Mortgagee may request; and permit the Mortgagee, agents and designees, at all reasonable times, to enter on and inspect the Premises.

6. Stamp and Other Taxes. If the Federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Mortgagee's receipt of interest payments on the principal portion of the indebtedness secured hereby), assessment or imposition upon this Mortgage, the Liabilities or any of the other Loan Documents, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Mortgage, the Note or any of the other Loan Documents, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then all sums hereby secured shall become immediately due and payable at the option of the Mortgagee.

7. Insurance Requirements.

a. Insurance. The Mortgagor, at its sole cost and expense, shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and, in any event, including:

(i) All Risk. Insurance against loss to the Premises on an "All Risk" policy form, covering insurance risks no less broad than those covered under a Standard Multi Peril (SMP) policy form, which contains a 1987 Commercial ISO "Causes of Loss - Special Form", and insurance against such other risks as Mortgagee may reasonably require, including, but not limited to, insurance covering the cost of demolition of undamaged portions of any portion of the Premises when required by code or ordinance, the increased cost of reconstruction to conform with current code or ordinance requirements and the cost of debris removal. Such policies shall be in amounts equal to the full replacement cost of the Premises (excluding land), including the foundation and underground pipes, fixtures and equipment and Mortgagor's

interest in any leasehold improvements. Such policies shall also contain a 100% co-insurance clause with an agreed amount endorsement and deductibles which are in amounts acceptable to Mortgagee.

(ii) Rent Continuation. Rent and rental value/extra expense insurance (if the Premises is tenant occupied) in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross rents basis for a period of twelve (12) months or such greater time as Mortgagee may deem appropriate: (A) all rents derived from the Premises; (B) all amounts (including, but not limited to, all impositions, utility charges and insurance premiums) required to be paid by Mortgagor or by tenants of the Premises; and (C) all contingent rents.

(iii) Business Interruption. Business interruption/extra expense insurance (if the Premises is owner-occupied) in amounts sufficient to pay during any period in which the Premises may be damaged or destroyed, on a gross income basis for a period of twelve (12) months or such greater time as Mortgagee may deem appropriate: (A) all business income derived from the Premises and (B) all amounts (including, but not limited to, all impositions, utility charges and insurance premiums) required to be paid by Mortgagor.

(iv) Boiler and Machinery. Broad form boiler and machinery insurance including business interruption/extra expense and rent and rental value insurance, on all equipment and objects customarily covered by such insurance and/or involved in the heating, cooling, electrical and mechanical systems of the Premises (if any are located at the Premises), providing for full repair and replacement cost coverage, and other insurance of the types and in amounts as Mortgagee may reasonably require, but in no event less than that customarily carried by persons owning or operating like properties.

(v) Workers' Compensation. During the making of any alterations or improvements to the Premises (A) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in subparagraph (viii) below and (B) workers' compensation insurance covering all persons engaged in such alterations or improvements.

(vi) Flood. Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if

the Premises is now, or at any time while the Premises is subject to the lien of this Mortgage shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts equal to the full replacement value of all above grade structures on the Premises which are located within such special flood hazard area Zone A or Zone Z.

(vii) Public Liability. Commercial general public liability insurance against death, bodily injury and property damage arising in connection with the Premises. Such policy shall be written on a 1986 Standard ISO occurrence basis form or equivalent form, shall list Mortgagor as the named insured, shall designate thereon the location of the Premises and have such limits as Mortgagee may reasonably require, but in no event less than \$1,000,000. Mortgagor shall also obtain excess umbrella liability insurance with such limits as Mortgagee may reasonably require, but in no event less than \$10,000,000.

(viii) Other Insurance. Such other insurance relating to the Premises and the use and operation thereof as Mortgagee may, from time to time, reasonably require, including but not limited to, dramshop, products liability and garage keeper's insurance.

8. Policy Requirements. All insurance shall: (i) be carried in companies with a Best's rating of A/X or better, or otherwise acceptable to Mortgagee; (ii) be in form and content reasonably acceptable to Mortgagee; (iii) provide thirty (30) days' advance written notice to Mortgagee before any cancellation, adverse material modification or notice of non-renewal; and (iv) to the extent limits are not otherwise specified herein, contain deductibles which are in amounts acceptable to Mortgagee.

All physical damage policies and renewals shall contain a standard mortgage clause naming Mortgagee as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Mortgagee under such insurance; and a loss payable clause in favor of Mortgagee for the Collateral. All liability policies and renewals shall name Mortgagee as an additional insured. No additional parties shall appear in the mortgage or loss payable clause without Mortgagee's prior written consent. All deductibles shall be in amounts acceptable to Mortgagee. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of any of the Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or

grantee unless such transfer is prohibited by the terms of such policies.

9. Delivery of Policies. Any notice pertaining to insurance and required pursuant to this Section shall be given in the manner provided in below. The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of insurance. Mortgagor shall use its best efforts to deliver originals of all policies and renewals (or certificates evidencing the same), marked "paid", (or evidence satisfactory to Mortgagee of the continuing coverage) to Mortgagee at least ten (10) days before the expiration of existing policies and, in any event, Mortgagor shall deliver originals of such certificates to Mortgagee at least five (5) days before the expiration of existing policies and originals of such policies by 30 days after such expiration. If Mortgagee has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Mortgagee shall have the right, but not the obligation, to purchase such insurance for Mortgagee's interest only. Any amounts so disbursed by Mortgagee pursuant to this Section shall be a part of the Liabilities and shall bear interest at the default interest rate provided in the Loan Documents. Nothing contained in this Section shall require Mortgagee to incur any expense or take any action hereunder, and inaction by Mortgagee shall never be considered a waiver of any right accruing to Mortgagee on account of this Section.

10. Separate Insurance. Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Mortgagee's prior written consent, and any such policy shall have attached a standard non-contributing mortgagee clause, with loss payable to Mortgagee, and shall otherwise meet all other requirements set forth herein.

11. Insurance Review. At Mortgagee's option following the expiration or termination of any of the insurance policies required by this Security Deed which are currently in effect, but not more often than annually after such expiration or termination, Mortgagor shall provide Mortgagee with a report from an independent insurance consultant of regional or national prominence, acceptable to Mortgagee, certifying that Mortgagor's insurance is in compliance with this Section.

12. Notice of Casualty. Mortgagor shall give prompt notice of any loss in excess of \$200,000 to Mortgagee. In case of loss covered by any of such policies, Mortgagee is authorized, during the continuance of a Default or Event of Default, to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Mortgagee

UNOFFICIAL COPY

may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence which appointment shall be operative during the continuance of a Default or Event of Default. Mortgagee may deduct from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including, but not limited to, reasonable attorneys' and adjusters' fees and charges.

13. Application of Proceeds. If all or any part of the Premises shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in this Mortgage, Mortgagor, if Mortgagor is not then in Default or if Mortgagor has not elected to apply the Proceeds to the Liabilities as provided hereinbelow, shall promptly and with all due diligence restore and repair the Premises whether or not the net insurance proceeds, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Mortgagee may require that all plans and specifications for such restoration or repair be submitted to and approved by Mortgagee in writing prior to commencement of the work. So long as no Default then exists, at Mortgagor's election, to be exercised by written notice to Mortgagee within thirty (30) days following notice by Mortgagee to Mortgagor of Mortgagee's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds, shall either: (i) be applied first to the costs and expenses of Mortgagee under this Mortgage, next to the Loan and then to the balance of the Liabilities in such order and manner as Mortgagee may elect or (ii) be made available to Mortgagor on the terms and conditions set forth in this Section to finance the cost of restoration or repair with any excess to be applied first to the costs and expenses of Mortgagee under this Mortgage, next to the Loan and then to the balance of the Liabilities in such order and manner as Mortgagee may elect. Any application of the Proceeds to reduce the Liabilities shall constitute a voluntary prepayment subject to any prepayment premiums or fees provided in the Loan Documents. Mortgagee may apply the Proceeds to such prepayment or fees. If the amount of the Proceeds to be made available to Mortgagor is less than the cost of the restoration or repair as reasonably estimated by Mortgagee at any time prior to completion thereof, Mortgagor shall cause to be deposited with Mortgagee the amount of such deficiency within thirty (30) days of Mortgagee's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to the Proceeds. If Mortgagor is required to deposit funds under this Section, the deposit of such funds shall be a condition precedent to Mortgagee's obligation to disburse the Proceeds held by Mortgagee hereunder. The amount of the Proceeds

which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Mortgagee to be disbursed from time to time to pay the cost of repair or restoration either, at Mortgagee's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Mortgagee may reasonably impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Mortgagee may require (i) evidence of the estimated cost of completion of such restoration or repair reasonably satisfactory to Mortgagee and (ii) such architect's certificates, waivers of lien, contractors's sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance reasonably acceptable to Mortgagee. If Mortgagee requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with Chicago Title & Trust Company, or another escrow trustee reasonably acceptable to Mortgagee, pursuant to a construction loan escrow agreement reasonably satisfactory to Mortgagee. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Mortgagee may commingle any such funds held by it with its other general funds. Mortgagee shall pay interest in respect of any such funds held by it at its normal rate for deposit accounts. Mortgagor shall not be entitled to a credit against any of the Liabilities except and to the extent the funds are applied thereto. Without limitation of the foregoing, Mortgagee shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Documents. Notwithstanding anything contained herein to the contrary, the rights and obligations contained in this Section 13 shall be subject and subordinate to the rights of the Superior Lender (as defined hereinafter) to Proceeds under the Superior Financing Documents (as defined hereinafter).

14. Eminent Domain. In case the Collateral, or any part or interest in any thereof, is taken by condemnation, the Mortgagee is hereby irrevocably authorized and empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee), and all Condemnation Awards so received shall be forthwith applied by the Mortgagee, as provided hereinabove. The Mortgagor hereby empowers the Mortgagee, if the adequacy of its security is impaired, to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof. Nothing contained in this Mortgage shall create any responsibility or obligation on the Mortgagee to collect any amounts resulting from any condemnation or

to rebuild or replace any damaged or destroyed Improvements or other Collateral or to perform any other act hereunder. Notwithstanding anything contained herein to the contrary, the rights and obligations contained in this Section 14 shall be subject and subordinate to the rights of the Superior Lender to Condemnation Awards under the Superior Financing Documents.

15. Governmental Requirements. The Mortgagor will at all times fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral or the use thereof, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights and use, noise and pollution) which are applicable to the Mortgagor or have been granted for the Collateral or the use thereof.

16. No Mechanics' Liens. Subject to Mortgagor's right to contest mechanics' lien claims in good faith, the Mortgagor will not do or permit to be done any act or thing, and no person shall have any right or power to do any act or thing, whereby any mechanics' lien under the laws of the State of Illinois can arise against or attach to the Premises or any part thereof. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the above provisions.

17. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and file (at the Mortgagor's expense) such financing statements, obtain such acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time reasonably request to establish and maintain a valid and perfected junior lien on and security interest in the Collateral subject only to the Superior Mortgage (as defined hereinafter) and to provide for payment to the Mortgagee directly of all cash proceeds thereof, with the Mortgagee in possession of the Collateral to the extent it requests; not move its executive office and principal place of business without first notifying Mortgagee; keep all of its books and records relating to the Collateral on the

Premises or at such address; keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing or as otherwise provided in the Loan Documents; make notations on its books and records sufficient to enable the Mortgagee, as well as third parties, to determine the interest of the Mortgagee hereunder; and not collect any rents or the proceeds of any of the Leases or Intangibles more than 30 days before the same shall be due and payable except as the Mortgagee may otherwise consent in writing.

18. Utilities. The Mortgagor will pay all utility charges incurred in connection with the Collateral and maintain all utility services available for use at the Premises.

19. Contract Maintenance; Other Agreements. The Mortgagor, for the benefit of Mortgagee, will fully and promptly perform each obligation and satisfy each condition imposed on it under any Contract for Sale, Contract for Construction, Lease, Intangible or other agreement, or the Superior Financing Documents so that there will be no default thereunder and so that the persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance.

20. Agreements Affecting the Collateral. The Mortgagor shall keep, observe, perform and comply with all covenants, conditions and restrictions affecting the Premises, any operating agreements or other writings relating to the Collateral, and all leases, instruments and documents relating thereto or evidencing or securing any indebtedness secured thereby.

21. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, issues, profits, Leases, Contracts for Sale, or other contracts relating to the Premises, or any interest in any thereof, to be assigned, transferred, conveyed, pledged or disposed of, to any party other than the Mortgagee or Superior Lender without first obtaining the express written consent of the Mortgagee thereto. In addition, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except for customary Leases of space at the Premises that Mortgagor enters into in the ordinary course of business or except pursuant to written leases approved by the Mortgagee. Each such lease shall contain, at the Mortgagee's election, either (i) a provision to the effect that the tenant shall, at the request of the Mortgagee, deliver to the Mortgagee an instrument, in form and substance satisfactory to the Mortgagee, in which the tenant agrees that no action taken by the Mortgagee to

enforce this Mortgage by foreclosure, or by accepting a deed in lieu of foreclosure, or by resorting to any other remedies available to the Mortgagee, shall terminate the lease or invalidate any of the terms thereof and that tenant will attorn to the Mortgagee, to the purchaser at a foreclosure sale, or to a grantee in a voluntary conveyance, and will recognize such entity as landlord for the balance of the term of the lease, providing that the Mortgagee will agree with the tenant that, as long as the tenant is not in default under any of the terms of its lease, the tenant's possession will not be disturbed by the Mortgagee, or (ii) a subordination clause providing that the lease and the interest of the lessee in the demised real estate are in all respects subject and subordinate to this Mortgage; provided, however, that in the event any such lease fails for any reason to contain either of such provisions, no proceeding by the Mortgagee to foreclose this Mortgage, or action by way of its entry into possession after any Default hereunder, shall in or of itself operate to terminate such lease unless the Mortgagee expressly requests such relief in writing, but the preceding provisions of this Section shall never be construed as subordinating this Mortgage to any such lease or any other lease.

22. Financial Reporting. The Mortgagor will at all times comply (or cause to be complied with) the financial reporting requirements of the Loan Documents and will comply with all covenants contained therein.

23. Collections. Until such time as the Mortgagee shall notify the Mortgagor of the revocation of such power and authority, the Mortgagor will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the Rents, Leases, Contracts for Sale, Intangibles and other Collateral, including the taking of such action with respect to such collection as the Mortgagee may reasonably request, or, in the absence of such request, as the Mortgagor may deem advisable. (While reserving the right to revoke such power and authority at anytime, it is the Mortgagee's present intention not to revoke such authority unless an Event of Default or unmatured Event of Default should occur. The Mortgagee, however, may, at any time, whether before or after any revocation of such power and authority or the maturity of any of the Liabilities, notify any parties obligated on any of the Rents, Leases, Contracts for Sale, Intangibles and other Collateral to make payment to the Mortgagee of any amounts due or to become due thereunder and enforce collection of any of the Rents, Leases, Contracts for Sale, Intangibles or other Collateral by suit or otherwise and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby. Upon request of the Mortgagee after a Default has occurred, the Mortgagor will, at its own expense, notify any parties obligated on any of the Rents, Leases, Contracts

for Sale, Intangibles or other Collateral to make payment to the Mortgagee of the amounts due or to become due thereunder. Except as the Mortgagee may otherwise consent in writing, the Mortgagor will forthwith, upon receipt, transmit and deliver to the Mortgagee in the form received, all cash, checks, drafts, chattel paper, earnest money, and other instruments or writings for the payment of money (properly endorsed, where required, so that such items may be collected by the Mortgagee) which may be received by the Mortgagor at any time in full or partial payment or otherwise as proceeds of any of the Collateral. Any such items which may be received by the Mortgagor will be held upon express trust for the Mortgagee until delivery is made to the Mortgagee. All items or amounts which are delivered by the Mortgagor to the Mortgagee on account of partial or full payment or otherwise as proceeds of any of the Collateral shall be deposited to the credit of a deposit account in the name of the Mortgagor with the Mortgagee, as security for payment of the Liabilities. The Mortgagee may from time to time in its discretion, and shall upon request of the Mortgagor made not more than once in any one-week period, apply all or any part of the then-balance in the deposit account representing collected funds toward payment of the Liabilities, whether or not then due, in such order of application as the Mortgagee may determine, and the Mortgagee may, from time to time, in its discretion, release all or any part of such balance to the Mortgagor. Except as provided herein or in the other Loan Documents, the Mortgagor shall have no right to withdraw any funds deposited in the deposit account. The Mortgagee is authorized to endorse, in the name of the Mortgagor, any item, howsoever received by it, representing any payment on or other proceeds (including insurance proceeds) of any of the Collateral and to endorse and deliver, in the name of the Mortgagor, any instrument, chattel paper or other item of Collateral held by the Mortgagee hereunder, in connection with the sale or collection of Collateral.

24. Mortgagee's Performance. If the Mortgagor fails to pay or perform any of its obligations herein contained beyond any applicable cure periods (including payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), as agent or attorney-in-fact of the Mortgagor, after giving the Mortgagor notice of its intention to do so (no such notice need be given after receipt of a notice by Mortgagor of the occurrence of a Default), make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the highest rate applicable after maturity as provided in the Note, shall be added to the principal debt hereby secured and shall be repaid to the Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do

all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Collateral; complete construction; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of the Mortgagor hereunder, the Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes a Default (defined hereinafter).

25. Subrogation. To the extent that the Mortgagee, on or after the date hereof, pays any sum due under any provision of law or any instrument or document creating any lien prior or superior to the lien of this Mortgage, or the Mortgagor or any other person pays any such sum with the proceeds of the Loan, the Mortgagee shall have and be entitled to a lien on the Collateral equal in priority to the lien discharged, and the Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit the Mortgagee in securing the Liabilities.

26. Mortgagor's Right to Contest. Mortgagor may contest or object to the legal validity or amount of any tax or any mechanics' or materialmen's lien on the Premises on and subject to the terms and conditions set forth in the Loan Documents.

27. Taxes, Assessments and Insurance. Mortgagor shall have full and sole responsibility at all times to cause all taxes and assessments on the Premises to be fully and timely paid, and the Mortgagee shall have no responsibility or obligation of any kind with respect thereto.

28. Junior Mortgage.

a. Notwithstanding anything contained herein to the contrary, the parties acknowledge that this Mortgage is a second lien on the Collateral subject to the prior mortgage listed on Exhibit C attached hereto and made a part hereof (the "Superior Mortgage"). It is a covenant hereof that Mortgagor shall faithfully and fully observe and perform each and every term, covenant and condition of the Superior Mortgage and of any and all loan agreements, notes, security agreements and other loan documents related to the Superior Mortgage, (collectively,

including the Superior Mortgage, the "Superior Financing Documents"), and shall not permit any of such Superior Financing Documents to go into default. Mortgagor shall immediately notify Mortgagee of any default or delinquency under any of the Superior Financing Documents, and shall provide Mortgagee with a copy of any notice of default or delinquency received by Mortgagor pursuant to any of the Superior Financing Documents. A default or delinquency under any one of the Superior Financing Documents which is not cured within any applicable cure period contained in the Superior Financing Documents shall automatically and immediately constitute a Default under this Mortgage, and in consequence thereof, Mortgagee may avail itself of any remedies it may have for Default hereunder including, without limitation, acceleration of the Loan under the Note.

b. Mortgagee is hereby expressly authorized to advance at its option all sums necessary to keep any Superior Financing Documents in good standing, and all sums so advanced, together with interest thereon at the rate of "interest after maturity" (as described in the Note) shall be repayable on demand to Mortgagee and shall be secured by the lien of this Mortgage, as in the case of other advances made by Mortgagee hereunder.

c. Mortgagor agrees that Mortgagor shall not make any agreement with the holder of any Superior Financing Documents (the "Superior Lender") which shall in any way modify, change, alter or extend any of the terms or conditions of any such Superior Financing Documents, nor shall Mortgagor request or accept any future advances under such Superior Financing Documents, without the express written consent of Mortgagee.

II. ENVIRONMENTAL MATTERS

1. Definitions. For purposes of this Article:

a. "Premises" means: The Real Estate including, improvements presently and hereafter situated thereon or thereunder, construction material used in such improvements, surface and subsurface soil and water, areas leased to tenants, and all business, uses, and operations thereon.

b. "Environmental Laws" means:

(i) any applicable present or future federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment, including, but not limited to: the

Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the Clean Water Act, 33 U.S.C. Section 1251 et seq.;

(ii) any applicable present or future state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of the environment.

c. "Hazardous Material" means:

(i) "hazardous substances" as defined by CERCLA;

(ii) "hazardous wastes", as defined by RCRA;

(iii) any hazardous, dangerous or toxic chemical, material, waste, pollutant, contaminant or substance ("pollutant") within the meaning of any Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant;

(iv) any petroleum, crude oil or fraction thereof;

(v) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Section 2011 et seq., and amendments thereto and reauthorizations thereof;

(vi) asbestos-containing materials in any form or condition; and

(vii) polychlorinated biphenyls ("PCBs") in any form or condition.

d. "Environmental Actions" means:

(i) any written notice of violation, complaint, claim, citation, demand, inquiry, report, action, assertion of potential responsibility, lien, encumbrance, or proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency, or body, or any person or entity respecting:

(A) alleged violation of Environmental Laws;

(B) the environmental condition of the Premises, or any portion thereof, including actual or alleged damage or injury to humans, public health, wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or

(C) the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of Hazardous Material on, in, under, about, from the Premises.

(ii) any violation or claim of violation by Mortgagor of any Environmental Laws involving the Premises;

(iii) any lien on the Premises for damages caused by, or the recovery of any costs incurred by any person or governmental entity for the investigation, remediation or cleanup of any release or threatened release of Hazardous Material; or

(iv) the destruction or loss of use of property, or the injury, illness or death of any officer, director, employee, agent, representative, tenant or invitee of Mortgagor or any other person alleged to be arising from or caused by the environmental condition of the Premises or the release, emission or discharge of Hazardous Materials from the Premises.

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

a. Compliance. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, except as otherwise disclosed in writing to Mortgagee in Exhibit B attached herein, the Premises is not listed on any local, state and/or federal lists of potentially contaminated sites, including, but not limited to, the National Priorities List, CERCLIS or any state or federal hazardous waste site or leaking underground storage tank lists, and the Premises and Mortgagor have been and are currently in material compliance with all Environmental Laws. Except as otherwise disclosed in writing to Mortgagee in Exhibit B attached herein there have been, to the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no past, and there are no pending or threatened, Environmental Actions to which Mortgagor is a party and which relate to the Premises. To the best of Mortgagor's knowledge, all required governmental permits and licenses are in effect, and Mortgagor is in material compliance therewith. Except as disclosed in writing to Mortgagee in Exhibit B attached herein, Mortgagor has not received any written notice of any Environmental Action respecting Mortgagor relating to the Premises, the Premises or any off-site facility to which has been sent any Hazardous

UNOFFICIAL COPY

Material from the Premises for off-site treatment, recycling, reclamation, reuse, handling, storage, sale or disposal.

b. Absence of Hazardous Material. Except as disclosed in writing to Mortgagee, in Exhibit B attached herein no use, exposure, release, emission, discharge, generation, manufacture, sale, handling, reuse, presence, storage, treatment, transport, recycling or disposal of Hazardous Material has, to the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, occurred or is occurring on or from the Premises except in compliance with Environmental Laws. The term "release" shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Material. To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, all Hazardous Material used, treated, stored, transported to or from, generated or handled on the Premises has been disposed of on or off the Premises in a lawful manner except as has been disclosed in writing to the Mortgagee ("Disclosed Material"). To the best of Mortgagor's knowledge based on all appropriate and thorough inquiry, no underground storage tanks (including but not limited to petroleum or heating oil storage tanks) are present on or under the Premises, or have been on or under the Property except as has been disclosed in writing to the Mortgagee ("Disclosed Tanks").

3. Mortgagor's Covenants. Mortgagor hereby covenants and agrees with Mortgagee as follows:

a. Compliance. The Premises and Mortgagor shall materially comply with all Environmental Laws. All required governmental permits and licenses shall be obtained and maintained, and Mortgagor shall comply therewith. All Hazardous Material on the Premises will be disposed of in a lawful manner without giving rise to liability under any Environmental Laws. Mortgagor will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance, closure and removal of all underground storage tanks on the Premises, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

b. Absence of Hazardous Material. Other than Disclosed Material or Hazardous Material in normal amounts and of the type used in Mortgagor's normal course of business operations, no Hazardous Material shall be introduced to or used, exposed, released, emitted, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on the Premises without thirty (30) days' prior written notice to Mortgagee.

c. Environmental Actions and Right to Consent.

Mortgagor shall promptly notify the Mortgagee of all Environmental Actions relating to the Premises and provide copies of all written notices, complaints, non-privileged correspondence and other documents relating thereto within two business days of receipt, and Mortgagor shall keep the Mortgagee informed of all responses thereto. Mortgagor shall promptly respond to all Environmental Actions and Mortgagor shall keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any Environmental Actions. Notwithstanding the foregoing sentence, Mortgagor may, diligently, in good faith and by appropriate legal proceedings, contest such proceedings provided: (i) such contest shall not cause the loss or impairment of Mortgagee's lien and security interests in and to the Premises; and (ii) such contest will not cause Mortgagee to incur any liability in Mortgagee's reasonable judgment. Mortgagor shall have an affirmative obligation to prevent forfeiture of the premises to third parties. Mortgagor shall permit Mortgagee, at Mortgagee's option, to appear in and to be represented in any such contest and shall pay upon demand all reasonable expenses incurred by Mortgagee in so doing, including reasonable attorneys' fees.

d. Future Environmental Audits. Mortgagor shall provide such information and certifications which the Mortgagee may reasonably request from time to time to monitor Mortgagor's compliance with this Article for the sole purpose of protecting Mortgagee's security interest. To protect its security interest, Mortgagee shall have the right, but not the obligation, at any time upon three (3) days' prior written notice (except in the case of an emergency) to enter upon the Premises, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct such other activities as Mortgagee, at its sole discretion, deems appropriate, provided Mortgagee has previously informed Mortgagor of its purpose for such entry onto the Premises, schedule such visits during normal business hours and agrees to comply with all health and safety requirements to the extent such requirements are provided to Mortgagee in writing at the time of scheduling of audit. Mortgagor shall cooperate fully in the conduct of such an audit. If Mortgagee decides to conduct such an audit because of (i) an Environmental Action; (ii) Mortgagee's considering taking possession of or title to the Premises after default by Mortgagor; (iii) a material change in the use of the Premises, which in Mortgagee's reasonable opinion, increases the risk to its security interest; or (iv) the introduction of Hazardous Material other than Disclosed Material or Hazardous Materials in normal amounts and of the type used in Mortgagor's normal course of business operations to the Premises; then Mortgagor shall pay upon demand all costs and expenses connected with such audit, which, until paid, shall become additional indebtedness secured by the Loan Documents and shall bear interest at the Default Rate. Mortgagor shall be provided,

upon request, with a copy of any such audit report or results. Nothing in this Article shall give or be construed as giving Mortgagee the right to direct or control Mortgagor's actions in complying with Environmental Laws.

e. Event of Default and Opportunity to Cure. If Mortgagor fails to comply with any of its covenants contained in this Section 3 within sixty (60) days after notice by Mortgagee to Mortgagor, Mortgagee may, at its option, declare an Event of Default. If, however, the noncompliance cannot, in Mortgagee's reasonable determination, be corrected within such sixty (60) day period, and if Mortgagor has promptly commenced and diligently pursues action to cure such noncompliance to Mortgagee's satisfaction, then Mortgagor shall have such additional time as is reasonably necessary to correct such noncompliance, provided Mortgagor continues to diligently pursue corrective action, and has obtained the written consent of Mortgagee which is not to be unreasonably withheld.

4. Mortgagee's Right to Rely. Mortgagee is entitled to rely upon Mortgagor's representations, warranties and covenants contained in this Article. The Mortgagor shall take all necessary actions to determine for itself, and to remain aware of, the environmental condition of the Premises.

5. Indemnification. The term "Mortgagee's Environmental Liability" shall mean any and all losses, liabilities, obligations, penalties, claims, fines, demands, litigation, defenses, costs, judgments, suits, proceedings, damages (including consequential, punitive and exemplary damages unless incurred as a direct result of bank or bank's agent negligence or illegal act), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against, settling or prosecuting any suit, litigation, claim or proceeding) which may at any time be either directly or indirectly imposed upon, incurred by or asserted or awarded against the Mortgagee or any of the Mortgagee's parent and subsidiary corporations and their affiliates, shareholders, directors, officers, employees, and agents (collectively, "Affiliates") in connection with or arising from:

a. any Hazardous Material used, exposed, emitted, released, discharged, generated, manufactured, sold, transported, handled, stored, treated, reused, presented, disposed of or recycled on, in or under all or any portion of the Premises, during or before Mortgagor's ownership of the Premises.

b. any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained in this Article and the attached Schedules.

c. any violation, liability or claim of violation or liability, under any Environmental Laws at or relating to the Premises or during or before Mortgagor's ownership of the Premises or relating to the relationship between Mortgagor and Mortgagee established pursuant to the Loan Documents;

d. the imposition of any lien for damages caused by, or the recovery of any costs incurred for the cleanup of, any release or threatened release of Hazardous Material at or relating to the Premises or relating to the relationship between Mortgagor and Mortgagee established pursuant to the Loan Documents; or

e. any Environmental Actions at or relating to the Premises or relating to the relationship between Mortgagor and Mortgagee established pursuant to the Loan Documents.

Mortgagor shall indemnify, defend (at trial and appellate levels and with counsel, experts and consultants acceptable to Mortgagee and at Mortgagor's sole cost) and hold the Mortgagee and their Affiliates free and harmless from and against Mortgagee's Environmental Liability (collectively, "Mortgagor's Indemnification Obligations"). Mortgagor's Indemnification Obligations shall survive for the maximum period of time provided in any applicable statute of limitations governing any Environmental Actions with respect to any Mortgagee's Environmental Liability.

Mortgagor and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action relating to this transaction against the Mortgagee under or with respect to any Environmental Laws. Mortgagor's obligation to the Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor or Mortgagee (unless the Mortgagee is grossly negligent or commits wilful misconduct) with respect to the violation or condition which results in liability to the Mortgagee.

III. DEFAULT; REMEDIES

The Mortgagor and the Mortgagee hereby agree further as follows:

1. Defaults; Acceleration. The occurrence of any default under the Note or any of the other Loan Documents or the breach of any covenant contained herein or in any of the other Loan Documents, shall constitute a "Default" hereunder.

2. Non-performance of Certain Obligations: If any Default shall occur in the performance of or compliance with any non-monetary covenant contained herein, Mortgagor shall immediately notify Mortgagee and Mortgagor shall have thirty (30) days after notice from Mortgagee to cure such Default; provided, however, that

if such Default cannot be cured with diligence within such thirty (30) day period, the Mortgagor shall have such additional time (but not in excess of thirty (30) additional days) as may be required to cure such default so long as the Mortgagor commences within said thirty (30) day period and diligently pursues all actions necessary to effect such cure.

3. Remedies Cumulative. No remedy or right of the Mortgagee hereunder or under any of the other Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Default shall impair any such remedy or right or be construed to be a waiver of any such Default or an acquiescence therein, nor shall it affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by law or in the other Loan Documents.

4. Possession of Premises; Remedies under Loan Documents. The Mortgagor hereby waives all right to the possession, income, and rents of the Premises from and after the occurrence of any Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction in progress thereon at the expense of the Mortgagor, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Premises or, at the election of the Mortgagee in its sole and unreviewable discretion, to a reduction of such of the Liabilities in such order as the Mortgagee may elect. The Mortgagee, in addition to the rights provided under the Loan Documents, is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Goods and Improvements from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection and completion of Improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of the Mortgagor. All such expenditures by the Mortgagee shall be Liabilities under this Mortgage for all purposes. Upon the occurrence of any Default, the Mortgagee may also exercise any or all rights or remedies under the Loan Documents, including, without limitation, disbursement of the undisbursed balance of any

Commitment to complete buildings and improvements or perform obligations of the Mortgagor under any Contract for Sale.

5. Foreclosure; Receiver. Upon the occurrence of any Default, the Mortgagee shall also have the right, immediately or at any time thereafter (in Mortgagee's sole discretion), to foreclose this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of the Mortgagee (and Mortgagor hereby irrevocably and unconditionally agrees and consents to the appointment of any such receiver that the Mortgagee may designate or request or that such court may appoint), with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit and during any period from the end of the redemption period up to and including the date which is 30 days after the confirmation of sale. The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment first to the costs and expenses of Mortgagee incurred while exercising any of its rights under this Mortgage, next to the Loan and then to the balance (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Mortgagee in its sole and unreviewable discretion may elect: (i) amounts due under the Loan Documents, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by the Mortgagee to cure or attempt to cure any default by the Mortgagor in the performance of any obligation or condition contained in the Loan Documents or otherwise, to protect the security hereof provided herein, or in any of the Loan Documents, with interest on such advances at the interest rate applicable after maturity under the Loan Documents. The overplus of the proceeds of sale, if any, shall then (to the fullest extent permitted by applicable law) be paid to the Mortgagor upon its written request (and, if not permitted by law to be paid to the

Mortgagor, such overplus shall be paid and applied as required by applicable law). This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Mortgagee may elect, until all of the Premises have been foreclosed against and sold. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor.

6. Remedies for Leases and Rents. If any Default occurs, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby shall have full power to use and apply the Rents to the payment of or on account of the following,

in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to first to the costs and expenses of Mortgagee under this Mortgage, next to the Loan and then to the balance of the Liabilities in such order and manner as Mortgagee may elect.

7. Personal Property. Whenever there exists a Default hereunder, the Mortgagee may exercise from time to time any rights and remedies available to it under applicable law upon default in payment of indebtedness. The Mortgagor shall, promptly upon request by the Mortgagee, assemble the Collateral and make it available to the Mortgagee at such place or places, reasonably convenient for both the Mortgagee and the Mortgagor, as the Mortgagee shall designate. Any notification required by law of intended disposition by the Mortgagee of any of the Collateral shall be deemed reasonably and properly given if given at least five days before such disposition. Without limiting the foregoing, whenever there exists a Default hereunder, the Mortgagee may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any person obligated on the Collateral to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral, (vi) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any public or private sale, and (vii) bid for and purchase any or all of the Collateral at any such sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by the

Mortgagee to the payment of expenses in connection with the Collateral, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied first to the costs and expenses of Mortgagee under this Mortgage, next to the Loan and then by the Mortgagee toward the payment of the balance of the Liabilities in such manner and in such order of application as the Mortgagee may from time to time, in its sole and unreviewable discretion, elect. The Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Liabilities and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

8. Performance of Contracts. The Mortgagee may, in its sole discretion at any time after the occurrence of a Default, notify any person obligated to the Mortgagor under or with respect to any Intangible, any Contract for Sale or any Contract for Construction of the existence of a Default, require that performance be made directly to the Mortgagee at the Mortgagor's expense, and advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder; and the Mortgagor agrees to cooperate with the Mortgagee in all ways reasonably requested by the Mortgagee (including the giving of any notices requested by, or joining in any notices given by, the Mortgagee) to accomplish the foregoing.

9. No Liability on Mortgagee. Notwithstanding anything contained in this Mortgage, the Mortgagee shall not be obligated to perform or discharge, and does not undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether under this Mortgage, under the Superior Financing Documents, under any of the Leases, under any Intangible, under any Contract for Construction, under any Contract for Sale or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from: any and all liabilities, losses or damages which the Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of Mortgagee's exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted

against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral. Unless Mortgagee assumes control of the Premises by taking possession thereof either directly or through a receiver, the Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in Mortgagee's exercise of the powers herein granted to it except for such liability as is caused by Mortgagee's gross negligence or wilful misconduct, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

IV. GENERAL

1. Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other person (except any person expressly released in writing by the Mortgagee) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, the Mortgagee may at any time and from time to time, without the consent of any person, do any or all of the following: release any person liable (whether directly or indirectly, primarily or secondarily, or otherwise) for the payment or performance of any of the Liabilities; extend the time for, or agree to alter the terms of payment of any of the Liabilities; modify or waive any obligation or performance; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind; release any Collateral or other property securing any or all of the Liabilities; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; consent to the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right the Mortgagee may have.

2. Suits and Proceedings. The Mortgagor agrees to indemnify the Mortgagee and hold the Mortgagee harmless, from and against any and all losses, damages, costs, expenses and claims of any kind whatsoever (including, without limitation, attorneys' fees) which the Mortgagee may pay or incur in connection with any suit or proceeding in or to which the Mortgagee may be made or become a

party, which suit or proceeding does or may affect all or any portion of the Collateral or the value, use or operation thereof or this Mortgage or the validity, enforceability, lien or priority hereof or of any of the Liabilities or indebtedness secured hereby.

3. Loan Documents; Obligatory Future Advances; Partial Releases.

a. The Mortgagor covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of the Loan Documents.

b. This Mortgage is granted to secure future advances and loans from the Mortgagee to or for the benefit of the Mortgagor or its successors and assigns or the Premises, as provided in the Loan Documents, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage and the Loan Documents. All advances, disbursements or other payments required by the Loan Documents are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded.

c. It is contemplated that partial releases of this Mortgage may be given if provided in the Loan Documents or as otherwise agreed to by the Mortgagee, but no such release (or any other release) shall affect the lien of this Mortgage on the remainder of the Premises encumbered hereby.

4. Security Agreement and Financing Statement. This Mortgage, to the extent that it conveys, grants a security interest in, or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement, and also as a financing statement, under the Uniform Commercial Code as in effect in the State of Illinois, with the Mortgagor as Debtor (with its address as set forth above) and with the Mortgagee as Secured Party (with its address as set forth above).

5. Defeasance. Upon full payment of all indebtedness secured hereby and full payment, performance and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, and when Mortgagee shall have no further obligation (whether contingent, conditional or otherwise) to make any advance, disbursement or payment of any kind or to extend any credit under or with respect to the Loan Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of quitclaim reconveyance or release shall in due course be made by the Mortgagee to the Mortgagor at the Mortgagor's expense (but the

Mortgagor's undertakings and agreements set out in Article II, Section 5 above shall survive any such reconveyance or release).

6. Notices. All notices and other communications provided for hereunder shall be in writing and, if to the Mortgagor, mailed, telecopied, telegraphed, telexed or cabled to it at the address of the Mortgagor specified herein and in the Loan Documents; if to the Mortgagee, mailed, telecopied, telegraphed, telexed or cabled to it at the address of the Mortgagee specified herein and in the Loan Documents; or as to either party at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section. All such telecopier, telegraphic, telex or cable notices and communications shall, when telecopied, delivered, telexed or cabled, be effective when telecopied, delivered to the telegraph company, confirmed by telex answerback or delivered to the cable company, respectively, and all such mail notices and communications shall be effective five (5) days after deposit in the mails.

7. Successors, the Mortgagor; Gender. All provisions hereof shall inure to and bind the parties and their respective successors, vendees and assigns; provided, however, that the foregoing shall not in any way limit, restrict or modify the provisions of Article I, Section 4 above. The word "Mortgagor" shall include all persons claiming under or through the Mortgagor and all persons liable for the payment or performance of any of the Liabilities whether or not such persons shall have executed this Mortgage or any of the other Loan Documents. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

8. Care by the Mortgagee. The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as the Mortgagor requests in writing, but failure of the Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Mortgagee to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

9. No Obligation on Mortgagee. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding, (i) the Mortgagor shall be and remain liable under and with respect to the Collateral to perform all of the obligations assumed by it under or with respect to each thereof, (ii) the Mortgagee shall have no obligation or liability under or with respect to the Collateral by reason or arising out of this Mortgage and (iii) the Mortgagee shall not be required or

obligated in any manner to perform or fulfill any of the obligations of the Mortgagor under, pursuant to or with respect to any of the Collateral.

10. No Waiver by the Mortgagee; Writing. No delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No amendment, waiver or supplement in any way affecting this Mortgage shall in any event be effective unless set out in a writing signed by the Mortgagee.

11. Governing Law; Severability; Fraudulent Conveyance Section Headings. This Mortgage shall be construed in accordance with and governed by the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or the remaining provisions of this Mortgage, it being the parties' intention that this Mortgage and each provision hereof be effective and enforced to the fullest extent permitted by applicable law. Consistent with the foregoing, and notwithstanding any other provision of this Mortgage to the contrary, in the event that any action is brought seeking to invalidate any of Mortgagor's obligations under this Mortgage or under any of the other Loan Documents under any fraudulent conveyance or fraudulent transfer theory, Mortgagor shall be liable under this Mortgage only for an amount equal to the maximum amount of liability that a court of competent jurisdiction pursuant to a final and nonappealable order or judgement determines could have been incurred under applicable law by Mortgagor under this Mortgage or the other Loan Documents at the time of the execution and delivery of this Mortgage or other Loan Documents (or if such date is determined not to be the appropriate date for determining the enforceability of Mortgagor's obligations hereunder and thereunder for fraudulent conveyance or transfer purposes, on the date determined to be so appropriate) without rendering such hypothetical liability voidable under applicable law relating to fraudulent conveyance or fraudulent transfer (the "Maximum Obligated Amount"), and not for any greater amount, as if the stated aggregated amount of the liability had instead been the Maximum Obligated Amount. The Section headings used herein are for convenience of reference only, and shall not be deemed to be a part of this Mortgage or be considered in the interpretation, or construction thereof.

12. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge

in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

13. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities secured hereby, or otherwise.

14. Compliance with Illinois Mortgage Foreclosure Law.

a. If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined below), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

b. Without in any way limiting or restricting any of Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Mortgagee any rights, remedies, powers or authorities upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

c. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, to the extent reimbursable under Sections 15-1510, 15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

15. No Reliance by Others on the Premises; Single Zoning Lot and Tax Parcel. The Mortgagor covenants that it will not cause or permit any land, building or other improvement, or other property of any kind whatsoever which is not subject to the lien of this Mortgage (regardless of whether such property is owned by Mortgagor) to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement of any kind whatsoever, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give or withhold consent for all or any portion of the Premises or any interest therein to be so used. The Mortgagor represents, warrants and covenants that no building or other improvement situated on or comprising part of the Premises does, or at any time will, rely on any property not subject to the lien of this Mortgage to fulfill any governmental or municipal requirement of any kind whatsoever. The Mortgagor shall not cause or permit to be impaired the integrity of the Premises as a tax parcel or parcels separate and apart from all other tax parcels. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void ab initio and of no force or effect for any purpose whatsoever.

16. No Property Manager's Lien. Any property management agreement for or relating to all or any part of the Premises, whether now in effect or entered into hereafter by the Mortgagor or its agent, with a property manager shall contain a "no lien" provision whereby the property manager forever and unconditionally waives and releases any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, 770 ILCS 60/1). Such property management agreement or a short form thereof including such waiver shall, at the Mortgagee's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. In addition, the Mortgagor shall cause the property manager to enter into a subordination agreement with the Mortgagee, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. The Mortgagor's failure to cause any of the foregoing to occur shall constitute a default under this Mortgage.

17. WAIVERS. THE MORTGAGOR, ON BEHALF OF ITSELF AND ALL PERSONS NOW OR HEREAFTER INTERESTED IN THE PREMISES OR THE COLLATERAL, VOLUNTARILY AND KNOWINGLY HEREBY: ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ILLINOIS MORTGAGE FORECLOSURE LAW, 735 ILCS 5/15 - 1101 ET SEQ., HEREIN THE "ACT"), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT); WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL OTHER RIGHTS TO REINSTATEMENT OR REDEMPTION AND ANY AND ALL OTHER RIGHTS AND BENEFITS UNDER ALL PRESENT AND FUTURE

APPRAISEMENT, HOMESTEAD, MORATORIUM, VALUATION, EXEMPTION, STAY, EXTENSION, REDEMPTION AND MARSHALLING STATUTES, LAWS OR EQUITIES NOW OR HEREAFTER EXISTING, AND AGREES THAT NO DEFENSE, CLAIM OR RIGHT BASED ON ANY THEREOF WILL BE ASSERTED, OR MAY BE ENFORCED, IN ANY ACTION ENFORCING OR RELATING TO THIS MORTGAGE OR ANY OF THE COLLATERAL. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE MORTGAGOR, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 - 1602) OR REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 - 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

18. JURISDICTION.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF MORTGAGEE OR MORTGAGOR SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY CONSENTS TO PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

19. WAIVER OF JURY TRIAL.

MORTGAGOR AND MORTGAGEE HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, AND MORTGAGOR AND MORTGAGEE AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT A JURY.

[Signature Page Follows].

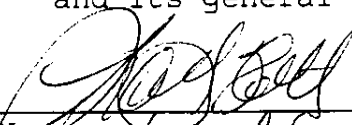
UNOFFICIAL COPY

WITNESS the hand and seal of the undersigned Mortgagor on the day and year first above written, pursuant to proper authority duly granted.

TELEGRAPH PROPERTIES LIMITED
PARTNERSHIP, an Illinois
limited partnership

By: Telegraph Properties, Inc.,
a South Dakota corporation,
and its general partner

By:


Name: Lynn A. Green
Title: Secretary

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Sharon Klockowski, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Leon A. Greenblatt personally known to me to be the Secretary of Telegraph Properties, Inc., general partner of Telegraph Properties Limited Partnership, an Illinois limited partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Secretary of said corporation, he signed and delivered the said instrument pursuant to proper authority duly given by the Board of Directors of said corporation, as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

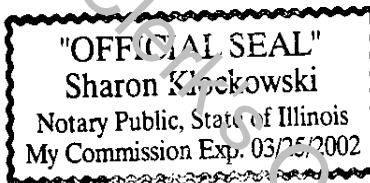
GIVEN under my hand and notarial seal this 18th day of March 1999.

Sharon Klockowski
Notary Public

My Commission expires:

[SEAL]

03/25/2002



UNOFFICIAL COPY

EXHIBIT A

The Land

LAND IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

LOT 5 IN BLOCK 33 IN ORIGINAL TOWN OF CHICAGO, IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 188 WEST RANDOLPH

PIN: 17-09-433-001 Vol. 510

EXHIBIT B

Environmental Disclosures

NONE

Property of Cook County Clerk's Office

EXHIBIT C

Superior Mortgages

Mortgage dated July 31, 1998, from Telegraph Properties Limited Partnership, an Illinois limited partnership, as Mortgagor, to Corus Bank, N.A., as Mortgagee securing an original principal amount of \$11,100,000.00, which was recorded on August 4, 1998, with the County of Recorder of Cook County, Illinois as Document No. 98683359.

AND

Mortgage dated February 27, 1997, from Telegraph Properties Limited Partnership, an Illinois limited partnership, as Mortgagor, to LaSalle Bank NI, as Mortgagee securing an original principal amount of \$4,000,000.00, which was recorded on March 5, 1997, with the County of Recorder of Cook County, Illinois as Document No. 97655652.

- NO OTHER MORTGAGES -

Property of Cook County Clerk's Office