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**MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING**

Cover Sheet

Dated as of April 10, 2003

Mortgagor: 625 N. Michigan, LLC  
(Hereinafter sometimes "Borrower")

Mortgagor's c/o Berwind Property Group, Ltd.

Notice Address: 3000 Centre Square West  
1500 Market Street  
Philadelphia, Pennsylvania 19102  
Attn: Lorretta Kelly

With a copy to: c/o Berwind Property Group, Ltd.  
770 Township Line Road  
Suite 150  
Yardley, Pennsylvania 19067  
Attention: Scott Williams

With a courtesy copy to: Holland & Knight LLC  
131 S. Dearborn, 30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: Anthony L. Frink

Mortgagee: MASSACHUSETTS MUTUAL LIFE INSURANCE  
COMPANY, a Massachusetts corporation  
(Hereinafter sometimes "Lender")

01030453 Cook Co, IL

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Mortgagee's Notice Address: c/o David L. Babson & Company Inc.  
 Real Estate Finance Group  
 1500 Main Street, Suite 2100  
 Springfield, Massachusetts 01115  
 Attention: Managing Director

With a copy to: David L. Babson & Company Inc.  
 150 South Wacker Drive  
 Suite 2500  
 Chicago, Illinois 60606  
 Attention: Managing Director

Note Amount: \$47,600,000

Maturity Date: May 1, 2010

State: Illinois

Property of Cook County Clerk's Office

MORTGAGE AND SECURITY AGREEMENT

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**MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING**

THIS MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of April 10, 2003, by and between 625 N. MICHIGAN, LLC, an Illinois limited liability company having an office at c/o Berwind Property Group, Ltd., 3000 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102 ("Borrower"), and MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation having an office at c/o David L. Babson & Company Inc., Real Estate Finance Group, 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115 ("Lender").

**GRANTING CLAUSES**

For good and valuable consideration and to secure the payment of an indebtedness in the principal sum of Forty Seven Million Six Hundred Thousand and 00/100 Dollars (\$47,600,000) lawful money of the United States, to be paid according to that certain Promissory Note of even date herewith from Borrower to Lender in said principal sum, with a maturity date of May 1, 2010, and by this reference made a part hereof (said Promissory Note, as the same may hereafter be amended, modified, consolidated, split or extended, the "Note"), together with all other obligations and liabilities due or to become due to Lender, all amounts, sums and expenses paid hereunder by or payable to Lender according to the terms hereof, and all other covenants, obligations and liabilities of Borrower under the Note, this Mortgage, the Assignment (hereinafter defined) and any other instrument evidencing, securing or executed in connection with the loan evidenced by the Note (all of the foregoing instruments, collectively, the "Loan Documents"), and together with all interest on said indebtedness, obligations, liabilities, amounts, sums, Advances (as hereinafter defined) and expenses (all of the foregoing, collectively, the "Indebtedness"), Borrower has created a security interest in and mortgaged, warranted, granted, bargained, sold, conveyed, assigned, pledged, transferred and set over, and does by these presents create a security interest in and MORTGAGE WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Lender, its successors and assigns forever, WITH MORTGAGE COVENANTS and with all POWERS OF SALE, to the extent available, and other STATUTORY RIGHTS AND COVENANTS in the State (hereinafter defined), the following property:

The parcel or parcels of land described in Schedule A attached hereto and by this reference made a part hereof (the "Land");

**TOGETHER** with the buildings, foundations, structures and improvements (including fixtures in which Borrower now has or hereafter may acquire a possessory or title interest) now or hereafter located on or in the Land (collectively, the "Improvements");

**TOGETHER** with all right, title and interest, if any, of Borrower in and to the streets and roads, opened or proposed, abutting the Land, all strips and gores within or adjoining the Land, the air space and right to use the air space above the Land, all rights of ingress and egress to and from the Land, all easements, rights of way, reversions, remainders, estates, rights, titles, interests,

privileges, servitudes, tenements, hereditaments, and appurtenances now or hereafter affecting the Land or the Improvements, all royalties and rights and privileges appertaining to the use and enjoyment of the Land or the Improvements, including all air, lateral support, streets, alleys, passages, vaults, drainage, water, oil, gas and mineral rights, development rights, all options to purchase or lease, and all other interests, estates or claims, in law or in equity, which Borrower now has or hereafter may acquire in or with respect to the Land or the Improvements (collectively, the "Appurtenances");

The Land, the Improvements and the Appurtenances are hereinafter sometimes collectively referred to as the "Premises";

**TOGETHER** with all equipment, fittings, furniture, furnishings, appliances, apparatus, and machinery in which Borrower now or hereafter has a possessory or title interest and now or hereafter installed in or located upon the Premises and all building materials, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein or located thereon in which Borrower now has or hereafter may acquire a possessory or title interest; all fixtures, other goods and personal property of whatever kind and nature now contained on or in or hereafter placed on or in the Premises and used or to be used in connection with the letting or operation thereof, in which Borrower now has or hereafter may acquire a possessory or title interest (but specifically excluding inventory) and all renewals or replacements of any of the foregoing property or articles in substitution thereof (collectively, the "Equipment");

**TOGETHER** with all right, title and interest of Borrower in and under all present or future accounts, deposit accounts, escrows, documents, instruments, chattel paper, and general intangibles, including "payment intangibles", as the foregoing terms are defined in the Code (hereinafter defined), all monies, deposits or reserves held by the Lender or Lender's agent or any other accounts established pursuant hereto or pursuant to any other Loan Document, and all contract rights, including, without limitation, casualty insurance policies and liability insurance policies (irrespective of whether such policies are required to be obtained or maintained in force pursuant to this Mortgage or other Loan Documents), trade names, trademarks, servicemarks, logos, copyrights, goodwill, franchises, books, records, plans, specifications, permits, licenses, approvals, actions and causes of action which now or hereafter relate to, are derived from or are used in connection with the Premises or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the "Intangibles");

**TOGETHER** with all right, title and interest of Borrower in and under all leases, lettings, tenancies, licenses and similar arrangements with respect to the Premises or any part thereof now or hereafter entered into and all amendments, extensions, renewals and guaranties thereof (collectively, the "Leases"), all security therefor, including letters of credit rights and supporting obligations, and all moneys payable thereunder whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time or any successor statute thereto (the "Bankruptcy Code");

**TOGETHER** with all rents, income, accounts, receivables, issues, profits, security deposits, letter of credit rights, supporting obligations, uncertificated securities and investment property

and other benefits to which Borrower may now or hereafter be entitled from the Premises, the Equipment or the Intangibles or under or in connection with the Leases (collectively, the "Property Income"); and

**TOGETHER** with all proceeds, judgments, claims, compensation, awards of damages and settlements pertaining to or resulting from or in lieu of any condemnation or taking of the Premises by eminent domain or any casualty loss or damage to any of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, and including also, without limitation, the right to assert, prosecute and settle claims arising out of or pertaining to such condemnation or taking or such casualty loss under insurance policies constituting an Intangible and to apply for and receive payments of proceeds under such insurance policies and in any condemnation or taking, the right to apply for and receive all refunds with respect to the payment of property taxes and assessments and all other proceeds from the conversion, voluntary or involuntary, of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, or any part thereof, into cash or liquidated claims. Collectively, all of the foregoing, are herein referred to as the "Proceeds."

The Equipment, the Intangibles, the Leases, the Property Income and the Proceeds are hereinafter sometimes collectively referred to as the "Collateral." The Premises and the Collateral are hereinafter sometimes collectively referred to as the "Mortgaged Property."

**TO HAVE AND TO HOLD** the Mortgaged Property, with all the privileges and appurtenances to the same belonging, and with the possession and right of possession thereof, unto Lender and its successors and assigns forever.

**ARTICLE I  
Definition of Terms**

As used in this Mortgage, the terms set forth below shall have the following meanings:

"Advances". All sums, amounts or expenses advanced or paid and all costs incurred by Lender, as provided in this Mortgage or in any other Loan Document, upon failure of Borrower to pay or perform any obligation or covenant contained herein or in such other Loan Document.

"Appurtenances". See Granting Clauses.

"Assignment". The Assignment of Leases and Rents from Borrower to Lender of even date herewith, as the same may be amended or modified from time to time.

"Bankruptcy Proceeding". Any proceeding, action, petition or filing under the Federal Bankruptcy Code or any similar state or federal law now or hereafter in effect relating to bankruptcy, reorganization or insolvency, or the arrangement or adjustment of debts.

"Borrower". The party or parties identified and defined as Mortgagor on the Cover Sheet and in the preamble of this Mortgage, any subsequent owner of the Mortgaged Property, and its or their respective heirs, executors, legal representatives, successors and assigns.

"Business Day". Any day other than a Saturday, Sunday or other day on which national banks in the State are not open for business.

"Code". The Uniform Commercial Code of the State.

"Collateral". See Granting Clauses.

"Default". Any of the matters, events or occurrences enumerated in Section 4.01 of this Mortgage.

"Default Rate". The per annum interest rate equal to the lesser of (i) the highest rate permitted by applicable law as of the date hereof or the date of any Advance hereunder, whichever is higher, to be charged on commercial mortgage loans, or (ii) the sum of three percent (3%) plus the greater of either the Contract Rate (as defined in the Note) or the rate published in The Wall Street Journal as the average prime rate in its Money Rates section as of the date of any Advance hereunder. If The Wall Street Journal is not in publication on the applicable date, or ceases to publish such average rates, then any other publication acceptable to Lender quoting daily market average prime rates will be used.

"Environmental Law". Any present or future federal, state or local law, statute, regulation or ordinance, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including, without limitation, each of the following as to date or hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Federal Water Pollution Control Act (also known as the Clean Water Act); the Clean Air Act; and the Hazardous Materials Transportation Act; the Solid Waste Disposal Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Emergency Planning and Community Right-To-Know Act; the Federal Insecticide, Fungicide and Rodenticide Act; the National Environmental Policy Act; and, the Rivers and Harbors Appropriation Act.

"Environmental Report". ENSR International ("ENSR") dated November, 2002, together with a reliance letter from ENSR dated March 6, 2003 permitting Lender to rely on the November, 2002 report.

"Equipment". See Granting Clauses.

"ERISA". The Employee Retirement Income Security Act of 1974, as amended.

"Event of Default". Any one or more of the events (a) described in Section 4.01 of this Mortgage after expiration of the notice and grace period, if any, provided in Section 7 of the Note, or if no notice or grace period is provided for in Section 7 of the Note then upon the occurrence of the event, or (b) otherwise herein or in any other Loan Document deemed to be an "Event of Default".



"Fiscal Year". The 12 month period commencing on January 1 and ending on December 31 during each year of the term of this Mortgage, or such other fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. During the first year of the term hereof, Borrower's Fiscal Year shall be deemed to have commenced on the date of this Mortgage and shall end on the regular Fiscal Year ending date as indicated in the immediately preceding sentence.

"GoCo". GoCo 625 LLC, an Illinois limited liability company.

"Guaranty and Indemnity Agreement". That certain Guaranty and Indemnity Agreement of even date herewith from Berwind Property Group, Inc., Berwind Property Group, Ltd. and GoCo 625, LLC for the benefit of Lender.

"Hazardous Substance". Any material, waste or substance which is:

(i) included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in or pursuant to any Environmental Law, or subject to regulation under any Environmental Law;

(ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. §172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or

(iii) explosive, radioactive, asbestos, a polychlorinated biphenyl, oil or a petroleum product.

Notwithstanding the aforesaid, Hazardous Substance shall not include any routine maintenance, cleaning and office supplies that are stored and used at the Mortgaged Property provided that such routine maintenance, cleaning and office supplies are stored and used in compliance with all Environmental Laws.

"Impositions". All taxes of every kind and nature, sewer rents, charges for water, for setting or repairing meters and for all other utilities serving the Premises, and assessments, levies, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any portion thereof (including the Property Income), and any stamp or other taxes which might be required to be paid, or with respect to any of the Loan Documents, any of which might, if unpaid, affect the enforceability of any of the remedies provided in this Mortgage or result in a lien on the Mortgaged Property or any portion thereof, regardless of to whom assessed.

"Indebtedness". See Granting Clauses.

"Intangibles". See Granting Clauses.

"Land". See Granting Clauses.

"Late Charge". Any charge designated as such and payable by Borrower for tardy performance by Borrower under the Note, this Mortgage or any other Loan Document.

"Leases". See Granting Clauses.

"Lender". Massachusetts Mutual Life Insurance Company, the mortgagee identified as such on the Cover Sheet and in the preamble of this Mortgage, and its successors and assigns (including any other holders from time to time of the Note).

"Loan". The loan made by Lender to Borrower evidenced by the Note.

"Loan Documents". See Granting Clauses.

"Losses". Claims, suits, liabilities (including without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, reasonable costs, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense).

"Management Agreement". That certain Management Agreement dated of even date with this Mortgage between Borrower and Manager.

"Manager". Golub & Company.

"Mortgaged Property". See Granting Clauses.

"Note". See Granting Clauses.

"Permitted Encumbrances". The liens and security interests created by this Mortgage and the other Loan Documents and those exceptions to title set forth in Schedule B to this Mortgage.

"Premises". See Granting Clauses.

"Proceeds". See Granting Clauses.

"Property Income". See Granting Clauses.

"Release". Release means and includes the following: the release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of a Hazardous Substance no matter how or by whom or what caused.

"Remediation". Remediation means and includes the following: any response, remedial, removal or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of a Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment,

audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances and to anything referred to in Section 2.20.

"State". The State or Commonwealth in which the Land is situated.

## ARTICLE II Covenants of Borrower

Borrower covenants, warrants, represents and agrees with and to Lender as follows:

Section 2.01 Payment of the Indebtedness. Borrower shall punctually pay the Indebtedness at the times and in the manner provided in the Note and the other Loan Documents, all in lawful money of the United States of America.

Section 2.02 Title to the Mortgaged Property. Borrower has fee simple title (or such lesser estate therein as may be specified in Schedule A) to the Premises and good indefeasible title to the balance of the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances.

- (a) Borrower has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth.
- (b) This Mortgage is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property
- (c) Borrower will preserve such title and will forever warrant and defend the same and the validity and priority of the lien hereof to Lender against all claims whatsoever.

Section 2.03 Maintenance of the Mortgaged Property. Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting or which may be interpreted as affecting the Mortgaged Property. Borrower shall permit Lender to enter upon and inspect the Mortgaged Property with reasonable prior notice at all reasonable hours (and without prior notice in the event of an emergency or if the inspection pertains to public areas). Borrower shall not, without the prior consent of Lender (a) change the use of the Premises or cause or permit the use or occupancy of any part of the Premises to be discontinued if such change of use or discontinuance would violate any zoning or other law, ordinance or regulation; (b) consent to any zoning reclassification, modification or restriction affecting the Premises; (c) threaten, commit or permit any waste, structural or material alteration, demolition or removal of the Mortgaged Property or any portion thereof (provided that the Equipment included within the Collateral may be removed if replaced with similar items of equal or greater value); or (d) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership. Notwithstanding the aforesaid, with respect to obtaining Lender's consent for any structural or material alteration, demolition or removal of the Mortgaged Property, Lender agrees that its consent shall not be

unreasonably withheld, delayed or conditioned. No provision of this Section 2.03 shall prohibit Borrower from undertaking and completing tenant improvement work authorized under Leases previously approved by Lender or not requiring Lender's prior approval.

Section 2.04 Insurance; Restoration.

- (a) Borrower shall keep the Improvements and the Equipment insured against damage by fire and the other hazards covered by a comprehensive all risk coverage insurance policy, with terrorism coverage, in an amount equal to 100% of the full replacement value thereof (which shall mean the full repair and actual replacement value thereof providing for no deductible in excess of \$50,000, without reduction for depreciation or coinsurance) as approved by Lender, which approval shall not be unreasonably withheld, delayed or conditioned, and against loss of rents in an amount not less than 12 months' rental income from all Leases. Borrower shall also carry earthquake insurance with terms satisfactory to the Lender, and such other insurance, and in such amounts, as Lender may from time to time reasonably require, against insurable risks which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the availability of insurance and to the type of construction, location, utilities, use and occupancy of the Premises or any replacements or substitutions therefor. Such additional insurance may include workers' compensation, boiler and machinery, flood, demolition and contingent liability from the operation of "nonconforming" improvements on the Premises, and shall be obtained within 20 days after demand by Lender. Borrower shall not obtain any umbrella or blanket liability or casualty policy or any separate or additional insurance which is contributing in the event of loss or any other insurance policy not required hereunder. Notwithstanding the foregoing, in the event Borrower obtains an umbrella or a blanket insurance policy or a separate policy or any other insurance policy affecting the Mortgaged Property hereunder, Borrower shall notify Lender of the same and shall cause certified copies of each insurance policy to be delivered as required under Section 2.04(c) below. Any umbrella or blanket insurance policy shall specifically allocate to the Mortgaged Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate policy insuring only the Mortgaged Property in compliance with the provisions of Section 2.04(c), giving Lender all of the rights set forth in this Section 2.04. The Proceeds of insurance paid on account of any damage to or destruction of the Premises or any portion thereof shall be paid over to Lender to be applied as hereinafter provided.
- (b) Borrower shall also maintain commercial general liability insurance with respect to the Premises against personal injury, death and property damage, with limits of liability in amounts reasonably satisfactory to Lender in its sole discretion.
- (c) All insurance policies and endorsements required pursuant to this Mortgage shall
- (i) be endorsed to name Lender as an insured thereunder, as its interest may appear, with loss payable to Lender, without contribution, under a long-form, non-

contributory mortgagee clause, or otherwise endorsed as Lender may reasonably require; (ii) be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State, with a rating of "A VIII" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Lender; which approval shall not be unreasonably withheld, delayed or conditioned; (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially changed except upon 30 days prior written notice of intention of non-renewal, cancellation or material change to Lender, and that no act or thing done by Borrower or Lender shall invalidate the policy as against Lender; and (iv) be in form and content reasonably satisfactory to Lender. Borrower shall deliver all original policies including all endorsements and renewals thereof, or copies thereof certified by the insurance company or authorized agent as being true copies, to Lender together with all endorsements required hereunder, on the date of this Mortgage and thereafter at least 10 days prior to the expiration date of such policies. Borrower may request an extension of time not exceeding 120 days to deliver the foregoing policies, endorsements and renewals or certified copies thereof if Borrower has done all things necessary to obtain the issuance of the policies, endorsements and renewals including, without limitation, the payment of all premiums therefor, and Borrower has delivered to Company within the above 10 day period an insurance binder reasonably satisfactory to Company issued by the approved insurer showing all required coverage to be in full force and effect for the succeeding 12 month period along with evidence reasonably satisfactory to Company of payment in full of all premiums. If Borrower fails to maintain insurance in compliance with this Mortgage, Lender may (but shall not be obligated to) obtain such insurance and pay the premium therefor and Borrower shall reimburse Lender on demand for all such Advances with respect thereto. Notwithstanding anything to the contrary contained herein or in any provision of law, the Proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds and Lender shall be entitled to dispose of such Proceeds as hereinafter provided.

- (d) In the event of any damage to or destruction of the Premises and/or Equipment, Borrower shall give prompt written notice to Lender and shall promptly commence and diligently continue to completion the repair, restoration and rebuilding of the Premises and/or Equipment so damaged or destroyed in full compliance with all legal requirements and with the provisions of Section 2.04(h)(i) below, and free and clear from any and all liens and claims that are not contested as herein provided. Such repair, restoration and rebuilding of the Premises are sometimes hereinafter collectively referred to as the "Work." Borrower shall not adjust, compromise or settle any claim for insurance proceeds without the prior consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Lender shall have the option in its sole discretion to apply any insurance Proceeds it may receive pursuant to this

Mortgage (less any reasonable cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees) to the payment of the Indebtedness or to allow all or a portion of such Proceeds to be used for the Work. If any insurance Proceeds are applied to reduce the Indebtedness, provided no Event of Default shall have occurred or be continuing, Lender shall apply the same, without any prepayment fee, in the following order:

- (i) first, to the payment of interest due on any Advances;
- (ii) next, to the principal amount of any Advances;
- (iii) next, to any Late Charges, reasonable attorney's fees or any other amount due hereunder or under a Loan Document save for the amounts described in (iv) and (v) immediately below;
- (iv) next, to accrued interest then due under the Note; and
- (v) finally, to the unpaid principal balance of the Note (in the inverse order of maturity of principal installments thereof).

If an Event of Default shall have occurred and be continuing, however, Lender, at its option, may apply any insurance Proceeds to the foregoing items in such order and priority as Lender deems appropriate in its sole discretion.

- (e) In the event of the foreclosure of this Mortgage or other transfer of title to or assignment of the Mortgaged Property in extinguishment of the Indebtedness in whole or in part, all right, title and interest of Borrower in and to all policies of insurance required by this Mortgage and any insurance Proceeds shall inure to the benefit of and pass to Lender or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.
- (f) Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, to apply and make claims for insurance Proceeds under all insurance policies constituting Intangibles, to prosecute and settle such claims and to endorse any checks, drafts or other instruments representing any insurance Proceeds whether payable by reason of loss thereunder or otherwise. Additionally, Lender may notify any and all insurers under casualty and liability insurance policies constituting part of the Intangibles that Lender has a security interest pursuant to the provisions of this Mortgage in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to Lender. Lender's rights under this Section 2.04(f) may be exercised by Lender or a court appointed receiver appointed upon the request of Lender and irrespective of whether or not a Default shall have occurred under this Mortgage.
- (g) Notwithstanding the provisions of Section 2.04(d) above, if in Lender's reasonable judgment the cost of the Work shall not exceed 50 percent of the then outstanding

principal balance of the Note, then Lender shall, upon request by Borrower, permit Borrower to use the Proceeds for the Work (subject to the provisions of, and less Lender's costs described in, Section 2.04(h) below), so long as:

- (i) no Event of Default shall then exist nor any matter(s) exist which, after notice of default or passage of time or both, would constitute an Event of Default;
- (ii) Borrower demonstrates to the reasonable satisfaction of Lender that the Work can be completed by the date that is the earlier to occur of (a) twelve (12) months after the damage or destruction and (b) six (6) months prior to the Maturity Date of the Note;
- (iii) Borrower provides Lender with evidence reasonably satisfactory to Lender that upon completion of the Work either (a) the net operating income from the Mortgaged Property for the twelve (12) month period following the completion of the Work shall not be less than the net operating income during the twelve (12) month period immediately prior to the damage or destruction, or (b) the quotient obtained by dividing (i) the anticipated cash flow from the Mortgaged Property (i.e., gross income from all sources less all operating expenses including taxes and a reasonable reserve for capital improvements, tenant improvements and leasing commissions but excluding principal and interest payments on the Loan, depreciation and other non-cash charges and proceeds from casualty policies), for the 12-month period commencing on the first day of the month following the date the Work is completed by (ii) the required payments of principal and interest on the Loan for the same 12-twelve month period, shall be equal to or greater than the quotient obtained by dividing (i) the cash flow from the Mortgaged Property, for the 12-month period ending on the last day of the month which is prior to the damage or destruction by (ii) the required payments of principal and interest on the Loan for the same 12-month period, or is otherwise reasonably acceptable to Lender. Satisfaction of either of the tests set forth in this subparagraph shall be determined by Lender in Lender's sole but reasonable discretion based on financial statements for the Mortgaged Property and other information reasonably required by Lender, all in form and substance reasonably satisfactory to Lender and submitted to Lender by Borrower.
- (iv) all sums necessary to effect the Work over and above any available Proceeds (the "Excess Costs") shall be at the sole cost and expense of the Borrower and, at Lender's request, Borrower shall deposit such additional amounts, as estimated by Lender in its reasonable discretion, with Lender prior to commencing any Work and at all times thereafter;
- (v) at all times during any such Work Borrower shall maintain, at its sole cost and expense, workers' compensation, builders risk and public liability

insurance in amounts reasonably satisfactory to Lender and in accordance with the provisions of this Section 2.04; and

- (vi) any unexpended Proceeds, at the sole option of the Lender, shall either be paid over to the Borrower or shall be applied to the reduction of the Indebtedness.
  
- (h) If any insurance Proceeds and/or Excess Costs are used for the Work, then such Proceeds and Excess Costs shall be held by Lender and shall be paid out from time to time to Borrower as the Work progresses (less any reasonable cost to Lender of recovering and paying out such Proceeds or Excess Costs, including reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:
  - (i) If the Work is structural or if the cost of the Work is reasonably estimated to exceed One Hundred Thousand Dollars (\$100,000), the Work shall be conducted under the supervision of a certified and registered architect or engineer reasonably satisfactory to Lender. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Lender shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld, conditioned or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Premises shall be at least equal in value and general utility to the Premises immediately prior to the damage or destruction.
  
  - (ii) Each request for payment shall be made on not less than seven Business Days prior notice to Lender and shall be accompanied by a certificate of the architect or engineer in (i) above (or a certificate given by Borrower if no architect or engineer is so required) stating (a) that all of the Work completed has been done in material compliance with the approved plans and specifications, if required under (i) above, (b) that the sum requested is justly required to reimburse the Borrower for payments by Borrower, or is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by Lender does not exceed the value of the Work done to the date of such certificate, (c) if the sum requested is to cover payment relating to repair and restoration of Equipment required or relating to the Premises, that title to the items of Equipment covered by the request for payment is vested in Borrower, and (d) that the amount of such Proceeds and/or Excess Costs remaining in the hands of Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion). The foregoing notwithstanding, if such certificate is from an architect or engineer, and such architect or engineer will only supply the



information required by AIA form G702, then Borrower may certify the balance of the required information. Additionally, each request for payment shall contain a statement signed by Borrower approving both the Work done to date and the Work covered by the request for payment in question.

- (iii) Each request for payment shall be accompanied by waivers of lien reasonably satisfactory to Lender covering that part of the Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Lender that there has not been filed with respect to the Premises any mechanics' or other lien or instrument for the retention of title relating to any part of the Work not discharged of record, except to the extent Borrower is contesting the same as herein provided. Additionally, as to any Equipment covered by the request for payment, Lender shall be furnished with evidence of payment therefor and such further evidence reasonably satisfactory to assure Lender of its valid first lien on the Equipment.
- (iv) Lender shall have the right to inspect the Work at all reasonable times upon reasonable advance notice and may condition any disbursement of Proceeds upon the satisfactory completion, as determined in Lender's reasonable discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by Lender of the plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement.
- (v) Proceeds shall not be disbursed more frequently than every 30 days.
- (vi) Any request for payment made after the Work has been completed shall be accompanied by a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Premises legal to the extent available.
- (vii) Upon completion of the Work and payment in full therefor, or upon any failure on the part of Borrower to promptly commence the Work or to proceed diligently and continuously to completion of the Work, Lender may apply any such Proceeds it then or thereafter holds to the payment of the Indebtedness after notice from Lender to Borrower of such failure and the failure of Borrower to so commence or proceed; provided, however, that Lender, at its sole option, shall be entitled to apply at any time all or any portion of insurance Proceeds it then holds to the curing of any Event of Default under this Mortgage, the Note or any other Loan Document.

- (i) Notwithstanding any other provision of this Section 2.04, if no Event of Default shall exist or be continuing (nor any matters have occurred which, after notice or passage of time or both, would constitute an Event of Default) and in Lender's reasonable judgment the cost of the Work is less than one percent (1%) of the outstanding principal balance of the Note as of the date of loss or damage to the Premises and/or Equipment and the Work can be completed in less than 60 days, then Lender shall, upon request by Borrower, permit Borrower to apply for and receive the insurance Proceeds directly from the insurer (and Lender shall advise the insurer to pay over such Proceeds directly to Borrower), provided that Borrower shall apply such insurance Proceeds solely to the prompt and diligent commencement and completion of such Work.

**Section 2.05 Condemnation.** Borrower shall notify Lender immediately of the actual or, to its knowledge, threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in such proceedings and Borrower shall deliver to Lender all instruments requested by Lender to permit such participation. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain the Proceeds of any such condemnation and, if an Event of Default has occurred, to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Mortgage. Borrower shall adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Lender. All Proceeds of any condemnation, or purchase in lieu thereof, of the Premises or any portion thereof are hereby assigned to and shall be paid to Lender. Borrower hereby authorizes Lender to collect and receive such Proceeds, to give proper receipts and acquittances therefor and, in Lender's sole discretion, to apply such Proceeds (less any reasonable cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees and costs allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Premises in the manner and subject to the conditions set forth in Section 2.04(h). If the Proceeds are used to reduce the Indebtedness, they shall be applied in the order provided in Section 2.04(d), without any prepayment fee. Borrower shall promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the condemnation Proceeds to Lender. Notwithstanding anything herein to the contrary, if Lender determines that (i) after the repair, restoration and rebuilding of the Premises the Mortgaged Property shall comply with all applicable codes, laws and regulations, (ii) none of the Leases in effect prior to the condemnation or taking shall be terminated as a result of said condemnation or taking (or contain an unexpired right to so terminate), (iii) the condemnation or taking shall not affect access to the Mortgaged Property or otherwise materially and adversely affect Borrower's use and operation of the Mortgaged Property and (iv) the other requirements set forth in Section 2.04(g) are satisfied, then Lender shall permit Borrower the right to use the Proceeds for restoration, repair and rebuilding of the Premises and such Proceeds shall be disbursed in accordance with Section 2.04(h) hereof.

Section 2.06 Impositions.

- (a) Borrower shall pay and discharge all Impositions prior to delinquency and shall furnish to Lender validated receipts or other evidence reasonably satisfactory to Lender showing the payment of such Impositions within 10 days after the same would otherwise have become delinquent. Borrower's obligation to pay Impositions pursuant to this Mortgage shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon Lender an obligation to pay any property taxes or other Impositions or which otherwise adversely affect Lender's interests. Should Borrower default in the payment of any Impositions, except to the extent Borrower is contesting the same as hereinafter provided, Lender may (but shall not be obligated to) pay such Impositions or any portion thereof and Borrower shall reimburse Lender on demand for all such Advances.
- (b) Borrower shall not be required to pay, discharge or remove any Imposition so long as Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that prior to the date on which such Imposition would otherwise have become delinquent Borrower shall have (i) given Lender prior notice of such contest and (ii) deposited with Lender, and shall deposit such additional amounts as are necessary to keep on deposit at all times, an amount equal to at least 110 percent of the total of (a) the balance of such Imposition then remaining unpaid and (b) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition as finally determined, together with all interest and penalties payable in connection therewith. Lender shall have full power and authority to apply any amount deposited with Lender under this Section 2.06(b) to the payment of any unpaid Imposition to prevent the sale or forfeiture of the Mortgaged Property for nonpayment thereof. Lender shall have no liability, however, for failure to so apply any amount deposited unless Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by Lender after payment of the Imposition for which a deposit was made shall be repaid to Borrower unless an Event of Default shall have occurred under the provisions of this Mortgage, in which case said surplus may be retained by Lender to be applied to the Indebtedness. Notwithstanding any provision of this Section 2.06(b) to the contrary, Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of Lender, the Mortgaged Property is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such Advances. Additionally, in such event, if Lender is prevented by law or judicial or administrative order from paying such

Imposition, then Lender, at its option, may declare the entire Indebtedness immediately due and payable.

Section 2.07 Deposits. Borrower shall deposit with Lender, monthly, on the due date of each monthly installment under the Note, 1/12th of the annual charges (as reasonably estimated by Lender) for general real estate taxes and special assessments imposed against the Premises. If required by Lender, Borrower shall also deposit with Lender, simultaneously with such monthly deposits and/or the execution of this Mortgage, a sum of money which together with such monthly deposits will be sufficient to make the payment of each such charge at least 30 days prior to the date initially due. The deposits are subject to the Security Agreement created in Section 3.01(a) hereof, and Borrower hereby grants Lender a first perfected security interest therein, to secure the Indebtedness. Should such charges not be ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the charges for the prior year or payment period, as reasonably estimated by Lender. When the charges are fixed for the then current year or period, Borrower shall deposit any deficiency on demand. All funds deposited with Lender shall be held without interest (unless the payment of interest thereon is required under applicable law), may be commingled with Lender's other funds, and shall be applied in payment of the foregoing charges when and as payable provided that no Event of Default shall have occurred. Should an Event of Default occur, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as Lender in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. Borrower shall furnish Lender with bills and all other documents necessary for the payment of the foregoing charges at least 10 days prior to the date on which each payment thereof shall first become due.

Section 2.08 Mortgage Taxes. Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Lender by reason of its ownership of, or measured by amounts payable under, the Note, this Mortgage or any other Loan Document (other than income, franchise, excise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Note or the other Loan Documents. If Borrower fails to make such payment within five days after notice thereof from Lender, Lender may (but shall not be obligated to) pay the amount due, and Borrower shall reimburse Lender on demand for all such Advances. If applicable law prohibits Borrower from paying such taxes, charges, filing, registration and recording fees, excises, levies, stamp taxes or other taxes, then Lender may declare the Indebtedness then unpaid to be immediately due and payable. In such event, no prepayment fee shall be charged.

Section 2.09 Loan Documents Authorized. Borrower hereby represents and warrants to Lender as follows:

- (a) The execution and delivery of this Mortgage, the Note and the other Loan Documents have been duly authorized and there is no provision in Borrower's organizational documents, as amended, requiring further consent for such action by any other person or entity.

- (b) Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.
- (c) Borrower has all necessary franchises, licenses, authorizations, registrations, permits and approvals and full power and authority to own and operate its properties, including the Mortgaged Property, and carry on its business as now conducted in each jurisdiction where Borrower conducts its business.
- (d) The execution and delivery of and performance of its obligations under the Loan Documents (i) will not result in Borrower's being in default under any provision of its organizational documents, as amended, any court order, or any mortgage or other agreement to which it is a party and (ii) do not require the consent of or any filing with any governmental authority.
- (e) All necessary and required actions have been duly taken by and on behalf of Borrower to make and constitute the Loan Documents, and the Loan Documents constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.
- (f) The Mortgaged Property is in compliance with all provisions of all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject.

Section 2.10 Maintenance of Existence. So long as it owns the Mortgaged Property, Borrower shall do all things necessary to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals under the laws of the state of its formation and the State, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court now or hereafter applicable to Borrower or to the Mortgaged Property or any portion thereof.

Section 2.11 Payment of Liens. Borrower shall pay when due all payments and charges due under or in connection with any liens and encumbrances on and security interests in the Mortgaged Property or any portion thereof, all rents and charges under any ground leases and other leases forming a part of the Mortgaged Property, and all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any portion thereof (provided that if Lender in its reasonable opinion does not believe at any time that the Mortgaged Property is in jeopardy or in danger of being forfeited or foreclosed, Borrower shall have the right to contest, bond over, and/or insure the same in accordance with provisions for contesting Impositions under Section 2.06(b) hereof), and shall cause the prompt (but in no event later than thirty (30) days after imposition), full and unconditional discharge of all liens imposed on or against the Mortgaged Property or any portion thereof (except to the extent contested, bonded or insured as herein above permitted). Borrower shall do or cause to be done, at the sole cost of Borrower, everything necessary to fully preserve the initial priority of the lien of this Mortgage. If Borrower fails to make any such payment or if a lien attaches to the Mortgaged Property or any portion thereof and is not discharged within said

thirty (30) days or bonded or insured over as herein above permitted, Lender may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Lender on demand for all such Advances.

**Section 2.12 Costs of Defending and Upholding the Lien.** Lender may, after advance notice to Borrower, (a) appear in and defend any action or proceeding, in the name and on behalf of either Lender or Borrower, in which Lender is named or which Lender in its sole discretion determines may adversely affect the Mortgaged Property, this Mortgage, the lien hereof or any other Loan Document; and (b) institute any action or proceeding which Lender in its sole discretion determines should be instituted to protect its interest in the Mortgaged Property or its rights under this Mortgage or any other Loan Document including, without limitation, to the extent an Event of Default has occurred, foreclosure proceedings. Borrower agrees and shall pay or reimburse Lender on demand for all Advances and reasonable expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with any such action or proceeding.

**Section 2.13 Costs of Enforcement.** Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Mortgage or any other Loan Document, any enforcement, compromise or settlement of this Mortgage, any other Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of Lender in respect of any thereof, by litigation or otherwise.

**Section 2.14 Interest on Advances and Expenses.** All Advances made at any time by Lender pursuant to the provisions of this Mortgage or the other Loan Documents or under applicable law shall be secured by this Mortgage as part of the Indebtedness, with equal rank and priority. All such Advances shall bear interest at the Default Rate from the date that each such Advance is made to the date of repayment and all Advances with interest thereon shall be payable to Lender on demand.

**Section 2.15 Indemnification.** To the extent not arising from the gross negligence or willful misconduct of Lender or its directors, officers, employees or agents, Borrower shall indemnify and hold harmless Lender and Lender's directors, officers, employees and agents from and against and reimburse them for all Losses which may be imposed upon, asserted against, or incurred or paid by any of them (a) by reason of, on account of or in connection with any act or occurrence relating to the Mortgaged Property or any bodily injury, death, other personal injury or property damage occurring in, upon or in the vicinity of the Premises from any cause whatsoever, (b) as a result of the failure of Borrower to perform any of its obligations under any of the Loan Documents, or (c) on account of any transaction otherwise arising out of or in any way connected with the Mortgaged Property, this Mortgage or the Indebtedness.

**Section 2.16 Financial Statements; Records.** Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles ("GAAP"), or in accordance with other methods acceptable to Lender in its reasonable discretion, consistently applied, and shall furnish to Lender:

- (a) a current certified rent roll, signed and dated by Borrower, detailing for each of the Leases, the names of all tenants of the Premises, the portion of the Premises occupied by each tenant, the annual rental, including base rent, additional rent and percentage rent, and any other charges payable and the term of each of the Leases, including the expiration date, and any other information as is reasonably required by Lender, within 120 days after the end of each Fiscal Year of the Borrower;
- (b) an annual operating statement of the Premises detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow, to be prepared and certified by Borrower in the form reasonably approved by Lender, within 120 days after the close of each Fiscal Year of Borrower;
- (c) an annual balance sheet and profit and loss statement of Borrower and of any guarantor or indemnitor under any Loan Document, in a form reasonably approved by Lender, prepared and certified by Borrower, the guarantor or indemnitor as to the applicable statement. All statements shall be delivered to Lender within 120 days after the close of each Fiscal Year of Borrower;
- (d) an annual operating budget and management plan presented on a monthly basis consistent with the annual operating statement described above for the Premises, including cash flow projections for the upcoming year, and all proposed capital replacements and improvements at least 15 days prior to the start of each Fiscal Year;
- (e) a copy of Borrower's federal tax return within ten (10) days after the return is filed with the Internal Revenue Service; and
- (f) upon reasonable advance request from Lender, the following:
  - (i) quarterly operating statements of the Premises, prepared and certified by Borrower in a form reasonably approved by Lender, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for that quarter and containing appropriate year to date information, within 30 days after the end of each fiscal quarter;
  - (ii) an accounting of all security deposits held in connection with any of the Leases, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release for Borrower to obtain information regarding such accounts directly from such financial institutions;

- (iii) such other financial or management information (including monthly or quarterly certified rent rolls meeting the requirements of paragraph 2.16(a) above) as may, from time to time, be reasonably required by Lender and in form and substance reasonably satisfactory to Lender; and
- (iv) Borrower's books and records regarding the Premises for examination, review, copying and audit by Lender or its auditors during normal business hours and convenient facilities for such examination review, copying and audit of Borrower's books and records of account.
- (g) Borrower's agreements as set forth in this Section 2.16 constitute material inducements to Lender in making the loan secured by this Mortgage. Borrower hereby appoints Lender its attorney in fact for the purpose of hiring at Borrower's cost an auditing firm to prepare and deliver to Lender any overdue rent roll, operating statement or balance sheet and profit and loss statement in the event Borrower fails or refuses to furnish to Lender those financial reports as and when due and continues to fail to produce the same within seven (7) days after notice from Lender to Borrower specifying such failure or refusal. The foregoing costs and expenses of the auditor shall be due and payable to Lender upon demand and shall constitute a part of the Indebtedness. Lender acknowledges and agrees that the failure of GoCo to submit its financial statements as herein required shall not be a Default hereunder.

Section 2.17 Prohibition Against Conveyances and Encumbrances. (A) Except with the prior consent of Lender, Borrower shall not and shall not permit others to convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest (all of the aforesaid conveyances are collectively referred to herein as "Transfers") (a) in all or any portion of the Mortgaged Property including the Leases; (b) in the stock of any corporation which is either Borrower or a beneficial owner of all or any portion of Borrower or of the Mortgaged Property; (c) in Borrower (or any trust of which Borrower is a trustee); or (d) if Borrower is a limited or general partnership, limited liability company, joint venture, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership, in any person, firm or entity having a direct or indirect legal or beneficial ownership interest in Borrower (e.g., if Borrower is a limited liability company, Transfers of any member's ("Members") interest in Borrower, Transfers of any interest in any such Member ("Indirect Owner"), Transfers of any interest in any such Indirect Owner, etc.). Any such transfer or encumbrance to which Lender consents must be to a United States citizen or an entity owned or controlled by United States citizens. All requests for Lender's consent under this Section 2.17 shall be on a form previously approved by Lender and shall be accompanied by the payment of Lender's standard processing fee for such transactions then in effect. Lender's consent to any of the foregoing actions, if given (in Lender's sole discretion), may be conditioned upon a change in the interest rate, maturity date, amortization period or other terms under the Note, the payment of a transfer fee and/or any other requirements of Lender. In addition to the standard processing fee and the transfer fee referred to in this Section 2.17, Borrower agrees to



bear and shall pay or reimburse Lender on demand for all reasonable expenses (including reasonable attorneys' fees, title search costs, and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such transaction.

(B) Notwithstanding the prohibitions of Section 2.17(A), Lender will permit a one-time transfer of title to the Mortgaged Property without modification of the terms of the Loan, which shall be personal to the Borrower named on page one of this Mortgage and shall not apply to any successor, assignee or transferee of Borrower, and shall be subject, however, to satisfaction of each and every one of the following conditions:

1. At least thirty (30) days prior to such transfer, Borrower shall have provided Lender with written notice of the proposed transfer together with an administrative processing fee in the amount of \$10,000 (the "Processing Fee") along with the name(s), address(es) and organizational documents of the proposed transferee and principals, affiliates and parents or other majority owners, as applicable, of the proposed transferee. Upon receipt, the Processing Fee shall be deemed earned, whether or not Borrower completes the proposed transfer and whether or not the proposed transfer is actually approved by Lender pursuant to this Section 2.17(B). A separate Processing Fee shall be required for each transfer requested. Additionally, Borrower shall furnish to Lender along with such notice the following: (i) reasonably detailed and complete financial statements of the proposed transferee and principals, affiliates and parents or other majority owners, as applicable, of the proposed transferee, (ii) information with respect to the business and business experience of the proposed transferee and its principals, affiliates and parents or other majority owners, as applicable, and their experience in the ownership and operation of properties similar to the Mortgaged Property and other commercial real estate, (iii) evidence that the Mortgaged Property as of the proposed date of transfer of title and thereafter will be managed by a management company and under a management agreement meeting the requirements of subparagraph 4 below, (iv) the terms and conditions of the proposed sale and a copy of the executed purchase and sales agreement, (v) a description, including a chart, if appropriate, of the ownership structure of the proposed transferee and each of its principals, affiliates and parent or other majority owners, as applicable, (vi) the management plan for the Mortgaged Property, (vii) the status of the proposed transferee, and if the proposed transferee is a special purpose entity, of its principals, parent or other majority owners, as a "Qualified Real Estate Investor" as defined below and (viii) such other information as Lender may reasonably request to permit it to determine the creditworthiness and management abilities of the proposed transferee and its principals, affiliates and parent or other majority owners, as applicable.
2. The Loan must be current in all respects and there may not be an Event of Default or a Default either as of the date of the notice given Lender under subparagraph 1 above or thereafter through the date of transfer of title to the Mortgaged Property unless such Event of Default or Default is cured prior to the date of transfer of title.

3. The proposed transferee, or, if the proposed transferee is a special single purpose entity, each of its principals, parent or other majority owners, as applicable, shall be a "Qualified Real Estate Investor" as defined below.
4. The Mortgaged Property as of the date of transfer and thereafter must be managed by a management company approved by Lender, which approval shall not be unreasonably withheld, delayed or conditioned, under a management agreement reasonably satisfactory to Lender.
5. The proposed transferee shall assume the Loan from and after the transfer of title under documents in form and substance reasonably satisfactory to Lender (including a statement from Lender of the amount of the unpaid principal balance), subject to the non-recourse provisions of the Loan Documents existing as of the date of the closing of the sale of the Mortgaged Property. Additionally, at the time of the assumption of the Loan, the proposed transferee shall furnish to Lender an environmental indemnity in form and substance reasonably satisfactory to Lender (which form may be different from any form executed by Borrower (and/or other indemnitors) as a result of Lender's updating its standard form of environmental indemnity or as a result of specific environmental conditions at the Mortgaged Property) and, if the proposed transferee is a special purpose entity, a non-recourse carveout guaranty in form and substance reasonably satisfactory to Lender, but no more onerous than that contained in the Loan Documents, each from a financially responsible person or entity approved by Lender, which approval shall not unreasonably withheld, delayed or conditioned. Borrower and the proposed transferee and such other entities or persons as Lender shall reasonably require shall also deliver and, if applicable, execute (i) evidence of authority and entity existence, (ii) Uniform Commercial Code searches, (iii) Uniform Commercial Code financing statements, (iv) an endorsement to Lender's title policy updating the effective date to the date of transfer, showing the transferee as the owner of the Mortgaged Property, showing no additional title exceptions, except as shall be approved by Lender in its reasonable discretion and otherwise in form and substance reasonably acceptable to Lender, (v) opinions of counsel reasonably acceptable to Lender on such matters as Lender shall reasonably require, (vi) evidence of fire and extended coverage insurance and such other insurance, including, without limitation, terrorism insurance, as shall be reasonably required by the Loan Documents and Lender and (vii) such other documents as Lender shall reasonably require in order to effectuate the transaction as contemplated by this Section 2.17(B). The proposed transferee shall make monthly deposits with Lender sufficient to pay when due all real estate taxes, assessments and municipal charges, and to pay any ground rents. In addition, the Lender may require the proposed transferee to establish with Lender at the time of closing of any approved transfer a reasonable reserve for future tenant improvements, leasing commissions and/or capital improvements. To the extent the Loan Documents require any other reserves or deposits at the time of the transfer the same shall be established by the proposed transferee prior to the date of closing of the proposed transfer. The foregoing requirement for deposits and

reserves shall be required notwithstanding that any of the foregoing shall have been waived by Lender with respect to Borrower either in this Mortgage, the Loan Documents or in any side letter or agreement executed by Lender unless the Lender in its reasonable discretion waives such requirement for the transferee.

6. At the closing of any approved transfer, Borrower shall pay to Lender a fee in the amount of one percent (1%) of the then outstanding balance of the Loan in cash or certified funds (the "Transfer Fee"). The Transfer Fee is being paid in order to induce Lender to allow the proposed transferee to assume the obligations of the Borrower under the Loan Documents and to release Borrower and the Indemnitors from liability thereunder for Borrower's and Indemnitor's obligations, acts and omissions from and after the date of transfer in accordance with these provisions, provided, however, in no event shall the Borrower or Indemnitor be released from any liability for acts or omissions prior to the date of the transfer, including without limitation, acts or omissions leading to environmental contamination, whether known or unknown.
7. The cash flow from the Mortgaged Property (i.e., gross income from all sources less all operating expenses including taxes and a reasonable reserve for capital improvements, tenant improvements and leasing commissions but excluding principal and interest payments on the Loan, depreciation and other non-cash charges and proceeds from casualty policies), as reasonably determined by Lender, for the 12-month period ending on the last day of the month which is two months prior to the month of the anticipated date of such transfer of the Mortgaged Property shall be not less than 1.70 times the required payments of principal and interest on the Loan for the same 12-twelve month period as determined by Lender in its reasonable discretion from financial statements for the Mortgaged Property in form and substance reasonably satisfactory to Lender and submitted to Lender.
8. The unpaid principal balance of the Loan shall be not more than sixty eight percent (68%) of the appraised value of the Mortgaged Property according to a current appraisal furnished to and reasonably satisfactory to Lender and prepared by an MAI appraiser reasonably acceptable to Lender.
9. The proposed transfer shall not cause a violation of any federal, state or local law, statute, rule, regulation or order governing the Mortgaged Property, Borrower or the proposed transferee or any of its principals, parent, or other owners.
10. Borrower shall pay all of Lender's reasonable costs and expenses incurred in connection with the proposed transfer of the Mortgaged Property whether or not the transfer actually occurs including, without limitations, reasonable attorneys fees, recording and filing charges, title charges and any endorsement to Lender's title policy.

The Lender will not review or process Borrower's request for approval of a proposed transfer of the Mortgaged Property pursuant to this Section 2.17(B) until such time as Lender has received all of the items, including the Processing Fee, required to be delivered to Lender pursuant to this Section 2.17(B).

For purposes of this Section 2.17(B), "Qualified Real Estate Investor" shall mean any reputable entity which is domiciled in the U.S. with principals who are U.S. citizens and which is reasonably determined by Lender to have satisfied all of the following conditions: (1) the proposed transferee has the qualifications, experience and creditworthiness at least equal to that of Borrower on the date of closing of the Loan; (2) the proposed transferee has the financial strength at least equal to that of Borrower on the date of the closing of the Loan, or the proposed transferee has (a) real estate assets with a current market value of not less than \$40,000,000, (b) net worth of not less than \$150,000,000, and (c) liquid assets of not less than \$20,000,000, and (3) neither the proposed transferee nor any principal, affiliate, parent or other majority owner of the proposed transferee, as of the date for the closing of the transfer of title to the Mortgaged Property or at any time prior thereto, is or has been (i) in default on any indebtedness or loan from Lender or any affiliate of Lender, (ii) involved as a debtor or as the principal of a debtor in any bankruptcy, reorganization or insolvency proceeding, (iii) the subject of any criminal charges or proceedings, (iv) involved in litigation which is reasonably deemed significant by Lender, or (v) listed on, included within or associated with any of the persons or entities referred to in Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended by the United States Department of the Treasury, Office of Foreign Assets Control through the date the determination of Qualified Real Estate Investor is made. All of the foregoing conditions must be satisfied as of the date of the request for approval of transfer of title to the Mortgaged Property and on the date of the proposed closing of the transfer.

(C) Notwithstanding the prohibitions of Section 2.17(A), Lender without requiring the payment of a fee or other payment except as set forth below, or an increase in the interest rate or other terms of the Loan, but subject nevertheless to the conditions set forth below, will permit transfers of membership interests in Borrower among (i) the members of Borrower on the date of this Mortgage (collectively, the "Members"), and (ii) from the Members to entities or persons that have membership interests in the Members on the date of this Mortgage. The foregoing permission to each transfer as outlined above is conditioned upon satisfaction of each of the following: (i) the Loan shall not be in Default at the time of such transfer, (ii) Berwind Property Group, Inc., or Berwind Property Group, Ltd. (collectively, the "Berwind Entities") directly or through subsidiaries that are wholly owned by the Berwind Entities, must continue to own not less than a 9.791% interest in BPG Investment Partnership VI, L.P. ("BPG") (as measured by percentage of base capital allocation) and must continue to control BPG (and therefore, indirectly control Borrower); (iv) Berwind Property Group Ltd. must continue to own 100% of the stock of Bergen of 625, Inc. ("Bergen"), Borrower's managing member, and BPG acting through Bergen must continue to control the Borrower; (v) Borrower notifies Lender within 30 days following

the transfer of the name and address of the transferee and the interest transferred and certifies to Lender in that notice that the required ownership and control described above continues to exist and, (vi) Borrower pays any reasonable costs incurred by Lender relative to the review of transfer documents or reasonable fees for required changes to loan servicing systems. For purposes of this Section 2.17(C) and Section 2.23 below, "control" and "controlling" shall mean the power to direct the management and policies of the applicable entity, whether through the ownership of voting securities or by contract or otherwise. Anything to the contrary contained in this Mortgage notwithstanding, none of the following shall constitute a violation of Section 2.17(A) above, or require Lender's approval or the payment of a fee or other payment, or an increase in the interest rate or other terms of the Loan:

- (a) Leases and amendment and modifications thereto entered into in accordance with the terms hereof;
- (b) Transfers related to condemnations, dedications, vacations and similar governmental actions or requirements, which shall be governed by the provisions of Section 2.05 above;
- (c) Liens that are being contested in accordance with the terms hereof; or
- (d) Transfers of limited partnership interests in BPG, so long as it is in accordance with the partnership agreement therefor, or any other interest in any beneficial owner of Borrower, not including the transfer of membership interests in Borrower, provided that (i) the Berwind Entities directly or through subsidiaries that are wholly owned by the Berwind Entities, continue to own not less than a 9.791% interest in BPG (as measured by percentage of base capital allocation) and continue to control BPG (and therefore, indirectly control Borrower), (ii) Berwind Property Group Ltd. continues to own 100% of the stock of Bergen, Borrower's managing member and (iii) BPG acting through Bergen continues to control Borrower.

Section 2.18 Estoppel Certificates. Within 10 Business Days of a request by Lender, Borrower shall furnish to Lender a duly acknowledged written statement confirming the amount of the outstanding Indebtedness, the terms of payment and maturity date of the Note, the date to which interest has been paid, and whether any known offsets or defenses known to Borrower exist against the Indebtedness. If any such offsets or defenses are alleged to exist, the nature thereof shall be set forth in detail. Borrower shall also furnish to Lender within 30 days of its request therefor tenant estoppel letters from such tenants of the Premises as Lender may require, but such requests as to any one tenant shall not be made more often than once in a calendar year period and provided Borrower uses good faith commercial efforts to obtain an estoppel certificate from each tenant Borrower shall not be in default under this Section 2.18 for its failure to deliver any estoppel certificate beyond what is required by the Lease for any tenant.

Section 2.19 Assignment of Leases and Property Income.

- (a) Borrower hereby absolutely and unconditionally assigns and transfers to Lender the Leases and the Property Income. Borrower shall not otherwise assign, transfer or encumber in any manner the Leases or the Property Income or any portion thereof. Borrower shall have a license, revocable by Lender, after an Event of Default, to collect and use the Property Income as the same becomes due and payable so long as no Event of Default has occurred, but may not collect any Property Income more than 30 days in advance of the date the same becomes due other than security deposits. The assignment in this Section 2.19 shall constitute an absolute and present assignment of the Leases and the Property Income, and not an additional assignment for security, and the existence or exercise of the Borrower's revocable license to collect Property Income shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Lender of any of its rights or remedies under this Section 2.19 shall not be deemed or construed to make Lender a mortgagee-in-possession.
- (b) Except to the extent otherwise herein provided, all proposed Leases (including, throughout this Section 2.19 and elsewhere herein, as provided in the definition of "Lease", renewals of existing Leases, and amendments, extensions and guarantees of any Lease) executed on or after the date hereof (other than residential Leases relating to a residential multifamily property and other Leases described in Subsection 2.19(d)) shall be subject to the prior review and approval of Lender and its counsel, which review and approval shall not be unreasonably withheld, delayed or conditioned, at Borrower's reasonable expense. Except as otherwise consented to by Lender, all Leases shall be written on the standard form of lease which shall have been approved by Lender. Borrower shall furnish Lender with executed copies of all Leases within 10 days after execution thereof. No material changes may be made to the Lender-approved standard lease form without the prior written consent of Lender. Except to the extent otherwise approved by Lender, which approval shall not be unreasonably withheld, delayed or conditioned, all proposed Leases and renewals of existing Leases shall be at rental rates and on terms comparable to existing local market rates and terms and shall be arms-length transactions with bona fide, independent third party tenants. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Lender. Notwithstanding anything contained herein to the contrary, except with the prior written consent of the Lender, no portion of the Mortgaged Property shall be leased, used or occupied for dry cleaning operations or the storage of any chemicals used in the dry cleaning process.
- (c) Borrower shall perform all obligations as lessor under all Leases and shall, to the extent economically practical, enforce all of the terms, covenants and conditions contained therein upon the part of the lessee thereunder to be performed or observed, short of termination thereof, except to the extent hereinafter provided. Additionally, except to the extent hereinafter provided, Borrower shall not take any action which would cause any Lease to cease to be in full force and effect.

Except with the prior consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned, or otherwise herein provided, Borrower shall not (i) cancel, terminate, surrender, sublet or assign any Lease or consent to any cancellation, termination, surrender, subletting or assignment thereof; (ii) amend, modify or subordinate any Lease to any mortgage or security interest that is subordinate to this Mortgage; (iii) enter into any new Lease (except as permitted in Section 2.19(d) below); (iv) waive any default under or breach of any Lease; (v) consent to or accept any prepayment for more than one month in advance or any security deposit or discount of rent or advance rent under any Lease; (vi) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or the Lender's interest therein; or (vii) alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to any of the Leases or cancel or terminate such guaranty, letter of credit or other credit support without the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the aforesaid, Borrower shall have the right to terminate, cancel or surrender any Lease for less than 10,000 square feet of net rentable area without Lender's or its counsel's review or consent provided that a lease termination, cancellation or surrender fee of more than \$150,000 is not required to be paid by tenant in connection with such termination.

- (d) Notwithstanding Section 2.19(b), Lender's or its counsel's review or consent shall not be required for entering into or modifying or amending any Lease covering less than 10,000 square feet of net rentable area, or renewals or extensions thereof, provided that each of the following conditions are satisfied: (i) the Lease utilized is on a standard form previously approved by Lender, subject to such reasonable modifications as shall be negotiated by Borrower and the tenant, (ii) the Lease represents an arm's-length transaction and provides for the payment of market rents and is based on commercially reasonable terms, (iii) neither the Lease nor the activity of the lessee will violate any provision of any other Lease or restriction or covenant affecting the Premises or this Mortgage or any other Loan Document, including Section 2.20(b) hereof and (iv) a subordination, non-disturbance and attornment agreement is not required to be executed by Lender. If any Lease is for 10,000 square feet of net rentable area or more or any of the conditions in (i) through (iv) above are not satisfied then Lender's prior written consent, which consent shall not be unreasonably delayed, withheld or conditioned, shall be required prior to Borrower's execution thereof. Lender agrees that it will promptly execute reasonable subordination, non-disturbance and attornment agreements (on Lender's standard form) required by any Leases that are approved by Lender as herein provided. Borrower shall give Lender notice of any Lease described in this Section 2.19(d) as not requiring Lender's or its counsel's review or consent, together with a fully executed and complete copy of such Lease, not later than 10 days after the execution thereof. In determining under subsection (c) or this subsection (d) whether a Lease is for 10,000 square

feet of net rentable area of the Premises, all space leased to any one tenant (whether pursuant to one or more Leases) shall be aggregated.

- (e) In addition to the foregoing, Borrower shall comply with all terms and provisions of the Assignment.
- (f) Upon occurrence of an Event of Default, Lender may, with or without exercising any other rights or remedies, (i) give or require Borrower to give notice to any or all tenants under the Leases authorizing and directing them to pay all Property Income under the Leases directly to Lender; and (ii) without regard to any waste, adequacy of the security or solvency of Borrower, apply for the appointment of a receiver of the Mortgaged Property to which appointment Borrower hereby consents, whether or not foreclosure proceedings have been commenced under this Mortgage and whether or not a foreclosure sale has occurred.
- (g) If any tenant is required to pay a lease termination fee of \$150,000 or more as a result of such tenant terminating its Lease, the entire amount so required to be paid by such tenant shall be collaterally assigned, pledged and mortgaged over to Lender as additional collateral for the Loan for the purpose of securing payment of all indebtedness, obligations and liabilities of Borrower to the Lender arising under or in connection with the Note, this Mortgage and the other Loan Documents and performance of all agreements, covenants, terms and conditions contained in the foregoing documents and instruments.

The funds paid to Lender shall be deposited by Lender in an interest bearing account ("Lease Termination Reserve Account"), with interest accruing (but remaining in the Lease Termination Reserve Account until funds are disbursed as hereinbelow provided) for the benefit of the Borrower unless Lender is entitled to apply the funds in the Lease Termination Reserve Account after an Event of Default as hereinbelow provided, in which event the interest shall have accrued for the benefit of Lender. Lender shall invest the funds in the Lease Termination Reserve Account in a money market account managed by Oppenheimer Management Company, in the name of Lender. Lender shall be the sole account party on that account. The Lease Termination Reserve Account and all funds deposited therein, shall not constitute a trust fund and Lender shall have the sole right to make withdrawals from such account in accordance with the terms hereof.

The Lease Termination Reserve Account, and all funds deposited therein, shall not constitute any deposit or account of Borrower or monies to which the Borrower is entitled upon demand, or upon the mere passage of time except as otherwise provided herein. Borrower hereby waives any claim of ownership in, or control of the Lease Termination Reserve Account, and acknowledges that Lender has control of the Lease Termination Reserve Account within the meaning of Section 8-106 of the Uniform Commercial Code. This agreement is intended to be a security agreement between Borrower and Lender.



Once the space vacated as a result of the Lease termination is relet pursuant to a fully executed Lease that has been approved by Lender if such approval is required pursuant to Section 2.19 hereof, Borrower may request a disbursement from the Lease Termination Reserve Account in order to reimburse Borrower for (i) the broker's commission(s) associated with reletting (provided such broker's commission is commercially reasonable); (ii) the costs and expenses incurred by Borrower in connection with any tenant improvements made to said relet space approved by Lender in Lender's reasonable discretion; and (iii) any other reasonable costs and expenses of reletting the space, including reasonable attorneys' fees (any such broker's commission and tenant improvements approved by Lender, which approval shall not be unreasonable withheld, delayed or conditioned, shall be referred to herein, respectively, as a "Qualifying Commission" and "Qualifying Improvement" and such other costs and expenses shall be referred to herein as a "Qualifying Cost"). The funds in the Lease Termination Reserve Account shall be disbursed upon satisfaction of all of the requirements set forth on Schedule 1 attached hereto that are applicable, as determined by Lender in its reasonable discretion, to the particular disbursement. Borrower shall not make a request for disbursement from the Lease Termination Reserve Account more often than once in any calendar month and each request for disbursement from the Lease Termination Reserve Account shall be in an amount not less than \$50,000, except for the final request.

Borrower covenants and agrees that all materials, equipment, fixtures, or any other item comprising a part of any Qualifying Improvements shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other liens (unless such mechanic's or materialman's lien is promptly contested in good faith by Borrower and is bonded off to the reasonable satisfaction of Lender in accordance with the terms of Section 2.11 of this Mortgage). Upon satisfaction of all of the requirements set forth on Schedule 1 attached hereto that are applicable, as determined by Lender in its reasonable discretion, and occupancy of the space by a bona fide rent-paying tenant pursuant to a lease based upon commercially reasonable rates and terms and approved by Lender as herein provided, to the extent Lender's approval is required, and payment of all costs with respect to the leasing of the space and the Qualifying Improvements (unless any of such costs are being contested in good faith by Borrower as provided in the Mortgage), Lender shall disburse to Borrower any amounts remaining in the Lease Termination Reserve Account with respect to that space.

- (h) If there is an Event of Default hereunder, then, upon any such Event of Default, Borrower shall immediately lose all of its rights to receive disbursements from the Lease Termination Reserve Account (including any interest that has accrued on the deposit(s)) unless and until the Event of Default is no longer continuing or all amounts secured by this Mortgage have been paid in full and Lender is obligated to release the lien of this Mortgage or the lien of this Mortgage has been assigned by Lender. During the continuance of any such Event of Default, Lender may in

its sole and absolute discretion, use the Lease Termination Reserve Account (or any portion thereof including any interest that has accrued on the deposit) for (i) repayment of any indebtedness secured by this Mortgage (in any order that Lender elects in its sole discretion), including, without limitation, principal prepayments and the Prepayment Premium (as such terms is defined in the Note) applicable to such full or partial prepayments (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any Event of Default; (ii) reimbursement of Lender for all losses and expenses (including, without limitation, reasonable legal fees and disbursements) suffered or incurred by Lender as a result of such Event of Default; (iii) completion or payment of any of the Qualifying Improvements or Qualifying Commissions; or (iv) payment of any amount expended in exercising all rights and remedies available to Lender at law or in equity or under this Mortgage or under the Note or any of the other Loan Documents.

Section 2.20 Environmental Matters; Warranties; Notice; Indemnity.

- (a) Borrower represents and warrants to Lender respecting the Premises and the Equipment as follows:
- (i) Borrower has not installed, used, generated, manufactured, produced, stored, released, discharged or disposed of in, on, under or about the Premises, or transported to or from any portion of the Premises, any Hazardous Substance or allowed any other person or entity to do so, except under conditions permitted by applicable Environmental Laws;
  - (ii) to Borrower's knowledge, there are no Hazardous Substances or underground storage tanks in, on, or under or about the Premises, except those that are both (a) in compliance with Environmental Laws and with permits issued pursuant thereto, and (b) fully disclosed to Lender in writing pursuant to the written reports resulting from environmental assessments of the Mortgaged Property delivered to Lender (the "Environmental Report");
  - (iii) to Borrower's knowledge, there are no past, present or threatened Releases of any Hazardous Substance in, on, under or about the Premises except as described in the Environmental Report;
  - (iv) to Borrower's knowledge, there is no threat of any Release of Hazardous Substances migrating to the Premises except as described in the Environmental Report;
  - (v) to Borrower's knowledge, there is no past or present noncompliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises or the Equipment except as described in the Environmental Report;

- (vi) Except as may be disclosed by the Environmental Report, Borrower does not know of, and has not received, any written or oral notice or other communication from any person or entity (including, but not limited to, a governmental entity) relating to Hazardous Substances or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Premises or Equipment, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and,
  - (vii) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under and about the Premises that is known by Borrower and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or about the Premises and/or to the environmental condition of the Premises.
- (b) Borrower shall not install, use, generate, manufacture, produce, store, Release, discharge or dispose of on, under or about the Premises, or transport to or from any portion of the Premises, any Hazardous Substance or allow any other person or entity to do so, except under conditions permitted by applicable Environmental Laws. Additionally, except with the prior written consent of Lender, no portion of the Premises shall be leased, used or occupied for dry cleaning operations or the storage of any chemicals used in the dry cleaning process.
  - (c) Borrower shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, applicable Environmental Laws.
  - (d) Borrower shall promptly after gaining knowledge of the same provide notice to Lender of:
    - (i) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration of any Hazardous Substance to or from adjoining property;
    - (ii) all claims made or threatened by any person or entity against Borrower, any other party occupying the Premises or any portion thereof, or the Premises, relating to any loss or injury allegedly resulting from any Hazardous Substance; and
    - (iii) the discovery of any occurrence or condition on the Premises or on any real property adjoining or in the vicinity of the Premises, of which Borrower becomes aware, which might cause the Premises or any portion thereof to be in violation of any Environmental Law or subject to any restriction on

ownership, occupancy, transferability or use under any Environmental Law (collectively, an "Environmental Violation").

- (e) Lender may join and participate in, as a party if it so determines, any legal or administrative proceeding or action concerning the Premises or Equipment under any Environmental Law. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and reasonable expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with any such action or proceeding.
- (f) Borrower shall indemnify, defend and hold Lender and Lender's directors, officers, employees and agents harmless from and against any and all claims, demands, liabilities, losses, damages, judgments, fines, penalties, costs and expenses (including reasonable attorneys' fees) directly or indirectly arising out of or attributable to a breach of any warranty or representation contained in this Section 2.20 or of any other provision thereof including, without limitation, (i) all actual and consequential damages, (ii) the costs of any required Remediation, and (iii) the costs of the preparation and implementation of any plans for Remediation, closure or other required plans. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage including any extinguishment of such lien by foreclosure or deed in lieu thereof and any other transfer of the Mortgaged Property.

Section 2.21 Environmental Matters; Remedial Work.

- (a) If any investigation, site monitoring, containment, cleanup, removal, restoration or other Remediation of any kind or nature (to the extent not so arising out of Hazardous Substances which are so released after the Repayment Date or Transfer Date, collectively, the "Remedial Work") is required, reasonably necessary or desirable under any applicable Environmental Law because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground water, surface water, or soil vapor on, under or about the Premises or any portion thereof Borrower shall promptly commence and or cause to be commenced and diligently prosecute or cause to be diligently prosecuted to completion all such Remedial Work. In all events, such Remedial Work shall be commenced within 45 days after any demand therefor by Lender or such shorter period as may be required under any applicable Environmental Law.
- (b) All Remedial Work shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Lender, which approval shall not be unreasonably withheld, delayed or conditioned. All costs and expenses of such Remedial Work and the reasonable costs and expenses of Lender's monitoring or review of such Remedial Work (including reasonable attorneys' fees) shall be paid by Borrower. If Borrower does not timely commence and diligently prosecute to completion the Remedial Work, Lender may (but shall

not be obligated to) cause such Remedial Work to be performed. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with monitoring, reviewing or performing any Remedial Work.

- (c) Except with Lender's prior consent, which consent shall not be unreasonably withheld, delayed or conditioned, Borrower shall not commence any Remedial Work or enter into any settlement agreement, consent decree or other compromise relating to any Hazardous Substances or Environmental Laws which might, in Lender's sole judgment, impair the value of Lender's security hereunder. Lender's prior consent shall not be required, however, if the presence or threatened presence of Hazardous Substances on, under or about the Premises poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Lender's prior consent. In such event Borrower shall notify Lender as soon as practicable of any action taken.

Section 2.22 Environmental Matters; Inspection.

- (a) Lender shall have the right at all reasonable times upon reasonable advance notice (except that prior notice shall not be required in the event of an emergency) to enter upon and inspect all or any portion of the Premises, provided that such inspections shall not unreasonably interfere with the operations of the tenants of the Premises. Lender may select a consulting engineer to conduct and prepare reports of such inspections. The inspection rights granted to Lender in this Section 2.22 shall be in addition to, and not in limitation of, any other inspection rights granted to Lender in this Mortgage, and shall expressly include the right to conduct soil borings and other customary environmental tests, assessments and audits.
- (b) Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and reasonable expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with the inspections and reports described in this Section 2.22 in the following situations:
- (i) If Lender has reasonable grounds to believe, at the time any such inspection is ordered, that there exists an Environmental Violation or that a Hazardous Substance is present on, under or about the Premises or is migrating to or from adjoining property, except under conditions permitted by applicable Environmental Laws and not prohibited by any Loan Document;
- (ii) if any such inspection reveals an Environmental Violation or that a Hazardous Substance is present on, under or about the Premises or is migrating to or from adjoining property, except under conditions permitted by applicable Environmental Laws and not prohibited by any Loan Document; or

- (iii) if an Event of Default exists at the time any such inspection is ordered.

Section 2.23 Management. At all times prior to the payment in full of the Indebtedness, the Mortgaged Property shall be managed by a management company reasonably satisfactory to Lender, and pursuant to a management agreement reasonably satisfactory to Lender. Additionally, any leasing commissions agreement pertaining to the Mortgaged Property shall be reasonably satisfactory to Lender. If at any time either the management company, the management agreement or any leasing commission agreement is not reasonably satisfactory to Lender, the Lender shall notify Borrower and Borrower shall have ninety (90) days after such notice to rectify the situation to Lender's reasonable satisfaction. If by the expiration of said ninety (90) day period Borrower has not rectified the situation to Lender's reasonable satisfaction then such failure shall be an Event of Default hereunder (without Borrower being provided with any further notice or grace period). Such management agreement, and any leasing commissions agreement affecting the Mortgaged Property, shall be subordinate to this Mortgage. As of the date hereof, Lender approves Manager, as manager of the Mortgaged Property having the right, however, to revoke such approval if, and only if, any one or more of the following occur: (i) all of the following are not satisfied: (a) the Berwind Entities directly or through subsidiaries that are wholly owned by the Berwind Entities continue to own at least a 9.791% interest in BPG (as measured by percentage of base capital allocation) and continue to control BPG (and therefore, indirectly control Borrower), (b) Berwind Property Group Ltd. continues to own 100% of the stock of Bergen, Borrower's managing member and (c) BPG acting through Bergen continues to control Borrower; or (ii) Manager has defaulted under the Management Agreement and such default continues uncured after the expiration of any applicable grace or cure period; or (iii) there is an Event of Default hereunder.

Section 2.24 ERISA. As of the date hereof and throughout the term of this Mortgage, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA; (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; (iii) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA; (iv) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans (but BPG has limited partners that are subject to such state statutes); and (v) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under this Mortgage, the Note, or the other Loan Documents) to be a nonexempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Borrower further agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section 2.24 as Lender may from time to time reasonably request.

Section 2.25 Engagement in Other Businesses; Other Indebtedness. Borrower will (a) own no material assets other than the Mortgaged Property, and not engage in any business, other than the business of operating the Mortgaged Property and (b) not incur any indebtedness for borrowed money other than the Loan. Borrower shall have covenants in its organizational documents confirming the aforesaid and shall not amend said organizational documents without Lender's prior written consent.

Section 2.26 Terrorism Certification. Borrower represents and warrants to Lender that neither the Borrower, managing member or general partner of Borrower, as the case may be, nor (i) any person controlling or controlled by any member or general partner of the Borrower, (ii) if any such member or general partner is a privately held entity, any person having a beneficial interest in said member or general partner or (iii) any person for whom any member or general partner is acting as agent or nominee in connection with this investment, is a country, territory, individual or entity designated on the "Specifically Designated Nationals and Blocked Persons List ("SDN List") maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or otherwise banned from engaging in transactions with U.S. entities under the program administered by OFAC or other U.S. law and regulations. During the term of the Loan, any additional members or general partners, as the case may be, or any direct or indirect transfer of ownership of the Borrower or its members or general partners, as the case may be, shall require the pre-approval of Lender in its sole discretion for purposes of determining compliance with this Section 2.26; and Borrower further represents that no property, money, goods, services or other benefits from this transaction shall be paid, donated or otherwise provided, directly or indirectly, to any person or entity on or associated with anyone on the SDN List. Borrower shall update the foregoing representation by written notice to Lender in the event the foregoing representation shall ever become false prior to the time the Loan is paid in full. Any failure to update the foregoing certification shall constitute an Event of Default hereunder.

Section 2.27 Amendments Require Consent. Borrower agrees that it will not amend, modify or terminate any of the Permitted Encumbrances without the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned.

### ARTICLE III Security Agreement

Section 3.01 Warranties, Representations and Covenants of Borrower. Borrower covenants, warrants, represents and agrees with and to Lender as follows:

- (a) This Mortgage constitutes a security agreement under the Code and serves as a fixture filing in accordance with the Code. This Mortgage creates, and Borrower hereby grants Lender, a security interest in favor of Lender as secured party under the Code with respect to any and all Collateral and any goods or personal property included within the Mortgaged Property which may become fixtures as set forth in Section 3.04 hereof. The mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property shall not derogate from or impair in any manner the intention of Borrower and Lender hereby declared that all items of Collateral described in this Mortgage are part of the real property encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the Improvements or whether serial numbers are used for the better identification of certain items. Specifically, the mention in any such financing statement of (i) the rights in or the Proceeds of any policy of insurance, (ii) any condemnation Proceeds, (iii) Borrower's interest in any Leases or Property Income, or (iv) any other item

included in the Mortgaged Property, shall not be construed to alter, impair or impugn any rights of Lender as determined by this Mortgage or the priority of Lender's lien upon and security interest in the Mortgaged Property. Any such mention shall be for the protection of Lender in the event that notice of Lender's priority of interest as to any portion of the Mortgaged Property is required to be filed in accordance with the Code to be effective against or take priority over the interest of any particular class of persons, including the federal government or any subdivision or instrumentality thereof.

- (b) Except for the security interest granted by this Mortgage, Borrower is and, as to portions of the Collateral to be acquired after the date hereof, will be the sole owner of the Collateral, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except Permitted Encumbrances and any of the same that are being contested as herein provided. Borrower shall notify Lender of, and shall defend the Collateral against, all claims and demands of all persons at any time claiming the same or any interest therein.
- (c) Except as otherwise provided in this Mortgage, Borrower shall not lease, sell, convey or in any manner transfer the Collateral without the prior consent of Lender.
- (d) The Collateral is not used or bought for personal, family or household purposes.
- (e) Any tangible Collateral shall be kept on or at the Premises, and Borrower shall not remove the tangible Collateral from the Premises without the prior consent of Lender, except such portions or items of the Collateral as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower with items of equal or greater value.
- (f) Borrower's state of formation is Illinois. Borrower shall not change its place of formation or its entity name without providing Lender with sixty (60) days prior written notice. In the event of any change in name, identity, structure or place of formation of Borrower, Borrower shall promptly after request, execute, file and record such Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all reasonable expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Code forms or continuation statements as Lender shall reasonably deem necessary (subject to Lender's right to sign such statements on behalf of Borrower as provided in Subsection 3.01(g)), and shall pay all reasonable expenses and fees in connection with the filing and recording thereof. If Lender shall initially pay such expenses, Borrower shall promptly reimburse Lender for the expenses.
- (g) Borrower hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to execute in the name of and on behalf of Borrower any and all



financing statements and continuations thereof and to file with the appropriate public office on its behalf and at its reasonable expense any financing or other statements signed only by Lender, as secured party, in connection with the Collateral covered by this Mortgage that Lender reasonably deems necessary.

- (h) Borrower represents that its exact legal name is set forth in the first paragraph of this Mortgage.
- (i) Borrower shall not file any termination statements concerning the Mortgaged Property without Lender's prior written consent unless the Indebtedness has been repaid and this Mortgage has been released.

Where Collateral is in possession of a third party, Borrower will join with the Lender in notifying the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender.

Borrower will reasonably cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper.

**Section 3.02 Financing Statements.** A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS MORTGAGE OR ANY FINANCING STATEMENT RELATING TO THIS MORTGAGE SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

**Section 3.03 Addresses.** The mailing address of Borrower and the address of Lender from which information concerning the security interest granted hereby may be obtained are set forth on the Cover Sheet of this Mortgage. Borrower maintains its sole place of business or its chief executive office at the address in Yardley, Pennsylvania shown on said Cover Sheet, and Borrower shall immediately notify Lender in writing of any change in said place of business or chief executive office.

**Section 3.04 Fixture Filing.** As provided above, this Mortgage shall constitute a fixture filing under the Code as to any goods and other personal property included in the Mortgaged Property in which Borrower has granted to Lender a security interest as provided in this Article III which are or may become fixtures under applicable law. This fixture filing is to be recorded in the Cook County, Illinois Recorder's Office.

#### **ARTICLE IV Default and Remedies**

**Section 4.01 Events of Default.** Each of the following shall constitute a Default under this Mortgage, the Note and the other Loan Documents and shall be deemed to be an Event of Default under this Mortgage, the Note and the other Loan Documents upon the expiration of the notice and cure period provided in Section 7 of the Note, if any, or if no notice or cure period is provided in Section 7 of the Note with respect to such Default, then upon the occurrence of the Default:

- (a) failure in the payment of any amount due as and when due under this Mortgage, the Note or any other Loan Document;
- (b) failure to pay any Imposition as and when due that is not contested pursuant to Section 2.06(b) above or to maintain insurance as required by this Mortgage;
- (c) default in the due observance or performance of any term, covenant or condition contained in this Mortgage, the Note or any other Loan Document;
- (d) if any representation made herein or in any other Loan Document shall prove to be untrue in any material respect;
- (e) violation of any of the covenants set forth in Section 2.17 with respect to conveyances, sales, encumbrances or other prohibited dispositions of the Mortgaged Property or Borrower or any portion thereof or any interest therein;
- (f) violation of any of the covenants set forth in Section 2.19(a) with respect to the further assignment, transfer or encumbrance by Borrower of the Leases or the Property Income or any portion thereof;
- (g) violation of any of the covenants set forth as items (i) through (vii) of Section 2.19(c) with respect to certain actions concerning Leases which shall not be taken by Borrower without the prior consent of Lender;
- (h) if Borrower, any general partner of Borrower or any managing or principal member of Borrower (if Borrower is a limited liability company) or any guarantor of the Note consents to the filing of, or commences or consents to the commencement of, any Bankruptcy Proceeding with respect to Borrower or such guarantor;
- (i) if any Bankruptcy Proceeding shall have been filed against Borrower, any general partner of Borrower any managing or principal member of Borrower (if Borrower is a limited liability company) or any guarantor of the Note and the same is not withdrawn, dismissed, canceled or terminated within 180 days of such filing;
- (j) if Borrower, any general partner of Borrower, any managing or principal member of Borrower (if Borrower is a limited liability company) or any guarantor of the Note is adjudicated bankrupt or insolvent or a petition for reorganization of Borrower or any such general partner, managing member or guarantor is granted;
- (k) if a receiver, liquidator or trustee of Borrower, any general partner of Borrower, any managing or principal member of Borrower (if Borrower is a limited liability company) or any guarantor of the Note or of any of the properties of Borrower or any such general partner, managing member or guarantor shall be appointed;
- (l) if Borrower, any general partner of Borrower, any managing or principal member of Borrower (if Borrower is a limited liability company) or any guarantor of the

Note shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due;

- (m) except as otherwise permitted herein, if Borrower, any general partner of Borrower, any managing or principal member of Borrower (if Borrower is a limited liability company) or any guarantor of the Note shall die or shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner, managing member or guarantor;
- (n) except to the extent permitted under Section 2.06(b) above, if a default or event of default shall occur under any mortgage, encumbrance, lien or security agreement encumbering all or any portion of the Mortgaged Property which is subordinate or superior to the lien of this Mortgage or if any party under any such instrument shall commence a foreclosure or other collection or enforcement action in connection therewith, provided, however, that this provision shall not be deemed to be a waiver of the provisions of Section 2.17 prohibiting further encumbrances or of any other provision of this Mortgage, it being understood that, except to the extent permitted by Section 2.06(b) above, it is an event of default under this Mortgage to permit any further mortgage, encumbrance, lien or security agreement to encumber all or any portion of the Mortgaged Property without the prior written consent of the Lender;
- (o) except as permitted in this Mortgage, the actual or threatened material alteration, demolition or removal of any of the Improvements without the prior consent of Lender; or
- (p) damage to any of the Mortgaged Property in any manner which is not covered by insurance as a result of Borrower's failure to maintain insurance required in accordance with this Mortgage.

Section 4.02 Remedies. Upon the occurrence of any Event of Default, Lender may take such actions against Borrower and/or the Mortgaged Property or any portion thereof as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Property, without notice or demand except as set forth below. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Such actions may include the following:

- (a) Lender may declare the entire principal balance under the Note then unpaid, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable.
- (b) Lender may enter into or upon the Mortgaged Property, personally or by its agents, nominees or attorneys, and may dispossess Borrower and its agents and

servants therefrom, and thereupon Lender at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Lender or in such other name as Lender shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Property Income; and (v) apply the receipts of Property Income to the payment of the Indebtedness (including any prepayment fee payable under the Note) in such order as Lender shall determine in its sole discretion, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its agents, nominees and attorneys.

- (c) With or without entry, personally or by its agents, nominees or attorneys, Lender may sell all or any portion of the Mortgaged Property and all or any portion of Borrower's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Lender shall have any statutory power of sale as may be provided by law in the State.
- (d) Lender may institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.
- (e) Lender may institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due.
- (f) Lender may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.
- (g) Lender shall have the rights and may take such actions as are set forth, described or referred to in any rider entitled "Rider - Applicable State Law Provisions" attached hereto and made a part hereof, or as are permitted by the laws of the State.

- (h) Lender may recover judgment on the Note, either before, during or after any proceedings for the foreclosure or enforcement of this Mortgage.
- (i) Lender may secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Borrower hereby consents and agrees to such appointment, without notice to Borrower and without regard to the adequacy of the security for the Indebtedness and without regard to the solvency of Borrower or any other person, firm or entity liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Property Income pursuant to this Mortgage or the Assignment.
- (j) Lender may exercise any or all of the remedies available to a secured party under the Code, but any sale of the Equipment shall be subject to any applicable provisions of the Note.
- (k) Lender may pursue any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.
- (l) Lender may apply any funds then on deposit with Lender for payment of Impositions, ground rent or insurance premiums in the manner provided for in Section 2.07.
- (m) Lender in its sole discretion may surrender any insurance policies and collect the unearned premiums and apply such sums against the Indebtedness.

Section 4.03 General Provisions Regarding Remedies.

- (a) Proceeds of Sale. The proceeds of any sale of the Mortgaged Property, or part thereof, shall be distributed and applied to the amounts set forth in Section 5 of the Note in such order and priority as Lender deems appropriate in its sole discretion.
- (b) Effect of Judgment. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any portion thereof, or any rights, powers or remedies of Lender hereunder. Such lien, rights, powers and remedies of Lender shall continue unimpaired as before.
- (c) Continuing Power of Sale. The power of sale conferred upon Lender in this Mortgage shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property remaining unsold, but shall continue unimpaired until all of the Mortgaged Property is sold or all of the Indebtedness is paid.

- (d) Right to Purchase. At any sale of the Mortgaged Property or any portion thereof pursuant to the provisions of this Mortgage, Lender shall have the right to purchase the Mortgaged Property being sold, and in such case shall have the right to credit against the amount of the bid made therefor (to the extent necessary) all or any portion of the Indebtedness then due.
- (e) Right to Terminate Proceedings. Lender may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in Section 4.02 at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender.
- (f) No Waiver or Release. Lender may resort to any remedies and the security given by the Loan Documents, in whole or in part, and in such portions and in such order as determined in Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided in the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Loan Documents. No acceptance by Lender of any payment after the occurrence of an Event of Default and no payment by Lender of any Advance or obligation for which Borrower is liable hereunder shall be deemed to waive or cure such Event of Default or Borrower's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Indebtedness or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Mortgaged Property or the liability of Borrower to pay the Indebtedness, except to the extent that such liability shall be reduced by Proceeds of the sale of all or any portion of the Mortgaged Property received by Lender. No waiver by Lender shall be effective unless it is in writing and then only to the extent specifically stated.
- (g) No Impairment; No Release. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Lender may grant with respect to any of the Indebtedness; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Indebtedness. If the Mortgaged Property is sold and Lender enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof or of any other Loan Document, Borrower shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Lender.
- (h) Waivers and Agreements Regarding Remedies. To the full extent Borrower may legally do so, Borrower:

- (i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole of the Indebtedness;
- (ii) waives all rights to a marshalling of the assets of Borrower, Borrower's partners, if any, and others with interests in Borrower, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of Lender to the payment of the Indebtedness out of the Proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever;
- (iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith, which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is raised by Borrower in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender), but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's foreclosure action;
- (iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;
- (v) waives the defense of laches and any applicable statutes of limitation; and
- (vi) waives any right to have any trial, action or proceeding tried by a jury.
- (i) Lender's Discretion. Except to the extent otherwise herein provided, Lender may exercise its rights, options and remedies and may make all decisions, judgments

and determinations under this Mortgage and the other Loan Documents in its sole unfettered discretion.

- (j) Recitals of Facts. In the event of a sale or other disposition of the Mortgaged Property pursuant to Section 4.02 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.
- (k) Lender's Right to Waive, Consent or Release. Lender may at any time, in writing, (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (ii) consent to Borrower's doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (iii) release any portion of the Mortgaged Property, or any interest therein, from this Mortgage and the lien of the other Loan Documents. No such act shall in any way impair the rights of Lender hereunder except to the extent specified by Lender in such writing.
- (l) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and demand by Lender at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Lender. If Borrower or any other occupant is permitted to remain in possession, such possession shall be as tenant of Lender and such occupant (i) shall on demand pay to Lender monthly, in advance reasonable use and occupancy charges for the space so occupied, and (ii) in default thereof, may be dispossessed by the usual summary proceedings. Upon demand, Borrower shall assemble the Collateral and make it available at any place Lender may designate to allow Lender to take possession and/or dispose of the Collateral. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any portion thereof.
- (m) Limitations on Liability.
- (i) Subject to the provisions of this Section, in any action or proceedings brought on this Mortgage, the Note or on any of the Loan Documents in which a money judgment is sought, Lender will look solely to the Mortgaged Property and other property described in the Loan Documents (including the Property Income and any other rents and profits from such property) for payment of the Indebtedness and, specifically and without limitation, Lender agrees to waive any right to seek or obtain a deficiency judgment against Borrower.



- (ii) The provisions of Section 4.03(m)(i) shall not
  - (a) constitute a waiver, release or impairment of any obligation evidenced or secured by this Mortgage, the Note or any other Loan Document;
  - (b) be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Mortgage or to require that all Collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Note, this Mortgage and the Loan Documents;
  - (c) impair the right of the Lender to name the Borrower or, to the extent necessary, any principals of Borrower or any guarantor of the Note as a party or parties defendant in any action or suit for judicial foreclosure and sale under this Mortgage;
  - (d) affect the validity or enforceability of, or limit recovery under, any separate indemnity agreement (including the Guaranty and Indemnity Agreement), guaranty, lease or similar instrument made in connection with this Mortgage, the Note or the Loan Documents;
  - (e) impair the right of the Lender to obtain the appointment of a receiver; or,
  - (f) impair Lender's rights and remedies under Section 2.19 of this Mortgage regarding the assignment of Leases and Property Income to Lender or under the Assignment.
- (iii) Notwithstanding any provisions of this Subsection 4.03(m) nothing herein shall be deemed to impair or prejudice in any way the right of Lender (which right is specifically reserved) to pursue or obtain personal recourse liability against Borrower, or any other person or entity, to recover Losses incurred by Lender arising out of or resulting from any one or more of the following:
  - (a) fraud or material misrepresentation in connection with any Loan Document, affidavit, certification, warranty or representation given by Borrower or any officer, general partner, member or authorized agent of Borrower in connection with the making of the loan evidenced by the Note;
  - (b) the application or appropriation of insurance or condemnation Proceeds in a manner contrary to the terms of the Loan Documents;

- (c) the application or appropriation of any tenant security deposits, advance or prepaid rents, cancellation or termination fees or other similar sums paid to or held by Borrower, any affiliate (as defined in Section 5.01(b) of this Mortgage) of Borrower, any property manager, any indemnitor under the Guaranty and Indemnity Agreement or any affiliate (as hereinbelow defined) of said indemnitor contrary to the terms of the Loan Documents or the Leases;
- (d) the failure to return, or reimburse Lender for, all Equipment taken from the Mortgaged Property by or on behalf of Borrower and not replaced with Equipment of the same utility and of the same or greater value;
- (e) any act of arson, malicious destruction or waste of the Mortgaged Property by Borrower, any principal, affiliate, member or partner thereof, or by any guarantor of the Indebtedness or indemnitor under the Guaranty and Indemnity Agreement; provided that the non-payment of real estate taxes and other items that, under applicable law, may be considered waste, shall not be considered waste if Borrower has applied all Property Income and Proceeds toward real estate taxes and such other items before applying or distributing such amounts to any other expenses or party; provided, further however, that Borrower shall have no personal liability for Losses based on distributions of Property Income or rent loss insurance Proceeds to Borrower, or any general partner, principal, stockholder or member of or managing agent for Borrower made in good faith (after determining the sufficiency of Property Income and rent loss insurance Proceeds to cover the payments due under the Loan Documents and the operating and capital expenses of the Mortgaged Property) more than 120 days prior to a Default;
- (f) the failure to apply Property Income or Proceeds to payments then currently due under the Loan Documents or to real estate taxes, capital expenses approved by Lender or other operating expenses of the Mortgaged Property (including, without limitation, any reserves or escrows required by the Loan Documents), thereby resulting in, or contributing materially to a Default; provided, however, that Borrower shall have no personal liability for Losses based on distributions of Property Income or rent loss insurance Proceeds to Borrower, or any general partner, principal, stockholder or member of or managing agent for Borrower made in good faith (after determining the sufficiency of Property Income and rent loss insurance Proceeds to cover the payments due under the Loan Documents and the operating and capital expenses of the Mortgaged Property) more than 120 days prior to a Default;

- (g) a Default under Section 2.17 or Section 2.25 of this Mortgage; or
- (h) the failure to apply Property Income or Proceeds to maintain or pay the premiums for any insurance required to be maintained or paid under Section 2.04 of this Mortgage or make the deposits required to be made under Section 2.07 of this Mortgage; provided that Borrower shall have no personal liability for Losses based on distributions of Property Income or rent loss insurance Proceeds to Borrower, or any general partner, principal, stockholder or member of or managing agent for Borrower made in good faith (after determining the sufficiency of Property Income and rent loss insurance Proceeds to cover the payments due under the Loan Documents and the operating and capital expenses of the Mortgaged Property) more than 120 days prior to a Default
- (iv) Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability as set forth in this Section 4.03(m)(i) above SHALL AUTOMATICALLY BECOME NULL AND VOID and be of no further force and effect in the event Borrower, any general partner or managing member (if Borrower shall be a limited liability company) of Borrower or any guarantor of the Indebtedness or indemnitors under the Guaranty and Indemnity Agreement (excluding GoCo), files, or consents to the filing of any petition under the U.S. Bankruptcy Code respecting its or their debts, or any such petition shall have been filed against any of the foregoing which is not dismissed within one hundred eighty (180) days of such filing.
- (n) Subrogation. If all or any portion of the proceeds of the Note or any Advance shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any portion thereof, then Lender shall be subrogated to, and shall have the benefit of the priority of, such other lien or encumbrance and any additional security held by the holder thereof.

## ARTICLE V Miscellaneous

### Section 5.01 Notices.

- (a) All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed in either case to any party hereto at its address as stated on the Cover Sheet of this Mortgage, or at such other address and person as shall be designated

from time to time by Lender or Borrower, as the case may be, in a written notice to the other party in the manner provided for in this Section 5.01. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, three Business Days after deposit in the United States mail; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. A party receiving a notice which does not comply with the technical requirements for notice under this Section 5.01 may elect to waive any deficiencies and treat the notice as having been properly given.

- (b) Borrower shall notify Lender promptly of the occurrence of any of the following:
- (i) receipt of notice from any governmental authority relating to the Mortgaged Property;
  - (ii) any material change in the occupancy of the Mortgaged Property;
  - (iii) receipt of any notice from the holder of any other lien or security interest in the Mortgaged Property; or
  - (iv) commencement of any judicial or administrative proceedings by, against or otherwise affecting Borrower or any guarantor of the Indebtedness, the Mortgaged Property, or any entity controlling, controlled by or under common control with Borrower or any such guarantor (any such party which is controlling, controlled by or under such control of another party is referred to in the Loan Documents as an "affiliate"), or any other action by any creditor thereof as a result of any default under the terms of any loan.

**Section 5.02 Binding Obligations, Joint and Several.** The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns. If there is more than one Borrower, all their obligations and undertakings hereunder are and shall be joint and several.

**Section 5.03 Captions.** The captions of the sections and subsections of this Mortgage are for convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

**Section 5.04 Further Assurances.** Borrower shall do, execute, acknowledge and deliver, at its sole cost and expense, such further acts, instruments or documentation, including additional title insurance policies or endorsements, as Lender may reasonably require from time to time to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Mortgage or any other Loan Document.

**Section 5.05 Severability.** If any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Section 5.06 Borrower's Obligations Absolute.** Except to the extent otherwise specifically provided in the Loan Document, including Section 4.02(h)(iii) above, (i) all sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff,

deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any Bankruptcy Proceeding relating to Borrower, any general partner of Borrower, or any guarantor or indemnitor, or any action taken with respect to this Mortgage or any other Loan Document by any trustee or receiver of Borrower or any such general partner, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

Section 5.07 Amendments. This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless in writing and signed by the party against which enforcement is sought.

Section 5.08 Other Loan Documents and Schedules. All of the agreements, conditions, covenants, provisions and stipulations contained in the Note and the other Loan Documents, and each of them, which are to be kept and performed by Borrower are hereby made a part of this Mortgage to the same extent and with the same force and effect as if they were fully set forth in this Mortgage, and Borrower shall keep and perform the same, or cause them to be kept and performed, strictly in accordance with their respective terms. The Cover Sheet and each schedule and rider attached to this Mortgage are integral parts of this Mortgage and are incorporated herein by this reference. In the event of any conflict between the provisions of any such schedule or rider and the remainder of this Mortgage, the provisions of such schedule or rider shall prevail.

Section 5.09 Legal Construction.

- (a) The enforcement of this Mortgage shall be governed by, and construed and interpreted in accordance with, the laws of the State.
- (b) All terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.
- (c) The terms "include" and "including" as used in this Mortgage shall be construed as if followed by the phrase "without limitation".

- (d) Any provision of this Mortgage permitting the recovery of attorneys' fees and costs shall be deemed to include such fees and costs incurred in all appellate proceedings.

Section 5.10 Merger. So long as any Indebtedness shall remain unpaid, fee title to and any other estate in the Mortgaged Property shall not merge, but shall be kept separate and distinct, notwithstanding the union of such estates in any person or entity.

Section 5.11 Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower under this Mortgage.

Section 5.12 Transfer of Loan. (a) Lender, in the management of its investments or for any other reason may, at no cost to Borrower, at any time, sell, transfer, split or assign the Note, the Mortgage and the other Loan Documents and the servicing rights with respect thereto or grant participations therein or issue mortgage passthrough certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement ("Securities") (collectively, a "Transfer"). Notwithstanding the foregoing, in connection with a participation of a portion of the Loan, if Lender (i) maintains an ownership interest in a portion of the Loan and (ii) is designated the "lead lender" among the holders of the Note(s) then Lender and/or Lender's subsidiaries or affiliates shall remain the servicer of the Loan. If Lender elects to sell all or a majority of its interest in the Loan, the new majority lender may be named as the servicer of the Loan. Borrower shall have no obligation to deal directly with a Loan participant that is not either Lender, a majority owner of the Loan or the "lead lender". As part of a Transfer, Lender may forward to each transferee, assignee, servicer, participant, investor, any Rating Agency rating such Securities or any organization maintaining databases on the underwriting and performance of commercial mortgage loans all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness, the Loan Documents, the Mortgaged Property, the Borrower and/or any indemnitor or guarantor of any part of the Loan whether furnished by Borrower or such guarantor or indemnitor, or otherwise, as the Lender determines necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable state or federal law to prohibit disclosure, including but not limited to, any right of privacy provided that any financial information so forwarded to Lender or any such investor, prospective investor, Rating Agency or other organization maintaining databases, as aforesaid shall be maintained with reasonable confidentiality.

(B) Borrower shall reasonably cooperate and shall cause any guarantor and any indemnitor of the Loan to cooperate with Lender in connection with any Transfer or any Securities issued or other financing created or obtained in connection with the Loan, including, without limitation, (i) the delivery of an estoppel certificate required under Section 2.18 hereof and such other documents as may be reasonably requested by Lender and (ii) permitting bifurcation of the Loan into two or more separate notes (which may have different terms, but which, in the aggregate, will have economic terms consistent with the Loan). In the event that Securities are issued in connection with the Loan, all funds held by Lender in connection with the Loan may be deposited in eligible institutions as then defined and required by any nationally recognized Rating Agency. Borrower may be required to execute additional documents in connection with such transfer or creation, including a new note or notes, which have no material

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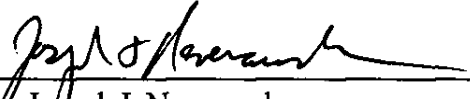
adverse effect on Borrower. Notwithstanding anything herein to the contrary, after a Transfer, the transferring Lender (in addition to the transferee) shall continue to have the benefits of any indemnifications and rights contained herein which such assigning Lender had prior to such assignment.

Section 5.13 Defeasance. If all of the Indebtedness is paid in full in accordance with the Note and the other Loan Documents and all of the covenants, warranties, conditions, undertakings and agreements made in this Mortgage and the other Loan Documents are fully kept and performed, all within any applicable grace or cure periods or otherwise allowed by Lender, then in that event only all rights of Lender under this Mortgage and the other Loan Documents shall terminate and the Mortgaged Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby and thereby, and Lender shall release or cause to be released such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost (to the extent permitted by the law of the State), and this Mortgage shall be void; provided, however, that no provision of this Mortgage or any other Loan Document which, by its own terms, is intended to survive such payment, performance, and release (nor the rights of Lender under any such provision) shall be affected in any manner thereby and such provision shall, in fact, survive. Recitals of any matters or facts in any release instrument executed by Lender under this Section 5.13 shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee or releasee as "the person or persons legally entitled thereto" and Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees or releasees of any of the Mortgaged Property. When this Mortgage has been fully released or discharged by Lender, the release or discharge hereof shall operate as a release and discharge of the Assignment and as a reassignment of all future Leases and Property Income with respect to the Mortgaged Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

Section 5.14 Business Purpose of Loan. Borrower stipulates and warrants that the purpose of the loan evidenced hereby is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. The Borrower further stipulates and warrants that all proceeds will be used for said business, professional or commercial enterprise.

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

625 N. MICHIGAN, LLC, an Illinois limited liability company

By:   
Name: Joseph I. Neverauskas  
Its: Senior Vice President

Property of Cook County Clerk's Office



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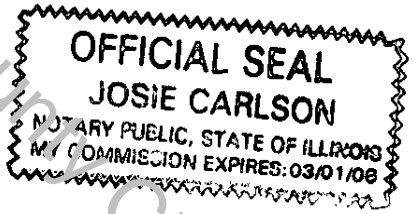
STATE OF Illinois ]  
COUNTY OF Cook ]

On this 10 of April, 2003, before me, a Notary Public in and for said State, personally appeared Joseph I. Neverauskas, known to me to be the person described in and who executed such instrument as Senior Vice President and duly authorized signatory of 625 N. Michigan, LLC, an Illinois limited liability company, and who acknowledged the execution of such instrument as such authorized signatory and Senior Vice President for and on behalf of and as the act and deed of such limited liability company, pursuant to authority lawfully conferred upon him by such limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first set forth above.

[Signature]  
Notary Public

My Commission Expires \_\_\_\_\_



**SCHEDULE A**

**DESCRIPTION OF LAND**

THE WEST 25 FEET OF LOT 4 AND ALL OF LOTS 5, 6, 7, 8 AND 9 IN OGDEN'S SUBDIVISION OF BLOCK 30 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE 10 FOOT VACATED ALLEY EAST OF SAID LOTS 6, 7, 8 AND 9 AND WEST OF LOT 5, AFORESAID, IN COOK COUNTY, ILLINOIS.

Property Address: 625 North Michigan Avenue, Chicago, Illinois

Pin No.: 17-10-118-001

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## SCHEDULE B

### Permitted Encumbrances

1. Real estate taxes not due and payable
2. Matters disclosed by the survey prepared by Certified Survey Company Dated October 15, 2002 last revised January 15, 2003 order number 862712 as specifically set forth in the policy of title insurance Number N01030453 issued by Lawyers Title Insurance Corporation.

Property of Cook County Clerk's Office

## RIDER

## APPLICABLE STATE LAW PROVISIONS

## Applicable State Law Provisions

The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Rider and the remainder of the attached Mortgage, this Rider shall govern.

(a) **Protective Advances.** Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Lender before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(ii) payments by Lender of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part hereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

(iv) reasonable attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Lender for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Mortgage at any time; (B) the amount of the Indebtedness found due and owing to Lender in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b) (2) and (e) of sections 15-1508 and Section 15-1511 of the Act.

(b) **Waiver of Right of Redemption and Reinstatement.** Without limiting the generality of Section 4.03(g) of this Mortgage, the waiver by Borrower of its rights of redemption and reinstatement in such Section, include the waiver of such rights as provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

(c) **Business Loan Recital/Statutory Exemption.** (i) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1)(1) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(1)); (B) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4; (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201 (1992)) or residential real estate (as defined in 735 5/15-1219 (1992)).

(d) **Maximum Principal Amount** This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and Indebtedness arising under or in connection with this Mortgage, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Mortgage; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed \$96,000,000.

(e) **Lender in Possession**. In addition to any provision of the Mortgage authorizing the Lender to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

(f) **Illinois Mortgage Foreclosure Act.** It is the express intention of Lender and Borrower that the rights, remedies, powers and authorities conferred upon Lender pursuant to this

Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(g) **Collateral Protection Act**. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Lender with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the Indebtedness. This insurance may, but need not protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the Indebtedness. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by the Mortgage, the Loan Agreement or any of the other Loan Documents. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own.

**SCHEDULE 1**

(1) Each request for disbursement from the Lease Termination Reserve Account was in a form reasonably specified or approved by Lender, which approval shall not be unreasonably withheld, delayed or conditioned and sets forth to the extent applicable:

- (i) the proposed Qualifying Improvements/Qualifying Commissions/Qualifying Costs for which such disbursement is requested,
- (ii) the quantity and price of each item purchased for which disbursement is required, if the proposed Qualifying Improvements includes the purchase or replacement of specific items,
- (iii) the price of all materials (grouped by type or category) used in any proposed Qualifying Improvements other than the purchase or replacement of specific items for which disbursement is requested,
- (iv) the cost of all contracted labor or other services applicable to each proposed Qualifying Improvements/Qualifying Commissions/Qualifying Costs for which such request for disbursement is made, and
- (v) Any other information reasonably required by Lender.

(2) Each request for disbursement from the Lease Termination Reserve Account included a certification of the Borrower indicating that the Qualifying Improvements for which disbursement is requested have been completed in a satisfactory manner.

(3) Each request for disbursement from the Lease Termination Reserve Account included copies of invoices for all items or materials purchased and all contracted labor or services provided for which disbursement is requested. Lender, at its option, may issue joint checks payable to Borrower and the supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with any Qualifying Improvements/Qualifying Commissions.

(4) Borrower obtained from each contractor, subcontractor, materialman or other party an acknowledgment of payment and release of lien if such work is lienable against the Premises for work performed and materials supplied and delivered said releases to Lender. Any such acknowledgment and release conformed to the requirements of applicable law and covered all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor, materialman or other party through the date covered by the current request.

(5) If requested by Lender, Borrower caused the title company ("Title Company") that issued the Lender's policy of title insurance insuring the lien of the Mortgage ("Title Policy") to issue and deliver to Lender an endorsement to the Title Policy dated as of the disbursement, insuring that there are no additional title exceptions except for real estate taxes not yet due or payable or otherwise permitted by the terms of the Loan Documents.



(6) If the estimated cost of the Qualifying Improvements/Qualifying Commissions/Qualifying Costs exceeds the sum of the undisbursed portion of the Lease Termination Reserve Account relating to the Lease termination for the applicable space, then Borrower provided such security as Lender may reasonably require to assure the lien-free completion of improvements.

(7) All work done pursuant to this subsection complied with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Mortgaged Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters. Borrower paid or has caused to be paid all applicable fees and charges of such authorities.

(8) If required by Lender, Lender, at Borrower's reasonable expense, conducted or caused its engineers to conduct an audit, inspection, or review of the Mortgaged Property to confirm the amount of the requested disbursement, which confirmation shall not be unreasonably withheld, delayed or conditioned and that all improvements to the Mortgaged Property have been completed to the reasonable satisfaction of Lender.

(9) Borrower paid Lender's reasonable costs and expenses in connection with such disbursement (including title charges, reasonable attorneys' fees and costs and expenses of Lender's inspecting engineer).

(10) Borrower submitted and, if Lender's approval is required under this Mortgage, Lender approved the lease as required herein for which the tenant improvements are to be constructed.

(11) As a condition to the funding of the final tenant improvements advance for any space in the Mortgaged Property:

- (i) the tenant under the lease is in occupancy, has accepted the leased premises and is paying rent under the lease or is under a free rent period, without offset, credit or defense, as evidenced by a tenant estoppel certificate executed by such tenant, addressed to Lender, in form satisfactory to Lender;
- (ii) the brokers to whom commissions are payable with respect to such lease have acknowledged payment in full of all commissions due with respect to the lease in question and have released Lender, Borrower, the Mortgaged Property and the lease from all commissions due with respect to such lease; and
- (iii) Borrower furnished Lender with (A) if applicable, a true and correct copy of the final and unconditional certificate of occupancy for the space under said lease, issued without restriction by the appropriate governmental authority having jurisdiction over the Mortgaged Property, unless

Borrower failed to obtain such certificate of occupancy due to events beyond its control (including, without limitation, the City of Chicago's long-standing non-issuance of the same), provided that the Borrower provides Lender with written evidence that the tenant may legally occupy and use the premises in question; and (B) final original lien waivers executed by each contractor, subcontractor and materialmen supplying labor or materials for the tenant improvements or title insurance over the same.

(12) Disbursements from the Lease Termination Reserve Account shall be made to pay leasing commissions only in accordance with written leasing commission agreements approved in writing by Lender, which approval shall not be unreasonably withheld, delayed or conditioned; however, Lender shall not be obligated to make any subsequent advance for any portion of any leasing commission until the executed lease, as approved by Lender if approval of said lease is required under this Mortgage, is delivered to Lender.

(13) There is no Default or Event of Default hereunder or under any other Loan Document.