

63.617 ORU

04-29-1999



SHEET

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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

**Conveyance Type**

- Assignment  License
  - Security Agreement  Nunc Pro Tunc Assignment
  - Merger  Change of Name
  - Other
- Effective Date  
Month Day Year

**Conveying Party**

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

**Receiving Party**

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

04/26/1999 JSHABAZZ 00000149 75447526

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 OP  
50.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**TRADEMARK**  
REEL: 1889 FRAME: 0111

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**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="75/447,526"/>	<input type="text" value="75/447,525"/>	<input type="text"/>	<input type="text" value="2,206,676"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

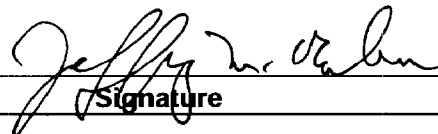
No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Jeffrey M. Becker

Name of Person Signing



Signature

4/14/99

Date Signed

# PLEDGE, ASSIGNMENT, AND SECURITY AGREEMENT

(Logix Communications Corporation)

THIS PLEDGE, ASSIGNMENT, AND SECURITY AGREEMENT (the "**Security Agreement**") is executed as of April 7, 1999, by LOGIX COMMUNICATIONS CORPORATION, an Oklahoma corporation (whether doing business in its own name or in one or more of the tradenames listed on **Annex A** hereto, "**Debtor**"), whose address is 355 N.W. 58<sup>th</sup> Street, Suite 600, Oklahoma City, Oklahoma 73112, and NATIONSBANK, N.A., a national banking association, (in its capacity as "**Administrative Agent**" for the holders of the Obligation under the Credit Agreement defined below), as "**Secured Party**," whose address is 901 Main Street, 64<sup>th</sup> Floor, Dallas, Texas 75202.

WHEREAS, Logix Communications Corporation (as a Borrower), NationsBank, N.A., as Administrative Agent (including its permitted successors and assigns in such capacity, "**Administrative Agent**"), NationsBanc Montgomery Securities LLC, as Sole Lead Arranger and Book Manager, Canadian Imperial Bank of Commerce, as Syndication Agent (including its permitted successors and assigns in such capacity, "**Syndication Agent**"), Toronto Dominion (Texas), Inc., as Documentation Agent (including its permitted successors and assigns in such capacity, "**Documentation Agent**"), and Lenders now or hereafter party to the Credit Agreement have entered into a Credit Agreement, dated as of April 7, 1999 (as amended, modified, supplemented, or restated from time to time, the "**Credit Agreement**");

WHEREAS, this Security Agreement is integral to the transactions contemplated by the Loan Papers, and the execution and delivery thereof is a condition precedent to Lenders' obligations to extend credit under the Loan Papers.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor and Secured Party hereby agree as follows:

1. **REFERENCE TO CREDIT AGREEMENT.** The terms, conditions, and provisions of the Credit Agreement are incorporated herein by reference, the same as if set forth herein verbatim, which terms, conditions, and provisions shall continue to be in full force and effect hereunder so long as Lenders are obligated to lend under the Credit Agreement and thereafter until the Obligation is paid and performed in full.

2. **CERTAIN DEFINITIONS.** Unless otherwise defined herein, or the context hereof otherwise requires, each term defined in either of the Credit Agreement or in the UCC is used in this Security Agreement with the same meaning; *provided that*, if the definition given to such term in the Credit Agreement conflicts with the definition given to such term in the UCC, the Credit Agreement definition shall control to the extent legally allowable; and if any definition given to such term in *Chapter 9* of the UCC conflicts with the definition given to such term in any other chapter of the UCC, the *Chapter 9* definition shall prevail. As used herein, the following terms have the meanings indicated:

**Collateral** has the meaning set forth in *Paragraph 4* hereof.

**Lender** means, individually, or **Lenders** means, collectively, on any date of determination, Administrative Agent, Syndication Agent, Documentation Agent, and Lenders and their permitted successors and assigns.

**Obligation** means, collectively, (a) the "**Obligation**" as defined in the Credit Agreement, and (b) all indebtedness, liabilities, and obligations of Debtor arising under this Security Agreement; it being the intention and contemplation of Debtor and Secured Party that future advances will be made by Secured Party or one or more Lenders to Debtor for a variety of purposes, that Debtor may guarantee (or otherwise become directly or contingently obligated with respect to) the obligations of others to Secured Party or to one or more Lenders, that from time to time overdrafts of Debtor's accounts with Secured Party or with other Lenders may occur, and that Secured Party or one or more Lenders may from time to time acquire from others obligations of Debtor to such others, and that payment and repayment of all of the foregoing are intended to and shall be part of the Obligation secured hereby. The Obligation shall include, without limitation, future, *as well as* existing, advances, indebtedness, liabilities, and obligations owed by Debtor to Secured Party or to any Lender arising under the Loan Papers or otherwise.

**Obligor** means any Person obligated with respect to any of the Collateral, whether as an account debtor, obligor on an instrument, issuer of securities, or otherwise.

**Partnership** means any partnership issuing a Partnership Interest.

**Pledged Securities** means, collectively, the Pledged Shares, the Partnership Interests (whether or not a security), and any other Collateral constituting securities.

**Security Interest** means the security interest granted and the pledge and assignment made under **Paragraph 3** hereof.

**System** has the meaning set forth in **Paragraph 3** hereof.

**Telecommunications Equipment** means fiber optic cable, switches, including without limitation those switches listed on **Annex A**, transmission equipment, and other ancillary equipment necessary for the installation and operation of a switch room or central office and co-location with other telecommunications providers that will enable Debtor to offer telephony services, as well as all software and hardware associated with the network operating center and back office systems (including operating support systems, billing systems, and data services).

**UCC** means the Uniform Commercial Code as enacted in the State of New York or other applicable jurisdiction, as amended at the time in question.

3. **SECURITY INTEREST.** In order to secure the full and complete payment and performance of the Obligation when due, Debtor hereby grants to Secured Party a Security Interest in all of Debtor's Rights, titles, and interests in and to the Collateral and pledges, collaterally transfers, and assigns the Collateral to Secured Party, all upon and subject to the terms and conditions of this Security Agreement. Such Security Interest is granted and pledge and assignment are made as security only and shall not subject Secured Party to, or transfer or in any way affect or modify, any obligation of Debtor with respect to any of the Collateral or any transaction involving or giving rise thereto. The grant contained herein is intended to confer upon Secured Party all Rights that a secured creditor may obtain and that may be granted in the Authorizations under applicable Law as from time to time in effect. If any Law that prohibits such a grant is subsequently changed or clarified, or if the applicable Governmental Authority's interpretation of such Law is changed, to permit or further permit the granting of such security interests in such Governmental Authority's Authorizations, then

those Authorizations, whether now held or hereafter acquired, shall automatically become subject to the Secured Party's Security Interest to the maximum extent permitted by the Law as then in effect. In the meantime, the value of Debtor's telephone communication businesses as a going concern depends upon the holder of Debtor's Authorizations also being the owner of the assets used or useful in the operation of Debtor's telecommunications systems (the "**System**") and, if ownership of those assets is separated from the Authorizations, a Governmental Authority might, under currently applicable Law, cancel the Authorizations. Accordingly, Debtor and Secured Party, in recognition of the unique nature of a Authorization and the fact that the separation of the Authorizations from Debtor's operating assets may prevent Lenders from adequately realizing the value of their Security Interests, have provided in **Paragraph 9(b)** hereof for the appointment of a receiver upon a Default or Potential Default and for the assignment of the Authorizations in the event of the foreclosure hereunder, with the specific intention in each case that the physical assets used in connection with the Systems not be separated from the Authorizations. If the grant, pledge, or collateral transfer or assignment of any specific item of the Collateral is expressly prohibited by any contract, then the Security Interest created hereby nonetheless remains effective to the extent allowed by *UCC § 9.318* or other applicable Law, but is otherwise limited by that prohibition.

4. **COLLATERAL.** As used herein, the term "**Collateral**" means the following items and types of property now owned or in the future acquired by Debtor:

(a) All present and future accounts, contract Rights, general intangibles, chattel paper, documents, instruments, inventory, investment property, equipment, including, without limitation, Telecommunications Equipment, fixtures, other goods, minerals, money, and deposit accounts, wherever located, now owned or hereafter acquired by such Debtor, and any and all present and future Tax refunds of any kind whatsoever to which any Debtor is now or shall hereafter become entitled and other obligations of any kind (including, without limitation, all intercompany debt owed to Debtor that is not evidenced by a promissory note or similar instrument) and all telephone accounts and accounts receivable arising from telecommunication services rendered to an end user and Rights in and to any of the telephone receivables, debts, and other amounts payable to such Debtor by any local exchange company, credit card company, or provider of local telephone services.

(b) All present and future issued and outstanding shares of capital stock or other equity or investment securities now owned or hereafter acquired by such Debtor, including, without limitation, all capital stock of the Subsidiaries of such Debtor as more particularly listed on **Annex B** hereto, *together with* all distributions thereon, all cash and noncash proceeds thereof, and any securities issued in substitution or replacement thereof (collectively, the "**Pledged Shares**").

(c) All Rights, titles, and interests of such Debtor in and to all promissory notes and other instruments payable to such Debtor, now or hereafter existing, including, without limitation, the inter-company notes as listed on **Annex B** (collectively, the "**Collateral Notes**"), all Rights titles, interests, and Liens Debtor may have, be or become entitled to under all present and future security agreements, pledge agreements, deeds of trust, mortgages, guarantees, or other documents assuring or securing payment of the Collateral Notes (the "**Collateral Note Security**") in, to, and under all other loan and collateral documents relating to such instruments.

(d) All present and future Rights, titles, interests, and Liens (but none of the obligations) now owned or hereafter acquired by such Debtor in any partnership or joint venture, including, without limitation, the partnerships listed on **Annex B** hereof (collectively, the "**Partnership Interests**").

(e) All present and future Rights, titles, interests, and Liens (but none of the obligations) now owned or hereafter acquired by such Debtor, as lessee or landlord, in and to each lease covering real property or any interest therein, and equipment or other personal property or any interest therein (each such lease herein called an *“Assigned Lease”*), including, without limitation, those leases described on *Annex A*.

(f) Substantially all of the real estate now owned or hereafter acquired by such Debtor, *together with* all improvements thereon and fixtures attached thereto.

(g) The balance of every deposit account of such Debtor and any other claim of such Debtor against any depository, now or hereafter existing, whether liquidated or unliquidated, including, without limitation, certificates of deposit, and other deposit instruments (collectively, the *“Deposit Accounts”*).

(h) All present and future automobiles, trucks, truck tractors, trailers, semi-trailers, or other motor vehicles or rolling stock, now owned or hereafter acquired by such Debtor (collectively, the *“Vehicles”*).

(i) All present and future Rights, awards, and judgments to which such Debtor is entitled under any Litigation (whether arising in equity, contract, or tort) now existing or hereafter arising.

(j) All present and future Rights (including, without limitation, the Right to sue for past, present, or future infringements), titles, and interests of such Debtor in and to all trademark applications, trademarks, corporate names, company names, tradenames, business names, fictitious business names, tradestyles, service marks, logos, other source of business identifiers, Rights or licenses to use any of such rights, and all registrations and recordings thereof, including, without limitation, such Debtor’s trademarks listed on *Annex B* hereto (collectively, the *“Trademarks”*), and the goodwill of each business to which each Trademark relates.

(k) All present and future Rights (including, without limitation, the Right to sue for past, present, or future infringements), titles, and interests of such Debtor in and to all copyrights, works protectable by copyright, copyright registrations, copyright applications of Debtor, and any Right or licenses to use any copyrights, including, without limitation, the copyrights listed on *Annex B* hereto (collectively, the *“Copyrights”*).

(l) All present and future Rights (including, without limitation, the Right to sue for past, present, and future infringements), titles, and interests of such Debtor in and to all inventions, trade secrets, know-how, patents, patent applications, utility models, industrial models, designs, and any other forms of industrial intellectual property, including all grants, applications, reissues, continuations, and divisions with respect thereto and any Rights or licenses to use any patents, manufacture, or sell any patent, including, without limitation, the patents listed on *Annex B* hereto (collectively, the *“Patents”*).

(m) All Authorizations issued by any Governmental Authority, including, without limitation, the FCC and applicable PUCs, to the extent that the grant of a security interest in any such Authorization does not result in the forfeiture of, or default under, any such Authorization, and the

right of Debtor to apply to any Governmental Authority for approval of transfers of licenses issued by such Governmental Authority.

(n) All proceeds of any sale or other disposition of any Authorization, whether or not any such Authorization may lawfully be included as Collateral and whether or not the grant of a security interest in any such Authorization is otherwise prohibited.

(o) All present and future increases, profits, combinations, reclassifications, improvements, and products of, accessions, attachments, and other additions to, tools, parts, and equipment used in connection with, and substitutes and replacements for, all or part of the Collateral heretofore described.

(p) All present and future accounts, contract rights, general intangibles, chattel paper, documents, instruments, cash and noncash proceeds, and other Rights arising from or by virtue of, or from the voluntary or involuntary sale or other disposition of, or collections with respect to, or insurance proceeds payable with respect to, or proceeds payable by virtue of warranty or other claims against the manufacturer of, or claims against any other Person with respect to, all or any part of the Collateral heretofore described in this clause or otherwise.

(q) All present and future security for the payment to any Company of any of the Collateral heretofore described and goods which gave or will give rise to any of such Collateral or are evidenced, identified, or represented therein or thereby.

The description of the Collateral contained in this *Paragraph 4* shall not be deemed to permit any action prohibited by this Security Agreement or by the terms incorporated in this Security Agreement. Furthermore, notwithstanding any contrary provision, Debtor agrees that, if, but for the application of this paragraph, granting a Security Interest in the Collateral would constitute a fraudulent conveyance under *11 U.S.C. § 548* or a fraudulent conveyance or transfer under any state fraudulent conveyance, fraudulent transfer, or similar Law in effect from time to time (each a "*fraudulent conveyance*"), then the Security Interest remains enforceable to the maximum extent possible without causing such Security Interest to be a fraudulent conveyance, and this Security Agreement is automatically amended to carry out the intent of this paragraph.

5. **REPRESENTATIONS AND WARRANTIES.** Debtor represents and warrants to Secured Party that:

(a) Credit Agreement. Certain representations and warranties in the Credit Agreement are applicable to it or its assets or operations, and each such representation and warranty is true and correct.

(b) Binding Obligation. This Security Agreement creates a legal, valid, and binding Lien in and to the Collateral in favor of Secured Party and enforceable against Debtor. For Collateral in which the Security Interest may be perfected by the filing of Financing Statements, once those Financing Statements have been properly filed in the jurisdictions described on *Annex A* hereto, the Security Interest in that Collateral will be fully perfected. Once perfected and, in the case of investment property or instruments, upon possession or "*control*" (within the meaning of *Sections 8-106 and 9-115* of the UCC) by Secured Party, the Security Interest will constitute a first-priority Lien

on the Collateral, subject only to Permitted Liens. The creation of the Security Interest does not require the consent of any Person that has not been obtained.

(c) Location. Debtor's place of business and chief executive office is where Debtor is entitled to receive notices hereunder; the present and foreseeable location of Debtor's books and records concerning any of the Collateral that is accounts is as set forth on *Annex A* hereto, and the location of all other Collateral, including, without limitation, Debtor's inventory and equipment, including, without limitation, Telecommunications Equipment, is as set forth on *Annex A* hereto (but the failure of such description to be accurate or complete shall not impair the Security Interest in such Collateral); and, *except* as noted on *Annex A* hereto, all such books, records, and Collateral are in Debtor's possession.

(d) Fixtures. The Collateral that is or may be fixtures is located on or affixed to the real property described on *Annex A* hereto (but the failure of such description to be accurate or complete shall not impair the Security Interest in such Collateral).

(e) Securities. All Collateral that is Pledged Securities is duly authorized, validly issued, fully paid, and non-assessable, and the transfer thereof is not subject to any restrictions, other than restrictions imposed by applicable securities and corporate Laws. The Pledged Shares issued by the Subsidiaries to Debtor constitute 100% of the issued and outstanding common stock or other equity interests of such Subsidiaries. Debtor has good title to the securities, free and clear of all Liens and encumbrances thereon (*except* for the Security Interest created hereby), and has delivered to Secured Party all stock certificates, promissory notes, bonds, debentures, or other instruments or documents representing or evidencing the securities, *together with* corresponding assignment or transfer powers duly executed in blank by Debtor, and such powers have been duly and validly executed and are binding and enforceable against Debtor in accordance with their terms; and the pledge of the securities in accordance with the terms hereof creates a valid and perfected first priority security interest in the securities securing payment of the Obligation.

(f) Partnerships and Partnership Interests. Each Partnership issuing a Partnership Interest is duly organized, currently existing, and in good standing under all applicable Laws; there have been no amendments, modifications, or supplements to any agreement or certificate creating any Partnership or any material contract relating to the Partnerships, of which Secured Party has not been advised in writing; no default or potential default has occurred under the terms of any material contract relating to any Partnership; and no approval or consent of the partners of any Partnership is required as a condition to the validity and enforceability of the Security Interest created hereby or the consummation of the transactions contemplated hereby which has not been duly obtained by Debtor. Debtor has good title to the Partnership Interests free and clear of all Liens and encumbrances (*except* for the Security Interest granted hereby). The Partnership Interests are validly issued, fully paid, and nonassessable and are not subject to statutory, contractual, or other restrictions governing their transfer, ownership, or control, *except* for applicable securities Laws.

(g) Governmental Authority. No authorization, approval, or other action by, and no notice to or filing with, any Governmental Authority is required either (i) for the pledge by Debtor of the Pledged Securities pursuant to this Security Agreement or for the execution, delivery, or performance of this Security Agreement by Debtor, or (ii) for the exercise by Secured Party of the voting or other Rights provided for in this Security Agreement or the remedies in respect of the



Collateral pursuant to this Security Agreement (*except* as may be required in connection with the disposition of the Pledged Securities by Laws affecting the offering and sale of securities generally and in connection with the transfer of control of certain Authorizations).

(h) Accounts. All Collateral that is accounts, contract Rights, chattel paper, instruments, or general intangibles is free from any claim for credit, deduction, or allowance of an Obligor and free from any defense, dispute, setoff, or counterclaim, and there is no extension or indulgence with respect thereto.

(i) Instruments, Chattel Paper, Collateral Notes, and Collateral Note Security. All instruments and chattel paper, including, without limitation, the Collateral Notes, have been delivered to Secured Party, *together with* corresponding endorsements duly executed by Debtor in favor of Secured Party, and such endorsements have been duly and validly executed and are binding and enforceable against Debtor in accordance with their terms. Each Collateral Note and the documents evidencing the Collateral Note Security are in full force and effect; there have been no renewals or extensions of, or amendments, modifications, or supplements to, any thereof about which the Secured Party has not been advised in writing; and no default or potential default has occurred and is continuing under any such Collateral Note or documents evidencing the Collateral Note Security, *except* as disclosed on *Annex C* hereto.

(j) Assigned Leases. All Collateral that is an Assigned Lease is in full force and effect; Debtor is in possession of the property covered by each such Assigned Lease; and no default or potential default exists under any such Assigned Lease.

(k) Maintenance of Collateral. All tangible Collateral is in good repair and condition, ordinary wear and tear excepted, and none thereof is a fixture *except* as specifically referred to herein in *Paragraph 5(d)* hereof.

(l) Liens. Debtor owns all presently existing Collateral, and will acquire all hereafter-acquired Collateral, free and clear of all Liens, *except* Permitted Liens.

(m) Deposit Accounts. With respect to the Deposit Accounts, (i) Debtor maintains each such Deposit Account with the banks listed on *Annex D* hereto, (ii) Debtor shall, on the Closing Date, cause each such bank to acknowledge to Secured Party that such Deposit Accounts are subject to the Security Interest and Liens herein created, (iii) Debtor has the legal right to pledge and assign to Secured Party the funds deposited and to be deposited in the Deposit Accounts; and (iv) the Deposit Accounts listed on *Annex D* represent all material bank accounts of Debtor, including without limitation, all material operating accounts of Debtor, and all certificates of deposit or other deposit instruments of Debtor.

The foregoing representations and warranties will be true and correct in all respects with respect to any additional Collateral or additional specific descriptions of certain Collateral delivered to Secured Party in the future by Debtor.

The failure of any of these representations or warranties to be accurate and complete does not impair the Security Interest in any Collateral.

6. **COVENANTS.** So long as Lenders are committed to extend credit to Debtor under the Credit Agreement and until the Obligation is paid and performed in full, Debtor covenants and agrees with Secured Party that Debtor will:

(a) **Credit Agreement.** (i) Comply with, perform, and be bound by all covenants and agreements in the Credit Agreement that are applicable to it, its assets, or its operations, each of which is hereby ratified and confirmed (**INCLUDING, WITHOUT LIMITATION, THE INDEMNIFICATION AND RELATED PROVISIONS IN SECTIONS 2.3(j) AND 11.12 OF THE CREDIT AGREEMENT**); AND (ii) **CONSENT TO AND APPROVE THE VENUE, SERVICE OF PROCESS, AND WAIVER OF JURY TRIAL PROVISIONS OF SECTION 13.10 OF THE CREDIT AGREEMENT.**

(b) **Record of Collateral.** Maintain, at the place where Debtor is entitled to receive notices under the Loan Papers, a current record of where all Collateral is located, permit representatives of Secured Party at any time during normal business hours to inspect and make abstracts from such records, and furnish to Secured Party, at such intervals as Secured Party may request, such documents, lists, descriptions, certificates, and other information as may be necessary or proper to keep Secured Party informed with respect to the identity, location, status, condition, and value of the Collateral.

(c) **Perform Obligations.** Fully perform all of Debtor's duties under and in connection with each transaction to which the Collateral, or any part thereof, relates, so that the amounts thereof shall actually become payable in their entirety to Secured Party.

(d) **Notices.** (i) Promptly notify Secured Party of (A) any change in any fact or circumstances represented or warranted by Debtor with respect to any of the Collateral or Obligation, and (B) any claim, action, or proceeding affecting title to all or any of the Collateral or the Security Interest and, at the request of Secured Party, appear in and defend, at Debtor's expense, any such action or proceeding; and (ii) give Secured Party thirty (30) days written notice before any proposed (A) relocation of its principal place of business or chief executive office, (B) change of its name, identity, or corporate structure, (C) relocation of the place where its books and records concerning its accounts are kept, and (D) relocation of any Collateral (*other than* delivery of inventory in the ordinary course of business to third party contractors for processing and sales of inventory in the ordinary course of business or as permitted by the Credit Agreement) to a location not described on the attached *Annex A*. Prior to making any of the changes contemplated in *clause (ii)* preceding, Debtor shall execute and deliver all such additional documents and perform all additional acts as Secured Party, in its sole discretion, may request in order to continue or maintain the existence and priority of the Security Interests in all of the Collateral.

(e) **Collateral in Trust.** Hold in trust (and not commingle with other assets of Debtor) for Secured Party all Collateral that is chattel paper, instruments, Collateral Notes, Pledged Securities, or documents at any time received by Debtor, and promptly deliver same to Secured Party, unless Secured Party at its option (which may be evidenced only by a writing signed by Secured Party stating that Secured Party elects to permit Debtor to so retain) permits Debtor to retain the same, but any chattel paper, instruments, Collateral Notes, or documents so retained shall be marked to state that they are assigned to Secured Party; each such instrument shall be endorsed to the order of Secured Party (but the failure of same to be so marked or endorsed shall not impair the Security Interest thereon).

(f) Further Assurances. At Debtor's expense and Secured Party's request, before or after a Default or Potential Default, (i) file or cause to be filed such applications and take such other actions as Secured Party may request to obtain the consent or approval of any Governmental Authority to Secured Party's Rights hereunder, including, without limitation, the Right to sell all the Collateral upon a Default or Potential Default without additional consent or approval from such Governmental Authority (and, because Debtor agrees that Secured Party's remedies at Law for failure of Debtor to comply with this provision would be inadequate and that such failure would not be adequately compensable in damages, Debtor agrees that its covenants in this provision may be specifically enforced); (ii) from time to time promptly execute and deliver to Secured Party all such other assignments, certificates, supplemental documents, and financing statements, and do all other acts or things as Secured Party may reasonably request in order to more fully create, evidence, perfect, continue, and preserve the priority of the Security Interest; and (iii) pay all filing fees in connection with any financing, continuation, or termination statement or other instrument with respect to the Security Interests, including, without limitation, any filing fee required in connection with any procedure hereafter developed for the recordation or registration of Liens or security interests in Authorizations.

(g) Fixtures. For any Collateral that is a fixture or an accession which has been attached to real estate or other goods prior to the perfection of the Security Interest, furnish Secured Party, upon demand, a disclaimer of interest in each such fixture or accession and a consent in writing to the Security Interest of Secured Party therein, signed by all Persons having any interest in such fixture or accession by virtue of any interest in the real estate or other goods to which such fixture or accession has been attached.

(h) Estoppel and Other Agreements and Matters. Either (unless waived by Secured Party in its sole judgment without requiring approval of any other Lender) (i) use commercially reasonable efforts to cause the landlord or lessor for each location where any of its inventory or equipment, including, without limitation, Telecommunications Equipment, is maintained to execute and deliver to Secured Party an estoppel and subordination agreement substantially in the form of *Annex G* hereto, or (ii) deliver to Secured Party a legal opinion or other evidence (in each case that is reasonably satisfactory to Secured Party and its counsel) that neither the applicable lease nor the Laws of the jurisdiction in which that location is situated provide for contractual, common law, or statutory landlord's Liens that is senior to or *pari passu* with the Security Interest.

(i) Assigned Leases. Upon the request of Secured Party, execute and deliver a Leasehold Mortgage or Deed of Trust substantially in the form of *Annex H* hereto, covering Debtor's Rights, titles, and interest as lessee in the Assigned Leases.

(j) Certificates of Title. Upon the request of Secured Party, if certificates of title are issued or outstanding with respect to any of the Vehicles or other Collateral, cause the Security Interest to be properly noted thereon.

(k) Impairment of Collateral. Not use any of the Collateral, or permit the same to be used, for any unlawful purpose, in any manner that is reasonably likely to adversely impair the value or usefulness of the Collateral, or in any manner inconsistent with the provisions or requirements of any policy of insurance thereon nor affix or install any accessories, equipment, or device on the

Collateral or on any component thereof if such addition will impair the original intended function or use of the Collateral or such component.

(l) Modifications to Agreements. Not modify or substitute, or permit the modification or substitution of, any Collateral Note or any document evidencing the Collateral Note Security or contract to which any of the Collateral which is accounts relates, nor extend or grant indulgences regarding any account which is Collateral, other than such modifications or indulgences as are reasonable and customary in the industry in which Debtor is engaged.

(m) Securities. Not sell, exchange, or otherwise dispose of, or grant any option, warrant, or other Right with respect to, any of the Pledged Shares; cause each Subsidiary not to issue any stock or other securities in addition to or in substitution for the Pledged Shares issued by the Subsidiaries, *except* to Debtor; pledge hereunder, immediately upon Debtor's acquisition (directly or indirectly) thereof, any and all additional shares of stock or other securities of the Subsidiaries or any other issuer of Securities issued to Debtor; and take any action necessary, required, or requested by Secured Party to allow Secured Party to fully enforce its Security Interest in the Pledged Shares, including, without limitation, the filing of any claims with any court, liquidator, trustee, custodian, receiver, or other like person or party.

(n) Partnerships and Partnership Interests. (i) Promptly perform, observe, and otherwise comply with each and every covenant, agreement, requirement, and condition set forth in the contracts and agreements creating or relating to any Partnership; (ii) do or cause to be done all things necessary or appropriate to keep the Partnerships in full force and effect and the Rights of Debtor and Secured Party thereunder unimpaired; (iii) not consent to any Partnership selling, leasing, or disposing of substantially all of its assets in a single transaction or a series of transactions; (iv) notify Secured Party of the occurrence of any default under any contract or agreement creating or relating to the Partnerships; and not consent to the amendment, modification, surrender, impairment, forfeiture, cancellation, dissolution, or termination of any Partnership, or material agreement relating thereto; (v) not transfer, sell, or assign any of the Partnership Interests or any part thereof; (vi) cause each Partnership to refrain from granting any partnership interests in addition to or in substitution for the Partnership Interests granted by the Partnerships, *except* to Debtor; (vii) pledge hereunder, immediately upon Debtor's acquisition (directly or indirectly) thereof, any and all additional Partnership Interests of any Partnership granted to Debtor; and (viii) take any action necessary, required, or requested by Secured Party to allow Secured Party to fully enforce its Security Interest in the Partnership Interests, including, without limitation, the filing of any claims with any court, liquidator, trustee, custodian, receiver, or other like person or party.

(o) Depository Bank. With respect to Deposit Accounts, (i) maintain the Deposit Accounts at the banks (a "*depository bank*") described on *Annex D* or such additional depository banks as have complied with *item (iv)* hereof; (ii) within ten (10) days of the Closing Date, deliver to each depository bank a letter in the form of *Annex E* hereto with respect to Secured Party's rights in such Deposit Account and obtain the execution of such letter by each depository bank; (iii) deliver to Secured Party all certificates or instruments, if any, now or hereafter representing or evidencing the Deposit Accounts, accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party; and (iv) notify Secured Party prior to establishing any additional Deposit Accounts and, at the request of Secured Party, obtain from such depository bank an executed letter substantially in the form of *Annex E* and deliver the same to Secured Party.

7. **DEFAULT; REMEDIES.** If a Default or a Potential Default exists, Secured Party may, at its election (but subject to the terms and conditions of the Credit Agreement), exercise any and all Rights available to a secured party under the UCC, in addition to any and all other Rights afforded by the Loan Papers, at Law, in equity, or otherwise, including, without limitation, (a) requiring Debtor to assemble all or part of the Collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to Debtor and Secured Party, (b) surrendering any policies of insurance on all or part of the Collateral and receiving and applying the unearned premiums as a credit on the Obligation, (c) applying by appropriate judicial proceedings for appointment of a receiver for all or part of the Collateral (and Debtor hereby consents to any such appointment), and (d) applying to the Obligation any cash held by Secured Party under this Security Agreement, including, without limitation, any cash in the Cash Collateral Account (defined in **Section 8(g)**). Notwithstanding the foregoing, Secured Party will not exercise any remedies against the assets of Debtor unless it has given at least ten days written notification to Debtor, to the FCC, to the extent such notice is required under *47 C.F.R. 22.937(f)*, and to any other Governmental Authority, to the extent such notice is required by Law.

(a) **Notice.** Reasonable notification of the time and place of any public sale of the Collateral, or reasonable notification of the time after which any private sale or other intended disposition of the Collateral is to be made, shall be sent to Debtor and to any other Person entitled to notice under the UCC; *provided that*, if any of the Collateral threatens to decline speedily in value or is of the type customarily sold on a recognized market, Secured Party may sell or otherwise dispose of the Collateral without notification, advertisement, or other notice of any kind. It is agreed that notice sent or given not less than ten Business Days prior to the taking of the action to which the notice relates is reasonable notification and notice for the purposes of this subparagraph.

(b) **Sales of Pledged Securities.**

(i) Debtor agrees that, because of the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder (collectively, the "**Securities Act**"), or any other Laws or regulations, and for other reasons, there may be legal or practical restrictions or limitations affecting Secured Party in any attempts to dispose of certain portions of the Pledged Securities and for the enforcement of its Rights. For these reasons, Secured Party is hereby authorized by Debtor, but not obligated, upon the occurrence and during the continuation of a Default or Potential Default, to sell all or any part of the Pledged Securities at private sale, subject to investment letter or in any other manner which will not require the Pledged Securities, or any part thereof, to be registered in accordance with the Securities Act or any other Laws or regulations, at a reasonable price at such private sale or other distribution in the manner mentioned above. Debtor understands that Secured Party may in its discretion approach a limited number of potential purchasers and that a sale under such circumstances may yield a lower price for the Pledged Securities, or any part thereof, than would otherwise be obtainable if such Collateral were either afforded to a larger number or potential purchasers, registered under the Securities Act, or sold in the open market. Debtor agrees that any such private sale made under this **Paragraph 7(b)** shall be deemed to have been made in a commercially reasonable manner, and that Secured Party has no obligation to delay the sale of any Pledged Securities to permit the issuer thereof to register it for public sale under any applicable federal or state securities Laws.

(ii) Secured Party is authorized, in connection with any such sale, (A) to restrict the prospective bidders on or purchasers of any of the Pledged Securities to a limited number of sophisticated investors who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or sale of any of such Pledged Securities, and (B) to impose such other limitations or conditions in connection with any such sale as Secured Party reasonably deems necessary in order to comply with applicable Law. Debtor covenants and agrees that it will execute and deliver such documents and take such other action as Secured Party reasonably deems necessary in order that any such sale may be made in compliance with applicable Law. Upon any such sale Secured Party shall have the right to deliver, assign, and transfer to the purchaser thereof the Pledged Securities so sold. Each purchaser at any such sale shall hold the Pledged Securities so sold absolutely free from any claim or Right of Debtor of whatsoever kind, including any equity or right of redemption of Debtor. Debtor, to the extent permitted by applicable Law, hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any Law now existing or hereafter enacted.

(iii) Debtor agrees that five days' written notice from Secured Party to Debtor of Secured Party's intention to make any such public or private sale or sale at a broker's board or on a securities exchange shall constitute "*reasonable notification*" within the meaning of *Section 9-504(c)* of the UCC. Such notice shall (A) in case of a public sale, state the time and place fixed for such sale, (B) in case of sale at a broker's board or on a securities exchange, state the board or exchange at which such a sale is to be made and the day on which the Pledged Securities, or the portion thereof so being sold, will first be offered to sale at such board or exchange, and (C) in the case of a private sale, state the day after which such sale may be consummated. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Secured Party may fix in the notice of such sale. At any such sale, the Pledged Securities may be sold in one lot as an entirety or in separate parcels, as Secured Party may reasonably determine. Secured Party shall not be obligated to make any such sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned.

(iv) In case of any sale of all or any part of the Pledged Securities on credit or for future delivery, the Pledged Securities so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall not incur any liability in case of the failure of such purchaser to take up and pay for the Pledged Securities so sold and in case of any such failure, such Pledged Securities may again be sold upon like notice. Secured Party, instead of exercising the power of sale herein conferred upon it, may proceed by a suit or suits at law or in equity to foreclose the Security Interests and sell the Pledged Securities, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

(v) Without limiting the foregoing, or imposing upon Secured Party any obligations or duties not required by applicable Law, Debtor acknowledges and agrees that, in foreclosing upon any of the Pledged Securities, or exercising any other Rights or remedies provided Secured Party hereunder or under applicable Law, Secured Party may, but shall not

be required to, (A) qualify or restrict prospective purchasers of the Pledged Securities by requiring evidence of sophistication or creditworthiness, and requiring the execution and delivery of confidentiality agreements or other documents and agreements as a condition to such prospective purchasers' receipt of information regarding the Pledged Securities or participation in any public or private foreclosure sale process, (B) provide to prospective purchasers business and financial information regarding the Companies available in the files of Secured Party at the time of commencing the foreclosure process, without the requirement that Secured Party obtain, or seek to obtain, any updated business or financial information or verify, or certify to prospective purchasers, the accuracy of any such business or financial information, or (C) offer for sale and sell the Pledged Securities with, or without, first employing an appraiser, investment banker, or broker with respect to the evaluation of the Pledged Securities, the solicitation of purchasers for Pledged Securities, or the manner of sale of Pledged Securities.

(c) Application of Proceeds. Secured Party shall apply the proceeds of any sale or other disposition of the Collateral under this **Paragraph 7** in the following order: *first*, to the payment of all expenses incurred in retaking, holding, and preparing any of the Collateral for sale(s) or other disposition, in arranging for such sale(s) or other disposition, and in actually selling or disposing of the same (all of which are part of the Obligation); *second*, toward repayment of amounts expended by Secured Party under **Paragraph 8**; *third*, toward payment of the balance of the Obligation in the order and manner specified in the Credit Agreement. Any surplus remaining shall be delivered to Debtor or as a court of competent jurisdiction may direct. If the proceeds are insufficient to pay the Obligation in full, Debtor shall remain liable for any deficiency.

## 8. OTHER RIGHTS OF SECURED PARTY.

(a) Performance. If Debtor fails to keep the Collateral in good repair, working order, and condition, as required in this Security Agreement, or fails to pay when due all Taxes on any of the Collateral in the manner required by the Loan Papers, or fails to preserve the priority of the Security Interest in any of the Collateral, or fails to keep the Collateral insured as required by this Security Agreement, or otherwise fails to perform any of its obligations under the Loan Papers with respect to the Collateral, then Secured Party may, at its option, but without being required to do so, make such repairs, pay such Taxes, prosecute or defend any suits in relation to the Collateral, or insure and keep insured the Collateral in any amount deemed appropriate by Secured Party, or take all other action which Debtor is required, but has failed or refused, to take under the Loan Papers. Any sum which may be expended or paid by Secured Party under this subparagraph (including, without limitation, court costs and attorneys' fees) shall bear interest from the dates of expenditure or payment at the Default Rate until paid and, *together with* such interest, shall be payable by Debtor to Secured Party upon demand and shall be part of the Obligation.

(b) Collection. If a Default or Potential Default exists and upon notice from Secured Party, each Obligor with respect to any payments on any of the Collateral (including, without limitation, dividends and other distributions with respect to securities, payments on Collateral Notes, insurance proceeds payable by reason of loss or damage to any of the Collateral, or Deposit Accounts) is hereby authorized and directed by Debtor to make payment directly to Secured Party, regardless of whether Debtor was previously making collections thereon. Subject to **Paragraph 8(e)** hereof, until such notice is given, Debtor is authorized to retain and expend all payments made on Collateral. If

a Default or Potential Default exists, Secured Party shall have the Right in its own name or in the name of Debtor to compromise or extend time of payment with respect to all or any portion of the Collateral for such amounts and upon such terms as Secured Party may determine; to demand, collect, receive, receipt for, sue for, compound, and give acquittances for any and all amounts due or to become due with respect to Collateral; to take control of cash and other proceeds of any Collateral; to endorse the name of Debtor on any notes, acceptances, checks, drafts, money orders, or other evidences of payment on Collateral that may come into the possession of Secured Party; to sign the name of Debtor on any invoice or bill of lading relating to any Collateral, on any drafts against Obligors or other Persons making payment with respect to Collateral, on assignments and verifications of accounts or other Collateral and on notices to Obligors making payment with respect to Collateral; to send requests for verification of obligations to any Obligor; and to do all other acts and things necessary to carry out the intent of this Security Agreement. If a Default or Potential Default exists and any Obligor fails or refuses to make payment on any Collateral when due, Secured Party is authorized, in its sole discretion, either in its own name or in the name of Debtor, to take such action as Secured Party shall deem appropriate for the collection of any amounts owed with respect to Collateral or upon which a delinquency exists. Regardless of any other provision hereof, however, Secured Party shall never be liable for its failure to collect, or for its failure to exercise diligence in the collection of, any amounts owed with respect to Collateral, nor shall it be under any duty whatsoever to anyone *except* Debtor to account for funds that it shall actually receive hereunder. Without limiting the generality of the foregoing, Secured Party shall have no responsibility for ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any Collateral, or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed to have, knowledge thereof). The receipt of Secured Party to any Obligor shall be a full and complete release, discharge, and acquittance to such Obligor, to the extent of any amount so paid to Secured Party.

(c) Record Ownership of Securities. If a Default or Potential Default exists, Secured Party at any time may have any Collateral that is Pledged Securities and that is in the possession of Secured Party, or its nominee or nominees, registered in its name, or in the name of its nominee or nominees, as pledgee; and, as to any Pledged Securities so registered, Debtor shall execute and deliver (or cause to be executed and delivered) to Secured Party all such proxies, powers of attorney, dividend coupons or orders, and other documents as Secured Party may reasonably request for the purpose of enabling Secured Party to exercise the voting Rights and powers which it is entitled to exercise under this Security Agreement or to receive the dividends and other payments in respect of such Collateral that is Pledged Securities which it is authorized to receive and retain under this Security Agreement.

(d) Voting of Securities. As long as neither a Default nor Potential Default exists, Debtor is entitled to exercise all voting Rights pertaining to any Collateral that is Pledged Securities. If a Default or Potential Default exists and if Secured Party elects to exercise such Right, the Right to vote any Collateral that is Pledged Securities shall be vested exclusively in Secured Party. To this end, Debtor hereby irrevocably constitutes and appoints Secured Party the proxy and attorney-in-fact of Debtor, with full power of substitution, to vote, and to act with respect to, any and all Collateral that is Pledged Securities standing in the name of Debtor or with respect to which Debtor is entitled to vote and act, subject to the understanding that such proxy may not be exercised unless a Default exists. The proxy herein granted is coupled with an interest, is irrevocable, and shall continue until the Obligation has been paid and performed in full.



(e) Certain Proceeds. Notwithstanding any contrary provision herein, any and all stock dividends or distributions in property made on or in respect of any Pledged Securities, and any proceeds of any Pledged Securities, whether such dividends, distributions, or proceeds result from a subdivision, combination, or reclassification of the outstanding capital stock of any issuer thereof or as a result of any merger, consolidation, acquisition, or other exchange of assets to which any issuer may be a party, or otherwise, shall be part of the Collateral hereunder, shall, if received by Debtor, be held in trust for the benefit of Secured Party, and shall forthwith be delivered to Secured Party (accompanied by proper instruments of assignment and/or stock and/or bond powers executed by Debtor in accordance with Secured Party's instructions) to be held subject to the terms of this Security Agreement. Any cash proceeds of Collateral which come into the possession of Secured Party (including, without limitation, insurance proceeds) may, at Secured Party's option, be applied in whole or in part to the Obligation (to the extent then due), be released in whole or in part to or on the written instructions of Debtor for any general or specific purpose, or be retained in whole or in part by Secured Party as additional Collateral. Any cash Collateral in the possession of Secured Party may be invested by Secured Party in certificates of deposit issued by Secured Party (if Secured Party issues such certificates) or by any state or national bank having combined capital and surplus greater than \$100,000,000 with a rating from Moody's and S&P of *P-1* and *A-1+*, respectively, or in securities issued or guaranteed by the United States of America or any agency thereof. Secured Party shall never be obligated to make any such investment and shall never have any liability to Debtor for any loss which may result therefrom. All interest and other amounts earned from any investment of Collateral may be dealt with by Secured Party in the same manner as other cash Collateral. The provisions of this subparagraph are applicable whether or not a Default or Potential Default exists.

(f) Use and Operation of Collateral. Should any Collateral come into the possession of Secured Party, Secured Party may use or operate such Collateral for the purpose of preserving it or its value pursuant to the order of a court of appropriate jurisdiction or in accordance with any other Rights held by Secured Party in respect of such Collateral. Debtor covenants to promptly reimburse and pay to Secured Party, at Secured Party's request, the amount of all reasonable expenses (including, without limitation, the cost of any insurance and payment of Taxes or other charges) incurred by Secured Party in connection with its custody and preservation of Collateral, and all such expenses, costs, Taxes, and other charges shall bear interest at the Default Rate until repaid and, *together with* such interest, shall be payable by Debtor to Secured Party upon demand and shall become part of the Obligation. However, the risk of accidental loss or damage to, or diminution in value of, Collateral is on Debtor, and Secured Party shall have no liability whatever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to the risks insured. With respect to Collateral that is in the possession of Secured Party, Secured Party shall have no duty to fix or preserve Rights against prior parties to such Collateral and shall never be liable for any failure to use diligence to collect any amount payable in respect of such Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. The provisions of this subparagraph are applicable whether or not a Default exists.

(g) Cash Collateral Account. If a Default exists, Secured Party shall have, and Debtor hereby grants to Secured Party, the Right and authority to transfer all funds on deposit in the Deposit Accounts to a *Cash Collateral Account* (herein so called) maintained with a depository institution acceptable to Secured Party and subject to the exclusive direction, domain, and control of Secured Party, and no disbursements or withdrawals shall be permitted to be made by Debtor from such Cash Collateral Account. Such Cash Collateral Account shall be subject to the Security Interest and Liens

in favor of Secured Party herein created, and Debtor hereby grants a security interest to Secured Party on behalf of Lenders in and to, such Cash Collateral Account and all checks, drafts, and other items ever received by Debtor for deposit therein. Furthermore, if a Default exists, Secured Party shall have the Right, at any time in its discretion without notice to Debtor, (i) to transfer to or to register in the name of Secured Party or any Lender or nominee any certificates of deposit or deposit instruments constituting Deposit Accounts and shall have the Right to exchange such certificates or instruments representing Deposit Accounts for certificates or instruments of smaller or larger denominations and (ii) to take and apply against the Obligation any and all funds then or thereafter on deposit in the Cash Collateral Account or otherwise constituting Deposit Accounts.

(h) Power of Attorney. Debtor hereby irrevocably constitutes and appoints Secured Party as Debtor's attorney-in-fact, with full irrevocable power and authority in the place and stead of Debtor and in the name of Debtor, Secured Party, Lenders, or otherwise, from time to time in Secured Party's discretion, for the sole purpose of carrying out the terms of this Security Agreement and, to the extent permitted by applicable Law, to take any action and to execute any document and instrument which Secured Party may deem necessary or advisable to accomplish the following when a Default exists:

(i) to transfer any and all funds on deposit in the Deposit Accounts to the Cash Collateral Account as set forth in herein;

(ii) to receive, endorse, and collect any drafts or other instruments or documents in connection with *clause (b)* above and this *clause (g)*;

(iii) to use the Patents, Copyrights, and Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents, Copyrights, and Trademarks to anyone else, and to perform any act necessary for the Secured Party to assign, pledge, convey, or otherwise transfer title in or dispose of the Patents, Copyrights, and Trademarks to any other Person; and

(iv) to execute on behalf of Debtor any continuation statement with respect to the Security Interests created hereby, and to do any and all acts and things to protect and preserve the Collateral, including, without limitation, the protection and prosecution of all Rights included in the Collateral.

(i) Purchase Money Collateral. To the extent that Secured Party or any Lender has advanced or will advance funds to or for the account of Debtor to enable Debtor to purchase or otherwise acquire Rights in Collateral, Secured Party or such Lender, at its option, may pay such funds (i) directly to the Person from whom Debtor will make such purchase or acquire such Rights, or (ii) to Debtor, in which case Debtor covenants to promptly pay the same to such Person, and forthwith furnish to Secured Party evidence satisfactory to Secured Party that such payment has been made from the funds so provided.

(j) Subrogation. If any of the Obligation is given in renewal or extension or applied toward the payment of indebtedness secured by any Lien, Secured Party shall be, and is hereby, subrogated to all of the Rights, titles, interests, and Liens securing the indebtedness so renewed, extended, or paid.

(k) Indemnification. Debtor hereby assumes all liability for the Collateral, for the Security Interest, and for any use, possession, maintenance, and management of, all or any of the Collateral, including, without limitation, any Taxes arising as a result of, or in connection with, the transactions contemplated herein, and agrees to assume liability for, and to indemnify and hold Secured Party and each Lender harmless from and against, any and all claims, causes of action, or liability, for injuries to or deaths of Persons and damage to property, howsoever arising from or incident to such use, possession, maintenance, and management, whether such Persons be agents or employees of Debtor or of third parties, or such damage be to property of Debtor or of others. Debtor agrees to indemnify, save, and hold Secured Party and each Lender harmless from and against, and covenants to defend Secured Party and each Lender against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses (collectively, "**Claims**"), including, without limitation, court costs and attorneys' fees, **and any of the foregoing arising from the negligence of Secured Party or any Lender, or any of their respective officers, employees, agents, advisors, employees, or representatives**, howsoever arising or incurred because of, incident to, or with respect to Collateral or any use, possession, maintenance, or management thereof; *provided, however*, that the indemnity set forth in this **Paragraph 8(k)** will not apply to Claims caused by the gross negligence or willful misconduct of Secured Party or any Lender.

## 9. **ACKNOWLEDGMENT OF REGULATORY CONSIDERATIONS**

(a) No Prohibited Transfers. It is hereby acknowledged that assignment or transfer of control of the Authorizations without the prior approval of the Governmental Authority may constitute a prohibited transfer in violation of such Governmental Authority's rules and regulations. Secured Party agrees that exercise of its Rights hereunder, including transfer of Authorizations upon the occurrence of a Default or Potential Default, shall be effected only after the obtaining of any necessary approvals for such exercise.

(b) Actions by Debtor. If counsel to Secured Party reasonably determines that the consent of any Governmental Authority is required in connection with any of the actions which may be taken by Secured Party on behalf of Lenders in the exercise of their Rights hereunder or under the Loan Papers, then Debtor, at its sole cost and expense, agrees to use its best efforts to secure such consent and to cooperate with Secured Party and Lenders in any action commenced by Secured Party to secure such consent and in such case Debtor shall retain control of its respective Authorizations until the applicable Governmental Authority shall have granted its consent to the transfer of such Authorization. Upon the occurrence and during the continuation of a Default or Potential Default, Debtor shall promptly execute or cause the execution of all applications, certificates, instruments, and other documents and papers that the Secured Party may be required to file in order to obtain any necessary governmental consent, approval, or authorization, and if Debtor fails or refuses to execute such documents, then, on the order of any court of competent jurisdiction, the Clerk of the Court with jurisdiction may execute such documents on behalf of Debtor. In addition, Debtor shall execute such applications and other documents and will take such other action as may be required in order for Secured Party to obtain from each Governmental Authority consent to operate the System, through a receiver or otherwise, during the time the Secured Party seeks to obtain a purchaser for the System and to submit any sale of the Systems to the Governmental Authorities for approval. Debtor recognizes that Authorizations, franchises, and other similar agreements are unique assets which (or the control of which) may have to be transferred in order for Lenders adequately to realize the value of their Security Interests. Debtor further recognizes that a violation of this covenant would result in

irreparable harm to Lenders for which monetary damages are not readily ascertainable and which might not fully compensate such Lenders. Therefore, in addition to any other remedy which may be available to Lenders, at Law or in equity, Secured Party on behalf of Lenders shall have the remedy of specific performance of the provisions of this subsection.

(c) Approval of Governmental Authorities. Notwithstanding anything to the contrary contained in this Security Agreement, Secured Party will not take any action pursuant to this Security Agreement or any of the documents executed pursuant hereto which would constitute an assignment of an Authorization or any transfer of control of an Authorization if such assignment or transfer of control would require under then-existing Law (including the written rules and regulations promulgated by any Governmental Authority) the prior approval of the Governmental Authority issuing such Authorization, without first obtaining such approval. Debtor agrees to take, or cause to be taken, any action which Secured Party may reasonably request in order to obtain and enjoy the full Rights and benefits granted to Secured Party by this Security Agreement and any other instruments or agreements executed pursuant hereto, including, without limitation, at Debtor's cost and expense, the exercise of its best efforts to cooperate in obtaining Governmental Authority approval of any action or transaction contemplated by this Security Agreement or any other instrument or agreement executed pursuant hereto which is then required by Law.

(d) Subsequent Actions by Debtor. Debtor agrees that if, for any reason, any Governmental Authority does not approve within a reasonable period of time the initial application for approval of the transfer of the Authorizations, then *Paragraphs 9(b) and (c)* above hereof shall be applicable to any subsequent application for transfer of the Authorizations pursuant to action taken by Secured Party in the exercise of its Rights hereunder or under the Loan Papers. With respect to each subsequent proposed purchaser(s), Debtor agrees to execute all such applications and other documents and take all such other action as may be reasonably requested by Secured Party at any time and from time to time in order to obtain the approval by the Governmental Authorities. Exercise by Secured Party of the Right to such cooperation shall not be exhausted by the initial or any subsequent exercise thereof.

#### 10. MISCELLANEOUS.

(a) Continuing Security Interest. This Security Agreement creates a continuing security interest in the Collateral and shall (i) remain in full force and effect until the termination of the obligations of Lenders to advance Borrowings under the Credit Agreement, the payment in full of the Obligation, and the expiration of all Financial Hedges; (ii) be binding upon Debtor, its successors, and assigns; and (iii) inure to the benefit of and be enforceable by the Secured Party, Lenders, and their respective successors, transferees, and assigns. Without limiting the generality of the foregoing *clause (iii)*, the Secured Party and Lenders may assign or otherwise transfer any of their respective Rights under this agreement to any other Person in accordance with the terms and provisions of *Section 13.13* of the Credit Agreement, and to the extent of such assignment or transfer such Person shall thereupon become vested with all the Rights and benefits in respect thereof granted herein or otherwise to the Secured Party or Lenders, as the case may be. Upon payment in full of the Obligation, the termination of the commitment of Lenders to extend credit, and the expiration of all Financial Hedges, Debtor shall be entitled to the return, upon its request and at its expense, of such of the Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof.

(b) Reference to Miscellaneous Provisions. This Security Agreement is one of the "Loan Papers" referred to in the Credit Agreement, and all provisions relating to Loan Papers set forth in *Section 13* of the Credit Agreement, other than the provisions set forth in *Section 13.7*, are incorporated herein by reference, the same as if set forth herein verbatim.

(c) Term. Upon full and final payment and performance of the Obligation, this Security Agreement shall thereafter terminate upon receipt by Secured Party of Debtor's written notice of such termination; *provided that* no Obligor, if any, on any of the Collateral shall ever be obligated to make inquiry as to the termination of this Security Agreement, but shall be fully protected in making payment directly to Secured Party until actual notice of such total payment of the Obligation is received by such Obligor.

(d) Actions Not Releases. The Security Interest and Debtor's obligations and Secured Party's Rights hereunder shall not be released, diminished, impaired, or adversely affected by the occurrence of any one or more of the following events: (i) the taking or accepting of any other security or assurance for any or all of the Obligation; (ii) any release, surrender, exchange, subordination, or loss of any security or assurance at any time existing in connection with any or all of the Obligation; (iii) the modification of, amendment to, or waiver of compliance with any terms of any of the other Loan Papers without the notification or consent of Debtor, *except* as required therein (the Right to such notification or consent being herein specifically waived by Debtor); (iv) the insolvency, bankruptcy, or lack of corporate or trust power of any party at any time liable for the payment of any or all of the Obligation, whether now existing or hereafter occurring; (v) any renewal, extension, or rearrangement of the payment of any or all of the Obligation, either with or without notice to or consent of Debtor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Secured Party or any Lender to Debtor; (vi) any neglect, delay, omission, failure, or refusal of Secured Party or any Lender to take or prosecute any action in connection with any other agreement, document, guaranty, or instrument evidencing, securing, or assuring the payment of all or any of the Obligation; (vii) any failure of Secured Party or any Lender to notify Debtor of any renewal, extension, or assignment of the Obligation or any part thereof, or the release of any security, or of any other action taken or refrained from being taken by Secured Party or any Lender against Debtor or any new agreement between or among Secured Party or one or more Lenders and Debtor, *it being understood that* neither Secured Party nor any Lender shall be required to give Debtor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Obligation, including, without limitation, notice of acceptance of this Security Agreement or any Collateral ever delivered to or for the account of Secured Party hereunder; (viii) the illegality, invalidity, or unenforceability of all or any part of the Obligation against any party obligated with respect thereto by reason of the fact that the Obligation, or the interest paid or payable with respect thereto, exceeds the amount permitted by Law, the act of creating the Obligation, or any part thereof, is *ultra vires*, or the officers, partners, or trustees creating same acted in excess of their authority, or for any other reason; or (ix) if any payment by any party obligated with respect thereto is held to constitute a preference under applicable Laws or for any other reason Secured Party or any Lender is required to refund such payment or pay the amount thereof to someone else.

(e) Waivers. *Except* to the extent expressly otherwise provided herein or in other Loan Papers and to the fullest extent permitted by applicable Law, Debtor waives (i) any Right to require Secured Party or any Lender to proceed against any other Person, to exhaust its Rights in Collateral, or to pursue any other Right which Secured Party or any Lender may have; (ii) with respect to the

Obligation, presentment and demand for payment, protest, notice of protest and nonpayment, and notice of the intention to accelerate; and (iii) all Rights of marshaling in respect of any and all of the Collateral.

(f) Financing Statement. Secured Party shall be entitled at any time to file this agreement or a carbon, photographic, or other reproduction of this agreement, as a financing statement, but the failure of Secured Party to do so shall not impair the validity or enforceability of this agreement.

(g) Amendments. This instrument may be amended only by an instrument in writing executed jointly by Debtor and Secured Party, and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

(h) Multiple Counterparts. This Security Agreement has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement; but, in making proof of this Security Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(i) Parties Bound; Assignment. This Security Agreement shall be binding on Debtor and Debtor's heirs, legal representatives, successors, and assigns and shall inure to the benefit of Secured Party and Secured Party's successors and assigns.

(i) Secured Party is the agent for each Lender under the Credit Agreement, the Security Interest and all Rights granted to Secured Party hereunder or in connection herewith are for the ratable benefit of each Lender, and Secured Party may, without the joinder of any Lender, exercise any and all Rights in favor of Secured Party or Lenders hereunder, including, without limitation, conducting any foreclosure sales hereunder, and executing full or partial releases hereof, amendments or modifications hereto, or consents or waivers hereunder. The Rights of each Lender *vis-a-vis* Secured Party and each other Lender may be subject to one or more separate agreements between or among such parties, but Debtor need not inquire about any such agreement or be subject to any terms thereof unless Debtor specifically joins therein; and consequently, neither Debtor nor Debtor's heirs, personal representatives, successors, and assigns shall be entitled to any benefits or provisions of any such separate agreements or be entitled to rely upon or raise as a defense, in any manner whatsoever, the failure or refusal of any party thereto to comply with the provisions thereof.

(ii) Debtor may not, without the prior written consent of Secured Party, assign any Rights, duties, or obligations hereunder.

(j) GOVERNING LAW. PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE CHOICE OF LAW PRINCIPLES THAT MIGHT OTHERWISE APPLY, EXCEPT TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION GOVERN THE CREATION, PERFECTION, VALIDITY, OR ENFORCEMENT OF LIENS HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL, AND THE APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA, SHALL GOVERN THE VALIDITY, CONSTRUCTION,

ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT. ALL TERMS USED  
HEREIN WHICH ARE DEFINED IN THE UNIFORM COMMERCIAL CODE AS ENACTED IN  
THE STATE OF NEW YORK SHALL HAVE THE MEANINGS THEREIN STATED.


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Signature Page to Follow.*


LOGIX COMMUNICATIONS CORPORATION,  
as Debtor

ATTEST:

(Seal)

By:

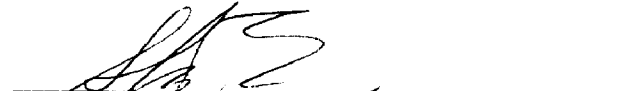
  
Name: Geoffrey Boyd  
Title: Exec Vice President

  
Secretary/Assistant Secretary  
of Debtor

LEIGH ANN IRIG  
Printed Name

WITNESSED:

  
Name: KEN KERR

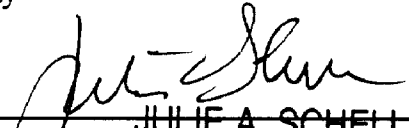
  
Name: Stuart Kwarr



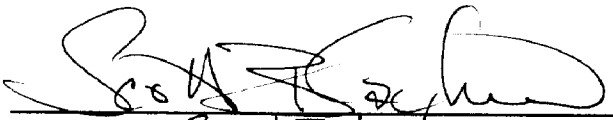
EXECUTED as of the date first stated in this Pledge, Assignment, and Security Agreement.

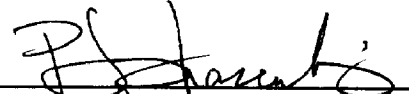
NATIONSBANK, N.A.,  
as Secured Party

By:

  
Name: JULIE A. SCHELL  
Title: VICE PRESIDENT

WITNESSED:

  
Name: Scott Blackman

  
Name: James Karcudis

Pledge, Assignment, and Security Agreement  
Signature Page

TRADEMARK  
REEL: 1889 FRAME: 0135

**ANNEX "A" TO THE PLEDGE, ASSIGNMENT AND SECURITY AGREEMENT**  
**(Logix Communications Corporation)**

- A. Tradenames - Logix Communications of Oklahoma, Logix Communications of Texas and Logix Communications of Arkansas are tradenames/ fictitious names registered in Oklahoma, Texas and Arkansas, respectively.

American Telco, Inc.

Zenex Long Distance Company

Dobson Fiber Company

- B. Location of Books and Records - 3555 N.W. 58th  
Suite 600  
Oklahoma City, Oklahoma 73112
- C. Location of Switches - See the attached Schedule A-1
- D. Location of Collateral - See the attached Schedule A-1
- E. Location of Real Property (Easement) -

A one-half interest in a private right of way along Interstate I 40 between Oklahoma City, Oklahoma and Amarillo, Texas. Such easement involves property located in the following:

(a) Oklahoma Counties: Oklahoma, Canadian, Caddo, Custer, Washita, and Beckham; and

(b) Texas Counties: Wheeler, Gray, Carson and Potter.

- F. Jurisdiction For Filing Financing Statements -

**OKLAHOMA**

- a. Oklahoma Secretary of State  
i. Transmitting Utilities
- b. Oklahoma County, Oklahoma  
i. Central UCC  
ii. Fixtures
- c. Tulsa County, Oklahoma  
ii. Fixtures

**TEXAS**

- a. Texas Secretary of State
  - i. Transmitting Utilities
  - ii. Central UCC
- b. Bexar County, Texas
  - i. Fixtures
- c. Dallas County, Texas
  - i. Fixtures
- d. Harris County, Texas
  - i. Fixtures
- e. Travis County, Texas
  - i. Fixtures

**ANNEX A**

SCHEDULE A-1

Logix Communications Corporation  
Switch Sites

Location	Company	Street Address	City	State	Zip Code	Switch	ATM
Albuquerque	IXC	Norwest Bank 200 Lomas Boulevard, NW Suite 800	Albuquerque	NM	87102		X
Amantilo	Dobson Fiber	203 West 8th Street	Amantilo	TX	79101	X	X
Austin	LOGIX	210 Barton Springs Rd.	Austin	TX	78704	X	X
Dallas	LOGIX	1950 Sterrmons Freeway, Suite 600	Dallas	TX	75207	X	X
Denver	IXC	Denver Gas & Electric Bldg. 910 - 15th Street, Suite 335	Denver	CO	80202		X
Houston	ATI	1415 Louisiana, Suite 02	Houston	TX	77002	X	X
Kansas City	IXC	Merchants Trust Center/Traders Bank Bldg. 1126 Grand Avenue, Suite 1704	Kansas City	MO	64108		X
Las Vegas	IXC	Office Warehouse Complex 4275 East Sahara Avenue Units 8, 28 & 29	Las Vegas	NV	89104		X
Lubbock	NTS	1220 Broadway, Suite 800	Lubbock	TX	79401	Remote	X
Oklahoma City	LOGIX	100 Park Avenue, Suite 900	Oklahoma City	OK	73162	X	X
Phoenix	IXC	2120 North Central, Suite G33	Phoenix	AZ	85004		X
Portland	AT&T	851 SW 6th Street	Portland	OR			X
San Antonio	IXC	IXC 660 South Santa Rosa	San Antonio	TX	78204	X	X
San Antonio C.O.	LOGIX	One Alamo Center 106 S. Saint Mary Street, Suite 400	San Antonio	TX	78205	X	X
San Francisco	AT&T	344 - 20th Street, 2nd Floor	San Francisco	CA			X
St. Louis	IXC	Valley Building 900 Walnut Street, Suite 400	Oakland	CA	94612		X
Tucson	IXC	9521 S. Wilcox Road	Tucson	AZ	85708		X
Tulsa	IXC	16718 E. Admiral Place	Tulsa	OK	74118		X
Tulsa C.O.	LOGIX	One Main Plaza	Tulsa	OK	74118	X	X
Wichita	Hyperion Telecom	810 South Main Street 701 E. Douglas Avenue	Wichita	KS	67202		X

**ANNEX B TO SECURITY AGREEMENT**

- A. PLEDGED SHARES  
NONE
- B. INTER-COMPANY PROMISSORY NOTES  
NONE
- C. PARTNERSHIP INTERESTS  
NONE
- D. TRADEMARKS

**I. FEDERAL MARKS**

<u>Mark</u>	<u>Application No.</u>	<u>Application Date</u>	<u>Registration No.</u>	<u>Registration Date</u>
Logix Communications	75-298,128	May 27, 1997	2,206,676	Dec. 1, 1998
Direct T (Pending)	75-447,526	March 10, 1998	-----	-----
Direct T (Pending)	75-447,525	March 10, 1998	-----	-----

**II. STATE MARKS**

<u>Mark</u>	<u>State</u>	<u>Registration No.</u>	<u>Registration Date</u>
Logix Communications	Oklahoma	28,774	May 23, 1997
Direct T	Oklahoma	29,242	March 4, 1998

- E. REGISTERED COPYRIGHTS  
NONE
- F. PATENTS  
NONE

**ANNEX "C" TO THE PLEDGE, ASSIGNMENT AND SECURITY AGREEMENT**  
**(Logix Communications Corporation)**

**DEFAULTS OR POTENTIAL DEFAULTS**

**None**

**ANNEX D TO SECURITY AGREEMENT**

**MATERIAL DEPOSIT ACCOUNTS**

**NAME OF BANK**

**ACCOUNT NUMBER**

**ACCOUNT DESCRIPTION**

NationsBank, N.A.  
211 N. Robinson  
Oklahoma City, OK

Investment  
Operating  
Payroll  
Controlled Disbursement  
Cafeteria Plan  
General American Insurance

**ANNEX E TO SECURITY AGREEMENT**

FORM OF LETTER FROM DEPOSITORY BANKS

TO: NationsBank, N.A., in its capacity as Administrative Agent for Certain Lenders and as Secured Party under that certain Pledge, Assignment, and Security Agreement dated as of \_\_\_\_\_, 1999  
901 Main Street, 64th Floor  
Dallas, Texas 75202  
Attn: Debra S. Wood

**Re: *Deposit Accounts (the "Accounts") maintained with \_\_\_\_\_ (the "Deposit Bank"), including without limitation the Deposit Accounts Listed on Addendum 1***

This will confirm that \_\_\_\_\_ (the "*Company*") and the undersigned Deposit Bank have agreed as follows with respect to the Accounts:

1. The Company and the Deposit Bank acknowledge and confirm that all funds now or at any time hereafter deposited to the Accounts and all of the Company's rights regarding such Accounts constitute part of the "*Collateral*" granted to Administrative Agent by the Company to secure the Company's obligations under the Credit Agreement and/or related Loan Papers and that Administrative Agent holds a security interest and collateral assignment therein.

2. The Deposit Bank (excluding any Deposit Bank which is a Lender under the Credit Agreement) will not exercise, and hereby releases, any banker's lien upon, and any right of setoff against, the Accounts or any funds at any time deposited to the Accounts *except* with respect to the Deposit Bank's normal fees and charges for operating the Accounts.

3. The Deposit Bank will take the following actions upon written demand by Administrative Agent:

A. The Deposit Bank will (and in the event of such demand the Company hereby irrevocably authorizes and instructs the Deposit Bank to) cease honoring all drafts, demands, withdrawal requests, or remittance instructions by the Company, whether made before or after the demand.

B. The Deposit Bank will hold solely for account of Administrative Agent all funds which may be on deposit in the Accounts at the time of the demand and all funds thereafter deposited to the Accounts, and, upon instructions from Administrative Agent, the Deposit Bank will remit all such funds (subject to *Paragraph 2* above) to Administrative Agent in such manner as Administrative Agent may from time to time instruct the Deposit Bank in writing.

After such a demand is made, Administrative Agent shall have sole control over the Accounts and the sole right to exercise and enforce all rights and remedies with respect thereto. The demand shall be effective when it is received by the Deposit Bank in writing at the address and to the attention of the person set forth below (or at such other address or to the attention of such other person as the Deposit Bank may specify by written notice received by Administrative Agent and the Company) and when the Deposit Bank has had a



reasonable time, based on the same standards as those applicable to payment and stop payment instructions generally, to act thereon.

4. Upon request of Administrative Agent, Deposit Bank will send to Administrative Agent, at its above address, a copy of each periodic statement for the Account, as and when the statement is sent to the Company.

5. This letter agreement is binding upon the Deposit Bank and the Company and their successors and assigns and is enforceable by Administrative Agent and its successors and assigns. It supersedes all prior agreements relating to the Deposit Bank, and it may not be modified or terminated *except* upon Administrative Agent's written consent. The Deposit Bank and the Company waive notice of acceptance hereof and of any action taken or omitted in reliance hereon.

DATED AS OF: \_\_\_\_\_, 19\_\_\_\_.

[COMPANY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[DEPOSIT BANK]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Address]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telex: \_\_\_\_\_  
Telecopier: \_\_\_\_\_

NATIONSBANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDENDUM 1**

**DEPOSIT ACCOUNTS**

**ANNEX F TO SECURITY AGREEMENT**

PLEDGE INSTRUCTION

PARTNERSHIP: \_\_\_\_\_

INTEREST OWNER: \_\_\_\_\_

BY THIS PLEDGE INSTRUCTION, dated as of \_\_\_\_\_, 1999, \_\_\_\_\_ ("**Interest Owner**"), hereby instructs \_\_\_\_\_ (the "**Partnership**") to register a pledge in favor of NationsBank, N.A. ("**Pledgee**"), in its capacity as Administrative Agent for certain Lenders and as Secured Party under that certain Pledge, Assignment, and Security Agreement dated as of \_\_\_\_\_, 1999 (the "**Security Agreement**"), against, and a security interest in favor of Pledgee in, all of the Interest Owner's Rights in connection with any partnership interest in the Partnership now and hereafter owned by the Interest Owner ("**Partnership Interest**").

1. **Pledge Instructions.** The Partnership is hereby instructed by the Interest Owner to register all of the Interest Owner's Right, title, and interest in and to all of the Interest Owner's Partnership Interest as subject to a pledge and security interest in favor of Pledgee who, upon such registration of pledge, shall become the registered pledgee of the Partnership Interest with all Rights incident thereto.

2. **Initial Transaction Statement.** The Partnership is further instructed by the Interest Owner to promptly inform Pledgee of the registration of the pledge by sending the initial transaction statement, in the form attached hereto as *Annex A*, to Pledgee at its office located at \_\_\_\_\_, with a copy to Interest Owner.

3. **Partnership Distributions, Accounts, and Correspondence.** The Partnership is further instructed by the Interest Owner to promptly (i) cause the Partnership to pay and remit to the Pledgee all proceeds, distributions, and other amounts payable to the Interest Owner upon demand or otherwise, including, without limitation, upon the termination, liquidation, and dissolution of the Partnership, (ii) cause the Partnership to hold all funds in deposit accounts for the benefit of Pledgee, and (iii) cause the Partnership to provide to the Pledgee all future correspondence, accountings of distributions, and tax returns of the Partnership.

4. **Warranties of the Interest Owner.** The Interest Owner hereby warrants that (i) the Interest Owner is an appropriate person to originate this instruction; (ii) the Interest Owner is entitled to effect the instruction here given; and (iii) the Interest Owner's taxpayer identification number is \_\_\_\_\_.

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Signature Page to Follow.***

EXECUTED as of the date first stated in this Pledge Instruction.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSENT OF THE GENERAL PARTNER

The undersigned, \_\_\_\_\_, in its capacity as general partner of the Partnership (in such capacity, the "**General Partner**") hereby acknowledges and consents to, and agrees to cause to be registered on the books and records of the Partnership, the Pledge of Partnership Interests, and further agrees that upon receipt of written notice from the Pledgee, the General Partner shall (i) cause the Partnership to pay and remit to the Pledgee all distributions and other amounts payable to the Interest Owner upon demand or otherwise, including, without limitation, upon the termination, liquidation, and dissolution of the Partnership, (ii) cause the Partnership to hold all funds in deposit accounts for the benefit of Pledgee, and (iii) cause the Partnership to provide to the Pledgee all future correspondence, accountings of distributions, and tax returns of the Partnership.

\_\_\_\_\_  
as General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Pledge Instruction  
Signature Page**

**EXHIBIT A TO PLEDGE INSTRUCTION**

FORM OF INITIAL TRANSACTION STATEMENT

THIS STATEMENT IS MERELY A RECORD OF THE RIGHTS OF THE ADDRESSEE AS OF THE TIME OF ISSUANCE. DELIVERY OF THIS STATEMENT, OF ITSELF, CONFERS NO RIGHTS ON THE RECIPIENT. THIS STATEMENT IS NEITHER A NEGOTIABLE INSTRUMENT NOR A SECURITY.

NAME OF PLEDGOR: \_\_\_\_\_  
ADDRESS OF PLEDGOR: \_\_\_\_\_  
Tax ID or Social Security Number: \_\_\_\_\_

NationsBank, N.A.  
[ADDRESS]  
[Tax ID Number: \_\_\_\_\_]

On \_\_\_\_\_, 1999, the undersigned, \_\_\_\_\_, in its capacity as managing general partner of \_\_\_\_\_ (in such capacity, the "*Managing General Partner*") caused the pledge of \_\_\_\_\_ (\_\_\_%) of the outstanding partnership interests in \_\_\_\_\_ ("*Partnership Interest*") by \_\_\_\_\_ (the "*Pledgor*"), in favor of NationsBank, N.A. (the "*Pledgee*") to be registered on the books and records of the Partnership. *Except* for the pledge in favor of the Pledgee, to the knowledge of the undersigned (including, without limitation, any information which may appear on the undersigned's books and records) there are no liens, restrictions, or adverse claims to which the Partnership Interest is, or may be, subject as of the date hereof.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ANNEX G TO SECURITY AGREEMENT**

LANDLORD CONSENT AND ESTOPPEL CERTIFICATE

This Landlord Consent and Estoppel Certificate ("**Certificate**") is executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 1999, by \_\_\_\_\_, a \_\_\_\_\_ ("**Landlord**").

RECITALS:

The Landlord and Logix Communications Corporations[, as successor to \_\_\_\_\_] ("**Lessee**") have entered into the lease (as renewed, extended, amended, or substituted, the "**Lease**") described in **Exhibit A** attached hereto, covering certain premises (the "**Premises**") described in the Lease and described more fully on **Exhibit B** attached hereto.

Landlord understands that Lessee has or will incur certain indebtedness, obligations, and liabilities (collectively, as amended, extended, renewed, and modified from time to time, the "**Indebtedness**") pursuant to that certain Credit Agreement dated as of April \_\_\_\_, 1999 (as amended, modified, restated, supplemented, or refinanced from time to time, the "**Loan Agreement**") among Lessee, as Borrower, NationsBank, N.A., as Administrative Agent (in such capacity, "**Administrative Agent**"), and the Lenders named therein ("**Lenders**"), which requires Lessee to grant to Administrative Agent, for and on behalf of the Lenders (a) a security interest and first lien (the "**Security Interest**") in, among other things, all assets, including but not limited to all present and future accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, investment property, equipment, fixtures, other goods, minerals, money, and deposit accounts, of Lessee now or in the future located at the Premises and all rights under the Lease (together with all cash and non-cash proceeds thereof, the "**Collateral**"), and (b) a first leasehold deed of trust or mortgage (the "**Mortgage**") on Lessee's interest in the Lease.

The Landlord is willing to consent to the Mortgage and Security Interest to secure the Indebtedness on the terms and conditions set forth herein.

In consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby certifies to Administrative Agent, for and on behalf of Lenders, as follows:

1. Consent to Mortgage. Lessee, its successors, and assigns shall have the right, without Landlord's further consent, to mortgage, encumber, pledge, or hypothecate its interest in the Lease as security for the Indebtedness to the Administrative Agent, for and on behalf of the Lenders, under the Mortgage and assign the Lease, or any part or parts thereof, as collateral security for the Indebtedness. Landlord specifically consents to the execution and delivery by Lessee of the Mortgage and any documents evidencing the Security Interest (the "**Security Documents**").

2. Consent to Foreclosure. In the event of foreclosure of the Mortgage or the Security Documents (by any means, including judicial foreclosure), Landlord shall recognize Administrative Agent, for and on behalf of the Lenders, as the lessee for all purposes under the Lease. In such event, Landlord shall accept performance by Administrative Agent in lieu of Lessee in the Lease. Additionally, notwithstanding anything to the contrary or apparently to the contrary contained in the Lease, Lessee hereby consents to foreclosure by

Administrative Agent, for and on behalf of the Lenders, in the event of default under the terms of the Mortgage, the Security Documents, the Loan Agreement, or any other documents executed in connection therewith (the "**Loan Documents**") and consents to the assignment of the Lease by Administrative Agent, subject to the Landlord's consent which shall not be unreasonably withheld, if the Administrative Agent, either by virtue of the enforcement of the Administrative Agent's rights under the Mortgage, the Security Documents, the Loan Documents, or otherwise, or in any capacity whatsoever, becomes the owner of Lessee's interest under the Lease. The Landlord agrees to execute a memorandum or short form of the Lease in recordable form and in such form as is reasonably required by the Administrative Agent and containing terms consistent with the terms of the Lease and this Certificate.

3. Subordination of Liens. All liens, security interests, and other rights to which Landlord might be entitled in the Collateral, whether arising by operation of law or otherwise, whether now existing or hereafter to arise, are subordinate and inferior in every respect to all of the terms, provisions, and conditions of the Mortgage, the Security Documents, the Loan Agreement, and the Loan Documents, regardless of the order in which any liens, security interests, and rights in the Collateral were or will be created, attached, pledged, filed, recorded, registered, or perfected.

4. Collateral Not Fixtures. The Collateral may be installed in or located on the Premises and is not and shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property, notwithstanding the manner of their annexation to the Premises, their adaptability to the uses and purposes for which the Premises are used, and the intentions of the party making the annexation.

5. Entry Upon Premises. Notwithstanding anything contained in the Lease to the contrary or apparently to the contrary, in the event Administrative Agent, for and on behalf of the Lenders, forecloses the Mortgage or the Security Documents, or exercises any other right granted to it in connection with the Mortgage, the Security Documents, the Loan Agreement, or other Loan Documents, the Administrative Agent or its representatives may enter upon the Premises for the purposes of inspecting or removing the Collateral or taking possession of the Premises in the exercise of its rights and remedies under the Mortgage, the Loan Agreement, or other Loan Documents, and may utilize the Premises for the purposes expressed in the Lease. In addition, the Administrative Agent or its representatives may advertise and conduct a public or private auction on the Premises.

6. Rights Upon Default. Landlord agrees to give Administrative Agent notice:

- (a) of any default under the terms of the Lease, concurrently with giving notice of such default to Lessee;
- (b) of any legal action which the landlord may commence to evict the Lessee from the Premises or to terminate or limit the Lessee's right to use, possess, or lease the Premises, promptly upon the commencement of any such action; or
- (c) of any cancellation of the Lease, at least thirty (30) days before such cancellation, stating the grounds for cancellation or termination.

After receipt of any notice described in this **Section 6**, the Administrative Agent shall have the right to remedy any default of the Lessee under the Lease, or to cause any default of the Lessee under the Lease to be remedied, and for such purpose the Landlord hereby grants Administrative Agent forty-five (45) days for

remedying, or causing to be remedied, any such default which is a non-monetary default, or such longer period of time as may be needed to complete such remedying (provided that the Administrative Agent has commenced to remedy such default within such forty-five (45) days and continues diligent prosecution of such remedying), and twenty (20) days for remedying, or causing to be remedied, any such default which is a monetary default. The Landlord shall not exercise any remedies under the Lease or terminate the Lease on account of a default by the Lessee, until the applicable grace period described in the foregoing sentence has expired. Any payment made or act done by Administrative Agent to cure any such default shall not constitute any assumption of the Lease or any obligations of Lessee.

(c) All notices hereunder shall be by certified or registered mail, return receipt requested, and shall be effective three (3) days after the same is deposited in the United States mail and shall be addressed to the Administrative Agent as follows: 901 Main Street, 64<sup>th</sup> Floor, Dallas, Texas 75202, Attention: Julie Schell, Vice President.

7. Status of Lease. Landlord hereby represents that (i) the granting of the Mortgage and the Security Interest by Lessee will not constitute an event of default under the Lease; (ii) there are no events or conditions existing which, with or without notice or through the lapse of time could constitute a monetary or other default of Lessee under the Lease; (iii) the Lease is valid and in full force and effect and has not been modified, supplemented, or amended; and (iv) all rents due and payable as of the date hereof under the Lease have been paid in full.

8. Indemnification. As a condition to exercising any remedies referenced in this Certificate, Administrative Agent and Lenders shall indemnify and hold harmless Landlord and its mortgagees from any and all claims, demands, liabilities, or expenses which may accrue or arise out of any wrongful or negligent act by them in exercising any rights or remedies under the Mortgage, the Security Documents, the Loan Agreement, or the Loan Documents, any wrongful or negligent act by the Administrative Agent or Lenders in exercising any action authorized herein, or any damage to or use of the Premises by Administrative Agent or Lenders. No provision, qualification, or limitation of this Certificate shall be deemed to limit any right of indemnification otherwise available to the Landlord or its lender.

9. Counterparts. This Certificate may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Certificate to physically form one documents, which may be recorded.

10. Governing Law. This Certificate shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

11. Successors and Assigns. This Certificate inures to the benefit of the Administrative Agent, on behalf of the Lenders, and binds the Landlord, and its respective successors, transferees, endorsees, and assigns. Landlord agrees to give Administrative Agent notice of any change in ownership of the Premises and the name and address of each new owner of the Premises, at least fifteen (15) days before any such change in ownership.

12. Estoppel Certificates. Landlord agrees that within ten (10) days after written request by Lessee, Landlord will provide an estoppel certificate setting forth (a) the name of the lessee under the Lease,



(b) that the Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (c) the basic rent payable under the Lease, (d) the date to which all rental charges have been paid by the lessee under the Lease, and (e) whether there are any alleged defaults of the lessee under the Lease and, if there are, setting forth the nature thereof in reasonable detail.

13. Waiver of Jury Trial. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS CERTIFICATE.**

9. Landlord's current address for notices and payments under the Lease is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Landlord understands that the Administrative Agent and the Lenders will rely on this Certificate in making the loan under the Loan Agreement.

IN WITNESS WHEREOF, Landlord has executed this Certificate as of the date first stated above.

LANDLORD:

\_\_\_\_\_  
Print Name of Landlord

By \_\_\_\_\_  
(Name) \_\_\_\_\_  
(Title) \_\_\_\_\_

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

Before me, a Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of \_\_\_\_\_, and that s/he has executed the same on behalf of said corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(PERSONALIZED SEAL)

**ANNEX H TO SECURITY AGREEMENT**

LEASEHOLD MORTGAGE

THIS DOCUMENT  
PREPARED BY AND WHEN  
RECORDED RETURN TO:

Haynes and Boone, LLP  
901 Main Street, Suite 3200  
Dallas, Texas 75202  
Attention: Karen S. Nelson

**MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS,  
AND FINANCING STATEMENT**

from

**LOGIX COMMUNICATIONS CORPORATION**

as *Grantor*,

in favor of

**MICHAEL F. HORD**

as *Trustee*,

for the benefit and in favor of

**NATIONSBANK, N.A.**

as *Administrative Agent* for the benefit of the *Lenders* described in this Instrument,

covering property situated in

\_\_\_\_\_ County

\_\_\_\_\_

**THIS INSTRUMENT IS EFFECTIVE AS A FINANCING STATEMENT PRESENTED TO A FILING OFFICER  
FOR FILING UNDER THE UNIFORM COMMERCIAL CODE.**

<b>DEBTOR'S AND GRANTOR'S NAME AND MAILING ADDRESS:</b>	Logix Communications Corporation 3555 NW 58 <sup>th</sup> Street Oklahoma City, Oklahoma 73112 FED TAX ID NO. 73-1510529
<b>SECURED PARTY'S NAME AND MAILING ADDRESS:</b>	NationsBank, N.A., as Administrative Agent for Lenders 901 Main Street, 64 <sup>th</sup> Floor Dallas, Texas 75202 FED TAX ID NO.
<b>FOR FILING OFFICER:</b>	County

**THIS FINANCING STATEMENT IS TO BE FILED FOR RECORD IN  
THE REAL ESTATE RECORDS. THE COLLATERAL INCLUDES, WITHOUT LIMITATION,  
ALL GOODS OF GRANTOR THAT ARE AND ARE TO BECOME FIXTURES ON,  
THE LAND DESCRIBED ON THE ATTACHED ANNEX A.  
\_\_\_\_\_ IS THE RECORD OWNER OF THAT LAND.**

**MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS,  
AND FINANCING STATEMENT**

**THIS MORTGAGE, DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, AND FINANCING STATEMENT** (this "*Instrument*") is executed as of \_\_\_\_\_, 1999, by **LOGIX COMMUNICATIONS CORPORATION**, an Oklahoma corporation ("*Grantor*"), in favor of **MICHAEL F. HORD, TRUSTEE**, (with his successors in the trust created by this Instrument, "*Trustee*"), for the benefit of and in favor of **NATIONSBANK, N.A.**, a national banking association (in its capacity as Administrative Agent for the benefit of the Lenders now or in the future party to the Transaction Documents described below, "*Mortgagee*").

Grantor (i) is the "*Borrower*" under that certain Credit Agreement dated as of April \_\_, 1999 (as amended, modified, supplemented, or restated, the "*Credit Agreement*"), among NationsBank, N.A., as *Administrative Agent*, Grantor, as *Borrower*, and certain other *Lenders* and *Loan Parties* named therein, together with all documents executed in connection therewith or pursuant thereto, being collectively referred to herein as the "*Transaction Documents*";

The execution and delivery of this Instrument are requirements of the Transaction Documents;

ACCORDINGLY, for adequate and sufficient consideration, Grantor agrees with Trustee and Mortgagee for the benefit of Lenders as follows:

**SECTION 1 DEFINITIONS.** Terms defined in the Credit Agreement or the UCC have the same meanings when used (unless otherwise defined) in this Instrument. If the definition given a term in the Credit Agreement conflicts with the definition given that term in the UCC, then the Credit Agreement definition controls to the extent allowed by any Law. If the definition given a term in *Chapter 9* of the UCC conflicts with the definition given that term in any other chapter of the UCC, then the *Chapter 9* definition controls. Furthermore, as used in this Instrument:

*Credit Agreement* is defined in the recitals to this Instrument.

*Default* means a (a) "*Default*" under the Credit Agreement; (b) any vesting of all or any part of the Mortgaged Property in a Person other than Grantor; (c) condemnation of a sufficient part of the Mortgaged Property as to materially and adversely affect Grantor's use of the Mortgaged Property; [or (d) the occurrence of a default by Grantor in the performance of or compliance with any of the provisions, warranties, covenants, promises, agreements, terms, or conditions contained in the Lease Agreement, which shall not be remedied within ten days from the occurrence thereof.] [*Include bracketed provision in Leasehold Mortgage only*]

*Fixtures* means all present and future equipment, goods, and other items of tangible property of Grantor that are (a) now or in the future attached to or installed on or in any of the Land or Improvements or (b) deemed under any Law to be fixtures to any of the Land or Improvements.

**Grantor** is defined in the recitals to this Instrument and includes, without limitation, Grantor, Grantor as a debtor-in-possession, and any receiver, trustee, liquidator, conservator, custodian, or similar party appointed for Grantor or for all or substantially all of Grantor's assets under any Debtor Relief Law, and Grantor's successors and assigns.

**Impositions** means all of the following that are now or in the future assessed, levied, or imposed upon any of the Mortgaged Property or any ownership, use, occupancy, or enjoyment of any of the Mortgaged Property: real estate and personal property Taxes; water, gas, sewer, electricity, and other utility rates and charges; charges for any easement, license, or agreement maintained for the benefit of any of the Mortgaged Property; and all other Taxes, standby fees, charges, and assessments, and any interest, costs, or penalties of any kind and/or character whatsoever.

**Improvements** means all present and future (a) buildings, structures, open parking areas, and other improvements that are now or in the future situated, constructed, or renovated on any of the Land and (b) all accessions, additions, replacements, substitutions, alterations, or appurtenances to any of the foregoing.

**Land** means the real property described on the attached **Annex A**, including, without limitation, all tenements, hereditaments, rights-of-way, easements, rights of ingress and egress, licenses, streets, ways, alleys, strips, gores, appendages, appurtenances, betterments, accessions, additions, substitutions, replacements, revisions, reversions, remainders, and other rights and privileges related thereto.

[**Lease Agreement** means those certain leases whether one or more, described on **Annex C** hereto (as the same may have been and may hereafter be amended, modified, extended, or replaced) relating to the Land. If no Lease Agreement is described on **Annex C**, then references to the term **Lease Agreement** within this agreement shall not be applicable.] [*Include bracketed provision in Leasehold Mortgage only*]

[**Leasehold Estate** means Grantor's leasehold estate in and to the property described in the Lease Agreement, including, to the extent applicable and without limitation, (a) all rights and benefits of every nature whatsoever derived or to be derived by Grantor by virtue of the Lease Agreement, including, without limitation, the Right to exercise options, to give consents, and to receive moneys payable to Grantor under the Lease Agreement, (b) any extension, renewal, or modification of the Lease Agreement, and (c) all Right, title, and interest that Grantor may hereafter acquire in the Land or the Improvements, whether by exercising a purchase option under the Lease Agreement or otherwise.] [*Include bracketed provision in Leasehold Mortgage only*]

**Lenders** means the "Lenders" under the Credit Agreement and any holder of all or any part of the "Obligation" under the Credit Agreement.

**Litigation** means any action by or before any Governmental Authority.

[**Mortgaged Property** means all of Grantor's present and future rights, title, and interests in and to all of (or, where the context permits or requires, any portion of or interest in) the Land, Improvements, Fixtures, Personalty, Tenant Leases, Rents, awards, remunerations, settlements, or compensation for any condemnation, taking for any public or quasi-public use, vacation of or change of grade in any streets affecting any of the Land or Improvements, or otherwise.] [*Include bracketed provision in Fee Mortgage only*]

[**Mortgaged Property** means all of Grantor's present and future rights, title, and interests in and to: (i) all of (or, where the context permits or requires, any portion of or interest in) the Leasehold Estates in and

to any of the Land or Improvements demised under the Lease Agreement, (ii) any and all Fixtures, Personalty, Tenant Leases, and Rents, and (iii) any and all awards, remunerations, settlements, or compensation for any condemnation, taking for any public or quasi-public use, vacation of, or change of grade in any streets affecting the Leasehold Estate, or otherwise.] [*Include bracketed provision in Leasehold Mortgage only*]

**Mortgagee** is defined in the preamble to this Instrument and includes its successor appointed under **Section 12.1** of the Credit Agreement and acting as *Administrative Agent* for Lenders under the Transaction Documents. Mortgagee shall be deemed to be the *Beneficiary* for all purposes under this Instrument where this document is intended to be used as a Deed of Trust using a non-judicial foreclosure method.

**Permitted Encumbrances** means (a) Permitted Liens and (b) any easements, building lines, restrictions, and other matters described on the attached **Annex B**.

**Personalty** means all of Grantor's present and future Right, title, and interest in and to all present and future Fixtures, equipment, inventory, goods, accounts, rights under contracts, chattel paper, instruments, Tenant Leases, general intangibles, plans and specifications, appraisals and other reports and studies, deposits, financial assets, documents, insurance policies, minerals, crops, and timber (and all present and future additions, accessions, accessories, amendments, modifications, extensions, renewals, enlargements, substitutions, income, profits, rents, and other cash and non-cash proceeds in connection with any of the foregoing) that are now or in the future actually (or acquired for the purpose of being) attached, installed, situated, located, used, produced, or grown to, on, in, from, under, or in connection with (or that arise from the ownership, improvement, financing, leasing, operation, or use of) any of the Land, Improvements, or Fixtures, including, without limitation: (a) furnishings, building materials, supplies, machines, telecommunications equipment, engines, boilers, stokers, pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, furniture cabinets, shades, blinds, screens; plumbing, heating, air conditioning, lighting, lifting, ventilating, refrigerating, cooking, medical, laundry, and incinerating equipment; (b) partitions, drapes, carpets, rugs and other floor coverings, and awnings; (c) call and sprinkler systems, fire prevention and extinguishing apparatus and equipment, water tanks, compressors, and vacuum cleaning systems; (d) disposals, swimming pools, dishwashers, ranges, ovens, kitchen equipment, and cafeteria equipment; and (e) recreational equipment.

**Rents** means all present and future rents, revenues, income, proceeds, royalties, profits, and other benefits paid or payable to Grantor under the terms of a Tenant Lease.

**Subject Liens** means the Liens and estates granted, bargained, mortgaged, sold, transferred, assigned, or conveyed to any of Trustee, Mortgagee, and Lenders under **Section 2.1**, **Section 7.1**, and any other provision of this Instrument, all of which are "*Liens*," as defined in the Credit Agreement.

**Tenant Leases** means any and all leases between Grantor, as lessor or sublessor, and any tenant or sub-tenant of any portion of the Land.

**Total Obligations** means (a) the "*Obligation*" under the Credit Agreement, (b) all existing and future advances and other extensions or other obligations owed to Mortgagee or any Lender under the Transaction Documents; (c) all present and future Debt liabilities and obligations arising to Trustee, Mortgagee, or any Lender under this Instrument; and (d) all renewals, extensions, amendments, restatements, or substitutions in respect of any of the foregoing.

**Trustee** is defined in the preamble to this Instrument.

## SECTION 2 GRANTING PROVISIONS.

### 2.1 Granting Clause.

(a) Grant. To secure the prompt, unconditional, and complete payment and performance of the Total Obligations when due, Grantor has GRANTED, BARGAINED, MORTGAGED, SOLD, TRANSFERRED, ASSIGNED, and CONVEYED (and by these presents GRANTS, BARGAINS, MORTGAGES, SELLS, TRANSFERS, ASSIGNS, and CONVEYS) all of the Mortgaged Property unto Trustee (in trust, with the power of sale, and Right of entry and possession and for the benefit of Mortgagee and Lenders), in those states that require the use of deeds of trust, or unto Mortgagee (for the benefit of Lenders), in those states requiring mortgages, its successors and assigns, TO HAVE AND TO HOLD the Mortgaged Property, all and singular, forever unto Trustee or Mortgagee, as required by applicable Law, its successors and assigns. Grantor binds itself and its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto Trustee and Mortgagee against every Person whomsoever lawfully claiming or to claim all or any part of the Mortgaged Property subject, however, to Permitted Encumbrances.

(b) Release. This conveyance is made upon this special trust that if Grantor pays the Total Obligations secured by the Subject Liens in accordance with the terms of this Instrument, together with all interest due on the Total Obligations and all renewals and extensions of the Total Obligations, and complies with all other covenants, stipulations and conditions of the Transaction Documents, this Instrument, and any other documents evidencing or securing the Transaction Documents, this Instrument will be canceled of record and the Mortgaged Property will be reconveyed at the request and at the cost of Grantor.

(c) Limitation. Notwithstanding anything to the contrary contained in this Instrument, Grantor agrees that, if, but for the application of this paragraph, any of the Total Obligations or Subject Liens would constitute a fraudulent conveyance under *11 U.S.C. § 548* or a fraudulent conveyance or transfer under any state fraudulent conveyance, fraudulent transfer, or similar Law in effect from time to time (each a "*fraudulent conveyance*"), then the affected part of the Total Obligations or Subject Liens remains enforceable to the maximum extent possible without causing any of the Total Obligations or Subject Liens to be a fraudulent conveyance, and this Instrument is automatically amended to carry out the intent of this paragraph.

2.2 No Assumption or Modification. The Subject Liens are given as security only in order to secure the prompt, unconditional, and complete payment and performance of the Total Obligations when due. Neither Trustee, Mortgagee, nor any Lender assumes or may become liable for any of Grantor's liabilities, duties, or obligations under or in connection with any of the Mortgaged Property. Neither Trustee's or Mortgagee's respective acceptance of this Instrument nor their respective taking of any action in carrying out this Instrument constitutes Trustee's or Mortgagee's approval of any of the Mortgaged Property or their assumption of any obligation under or in connection with any of the Mortgaged Property. This Instrument does not affect or modify any of Grantor's obligations with respect to any of the Mortgaged Property.

2.3 Covenants Running With Land. All obligations in this Instrument are intended by the parties to be and shall be construed as covenants running with the Land.

2.4 Type of Instrument. In order to fully effectuate the Subject Liens, this Instrument may be construed and enforced from time to time as a mortgage, deed of trust, trust deed, chattel mortgage,



conveyance, security agreement, assignment, pledge, financing statement, hypothecation, contract, or any one or more of them as may be appropriate under applicable laws.

2.5 Annexes. Executed original counterparts of this Instrument to be filed for record in the real property records of jurisdictions where any of the Mortgaged Property is situated will have attached to them as **Annexes A, B, [and C]** describing the Land, the Permitted Encumbrances, [and the Lease Agreement.] [*Include bracketed provision in Leasehold Mortgage only*]

2.6 Subrogation. If and to the extent that any proceeds of the Total Obligations are ever utilized to renew or extend any Debt or take up any outstanding Rights or Subject Liens against any of the Mortgaged Property, then (a) those proceeds are advanced by Lenders at Grantor's request and upon Grantor's representation that the amounts are due and payable, and (b) Mortgagee is subrogated on behalf of Lenders to all Rights and Subject Liens owned or claimed by any owner or holder of them, however remote and regardless of whether they are acquired by assignment or are released by that holder upon payment.

2.7 Vendor's Subject Lien. If any of the proceeds of the Total Obligations are advanced for the purpose of paying the purchase price for any of the Mortgaged Property, then Mortgagee has and is granted on behalf of Lenders a vendor's Subject Lien on that part of the Mortgaged Property to further secure the Total Obligations.

2.8 Non-Merger. Mortgagee may now have or in the future acquire estates or interests in all or portions of the Mortgaged Property in addition to the Subject Liens. Without Mortgagee's express written consent and agreement, none of those estates or interests shall ever merge with the Subject Liens, but shall always remain separate and distinct, notwithstanding that those estates and interests and the Subject Liens should be owned by or vested in the same party or parties at the same time, by purchase, foreclosure, or otherwise. [In addition, it is hereby agreed that the fee title and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the Landlord, Grantor, or a third party, whether by purchase or otherwise. If Grantor acquires the fee title or any other estate, title, or interest in the property demised by the Lease Agreement, or any part thereof, the Lien of this Instrument shall attach to, cover, and be a Lien upon such acquired estate, title, or interest, and same shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. Grantor agrees to execute all instruments and documents which Mortgagee may reasonably require to ratify, confirm, and further evidence Mortgagee's Lien on the acquired estate, title, or interest. Furthermore, Grantor hereby appoints Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of Grantor. This power, being coupled with an interest, shall be irrevocable as long as any part of the Total Obligations remain outstanding.] [*Include bracketed provision in Leasehold Mortgage only*]

**SECTION 3 REPRESENTATIONS AND WARRANTIES**. Grantor represents and warrants to Mortgagee on behalf of Lenders that:

3.1 Transaction Documents. All representations and warranties in the Transaction Documents that are applicable to Grantor or its assets or operations are accurate and complete and are ratified and confirmed.

3.2 Title and Priority. Grantor is lawfully seized of the Mortgaged Property in fee simple absolute, unless the Mortgaged Property is a Leasehold Estate, in which event, Grantor is lawfully seized of

the Leasehold Estate. Grantor has good and marketable title (except in Texas where Grantor has good and indefeasible title) to the Mortgaged Property, and this Instrument is a first lien deed of trust or mortgage on the Mortgaged Property, subject only to the Permitted Encumbrances.

3.3 Binding Total Obligation. This Instrument creates legal, valid, and binding Subject Liens on, in, and to all of the Mortgaged Property in favor of Trustee and Mortgagee and enforceable against Grantor. The Subject Liens under this Instrument will be duly perfected once the action required for perfection under applicable Law has been taken. The creation of the Subject Liens does not require the consent of any Person that has not been obtained.

**SECTION 4 COVENANTS.** While any Lender is committed to lend or extend credit under the Transaction Documents and until the Total Obligations are fully paid and performed, Grantor covenants and agrees with Mortgagee on behalf of Lenders, as follows:

4.1 Transaction Documents. Grantor shall promptly and fully comply with and perform all covenants and agreements in the Transaction Documents that are applicable to it or its assets or operations, each of which is ratified and confirmed.

4.2 Impositions. Grantor shall promptly pay and discharge, or cause to be paid and discharged, prior to or when due any and all Impositions and Grantor's obligations to materialmen, mechanics, carriers, warehousemen, or other like Persons *except* any of the foregoing that are being contested in good faith by lawful proceedings diligently conducted, against which reserve or other provision required by GAAP has been made, and in respect of which levy and execution of any Subject Lien has been and continues to be stayed. If at any time any Law imposes or authorizes any Imposition upon this Instrument, upon any Subject Liens or Rights under this Instrument, or upon either of the Notes, then Grantor shall immediately pay all of those Impositions to the extent it may lawfully do so. If it is unlawful for Grantor to pay any of those Impositions, then they may be paid by Mortgagee under this Instrument and then constitute part of the Total Obligations as such Total Obligations extend to Mortgagee's Subject Liens created in this Instrument.

4.3 Defense of Title. If Grantor's title to, or any of the Subject Liens or Rights under this Instrument in and to, any of the Mortgaged Property is directly or indirectly endangered or attacked, then Grantor shall, at its expense, take all necessary and proper steps for the defense of that title or those Subject Liens and Rights, including, without limitation, employing counsel, prosecuting or defending litigation, and discharging of claims.

4.4 Insurance. Grantor will carry insurance with respect to the Mortgaged Property with such insurers, and covering such risks as required by the Credit Agreement. In addition, if (and to the extent that) any of the Mortgaged Property is located within an area that has been or is later designated or identified as an area having special flood hazards by the Secretary of Housing and Urban Development or by any other official as may from time to time be authorized by any Law to make that designation under the *National Flood Insurance Act of 1968* or any other program of flood insurance, then Grantor shall carry flood insurance with respect to that portion of the Mortgaged Property in an amount not less than the maximum amount available under the *Flood Disaster Protection Act of 1973* in form complying with the "insurance purchase" requirement of that Act. Upon any foreclosure hereof or transfer of title to the Mortgaged Property in extinguishment of the whole or any part of the Total Obligations, all of Grantor's Right, title, and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferees, to the extent

permissible under such policies. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see the proper application of any amount paid over to Grantor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, be applied as provided in *Section 9.8* of the Credit Agreement. In any event, the unpaid portion of the Total Obligations shall remain in full force and effect and the payment thereof shall not be excused.

4.5 Mortgaged Property. Grantor (a) may not do or permit any act that is reasonably likely to adversely impair any material portion of any of the Mortgaged Property, (b) may not commit or permit any waste of any of the Mortgaged Property, (c) shall whenever repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to any of the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction promptly proceed to construct same or cause same to be constructed and notify Mortgagee of the commencement of those emergency measures and, when same are completed, the completion date and the measures actually taken, (d) may not otherwise, without first giving notice to Mortgagee, make or permit to be made any material alterations or additions to any of the Mortgaged Property, and (e) may not use, maintain, operate, or occupy or permit the use, maintenance, operation, or occupancy of the Mortgaged Property in any manner that materially violates any Law, that is reasonably expected to be dangerous unless safeguarded as required by Law, that constitutes a public or private nuisance, or that results in a Governmental Authority imposing a material fine or other penalty upon any of the Mortgaged Property, Grantor, Trustee, Mortgagee, or any Lender.

4.6 Restoration. If any material portion of the Mortgaged Property is damaged, destroyed, or taken (whether by any casualty for which insurance was not obtained or not obtainable or as otherwise described in *Section 6* below) then Grantor shall promptly (a) notify Mortgagee of that damage, destruction, or taking and (b) regardless of whether any applicable insurance proceeds are sufficient for the purpose, Grantor shall, at its sole cost and expense, restore, rebuild, replace, and repair the Mortgaged Property as nearly as possible to at least its value, condition, and character immediately before that damage, destruction, or taking in accordance with plans and specifications that are first submitted to and approved by Mortgagee not to be unreasonably withheld. For purposes hereof, damages should be deemed "*material*," if the cost to repair or replace equals or exceeds \$250,000.

4.7 Environmental Matters. Grantor is, and shall remain, in compliance with each of the representations, warranties, and covenants set forth in the Transaction Documents.

4.8 INDEMNIFICATION. GRANTOR ASSUMES ALL LIABILITY FOR ALL MORTGAGED PROPERTY, FOR THE SUBJECT LIENS, AND FOR ANY USE, POSSESSION, MAINTENANCE, AND MANAGEMENT OF, ALL MORTGAGED PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY TAXES ARISING AS A RESULT OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED IN THIS INSTRUMENT, AND AGREES TO ASSUME LIABILITY FOR, AND TO INDEMNIFY AND HOLD TRUSTEE, MORTGAGEE, AND EACH LENDER HARMLESS FROM AND AGAINST, ANY AND ALL CLAIMS, CAUSES OF ACTION, OR LIABILITY, FOR INJURIES TO OR DEATHS OF PERSONS AND DAMAGE TO PROPERTY, HOWSOEVER ARISING FROM OR INCIDENT TO SUCH USE, POSSESSION, MAINTENANCE, AND MANAGEMENT, WHETHER SUCH PERSONS BE AGENTS OR EMPLOYEES OF GRANTOR OR OF THIRD PARTIES, OR SUCH DAMAGE BE TO PROPERTY OF GRANTOR OR OF OTHERS. GRANTOR AGREES TO INDEMNIFY, SAVE, AND HOLD TRUSTEE, MORTGAGEE, AND EACH LENDER HARMLESS FROM AND AGAINST, AND COVENANTS TO DEFEND TRUSTEE, MORTGAGEE, AND EACH LENDER AGAINST, ANY

AND ALL LOSSES, DAMAGES, CLAIMS, COSTS, PENALTIES, LIABILITIES, AND EXPENSES, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES, HOWSOEVER ARISING OR INCURRED BECAUSE OF, INCIDENT TO, OR WITH RESPECT TO ANY MORTGAGED PROPERTY OR ANY USE, POSSESSION, MAINTENANCE, OR MANAGEMENT OF IT. HOWEVER, NO INDEMNIFIED PARTY IS ENTITLED TO INDEMNITY UNDER THIS PARAGRAPH FOR ITS OWN GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, OR FOR ANY INDEMNIFIED LIABILITY ARISING FROM ITS ACTIONS AFTER SECURED PARTY HAS FORECLOSED THE SECURITY INTEREST OR ACCEPTED CONVEYANCE IN LIEU OF FORECLOSURE OR (EXCEPT FOR PLEDGED SECURITIES) TAKEN POSSESSION OF ANY COLLATERAL. SUCH INDEMNIFICATION SHALL EXTEND TO ACTIONS ARISING FROM ANY INDEMNIFIED PARTY'S NEGLIGENCE (OTHER THAN GROSS NEGLIGENCE), WHETHER ACTIVE OR PASSIVE.

4.9 Not a Foreign Person. Grantor is not a "foreign person" within the meaning of the *Internal Revenue Code of 1986*, as amended, *Sections 1445 and 7701* (i.e., Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder).

## **SECTION 5 LEASEHOLD MORTGAGE PROVISIONS**

5.1 Representations and Warranties. If the Mortgaged Property is or includes a Leasehold Estate, Grantor hereby warrants and represents as follows with respect to the Lease Agreement creating or governing the Leasehold Estate:

- (a) The Lease Agreement is in full force and effect, unmodified by writing or otherwise, except as has been specifically disclosed to Mortgagee.
- (b) All rent, additional rent, and other charges reserved therein have been paid to the extent they are payable to the date hereof.
- (c) Grantor enjoys the quiet and peaceful possession of the property demised thereby.
- (d) Grantor is not in default under any of the terms of the Lease Agreement, and, to the best of Grantor's knowledge, there are no circumstances which with the passage of time or the giving of notice or both, would constitute an event of default under the Lease Agreement.
- (e) To the best of Grantor's knowledge all lessors and sublessors (collectively, whether one or more, and whether the same includes lessors, sublessors, or both the "**Landlord**") under the Lease Agreement is not in default under any of the terms or provisions thereof on the part of the Landlord to be observed or performed.

5.2 Covenants. If the Mortgaged Property is or includes a Leasehold Estate, Grantor hereby covenants as follows with respect to the Lease Agreement creating or governing the Leasehold Estate.

- (a) Grantor will (1) pay on or before the due dates thereof all rents and other amounts payable under the Lease Agreement; (2) timely and fully observe and perform all of the terms, covenants, agreements, and conditions of each Lease Agreement required to be observed and performed by Grantor; and (3) Grantor shall give Mortgagee immediate notice of any default by any party to the Lease Agreement and will deliver to Mortgagee a copy of any notice of default and all other notices,

communications, plans, specifications, and other similar instruments sent or received by Grantor under the Lease Agreement within five (5) Business Days after sending or receiving such notice;

(b) Grantor will not do, permit, suffer, or refrain from doing anything, as a result of which, there could be a default under or breach of any of the terms of the Lease Agreement.

(c) Without the written consent of Mortgagee, which consent shall not be unreasonably withheld, Grantor will not (i) cancel, surrender, or reject (including, without limitation, in connection with any Debtor Relief Laws) the Lease Agreement or (ii) modify, amend, or in any way alter or permit the alteration of any of the terms of the Lease Agreement, which would adversely affect the Rights and Liens of Trustee, Mortgagee, or Lenders thereunder.

(d) Grantor will furnish Mortgagee such information and evidence as Mortgagee may reasonably require concerning Grantor's due observance, performance, and compliance with the terms, covenants, and provisions of the Lease Agreement.

5.3 Default. In the event of any default by Grantor in the performance of any of its obligations under the Lease Agreement, including, without limitation, any default in the payment of rent and other charges and impositions made payable by the Grantor, then, in each and every case, Mortgagee may, at its option and without notice, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of Grantor thereunder in the name of and on behalf of Grantor. Any sums of money advanced or incurred by Mortgagee to cure any such default (including, without limitation, reasonable attorney's fees), shall become part of the Total Obligations, shall bear interest at the Default Rate until repaid by Grantor, and shall be repayable by Grantor to Mortgagee immediately upon demand.

5.4 Notice to Mortgagee. Grantor shall give Mortgagee notice of its intention to exercise each and every option to extend the terms of the Lease Agreement, at least twenty (20) but not more than sixty (60) days prior to the expiration of the time to exercise such option under the terms thereof. If Grantor intends to extend the term of the Lease Agreement, Grantor shall deliver to Mortgagee with the notice of such decision, a copy of the notice of extension delivered to the Landlord thereunder. If Grantor does not intend to extend the term of the Lease Agreement, Mortgagee may, at its option, exercise the option to extend in the name and on behalf of Grantor. In any event, Grantor hereby appoints Mortgagee its attorney-in-fact to execute and deliver, for and in the name of Grantor, all instruments and agreements necessary under the Lease Agreement or otherwise to cause any extension of the term thereof. This power, being coupled with an interest, shall be irrevocable as long as any part of the Total Obligations remain outstanding.

#### 5.5 Miscellaneous Lease Agreement Provisions.

(a) If the Lease Agreement is canceled or terminated, and if Mortgagee or its nominee shall acquire an interest in any new lease of the property demised thereby, Grantor shall have no Right, title, or interest in or to the new lease or the leasehold estate created by such new lease.

(b) Grantor shall use reasonable efforts to obtain and deliver to Mortgagee within twenty (20) days after written demand by Mortgagee, an estoppel certificate from the Landlord under the Lease Agreement setting forth (i) the name of the Landlord thereunder, (ii) that the Lease Agreement has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (iii) the basic rent payable under the Lease Agreement, (iv) the date to

which all rental charges have been paid by the tenant under the Lease Agreement, (v) whether there are any alleged defaults of the tenant under the Lease Agreement and, if there are, setting forth the nature thereof in reasonable detail, and (vi) agreeing to furnish Mortgagee with written notice of any default by Grantor thereunder.

(c) Notwithstanding anything to the contrary herein, the Instrument shall not constitute an assignment of the Lease Agreement within the meaning of any provision thereof prohibiting its assignment, and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Instrument. Mortgagee shall be liable for the obligations of the tenant arising under the Lease Agreement for only that period of time which Mortgagee is in possession of the demised premises or has acquired, by foreclosure or otherwise, and is holding all of Grantor's Right, title, and interest therein.

## **SECTION 6 ASSIGNMENT OF TENANT LEASES AND RENTS.**

6.1 Assignment of Tenant Leases and Rents. Grantor assigns all existing or future Tenant Leases and Rents to Mortgagee but has a revocable license to collect and receive all Rents. This assignment is intended to be perfected, absolute, and choate on recording pursuant to applicable laws. Mortgagee may revoke that license without notice to Grantor when a Default exists. While a Default exists, Mortgagee may (but is not obligated to) (a) notify any and all tenants and other obligors on Tenant Leases that the same have been assigned to Mortgagee and that all Rents are to be paid directly to Mortgagee, whether or not Mortgagee has foreclosed or commenced foreclosure proceedings against any of the Mortgaged Property and whether or not Mortgagee has taken possession of any of the Mortgaged Property, (b) fully or partially settle, compromise, or release, on terms acceptable to Mortgagee in its sole discretion, any amounts owing on Tenant Leases and any Rents, (c) enforce payment of Rents, prosecute any action or proceeding, and defend legal proceedings with respect to any Rents and Tenant Leases, (d) extend the time of payment, make allowances, adjustments, and discounts, (e) enter upon, take possession of, and operate any of the Mortgaged Property, (f) lease any of the Mortgaged Property, and (g) enforce all other rights of the lessor or sublessor under the Tenant Leases.

6.2 Covenants. Grantor (a) may not enter into any master or ground leases of, or installment contracts for, any of the Mortgaged Property pursuant to which transfer of title is delayed, (b) shall submit to Mortgagee any other proposed Tenant Lease, (c) may not execute any Tenant Lease without first obtaining Mortgagee's written consent and shall deliver to Mortgagee a fully executed counterpart of each approved Tenant Lease, including the lease specifically consented to above, when executed, (d) shall cause each tenant under a Tenant Lease entered into after the date of this Instrument to deliver to Mortgagee a form of tenant estoppel certificate as specified by Mortgagee, (e) shall duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon it under each Tenant Lease, (f) shall use all reasonable efforts to maintain each Tenant Lease in full force and effect during the full term of this Instrument, (g) shall appear and defend any action or proceeding arising under or in any manner connected with any Tenant Lease or the representations, warranties, covenants, and agreements of Grantor or of any other party or parties, (h) may not voluntarily terminate, cancel, surrender, waive, modify, amend, or terminate its material Rights or material obligations of any party under any Tenant Lease, (i) may not discount any Rent payable under any Tenant Lease or collect any Rent for a period of more than one month in advance (*except* the first month's rent at one time before the lease commencement date), and (j) may not materially further assign its interest in, to, or under any Tenant Lease or Rents to a party *other than* Mortgagee on behalf of Lenders.

6.3 Accounts. While a Default exists (a) Grantor shall establish, at Mortgagee's request, a separate account into which all Rents shall be deposited, which account Grantor pledges and collaterally assigns to Mortgagee on behalf of Lenders as security for the Total Obligations, and (b) Mortgagee may also establish a post office box in its name to which all Rents shall be sent at the direction of Mortgagee made to the lessees, tenants, or other parties renting, leasing, or otherwise using any of the Mortgaged Property.

6.4 Not Mortgagee's Total Obligations. Notwithstanding any contrary provision, Mortgagee has no obligation to perform or discharge (and Mortgagee does not undertake to perform or discharge) any obligation, duty, or liability (including, without limitation, liability under any covenant of quiet enjoyment contained in any Law in the event that any tenant is joined as a party defendant in any action to foreclose this Instrument and is barred and foreclosed of all Right, title, and interest and equity of redemption in any of the Mortgaged Property) with respect to the Tenant Leases or the Rents under or by reason of this Instrument. This Instrument does not operate to place responsibility for the control, care, maintenance, or repair of any of the Mortgaged Property upon Mortgagee or to make it responsible or liable for any waste committed on any of the Mortgaged Property by any tenant or other Person, for any dangerous or defective condition of any of the Mortgaged Property, or for the acts or omissions of Grantor, any tenant, or any other person in the management, upkeep, repair, or control of any of the Mortgaged Property.

6.5 Not a Subordination. Nothing in this section shall ever be construed as subordinating this Instrument to any Tenant Lease; *provided that* any proceedings by Mortgagee to foreclose this Instrument, or any action by way of its entry into possession after Default, shall not operate to terminate any Tenant Lease which has been approved in writing by Mortgagee, and Mortgagee will not cause any Lessee under any such approved Tenant Lease to be disturbed in his possession and enjoyment of the leased premises so long as such Lessee shall continue fully and promptly to perform all the terms, covenants, and provisions of its Tenant Leases.

## SECTION 7 INSURED CASUALTY AND CONDEMNATION.

7.1 Insured Casualty. If, and to the extent that, the Mortgaged Property covered by any insurance is destroyed or damaged by fire, explosion, windstorm, hail, or by any other casualty against which insurance is required under the Transaction Documents, Grantor shall be governed by **Section 9.8** of the Credit Agreement. Upon any foreclosure hereof or transfer of title to the Mortgaged Property in extinguishment of the whole or any part of the Total Obligations, all of Grantor's Right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferees, to the extent permissible under such policies. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see the proper application of any amount paid over to Grantor. Any such proceeds received by Mortgagee shall, after deduction therefrom of all reasonable expenses actually incurred by Mortgagee, including attorneys' fees, be applied as provided in **Section 9.8** of the Credit Agreement. In any event, the unpaid portion of the Total Obligations shall remain in full force and effect and the payment thereof shall not be excused.

7.2 Condemnation. Grantor shall promptly notify Mortgagee if Grantor learns or becomes aware of any proceedings for condemnation of any of the Mortgaged Property or any other proceedings arising out of injury or damage to any of the Mortgaged Property. Mortgagee may participate in any of those proceedings, and Grantor shall from time to time deliver to Mortgagee all instruments requested by it to permit that

participation. Grantor shall, at its expense, diligently prosecute any of those proceedings and consult and cooperate with Mortgagee and its attorneys and experts in the carrying on or defense of any of those proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to any of the Mortgaged Property and all judgments, decrees, and awards for injury or damage to any of the Mortgaged Property shall be paid to Mortgagee and shall be applied in accordance with **Section 3.12** of the Credit Agreement.

7.3 **Assignment and Collection of Proceeds.** Grantor assigns and transfers to Mortgagee all insurance proceeds and all proceeds, judgments, decrees, and awards of condemnation or sale in lieu of condemnation described above and agrees to execute such further assignments of any of the foregoing as Mortgagee may request. Mortgagee is authorized by this Instrument, in its name or Grantor's name, to execute and deliver valid acquittances for, and to appeal from, any payment, judgment, decree, or award. Mortgagee is not, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any proceeds, judgments, decrees, or awards. In any event the unpaid portion of the Total Obligations remains in full force and effect, and Grantor is not excused in the payment of the Total Obligations.

## **SECTION 8 RIGHTS AND REMEDIES.**

8.1 **Remedies.** While a Default exists, Mortgagee may, in accordance with the Transaction Documents, by and through the Trustee or otherwise, exercise any or all of the following Rights and recourses:

(a) **Entry on Mortgaged Property.** Either by itself or by appointment of a receiver, enter upon the Mortgaged Property and take exclusive possession of the Mortgaged Property and of all related books, records, and accounts without notice and without being guilty of trespass or conversion. If Grantor remains in possession of all or any part of the Mortgaged Property without the Mortgagee's prior written consent, Mortgagee on behalf of Lenders may, without notice to Grantor, invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and writ of restitution. Nothing contained in the preceding sentence shall be construed to impose any greater obligation or any prerequisites to acquiring possession of the Mortgaged Property after a Default than would have existed in the absence of such sentence.

(b) **Operation of Mortgaged Property.** Either by itself or by appointment of a receiver, hold, lease, manage, operate, or otherwise use or permit the use of the Mortgaged Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Lenders may deem to be prudent and reasonable under the circumstances (making such repairs and taking any and all other action, from time to time, as Lenders deem necessary or desirable for the purpose of maintaining the Mortgaged Property in its then current condition but not making any material capital improvements) and apply all Rents and other amounts collected by Trustee in connection in accordance with the provisions of **Section 8.7**.

(c) **Foreclosure and Sale.** Request Trustee to proceed with foreclosure or Mortgagee may commence a Foreclosure action itself. Upon Mortgagee's request, Trustee is authorized and empowered, and it shall be its special duty, to sell or offer for sale the Mortgaged Property, or any portion requested by Mortgagee in accordance with the applicable state statute governing foreclosure and sale under power of sale, at the place that is designated by statute or otherwise in the county of the state where the Land subject to the Subject Lien is situated; *provided*, that, to the extent permitted by Law, if the Land is situated in more than one county, then sale of all or any part of the Mortgaged Property may be made in any county where any part



of the Land then subject to the Subject Liens is situated that Trustee so designates. Trustee must give Grantor notice of the sale as and when directed by statute in such state.

(i) At any sale of the Mortgaged Property whether made under the power of sale contained in this Instrument, any applicable state statute, *Article 9* of the UCC, any other Law, or by virtue of any judicial proceedings or any other legal Right, remedy, or recourse, to the extent permitted by applicable Law, (A) Trustee or Mortgagee need not have the Mortgaged Property physically present or have constructive possession of the Mortgaged Property; *provided, however*, that the title to and Right of possession of the Mortgaged Property shall pass to the purchaser as completely as if it had been, if so required, actually present and delivered to purchaser at such sale; (B) each conveyance instrument executed by Trustee or Mortgagee shall contain a general warranty of title binding upon Grantor; (C) each and every recital contained in any conveyance instrument executed by Trustee or Mortgagee shall constitute *prima facie* evidence of the truth and accuracy of the matters recited, including, without limitation, appointment of any successor Trustee, nonpayment of the Total Obligations, notice, filing, posting, and conduct of the sale in the manner provided in this Instrument and by Law; (D) all prerequisites to the validity of the sale shall be rebuttably presumed to have been performed; (E) the receipt from Trustee or Mortgagee, or such other party or officer conducting the sale, shall be sufficient to discharge the purchaser for his purchase money, and no purchaser or his assigns or personal representatives, shall be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication, or non-application; (F) to the fullest extent permitted by Law, Grantor shall be completely and irrevocably divested of all of its Right, title, interest, claim, and demand whatsoever, either at Law or in equity, in and to the property sold, and such sale shall be a perpetual bar both at Law and in equity against Grantor and against all other persons claiming or to claim any part of the property sold by, through or under Grantor; (G) to the extent and under such circumstances as are permitted by Law, Mortgagee, on behalf of Lenders, may be a purchaser at any such sale and may credit the bid against the Total Obligations; and (H) Mortgagee, as a matter of Right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of all or any part of the Mortgaged Property and of the income, rents, issues, and profits.

(ii) The above provisions regarding foreclosure of the Lien of this Instrument by public sale to be conducted by Trustee, or any substitute Trustee (as provided below), are not intended as an exclusive method of foreclosure or to deprive Mortgagee of any other legal or equitable remedies available to it. Accordingly, it is specifically agreed that the above remedy of foreclosure by Trustee's sale shall be cumulative and shall not in any way be construed as an exclusive remedy. Mortgagee shall be fully entitled to a court foreclosure and to avail itself of any and all other legal or equitable remedies at any time available under the laws of the applicable state.

(iii) It is agreed that the power of sale above conferred upon Trustee is conferred upon the above-named Trustee and upon its successors or any substitute Trustee, as provided, and in the event Trustee advertises the Mortgaged Property or any portion for sale under this Instrument, Trustee, or any substitute Trustee appointed, may complete the sale whether advertised by Trustee or substitute Trustee, and deeds may be executed accordingly by Trustee or substitute Trustee actually making the sale. Mortgagee may rescind any notice of default or notice of sale without such rescission constituting a waiver of any default or impairing any Right or remedy available to Mortgagee.

(iv) Notwithstanding anything contained in this Instrument to the contrary, Mortgagee may exercise any or all of the remedies of a secured party available to it under the UCC with respect to the Mortgaged Property; *provided, however*, that Mortgagee may, at its option, dispose of the Fixtures and Personalty in accordance with Mortgagee's rights and remedies in respect of the real property pursuant to the provisions of this Instrument, in lieu of proceeding under the UCC.

(d) Trustee or Receiver. Mortgagee or Trustee may make application to a court of competent jurisdiction, as a matter of strict Right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Total Obligations, for appointment of a receiver of the Mortgaged Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to sell, rent, maintain, and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply the Rents in accordance with the provisions of *Section 7.7* in this Instrument.

(e) Cancellation of Insurance. In the event Mortgagee, on behalf of Lenders, is the successful bidder at a foreclosure sale of all or any part of the Mortgaged Property, it shall have the Right to cancel any insurance policy covering the property foreclosed upon and collect any unearned premiums from said policy.

(f) Other. Exercise any and all other rights, remedies, and recourses granted under the Transaction Documents or now or in the future existing in equity, at Law, by statute, or otherwise.

8.2 Divestment of Rights, Tenant at Sufferance. After sale of all or any portion of the Mortgaged Property and the passage of any applicable upset bid or waiting period, Grantor shall be divested of any and all interest and claim, including any interest or claim to all insurance policies, bonds, loan commitments, contracts, and other intangible property covered by this Instrument. Additionally, with respect to the Land, Improvements, Fixtures, and Personalty, after a sale of all or any portion and the passage of any applicable upset bid or waiting period, Grantor will be considered a tenant at sufferance of the purchaser of the same, and said purchaser shall be entitled to immediate possession. If Grantor fails to vacate the Mortgaged Property immediately, said purchaser may and shall have the Right, without further notice to Grantor, to go into any court in any precinct or county in which the Mortgaged Property is located and file an action in eviction, forcible entry and detainer, or unlawful or forcible detainer against Grantor or its assigns or legal representatives as a tenant at sufferance.

8.3 Remedies Cumulative, Concurrent, and Nonexclusive. Trustee and Mortgagee have all rights, remedies, and recourses granted in the Transaction Documents and available at Law or equity (including specifically those granted by the UCC, as amended but taking into account the provisions of the Transaction Documents) and same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against Grantor or others obligated under the Transaction Documents, or against the Mortgaged Property, or against any one or more of them at the sole discretion of Mortgagee; (c) may be exercised as often as necessary, it being agreed by Grantor that the exercise or failure to exercise any of the same shall not be construed as a waiver or release of any Right, remedy, or recourse; and (d) are intended to be, and shall be, nonexclusive. No delay or omission of Trustee or Mortgagee to exercise any Right or power accruing upon any Default shall impair any Right or power or to be construed to be a waiver of such Default.

8.4 Release of and Resort to Collateral. Any part of the Mortgaged Property may be released by Mortgagee in accordance with the Transaction Documents without affecting, subordinating, or releasing the

Lien, security interest, and assignment against the remainder of the Mortgaged Property. The Lien, security interest, and other rights granted shall not affect or be affected by any other security taken for all or any part of the Total Obligations. The taking of additional security or the rearrangement, extension, or renewal of all or any part of the Total Obligations shall not release or impair the Lien, security interest, and other rights granted by this Instrument or affect the liability of any endorser, guarantor, or surety, or improve the Right of any permitted junior Lienholder. This instrument, as well as any instrument given to secure any rearrangement, renewal, or extension of all or any part of the Total Obligations secured, shall be and remain a first and prior Lien, subject to Permitted Encumbrances, on all of the Mortgaged Property not expressly released until the Total Obligations are completely paid.

8.5 Waiver of Redemption, Notice, and Marshaling of Assets. To the fullest extent permitted by Law, Grantor irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Grantor by any present or future laws exempting the Mortgaged Property from attachment, levy, or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment, (b) all notices of any Default (except as may be provided for under the terms of this Instrument or the other Transaction Documents, or required by Law) or of Mortgagee's, Lenders' or Trustee's election to exercise or the actual exercise of any Right, remedy, or recourse provided for under the Transaction Documents, or required by Law, (c) any Right to appraisal or marshaling of assets or a sale in inverse order of alienation, (d) the exemption of homestead, and (e) the administration of estates of decedents or other matters to defeat, reduce, or affect the Right of Mortgagee under the terms of this Instrument to sell the Mortgaged Property for the collection of the Total Obligations secured by this Instrument (without any prior or different resort for collection) or the Right of Mortgagee, under the terms of this Instrument, to the payment of the Total Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant (only reasonable expenses of such sale being first deducted). Grantor expressly waives and relinquishes any Right or remedy which it may have or be able to assert by reason of any applicable Law pertaining to the rights and remedies of sureties.

8.6 Discontinuance of Proceedings. In case Mortgagee invokes any Right, remedy, or recourse permitted under the Transaction Documents and later elects to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified Right so to do, and, in such event, Grantor, Mortgagee, and Lenders shall be restored to their former positions with respect to the Total Obligations, the Transaction Documents, the Mortgaged Property, and otherwise and the rights, remedies, recourses, and power of Mortgagee shall continue as if same had never been invoked.

8.7 Application of Proceeds, Deficiency Total Obligation. The proceeds of any sale of, and the Rents and other income generated by the holding, leasing, operating, or other use of, the Mortgaged Property shall be applied by Mortgagee (or the receiver, if one is appointed) to the extent that funds are available in accordance with the Transaction Documents with any surplus to be paid, at Mortgagee's option, to the payment of any Debt secured by a subordinate deed of trust or security interest on the Mortgaged Property or to Grantor. Any other party liable on the Total Obligations shall be liable to the extent allowed under applicable Law for any deficiency remaining in the Total Obligations and Total Obligations arising subsequent to the sale referenced in this paragraph.

8.8 Purchase by Mortgagee. Mortgagee has the Right to become the purchaser on behalf of Lenders at the sale of the Mortgaged Property under this Instrument and has the Right to be credited on the amount of its bid for all or any part of the Mortgaged Property being sold and all of the Total Obligations due and owing as of the date of such sale.

8.9 Disaffirmation of Contracts. The purchaser at any Trustee's or foreclosure sale may disaffirm any easement granted or rental, lease, or other contract made in violation of any provision of this Instrument or the Transaction Documents and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement or rental, lease, or other contract. With respect to any Tenant Lease submitted to and approved by Mortgagee, Mortgagee agrees that the holding of a foreclosure sale or conveyance in lieu of foreclosure by it shall not terminate such Tenant Lease nor the rights and obligations of a lessee, so long as such lessee continues to perform all of its obligations, including, without limitation, the payment of all rental payments.

8.10 Deficiency Suit. It is expressly agreed by Grantor that to the extent any applicable Law requires that the "fair value" of the Mortgaged Property be determined as of the foreclosure date in order to enforce a deficiency against Grantor or any other party liable for repayment of the Total Obligations, the term "fair value" will include those matters required by Law and will also include the additional factors set forth below: (a) the Mortgaged Property is to be valued "AS IS" and "WITH ALL FAULTS," and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure; (b) there shall be an assumption of a prompt resale of the Mortgaged Property for an all cash sales price by the purchaser at the foreclosure sale; (c) an offset to the fair value of the Mortgaged Property, as determined under this Instrument, shall be made by deducting from such value the reasonable estimated closing costs relating to the sale of the Mortgaged Property, including, but not limited to, brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges which are incurred by a seller of property; (d) the burden on the Mortgaged Property of any Right of redemption available to Grantor or any other party; and (e) after consideration of the factors required by Law and those required above, an additional discount factor shall be calculated based upon the estimated time it will take to effectuate a sale of the Mortgaged Property so that the "fair value" as so determined is discounted to be as of the date of the foreclosure sale of the Mortgaged Property. Grantor acknowledges, however, its waiver of appraisal rights as set forth in *Section 7.5*.

8.11 Mortgage and Deed of Trust. This instrument shall be effective as a mortgage, as well as a deed of trust, and upon the occurrence of and during the continuation of any Default may be foreclosed as to the Mortgaged Property in any manner permitted by the laws of the state in which each respective part of the Mortgaged Property is situated. Any foreclosure may be brought by Trustee or any Mortgagee, as applicable. If a foreclosure is commenced by Trustee, Mortgagee may, at any time before the sale, and to the extent permitted by applicable Law, direct Trustee to abandon the sale, and may then institute suit for the collection of the Total Obligations, and for the foreclosure or enforcement of the Subject Liens.

## **SECTION 9 SECURITY AGREEMENT.**

9.1 Security Interest. This instrument shall be construed as a Deed of Trust and Mortgage on real property and it shall also constitute and serve as a security agreement on personal property within the meaning of, and shall constitute until the grant of the Deed of Trust and Mortgage shall terminate as provided in *Section 2.1(b)* of this Instrument, a first and prior security interest under *Article 9* of the UCC (subject only to the Permitted Encumbrances) with respect to the Personalty (other than Tenant Leases and Rents) and Fixtures. Grantor has granted, bargained, conveyed, assigned, transferred, and set over, and by these presents does grant, bargain, convey, assign, transfer, and set over unto Mortgagee for the benefit of Lenders a first and prior security interest (subject only to the Permitted Encumbrances) in and to all of Grantor's Right, title, and interest

in, to, and under the Personalty (other than Tenant Leases and Rents) and Fixtures to secure the full and timely payment of the Total Obligations and the full and timely performance and discharge of the Total Obligations.

9.2 Uniform Commercial Code Remedies. Trustee and Mortgagee shall have all the rights, remedies, and recourses with respect to the Personalty and Fixtures afforded a secured party by the UCC in addition to, and not in limitation of, the other rights, remedies, and recourses afforded by the Transaction Documents and at Law.

9.3 No Total Obligation of Trustee or Mortgagee. The assignment and security interest granted shall not be construed to (a) deem or constitute Trustee or Mortgagee as trustees in possession of the Mortgaged Property, (b) obligate Trustee or Mortgagee to operate or attempt to operate the Mortgaged Property or (c) take any action, incur any expenses, or perform or discharge any obligation, duty, or liability whatsoever under any of the Personalty or otherwise.

## **SECTION 10 TRUSTEE.**

10.1 Reimbursement by Grantor. **GRANTOR WILL, FROM TIME TO TIME, REIMBURSE TRUSTEE FOR AND SAVE AND HOLD TRUSTEE HARMLESS FROM AND AGAINST ANY AND ALL LOSS, COST, LIABILITY, DAMAGE AND EXPENSE WHATSOEVER INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES OTHER THAN THOSE ARISING FROM TRUSTEE'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

10.2 Retention of Monies. All monies received by Trustee shall, until used or applied as provided in this Instrument, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by Law), and Trustee has no liability for interest on any monies received.

10.3 Successor Trustee. It is agreed that Mortgagee may at any time or times, at the sole option of Mortgagee, appoint a successor or substitute Trustee in the place of Trustee or any substitute Trustee appointed, by a duly acknowledged written instrument, and, immediately upon recordation, any person so appointed shall have all powers conferred upon Trustee above named, and it is agreed that said power of substitution may be exercised as frequently and at such times as Mortgagee or the then holder of said indebtedness may reasonably desire.

10.4 Succession Instruments. Any new Trustee appointed pursuant to any of the provisions of this Instrument shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his or her predecessor in the rights under this Instrument with like effect as if originally named as Trustee; but, nevertheless, upon the written request of Mortgagee or any acting successor trustee, Trustee ceasing to act shall execute and deliver an instrument transferring to successor trustee, upon the trust expressed, all the estates, properties, rights, powers, and trusts of Trustee ceasing to act, and shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor trustee appointed.

## SECTION 11 MISCELLANEOUS.

11.1 No Release. Neither the Subject Liens, Grantor's obligations, nor Trustee's, Mortgagee's, or any Lenders' Rights under this Instrument are released, diminished, impaired, or adversely affected by the occurrence of any one or more of the following events: (a) the taking or accepting of any other security or assurance for any of the Total Obligations; (b) any release, surrender, exchange, subordination, or loss of any security or assurance at any time existing in connection with any of the Total Obligations; (c) the modification of, amendment to, or waiver of compliance with any terms of any other Transaction Document without Grantor's consent *except* as required in that other Transaction Document; (d) any present or future insolvency, bankruptcy, or lack of corporate or trust power of any party at any time liable for the payment of any of the Total Obligations; (e) *except* as specifically required by any other Transaction Document, any renewal, extension, or rearrangement of the payment of any of the Total Obligations (either with or without notice to or consent of Grantor) or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Trustee, Mortgagee, or any Lender to any Person; (f) any neglect, delay, omission, failure, or refusal of Trustee, Mortgagee, or any Lender to take or prosecute any action in connection with any agreement, document, guaranty, or instrument evidencing, securing, or assuring the payment of any of the Total Obligations other than this Instrument; (g) any failure of Trustee, Mortgagee, or any Lender to notify Grantor of any renewal, extension, or assignment of any of the Total Obligations, or the release of any security under any other document or instrument, or of any other action taken or refrained from being taken by Trustee, Mortgagee, or any Lender against any Person, or any new agreement between Mortgagee, any Lender, and any Person, it being understood that, except as expressly required by the Transaction Documents and the other Transaction Documents to which Grantor is a party, neither Mortgagee nor any Lender is required to give Grantor any notice of any kind under any circumstances whatsoever with respect to or in connection with the Total Obligations, including, without limitation, notice of acceptance of this Instrument or any of the Mortgaged Property; (h) the illegality, invalidity, or unenforceability of any of the Total Obligations against any third party obligated with respect to it by reason of the fact that the Total Obligations, or the interest paid or payable with respect to any of it, exceeds the amount permitted by Law, the act of creating any of it is *ultra vires*, or the officers, partners, or trustees creating any of it acted in excess of their authority, or for any other reason; or (i) if any payment by any party obligated with respect to any of the Total Obligations is held to constitute a preference under applicable Laws or for any other reason Mortgagee or any Lender is required to refund any payment on any of the Total Obligations or pay the amount of it to someone else.

11.2 Waivers. Except to the extent expressly otherwise provided in this Instrument or in any other Transaction Document and to the extent permitted under applicable Law, Grantor waives (a) any Right to require Trustee, Mortgagee, or any Lender to proceed against any other Person, to exhaust Rights in any other Collateral, or to pursue any other Right that Trustee, Mortgagee, or any Lender may have; (b) with respect to the Total Obligations, presentment and demand for payment, protest, notice of protest and nonpayment, notice of acceleration, and notice of intent to accelerate; and (c) all Rights of marshaling in respect of any of the Mortgaged Property or any other Collateral.

11.3 Recording. Grantor shall cause this Instrument and all renewals, extensions, amendments, and substitutions to it to be recorded, filed, re-recorded, and refiled in the manner and in the recording or filing offices as Trustee or Mortgagee reasonably request and shall pay all recording, filing, re-recording, and refiling Taxes, fees, and other charges. Mortgagee may at any time cause this Instrument (or a carbon, photographic, or other reproduction of this Instrument) to be filed as a financing statement, but the failure of Mortgagee to do so does not impair the validity or enforceability of this Instrument.

11.4 Information. Except as otherwise provided by Law, Mortgagee's charge for furnishing each statement of account or each list of any of the Mortgaged Property is \$10.00.

11.5 VENUE AND SERVICE OF PROCESS. EXCEPT TO THE EXTENT JURISDICTION OR VENUE IS ONLY PROPER IN ANOTHER LOCATION BECAUSE OF THE LOCATION OF THE LAND, GRANTOR (A) IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK OR IN THE UNITED STATES COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN NEW YORK CITY, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND AGREES AND CONSENTS THAT SERVICE OF PROCESS MAY BE MADE UPON IT IN ANY LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THE LOAN PAPERS AND THE OBLIGATION BY SERVICE OF PROCESS AS PROVIDED BY NEW YORK LAW, (B) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR IN THE FUTURE HAVE TO THE LAYING OF VENUE OF ANY LITIGATION BROUGHT IN CONNECTION WITH ANY TRANSACTION DOCUMENT OR THE TOTAL OBLIGATIONS BROUGHT IN ANY SUCH COURT, (C) IRREVOCABLY WAIVES ANY CLAIMS THAT ANY LITIGATION BROUGHT IN ANY OF THOSE COURTS HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (D) AGREES TO DESIGNATE AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN NEW YORK IN CONNECTION WITH ANY SUCH LITIGATION AND TO DELIVER TO MORTGAGEE EVIDENCE THEREOF, IF REQUESTED, (E) IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THOSE COURTS IN ANY LITIGATION BY THE MAILING OF COPIES OF THAT LEGAL PROCESS BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID AT ITS ADDRESS AS PROVIDED IN THE CREDIT AGREEMENT, (F) IRREVOCABLY AGREES THAT ANY LEGAL PROCEEDING AGAINST ANY PARTY TO ANY TRANSACTION DOCUMENT ARISING OUT OF OR IN CONNECTION WITH THE TRANSACTION DOCUMENTS OR THE TOTAL OBLIGATIONS MAY BE BROUGHT IN ONE OF THOSE COURTS, AND (G) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY TRANSACTIONS OR DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY. The scope of each of these waivers is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common Law and statutory claims. These waivers are a material inducement to the agreement by Mortgagee and each Lender to enter into the Transaction Documents, and they have each relied, and may continue to rely, on these waivers in its dealings with Grantor. Grantor represents and warrants that it has reviewed these waivers with its legal counsel, and that it knowingly and voluntarily agrees to each waiver following consultation with legal counsel. These waivers are irrevocable, may not be modified either orally or in writing, and apply to any renewals, extensions, amendments, and replacements of any Transaction Document.

11.6 Governing Law. The Rights and duties of the parties to this Instrument and the validity, construction, enforcement, and interpretation of this Instrument are governed by the Laws of the United States of America and of (a) the state in which this counterpart of this Instrument is recorded for items and matters for which choice of Law is mandatory in the state or otherwise required due to the location of the Land, and (b) New York in respect of all other matters.

11.7 Loan Paper. This instrument is a "Loan Paper" under the Credit Agreement and is subject to the applicable provisions of Sections 1 and 13 of the Credit Agreement, all of which are incorporated in this agreement by reference the same as if set forth in this agreement verbatim.

11.8 Amendments, Etc. No amendment, waiver, or discharge to or under this Instrument is valid unless it is in writing and is signed by the party against whom it is sought to be enforced and is otherwise in conformity with the requirements of Section 13.11 of the Credit Agreement.

11.9 **ENTIRETY.** THIS INSTRUMENT AND THE OTHER TRANSACTION DOCUMENTS TO WHICH GRANTOR IS PARTY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

11.10 **Mortgagee and Lenders.** Mortgagee is the agent for each Lender under the Transaction Documents. The Subject Liens and all Rights granted to Mortgagee under or in connection with this agreement are for each Lender's ratable benefit. Mortgagee may, without the joinder of any Lender, exercise any Rights in Mortgagee's or Lenders' favor and direct Trustee to exercise any Rights in Trustee's favor under or in connection with this Instrument, including, without limitation, conducting any foreclosure sales and executing full or partial releases of, amendments or modifications to, or consents or waivers under this Instrument. Mortgagee's and each Lender's Rights and obligations *vis-a-vis* each other may be subject to one or more separate agreements between those parties. However, Grantor need not inquire about any such agreement and is not subject to any terms of it unless Grantor specifically joins it. Therefore, neither Grantor nor its successors or assigns is entitled to any benefits or provisions of any such separate agreement or is entitled to rely upon or raise as a defense any party's failure or refusal to comply with the provisions of it.

11.11 **Parties.** This instrument benefits Trustee, Mortgagee, Lenders, and their respective successors in title, other successors, and assigns and binds Grantor and its successors in title, other successors, and assigns. The Rights of Trustee are transferrable to any of Trustee's successors or assigns in accordance with this Instrument. Upon appointment of any successor Mortgagee under the Transaction Documents, all of the Subject Liens, estates, and Rights of Mortgagee under this Instrument shall automatically vest in that new Mortgagee as successor Mortgagee on behalf of Lenders without any further act, deed, conveyance, or other formality *other than* that appointment. Unless otherwise required by Law, a written instrument executed by the predecessor Mortgagee and successor Mortgagee reciting the appointment of the new Mortgagee under the Transaction Documents is full evidence of the facts recited and of the Right and authority of the successor Mortgagee. The Rights of Mortgagee and Lenders under this Instrument may be transferred with any assignment of the Total Obligations. The Transaction Documents contain provisions governing assignments of the Total Obligations and of Rights and obligations under this Instrument.

**REMAINDER OF PAGE INTENTIONALLY BLANK.  
SIGNATURE PAGES FOLLOW.**



IN WITNESS WHEREOF, Grantor has caused this Instrument to be executed to be effective as of \_\_\_\_\_, \_\_\_\_\_, under seal by its duly authorized officers as of the date first stated above.

Signed, sealed and delivered by:

**LOGIX COMMUNICATIONS CORPORATION,**  
an Oklahoma corporation, as Grantor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Signature Page to Mortgage**

**TRADEMARK**  
**REEL: 1889 FRAME: 0175**

THE STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_, 1999, before me, \_\_\_\_\_, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the same in his or her authorized capacity and that, by his or her signature on the instrument, the person or the entity upon behalf of which he or she acted, executed this Instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(Notarial Seal)

Signature Page to Mortgage

TRADEMARK  
REEL: 1889 FRAME: 0176

**ANNEX A**

**LAND**

**ANNEX B**

**PERMITTED ENCUMBRANCES**

ANNEX C  
LEASE AGREEMENT

Annex C

14759.1

RECORDED: 04/19/1999

TRADEMARK  
REEL: 1889 FRAME: 0179