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THIS INSTRUMENT PREPARED BY:
STEVEN A. STENDER
MUCH SHELIST
191 NORTH WACKER DRIVE, SUITE 1800
CHICAGO, ILLINOIS 60606
AFTER RECORDING RETURN TO:
URI S. ADLER
WEINGARTEN AND ADLER
8170 N. MCCORMICK BLVD.
SKOKIE, IL 60076

Doc#: 0623012132 **Fee:** \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/18/2006 01:01 PM Pg: 1 of 17

SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS SECOND MORTGAGE, SECURITY AGREEMENT, AND FINANCING STATEMENT ("Mortgage") is made as of August 15, 2006, by 625 W. Division Condominiums LP ("Mortgagor"), whose mailing address is 10 Hidden Brook Drive, North Barrington, IL 60010, in favor of 625 Division Investors Partnership ("Mortgagee"), whose mailing address is 8170 North McCormick Blvd. Suite 118, Skokie, IL 60076.

Mortgagor is justly indebted to Mortgagee, in the principal sum of \$1,200,000.00, as evidenced by a certain promissory note of even date herewith ("Note"), which is hereby incorporated, made payable to the order of and delivered to Mortgagee, whereby the obligor promises to pay the Note, late charges, and interest in the amount, and at the rate or rates provided in the Note. The final payment of principal and interest, if not sooner paid, renewed, modified, extended, or renegotiated, shall be due on August 14, 2007. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance of the Note, secondly to any other sums due thereunder, third to all other advances and sums secured hereby, and the remainder to principal.

Mortgagor, in order to secure the payment of said principal sum of money and said interest and late charges, fees and expenses, in accordance with the terms, provisions, and limitations of this Mortgage and of the Note, and to secure the performance of the covenants and agreements herein contained by Mortgagor to be performed, as security for repayment of any and all other liabilities and obligations of Mortgagor or its beneficiary now or hereafter due Mortgagee, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, and in consideration of the sum of \$10.00 in hand paid, the receipt of which is hereby acknowledged, does by these presents mortgage, grant, remise, release, alien, and convey unto Mortgagee and its successors and assigns the following described real estate and all of its present and hereafter acquired estate, right, title, and interest therein, lying and being in the County of Cook and State of Illinois to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO
AND MADE A PART HEREOF AS EXHIBIT A

commonly known as 625 W. Division St., Chicago, IL, which, with the property hereinafter described, is collectively referred to herein as the "Premises."

7 of 7
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TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues, and profits thereof for as long as and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the real estate and not secondarily); all tenant security deposits, utility deposits, and insurance premium rebates to which Mortgagor may be entitled or that Mortgagor may be holding; and all fixtures, apparatus, equipment, and articles (other than inventories held for sale) that relate to the use, occupancy, and enjoyment of the Premises. All of the land, estate, and property hereinabove described, real, personal, and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood, agreed, and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto Mortgagee and its successors and assigns forever, for the purpose and use herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. MAINTENANCE, REPAIR, AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC. Mortgagor intends to demolish the improvements currently located on the Premises. Mortgagor will maintain the land portion of the Premises in accordance with existing law. Mortgagor shall (a) keep the Premises free from mechanics liens or other liens or claims for lien not expressly subordinated to the lien hereof or contemplated hereby (collectively called "Liens"), subject, however, to the rights of Mortgagor set forth in the next Paragraph below; (b) immediately pay when due any indebtedness that may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof (no such subsequent lien to be permitted hereunder) and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (c) comply with all federal, state, and local requirements of law, regulations, ordinances, orders, and judgments and all covenants, easements, and restrictions of record with respect to the Premises and the use thereof; (d) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any nonconforming uses and structures), privileges, franchises, and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (e) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this Paragraph and elsewhere in the Mortgage, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges, and all other sums at any time secured by this Mortgage.

Anything in (a) and (b) above to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any lien not expressly permitted by this Mortgage or subordinated to the lien hereof and defer payment and discharge thereof during the pendency of such contest, provided that (i) such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) within ten days after Mortgagor has been notified of the assertion of such lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest that

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lien; and (iii) Mortgagor shall have deposited with Mortgagee, First Mortgagee (as hereafter defined), or First Mortgagee's title company, a sum of money that shall be sufficient to pay in full the lien and all interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing the amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest, cost, and expenses finally determined to be due upon the conclusion of such contest, to the extent that amount exceeds the amount that Mortgagee will pay as provided below or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of the lien, together with all interest thereon, Mortgagor shall, upon demand, deposit with Mortgagee a sum that, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of the contest, apply the money so deposited in full payment of the lien or that part thereof then unpaid (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagee and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount to be paid.

2. **PAYMENT OF TAXES.** Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts thereof within 30 days following the date of payment. Mortgagor shall pay in full, under protest, any tax or assessment that Mortgagor may desire to contest, in the manner provided by law.

3. **INSURANCE.** Mortgagor shall keep all buildings and improvements and the Collateral now or hereafter situated on the Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee (but not in excess of any insurance requirements of the First Mortgagee), including without limitation of the generality of the foregoing (a) rent loss or business interruption insurance whenever, in the opinion of Mortgagee, such protection is necessary, and (b) flood insurance whenever it is available and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury, death, and property damage as Mortgagee may reasonably require (but not in excess of any insurance requirements of the First Mortgagee). All policies of insurance to be furnished hereunder shall be in forms, companies, and amounts satisfactory to First Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without 30 days' prior written notice to Mortgagee.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee certificates relating to the original policy or policies of such insurance. In the event of a foreclosure of the Mortgage, or of a transfer of title to the Premises

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either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee, or purchaser, as the case may be.

4. **ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.** In case of the loss or damage by fire or other casualty, the loss will be adjusted as provided for in the First Mortgage.

5. **STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over Mortgagor, any tax is due or becomes due in respect to the Note or this Mortgage, Mortgagor covenants and agrees to pay the tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums that Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment of any law of the state in which the Premises are located imposing on Mortgagee the payment of the whole or any part of taxes, assessments, or charges on the lien of this Mortgage, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness to be and become due and payable 60 days from the giving of such notice.

6. **OBSERVANCE OF LEASE ASSIGNMENT.** As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor and its beneficiaries do hereby assign to Mortgagee all of their right, title, and interest as landlords in and to the present leases and all future leases of the Premises.

Mortgagor will not and Mortgagor's beneficiaries will not, without Mortgagee's prior written consent (a) execute an assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the Indebtedness in favor of Mortgagee or in favor of the First Mortgagee.

Mortgagor at its sole cost and expense will (a) at all times promptly and faithfully abide by, discharge, and perform all of the covenants, conditions, and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (b) enforce or secure the performance of all the covenants, conditions, and agreements of such leases on the part of the tenants to be kept and performed; (c) appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with such leases or obligations, duties, or liabilities of the landlord or of any tenants thereunder; (d) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute, and deliver to Mortgagee upon demand any and all instruments required to effect the assignment; (e) furnish Mortgagee, within ten days after a request by Mortgagee so to do, a written statement containing

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the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (f) exercise within five days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the Note secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of the landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain) to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office in which this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize the successor in interest as landlord under the lease without change in the terms or other provisions thereof; provided, however, that the successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or the successor in interest. Each tenant, upon request by the successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

7. **MORTGAGOR AND LIEN NOT RELEASED.** From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, its beneficiaries, or its successors or assigns or the consent of any junior lien holder, grantor, or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement, or condition, (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes of the Note; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the indebtedness; (e) consent to any plat, map, or plan of the Premises or Declaration of Condominium as to the Premises (in whole or in part); (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the installments payable thereunder; and (i) waive or fail to exercise any right, power, or remedy granted by law or in this Mortgage or in any other instrument given at any time to evidence or secure the payment of the indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 7 shall not impair or affect (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements, and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

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Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorneys' fees (including those of in-house staff) as may be incurred by Mortgagee for any action described in this Paragraph 7 taken at the request of Mortgagor or its beneficiary or beneficiaries.

8. **MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS.** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or assessment or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All money paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other funds advanced by Mortgagee in regard to protecting the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

9. **MORTGAGEE'S RELIANCE ON TAX BILLS, ETC.** Mortgagee in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any computer or billing service, bill, statement, or estimate procured from the appropriate public office or title company without inquiry into the accuracy of that bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; or (b) for the purchase, discharge, compromise, or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien that may be asserted.

10. **ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.** If (a) default occurs in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof; or (b) Mortgagor or any beneficiary thereof or any guarantor of the Note shall (i) file a petition for liquidation, reorganization, or adjustment of debt under Title 11 of the United States Code or any similar law, state or federal, whether now or hereafter existing, or (ii) file any answer admitting insolvency or inability to pay debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days, as hereinafter provided; or (c) any order for relief of Mortgagor or any beneficiary thereof or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for Mortgagor or for any beneficiary thereof or any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceedings for the reorganization, dissolution, liquidation, adjustment of debt, or winding up of Mortgagor or of any beneficiary thereof or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or (d) Mortgagor or any beneficiary thereof or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or

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trustee or liquidator of all or any major part of its property; (e) default shall occur in the due observance or performance of any other covenant, agreement, or condition contained in this Mortgage and required to be kept or performed or observed by Mortgagor or its beneficiary, and such default is not cured by Mortgagor within thirty (30) days (or such longer period of time as may be reasonably required by Mortgagor to cure such default) after written notice thereof by Mortgagee; (f) default shall occur in the due observance or performance of any covenant, agreement, or condition required to be kept or observed by Mortgagor or its beneficiary or beneficiaries in the Note or any guarantor thereof or in any other instrument given at any time to secure the payment of the Note (beyond applicable notice or grace periods), then and in any such event, the whole of the Indebtedness shall at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor. If, while any insurance proceeds or condemnation awards are held by or for Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding, or restoration of buildings or other improvements on the Premises, as set forth herein, Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness together with all fees and interest payments, then and in any such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the entitlement appears on the records of Mortgagee.

11. FORECLOSURE; EXPENSE OF LITIGATION. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage for such Indebtedness or any part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee including, without limitation, expenditures for attorneys' fees, including those of in-house counsel, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute the civil action or to evidence to bidders at any sale that may be had pursuant to the order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this Paragraph 11 mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate, appellate, and bankruptcy proceedings, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, Mortgagor shall appear in and defend any suit, action, or proceeding that might in any way, in the sole judgment of Mortgagee, affect the value of the Premises, the priority of this Mortgage, or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless, and reimburse Mortgagee on demand for any and all loss, damage, expense, or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit,

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action, or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

12. APPLICATION OF PROCEEDS OF FORECLOSURE SALE. The proceeds of any foreclosure sale of the Premises shall (subject to the provisions of the First Mortgage and Paragraph 31 below) be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 hereof; second, to all other items that may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, to all principal and interest remaining unpaid on the Note; and fourth, to any parties entitled thereto as their rights may appear.

13. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which the action was commenced may, upon request of Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for a receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead, and Mortgagee or any holder of the Note may be appointed as such receiver as Mortgagee in possession. Such receiver or Mortgagee in possession shall have power to collect the rents, issues, and profits of the Premises during the pendency of the foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there shall be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of the receiver or Mortgagee in possession, would be entitled to collect the rents, issues, and profits, and all other powers that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Premises during the whole of that period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment, or other lien that may be or become superior to the lien hereof or the lien of such order of judgment, provided that the application is made prior to foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

14. RIGHTS CUMULATIVE. Each right, power, and remedy conferred on Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power, and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every such right, power, and remedy may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power, or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power, or remedy, and no delay or omission of, or discontinuance by, Mortgagee in the exercise of any right, power, or remedy accruing hereunder or arising otherwise shall impair any such right, power, or remedy or be construed to be a waiver of any default or acquiescence therein.

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15. **MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee and its representatives, agents, or participants shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

16. **EMINENT DOMAIN AND/OR CONDEMNATION.** Subject to First Mortgagee's rights under the First Mortgage, and Paragraph 31 below, Mortgagor hereby assigns, transfers, and sets over unto Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation.

The proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 4 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding, or restoration. Any surplus that may remain out of the award after payment of the cost of repair, rebuilding, and restoration and the reasonable charges of Disbursing Party shall, at the option of Mortgagee, be applied on account of the Indebtedness or paid to any party entitled to it as the entitlement appears on the records of Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by Mortgagee.

17. **RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release this Mortgage and the lien by proper instrument upon payment and discharge of all Indebtedness (or an applicable agreed portion) secured hereby (including any late charges provided for herein or in the Note).

18. **GIVING OF NOTICE.** Any notice that either party hereto may desire or be required to give to the other party shall be in writing, and the mailing thereof, by personal delivery or certified mail addressed to Mortgagor or Mortgagee, as the case may be, at the respective addresses set forth on the first page of this Mortgage or at such other place as any party hereto may by notice in writing designate as the place of notice, shall constitute service of notice hereunder. Any such notice shall be deemed to have been delivered three (3) business days after mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

19. **WAIVER OF DEFENSE.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense that would not be good and available to the party interposing it in an action at law on the Note.

20. **WAIVER OF STATUTORY RIGHTS.** Mortgagor shall not and will not (nor shall any beneficiary of Mortgagor) apply for or avail itself of any appraisal, valuation, stay, extension, or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, including its beneficiaries, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose this lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of Mortgagor, the trust estate, and all persons beneficially interested in it and each and every person, except judgment creditors of Mortgagor in its representative capacity and of the trust estate acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

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21. **FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.** Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiaries from time to time to keep and maintain, books and records of account in which full, true, and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

Mortgagor covenants and agrees to furnish to Mortgagee, within 90 days following the end of every fiscal year applicable to the operation of the Improvements on the Premises a copy of a report of the operations of the Improvements on the Premises for the year then ended, to be certified by Mortgagor or its beneficiaries (or a general partner if a beneficiary of Mortgagor is a partnership, or the chief financial officer if a beneficiary of Mortgagor is a corporation) satisfactory to Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such annual report shall certify that the certifying party examined those records as were deemed necessary for the certification and those statements are true, correct, and complete.

If Mortgagor fails to furnish promptly any report required by this Paragraph 21, Mortgagee may elect (in addition to exercising any other right, remedy, and power) to make an audit of all books and records of Mortgagor and its beneficiaries that in any way pertain to the Premises and to prepare the statement or statements that Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by Mortgagee. Mortgagor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when default exists thereunder.

22. **FILING AND RECORDING CHARGES AND TAXES.** Mortgagor will pay all filing, registration, recording, and search and information fees, all expenses incident to the execution and acknowledgement of this Mortgage and all other documents securing the Note, and all federal, state, county, and municipal taxes and other taxes, duties, imports, assessments, and charges arising out of or in connection with the execution, delivery, filing, recording, or registration of the Note, this Mortgage, and all other documents securing the Note and all assignments thereof.

23. **BUSINESS PURPOSE; USURY EXEMPTION.** Mortgagor hereby represents, or if applicable Mortgagor has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 and that the principal obligation secured hereby constitutes a "business loan" that comes within the purview and operation of that section.

24. **MISCELLANEOUS. *Binding Nature.*** This Mortgage and all provisions hereof shall extend to and be binding on the Mortgagor named on Page 1 hereof and its successors, grantees, and assigns, each subsequent owner or owners of the Premises, and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part

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thereof, whether or not such persons shall have executed the Note or this Mortgage, and shall also include any beneficiary of Mortgagor, direct or indirect.

Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any funds in which Mortgagor has an interest that are then held by the seller of the Note are turned over to the purchaser of the Note.

Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, the Note, or the other document and this Mortgage, the Note, or the other document shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

Governmental Compliance. Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any government requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor that would result in a violation of any of the provisions of this Paragraph shall be void.

Estoppel Certificate. Mortgagor, within 15 days after mailing of a written request by Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness and whether any default, offset, or defense then is alleged to exist against the Indebtedness and, in so doing, specifying the nature thereof.

Non-Joinder of Tenant. After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their right shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

25. SECURITY AGREEMENT AND FINANCING STATEMENT. Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "Security Agreement" within the meaning of the Illinois Uniform Commercial Code ("Code") with respect to all sums on deposit with Mortgagee ("Deposits") and with respect to any property included in the definition herein of the word

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"Premises," which property may not be deemed to form a part of the real estate described in Exhibit A or may constitute a "fixture" (within the meaning of the Code), and all replacements of such property, substitutions for such property, additions to such property, and books and records relating to the Premises and operation thereof and the proceeds thereof (said property, replacements, substitutions, additions, and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (b) a security interest in and to the Collateral and Deposits is hereby granted to Mortgagee; and (c) the Deposits and all of Mortgagor's right, title, and interest therein are hereby assigned to Mortgagee; all to secure payment of the Indebtedness and to secure performance by Mortgagor of the terms, covenants, and provisions hereof.

In the event of a default under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the Collateral in accordance with its rights, powers, and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling, and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee, including those of in-house staff. Mortgagor agrees that without the written consent of Mortgagee Mortgagor will not remove or permit to be removed from the Premises any of the Collateral, except that as long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable, or unnecessary for use in the operation of the Premises, but only upon replacing it or substituting for it other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that the replacement or substituted Collateral shall be subject to the security interest of this Mortgage and covered hereby. Mortgagor shall, from time to time, on request of Mortgagee, deliver to Mortgagee at the cost of Mortgagor (a) such further financing statements and security documents and insurance as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (b) an inventory of the Collateral in reasonable detail. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions thereof, or additions thereto, unless Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices, and security interests of others.

Mortgagor and Mortgagee agree, to the extent permitted by law, that this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of §§9-102(40) and 9-334 of the Code.

If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify Mortgagee prior to the sale and shall require as a condition of sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interest herein granted and to execute whatever agreements and filings are deemed necessary by Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral and Deposits.

26. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES, AND THE LIKE. As long as the original Mortgagee named on Page 1 of this Mortgage is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this

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Mortgage also secures the payment of all fees to its attorneys (including in-house staff), expenses, and advances due to or incurred by Mortgagee in connection with the loan transaction intended to be secured hereby.

27. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE. In determining whether to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagor and/or Mortgagor's beneficiaries or guarantors (if applicable), found it to be acceptable, and relied and continues to rely on it as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor and/or the beneficiaries or guarantors (if applicable) in owning and operating property such as the Premises, found them to be acceptable, and relied and continues to rely on them as the means of maintaining the value of the Premises that are Mortgagee's security for the loan. It is recognized that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by a party other than the original Mortgagor and/or its beneficiaries (if applicable). Mortgagor and/or its beneficiaries (if applicable) further recognize that any secondary or junior financing placed on the Premises (other than as contemplated by this Mortgage), or the beneficial interest of beneficiaries in Mortgagor, (a) may divert funds that would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer, which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling them; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (a) protecting Mortgagee's security, both of repayment by the Indebtedness and of the value of the Premises; (b) giving Mortgagee the full benefit of its bargain and contract with Mortgagor and/or its beneficiaries (if applicable); (c) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (d) keeping the Premises and the beneficial interest (if applicable) free of unpermitted subordinate financing liens, the beneficiaries (if applicable) and Mortgagor agree that if this Paragraph is deemed a restraint on alienation, it is a reasonable one and that any sale, conveyance, assignment, further encumbrance, or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

- a. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest or power of direction under the trust agreement with Mortgagor, if applicable;
- b. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of Mortgagor (if a corporation) or the corporation that is the beneficiary or one of the beneficiaries under the trust agreement with Mortgagor, or of any corporation directly or indirectly controlling such beneficiary corporation;

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c. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest of the limited partnership or general partnership (herein called the "Partnership") that is Mortgagor or the beneficiary or one of the beneficiaries under the trust agreement with Mortgagor, except for the grant of a security interest to the First Mortgagee (as defined in Paragraph 31 hereof);

d. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling any such Partnership.

Any consent by Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to or waiver of any right, remedy, or power of Mortgagee upon a subsequent event of default under this Paragraph.

28. HAZARDOUS MATERIALS. Mortgagor and its beneficiary (for purposes of this paragraph, collectively called "Mortgagor") represent, warrant, and covenant that Mortgagor has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Premises in any manner that violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Materials, and that to the best of Mortgagor's knowledge, no prior owner of the Premises or any tenant, subtenant, prior tenant, or prior subtenant has used Hazardous Materials on, from, or affecting the Premises in any manner that violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Materials. Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials. Without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, store, manufacture, refine, or process Hazardous Materials, except in compliance with all applicable federal, state, and local laws or regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Materials onto the Premises or onto any other property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state, or local laws, ordinances, rules, and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations, or permits required thereunder. Mortgagor shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Premises (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directives of all federal, state, and local governmental authorities, and (b) defend, indemnify, and hold harmless Mortgagee and its employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or other entities; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders,

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regulations, requirements, or demands of government authorities, or any policies or requirements of Mortgagee, that are based on or in any way related to such Hazardous Materials including, without limitation, attorneys' and consulting fees, investigation and laboratory fees, court costs, and litigation expenses. In the event the Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Premises to Mortgagee free of any and all Hazardous Materials, so that the condition of the Premises shall conform with all applicable federal, state, or local laws, ordinances, rules, and regulations affecting the Premises. For purposes of this Paragraph 28, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, regulated toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, *et seq.*), and the regulations adopted and publications promulgated pursuant thereto, or any other federal, state, or local environmental law, ordinance, rule, or regulation. Mortgagor shall secure all permits and approvals and file all notifications required under state and local laws, ordinances, and regulations prior to undertaking asbestos abatement activities. The provisions of this Paragraph 28 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law and shall survive the transactions contemplated herein.

29. INTENTIONALLY OMITTED.

30. AUTHORITY. Mortgagor hereby warrants that it possesses full power and authority to execute this instrument.

31. FIRST MORTGAGE. Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Loan Documents, this Second Mortgage is subject and subordinate to a Mortgage (the "First Mortgage") made by Mortgagor, dated of even date herewith, in favor of JDI Division, L.L.C. ("First Mortgagee"). The First Mortgage secures a first mortgage loan (the "First Loan") to Mortgagor in the original principal amount of \$4,500,000.00. All of the rights granted to Mortgagee by Mortgagor under this Mortgage are subject and subordinate to all of the corresponding rights granted to First Mortgagee in the First Mortgage. In the event of conflicting direction given to Mortgagor by First Mortgagee and Mortgagee, the direction given by First Mortgagee will control.

*It and recorded as document
no. 0623012128*

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Mortgagor has executed this instrument as of August 15, 2006:

625 W. Division Condominiums LP

By: 625 West Division LLC, its
general partner

By: [Signature]
John Breugelmans

Its: Manager
10 Hidden Brook Drive
North Barrington, IL 60010

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, Erica Campos, a Notary Public in and for and residing in the said County, in the State aforesaid, do hereby certify that John Breugelmans, personally known to me to be the same person whose name ~~and~~ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that ~~they~~ he signed, sealed, and delivered the said instrument as ~~their~~ free and voluntary act, for the uses and purpose and in the capacity (if any) therein set forth. h.s.

GIVEN under my hand and notary seal this 11th day of August, 20 06
Erica Campos



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LEGAL DESCRIPTION

PARCEL 1:

LOT 1 AND THE WEST ½ OF LOT 2 IN BLOCK 88 IN ELSTON'S ADDITION TO CHICAGO, IN SECTION 4, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 6, 7, 8, AND 9 IN BLOCK 88 OF ELSTON'S ADDITION TO CHICAGO IN THE WEST ½ OF THE SOUTH WEST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. NUMBER'S: 17-04-303-001-0000
17-04-303-002-0000
17-04-303-003-0000
17-04-303-010-0000

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