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AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING

Cover Sheet

Dated as of February 28, 2008

Mortgagor: MJH Wacker LLC, a Delaware limited liability company
(Hereinafter some times "Borrower")

Mortgagor's
Notice Address: MJH Wacker LLC
c/o Fulcrum Wacker LLC
8725 W. Higgins Road
Suite 805
Chicago, Illinois 60631
Attention: Scott M. Stahr

Rothschild, Barry & Myers
55 West Monroe Street, Suite 3900
Chicago, Illinois 60603-5012
Attention: Jonathan E. Rothschild

Lincoln Property Company
120 North LaSalle Street, Suite 1750
Chicago, Illinois 60602
Attention: John Grissim

Mortgagee: MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY, a Massachusetts corporation as
"Administrative Agent" for the benefit of itself and each of
the other holders, from time to time, of the Note

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Mortgagee's
Notice Address: c/o Babson Capital Management LLC
1500 Main Street, Suite 2100
Springfield, Massachusetts 01115-5189
Attention: Managing Director, Real Estate Finance Group

With a copy to:

Massachusetts Mutual Life Insurance Company
c/o Babson Capital Management LLC
1500 Main Street, Suite 2800
Springfield, Massachusetts 01115-5189
Attention: Vice President, Real Estate Law

And to:

DLA Piper US LLP
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
Attention: Alison M. Mitchell, Esq.

Note Amount: \$85,000,000

Maturity Date: March 1, 2010

State: Illinois

Property of Cook County Clerk's Office

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AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

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AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING

THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of February 28, 2008, by and between MJH WACKER LLC, a Delaware limited liability company, having an office at c/o Fulcrum Wacker LLC, 8725 W. Higgins Road, Suite 805, Chicago, Illinois 60631 ("Borrower"), MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation having an address c/o Babson Capital Management LLC, 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115-5189, Attention: Managing Director, Real Estate Finance Group, as "Administrative Agent" for the benefit of itself and each of the other Lenders (as hereinafter defined; and in such capacity, together with its successors and assigns in such capacity, "Mortgagee").

This Mortgage amends and restates that certain Mortgage and Security Agreement and Fixture Filing dated as of February 26, 2003 from Borrower in favor of Mortgagee, recorded with the Cook County, Illinois Recorder as Document No. 030290567, as amended by that certain Loan Documents Modification Agreement dated as of March 1, 2005 between Borrower and Mortgagee, recorded with the Cook County, Illinois Recorder as Document No. 0506718072.

GRANTING CLAUSES

For good and valuable consideration and to secure the payment of an indebtedness in the principal sum of Eighty-Five Million and 00/100 Dollars (\$85,000,000) lawful money of the United States, to be paid according to that certain Amended and Restated Promissory Note of even date herewith from Borrower to the order of Mortgagee in the principal sum of \$85,000,000, maturing on March 1, 2010, and by this reference made a part hereof (the Amended and Restated Promissory Note, as the same may hereafter be amended, modified, consolidated, split or extended, is referred to herein as the "Note"), together with all other obligations and liabilities due or to become due to Lenders or Mortgagee, all amounts, sums and expenses paid hereunder by or payable to Lenders or Mortgagee 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 Mortgagee (on behalf of the Lenders), its successors and assigns forever, WITH MORTGAGE COVENANTS and with all POWERS OF SALE and other STATUTORY RIGHTS AND COVENANTS in the State (hereinafter defined), together with all interest that Borrower may hereafter acquire in, the following property:

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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) 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; 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, as the foregoing terms are defined in the Code (hereinafter defined), all monies, deposits or reserves held by the Lenders or Mortgagee or Lenders' or Mortgagee'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");

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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, room rates, 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 Mortgagee 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:

"Administrative Agent". See Section 5.17 below.

"Advances". All sums, amounts or expenses advanced or paid and all costs incurred by the Lenders or Mortgagee, 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.

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“Anti-Money Laundering Laws”. The USA Patriot Act of 2001, as amended, the Bank Secrecy Act, as amended, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, and other federal laws and regulations and executive orders administered by the United States Department of the Treasury, Office of Foreign Assets Control (“OFAC”) which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

“Appurtenances”. See Granting Clauses.

“Assignment”. The Assignment of Leases and Rents from Borrower to Mortgagee dated February 26, 2003, 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”. See the Note.

“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

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and Rodenticide Act; the National Environmental Policy Act; and, the Rivers and Harbors Appropriation Act.

“Environmental Report”. Phase I ESA Report dated January 6, 2003 prepared by URS Corporation.

“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 Mortgagee. 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.

“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.

“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.

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“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.

“Lenders”. Massachusetts Mutual Life Insurance Company, and any other holders from time to time of the Note and their successors and assigns.

“Loan”. The loan made by Lenders 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, 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 reasonable attorneys’ fees and other costs of defense).

“Mortgaged Property”. See Granting Clauses.

“Note”. See Granting Clauses.

“OFAC Prohibited Person”. A country, territory, individual or Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the Mortgaged Property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in violation of such laws.

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

“Person”. Means and includes any individual, corporation, partnership, joint venture, limited liability company, association, bank, joint-stock company, trust, unincorporated organization or government, or an agency or political subdivision thereof.

“Premises”. See Granting Clauses.

“Prepayment Premium”. See Section 9 of the Note.

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“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 Mortgagee 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 Mortgagee 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

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orders affecting or which may be interpreted as affecting the Mortgaged Property. Borrower shall permit Mortgagee to enter upon and inspect the Mortgaged Property without prior notice at all reasonable hours, subject to the rights of tenants under existing leases. Borrower shall not, without the prior consent of Mortgagee, (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 (other than on-going capital maintenance and repair), 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. No provision of this Section 2.03 shall prohibit Borrower from undertaking and completing tenant improvement work authorized under Leases previously approved by Mortgagee or not requiring Mortgagee's prior approval, or from performing on-going capital maintenance and repair.

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 \$250,000 (except with respect to terrorism insurance in which the deductible shall be no more than 5% of the insurable value of the Mortgaged Property), without reduction for depreciation or coinsurance) as approved by Mortgagee, and against loss of rents in an amount not less than 12 months' rental income from all Leases. Borrower shall also carry such other insurance, and in such amounts, as Mortgagee may from time to time reasonably require, against insurable risks which at the time are commonly insured against in the case of premises of similar type and location, 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 Mortgagee, or as soon thereafter as is reasonably practical (but in any event within sixty (60) days after demand by Mortgagee). 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 Mortgagee 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

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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 Mortgagee 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 Mortgagee to be applied as hereinafter provided.

- (b) Borrower shall also maintain (i) public liability insurance with respect to the Premises against personal injury, death and property damage, with limits of liability in amounts reasonably satisfactory to Mortgagee, and (ii) insurance (“Environmental Insurance”) against loss or liability arising from the violation of any Environmental Law applicable to the Mortgaged Property or from the presence of any Hazardous Substances in, on or about the Premises, in the amount of ten million dollars (\$10,000,000.00).
- (c) All insurance policies and endorsements required pursuant to this Mortgage shall (i) be endorsed to name Mortgagee and Lenders as an insured thereunder, as its interest may appear, with loss payable to Mortgagee, without contribution, under a long-form, non-contributory mortgagee clause, or otherwise endorsed as Mortgagee 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 and A or better as established by Standard & Poors, Inc. or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Mortgagee; (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 Mortgagee, and that no act or thing done by Borrower, Lenders or Mortgagee shall invalidate the policy as against Mortgagee or Lenders; and (iv) be in form and content satisfactory to Mortgagee. 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 Mortgagee 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 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 satisfactory to Company of payment in full of all premiums. If Borrower fails to maintain insurance in compliance with this Mortgage, Mortgagee may (but shall not be obligated to) obtain such insurance and pay the premium therefor and Borrower shall reimburse Mortgagee on demand for all

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such Advances. Notwithstanding anything to the contrary contained herein or in any provision of law, the Proceeds of insurance policies coming into the possession of Mortgagee shall not be deemed trust funds and Mortgagee shall apply 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 Mortgagee 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. 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 Mortgagee. Subject to the provisions of Section 2.04(g) below, Mortgagee shall have the option in its sole discretion to apply any insurance Proceeds it may receive pursuant to this Mortgage (less any cost to Mortgagee 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 Mortgagee shall apply the same, without any prepayment fee, in accordance with Section 5.16 hereinbelow.
- (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 Mortgagee or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.
- (f) Claims for insurance proceeds hereunder shall be made, prosecuted and adjusted jointly by Borrower and Mortgagee, so long as no Event of Default hereunder shall have occurred and be continuing. Should any such Event of Default occur and be continuing, however, Mortgagee shall have the right to make, prosecute and adjust such claims on behalf of itself and Borrower, and for such purpose. Borrower hereby irrevocably appoints Mortgagee 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, Mortgagee may notify any and all insurers under casualty and liability insurance policies constituting part of the Intangibles that Mortgagee 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 Mortgagee. Mortgagee's rights under this Section 2.04(f) may be exercised by Mortgagee or a court appointed receiver

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appointed upon the request of Mortgagee 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 Mortgagee's reasonable judgment the cost of the Work shall not exceed 50 percent of the then outstanding principal balance of the Note, then Mortgagee shall, upon request by Borrower, permit Borrower to use the Proceeds for the Work (subject to the provisions of, and less Mortgagee'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) the original Borrower named herein or any successor owner permitted under the provisions of Section 2.17(B) hereof continues to be the owner of the Mortgaged Property;
 - (iii) the Work can be completed within twelve (12) months from the date of damage or destruction of the Premises;
 - (iv) no Lease in effect immediately prior to the damage or destruction which covers more than 20,000 rentable square feet shall have been canceled or terminated nor shall any such Lease contain any still exercisable right to cancel, as a result of such damage or destruction;
 - (v) 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 Mortgagee's request, Borrower shall deposit such additional amounts, as estimated by Mortgagee in its sole discretion, with Mortgagee prior to commencing any Work and at all times thereafter;
 - (vi) at all times during any such Work Borrower shall maintain, at its sole cost and expense (except to the extent that premiums are paid by the proceeds of casualty insurance), workers' compensation, builders risk and public liability insurance in amounts satisfactory to Mortgagee and in accordance with the provisions of this Section 2.04; and
 - (vii) any unexpended Proceeds, at the sole option of the Mortgagee, shall either be paid over to the Borrower or shall be applied to the reduction of the Indebtedness in accordance with Section 5.16 below, without any prepayment fee.
- (h) If any insurance Proceeds and/or Excess Costs are used for the Work, then such Proceeds and Excess Costs shall be held by Mortgagee and shall be paid out from time to time to Borrower as the Work progresses (less any cost to Mortgagee of recovering and paying out such Proceeds or Excess Costs, including reasonable

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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 Work is of such a nature or of such an extent that its performance can legally be undertaken only after Borrower has procured a building permit therefor from the City of Chicago then, the Work shall be conducted under the supervision of a certified and registered architect or engineer reasonably satisfactory to Mortgagee. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Mortgagee shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld 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 Mortgagee 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 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 Mortgagee 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 Mortgagee will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion). 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 satisfactory to Mortgagee covering that part of the Work for which payment or reimbursement is being requested and, if required by Mortgagee, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Mortgagee 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. Additionally, as to

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any Equipment covered by the request for payment, Mortgagee shall be furnished with evidence of payment therefor and such further evidence satisfactory to assure Mortgagee of its valid first lien on the Equipment.

- (iv) Mortgagee shall have the right to inspect the Work at all reasonable times and may condition any disbursement of Proceeds upon the satisfactory completion, as determined in Mortgagee's reasonable discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by Mortgagee of the plans and specifications for the Work nor the inspection by Mortgagee of the Work shall make Mortgagee 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.
 - (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, Mortgagee may apply any such Proceeds it then or thereafter holds to the payment of the Indebtedness; provided, however, that Mortgagee, 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 Mortgagee'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 120 days, then Mortgagee shall, upon request by Borrower, permit Borrower to apply for and receive the insurance Proceeds directly from the insurer (and Mortgagee 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 Mortgagee immediately of the actual or threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Mortgagee may participate in such proceedings and

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Borrower shall deliver to Mortgagee all instruments requested by Mortgagee to permit such participation. So long as no Event of Default has occurred hereunder and is continuing, Borrower and Mortgagee shall jointly adjust, negotiate or litigate the amount of the award. Mortgagee 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 to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Mortgage. Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Mortgagee. 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 Mortgagee. Borrower hereby authorizes Mortgagee to collect and receive such Proceeds, to give proper receipts and acquittances therefor and, in Mortgagee's sole discretion, to apply such Proceeds (less any cost to Mortgagee 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 accordance with Section 5.16 hereinbelow, without any prepayment fee. Borrower shall promptly execute and deliver all instruments requested by Mortgagee for the purpose of confirming the assignment of the condemnation Proceeds to Mortgagee.

Section 2.06 Impositions.

- (a) Borrower shall pay and discharge all Impositions prior to delinquency and shall furnish to Mortgagee validated receipts or other evidence satisfactory to Mortgagee 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 Mortgagee an obligation to pay any property taxes or other Impositions or which otherwise adversely affect Mortgagee's interests. Should Borrower default in the payment of any Impositions, Mortgagee may (but shall not be obligated to) pay such Impositions or any portion thereof and Borrower shall reimburse Mortgagee 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 Mortgagee prior notice of such contest and (ii) either (y) deposited with Mortgagee, 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, or (z) delivered to Lender an endorsement to

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Lender's title insurance policy insuring Lender against loss or damage occurring because of failure by Borrower to timely pay such Imposition, such endorsement to be satisfactory in all respects to Mortgagee. 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. Mortgagee shall have full power and authority to apply any amount deposited with Mortgagee 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. Mortgagee 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 Mortgagee 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 Mortgagee 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 Mortgagee, the Mortgaged Property is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition, Mortgagee may (but shall not be obligated to) make such payment and Borrower shall reimburse Mortgagee on demand for all such Advances. Additionally, in such event, if Mortgagee is prevented by law or judicial or administrative order from paying such Imposition, then Mortgagee, at its option, may declare the entire Indebtedness immediately due and payable.

Section 2.07 Deposits. Borrower shall deposit with Mortgagee, monthly, on the due date of each monthly installment under the Note, 1/12th of the annual charges (as estimated by Mortgagee) for Impositions and insurance premiums with respect to the Mortgaged Property; provided, however, that no such deposit shall be required with respect to the premiums for insurance, including for the Environmental Insurance referred to in Section 2.04(b) hereof, until after the occurrence of an Event of Default hereunder, and provided, further that no such deposit shall be required with respect to the Environmental Insurance if the Premium for such Environmental Insurance has been prepaid by Borrower through the Maturity Date. After the occurrence of an Event of Default hereunder, Mortgagee may require Borrower to make deposits pursuant to the provisions of the preceding sentence for the payment of insurance premiums. If required by Mortgagee, Borrower shall also deposit with Mortgagee, 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 Mortgagee 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 Mortgagee. When the charges are fixed for the then current year or period, Borrower shall deposit any deficiency on demand. All funds

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deposited with Mortgagee shall be held without interest (unless the payment of interest thereon is required under applicable law), may be commingled with Mortgagee's or Lenders' 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 Mortgagee 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 Mortgagee as herein provided. Borrower shall furnish Mortgagee 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, or if any such bill is received by Borrower less than 10 days prior to the date such payment is due, the Borrower shall deliver such bill to Mortgagee promptly upon receipt. Notwithstanding the foregoing, Mortgagee agrees that Borrower shall be entitled to all interest that accrues on the funds so deposited with Mortgagee as aforesaid until such time as there exists: (1) a Default or Event of Default under the terms of the Loan Documents, including, without limitation, a delinquency in the payment of either real estate taxes, insurance premiums or ground rents; or (2) there is a transfer of ownership as described in Section 2.17 hereof.

Section 2.08 Mortgage Taxes. Borrower shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Mortgagee or Lenders 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 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 Mortgagee, Mortgagee may (but shall not be obligated to) pay the amount due, and Borrower shall reimburse Mortgagee 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 Mortgagee 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 Mortgagee and Lenders 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) As of the date hereof, Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.
- (c) As of the date hereof, 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.

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- (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.
- (c) 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) As of the date hereof, the Mortgaged Property is, to the best of Borrower's knowledge, 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 Mortgagee 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 Sect on 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, Mortgagee may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Mortgagee on demand for all such Advances.

Section 2.12 Costs of Defending and Upholding the Lien. Mortgagee may, after notice to Borrower, (a) appear in and defend any action or proceeding, in the name and on behalf of either Mortgagee or Borrower, in which Mortgagee is named or which Mortgagee in its sole

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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 Mortgagee 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, foreclosure proceedings. Borrower agrees to bear and shall pay or reimburse Mortgagee on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Mortgagee in connection with any such action or proceeding. Mortgagee's rights under this Section 2.12 are subject to Borrower's right to contest liens and encumbrances pursuant to Section 2.06(b) hereof, and are further subject to the condition that Mortgagee shall not initiate an action or proceeding under sub-section (b) above until (i) Mortgagee has given notice to Borrower that such action or proceeding is necessary and Borrower has failed or refused to initiate such action or proceeding or (ii) an Event of Default has occurred hereunder, in which event Mortgagee shall have the right to initiate such action or proceeding without prior notice to Borrower.

Section 2.13 Costs of Enforcement. Borrower agrees to bear and shall pay or reimburse Mortgagee and Lenders on demand for all Advances made hereunder. In any proceeding, including all appeals, brought to foreclose this Mortgage or to enforce any of the provisions hereof or of the Note or any of the other Loan Documents, the prevailing party shall be entitled to reimbursement, on demand, for all reasonable attorney's fees and costs (including, without limitation, court costs and appraisal fees) incurred in connection with such proceeding. In the event of the entry of a decree of foreclosure of this Mortgage, there shall be included in such decree all 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, and foreclosure of this Mortgage or any other Loan Document. In any event where a foreclosure or other enforcement proceeding is commenced following the occurrence of an Event of Default hereunder and such proceeding is dismissed because the Borrower is permitted to reinstate the Indebtedness, whether because of Borrower's exercise of statutory rights of reinstatement or otherwise, then, notwithstanding the foregoing provisions of this Section 2.13, all costs and expenses of Mortgagee and the Lenders as described herein shall be paid or reimbursed by Borrower. Borrower shall also be responsible for the payment of all Mortgagee's and Lenders' costs and expenses in connection with any bankruptcy or insolvency proceeding involving Borrower, any member of Borrower or any guarantor.

Section 2.14 Interest on Advances and Expenses. All Advances made at any time by the Lenders or Mortgagee 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 Mortgagee on demand.

Section 2.15 Indemnification. Borrower shall indemnify and hold Mortgagee and the Lenders and their respective directors, officers, employees and agents (collectively, "Indemnified Parties") harmless 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,

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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. Notwithstanding the aforesaid, Borrower shall not be required to indemnify the Indemnified Parties with respect to an act or occurrence or injury or damage arising from any action of Mortgagee or Lenders or its agents in or upon the Mortgaged Property or occurring after Borrower, whether in connection with a foreclosure or receivership or otherwise, has been removed from possession of the Premises.

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 Mortgagee in its sole discretion, consistently applied, and shall furnish to Mortgagee:

- (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 Mortgagee, 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 approved by Mortgagee, or if required by Mortgagee, an audited annual operating statement prepared and certified by an independent certified public accountant acceptable to Mortgagee, 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 approved by Mortgagee, prepared and certified by Borrower, the guarantor or indemnitor as to the applicable statement, and, such statements, if required by Mortgagee, shall be audited financial statements prepared and certified by an independent certified public accountant acceptable to Mortgagee. All statements shall be delivered to Mortgagee 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; and
- (e) upon request from Mortgagee, the following:

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- (i) quarterly operating statements of the Premises, prepared and certified by Borrower in a form approved by Mortgagee, 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 Mortgagee and in form and substance reasonably satisfactory to Mortgagee; and
- (iv) Borrower's books and records regarding the Premises for examination, review, copying and audit by Mortgagee 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.
- (f) Borrower's agreements as set forth in this Section 2.16 constitute material inducements to Mortgagee in making the loan secured by this Mortgage. Accordingly, in the event Borrower fails to furnish any financial report or tax return required by this section as and when required, time being of the essence, then, in addition to all other remedies available to Mortgagee under this Mortgage, Borrower agrees to pay Mortgagee a late charge of \$10 for each day or part thereof that any such financial report or tax return shall be overdue. In addition, Borrower hereby appoints Mortgagee its attorney in fact for the purpose of hiring at Borrower's cost an auditing firm to prepare and deliver to Mortgagee any overdue rent roll, operating statement or balance sheet and profit and loss statement in the event Borrower fails or refuses to furnish to Mortgagee those financial reports as and when due. The foregoing late charges and the costs and expenses of the auditor shall be due and payable to Mortgagee upon demand and shall constitute a part of the Indebtedness.

Section 2.17 Prohibition Against Conveyances and Encumbrances. (A) Except with the prior consent of Mortgagee, and except as otherwise provided herein, 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

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consideration or of record) all or any portion of any legal or beneficial interest (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, including any legal or beneficial interest in any general partner of Borrower, in any general partner of any general partner of Borrower or in any member of a limited liability company. Any such transfer or encumbrance to which Mortgagee consents must be to a United States citizen or an entity owned or controlled by United States citizens. All requests for Mortgagee's consent under this Section 2.17 shall be on a form previously approved by Mortgagee and shall be accompanied by the payment of Mortgagee's standard processing fee for such transactions then in effect. Mortgagee's consent to any of the foregoing actions, if given (in Mortgagee's sole discretion), may be conditioned upon a change in the interest rate (to the rate then being charged by Mortgagee on loans of similar type encumbered by assets similar to the Mortgaged Property as determined by Mortgagee in its reasonable discretion), maturity date, amortization period or other terms under the Note, the payment of a transfer fee and/or any other requirements of Mortgagee. 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 Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees, title search costs, and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such transaction.

(B) Notwithstanding the prohibitions of Section 2.17(A), Mortgagee will permit a one-time transfer of title to the Mortgaged Property without modification of the terms of the Loan or any of the Loan Documents except as hereinbelow provided, nor any change in the interest rate, which right 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 Mortgagee with written notice of the proposed transfer together with an administrative processing fee in the amount of \$25,000 (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. Such Processing Fee shall be refunded to Borrower in the event that Mortgagee disapproves the proposed transfer for any reason, but otherwise shall be non-refundable, whether or not the proposed sale is completed. A separate Processing Fee shall be required for each transfer requested. Additionally, Borrower shall furnish to Mortgagee along with such notice the following: (i) detailed and complete financial statements of the proposed transferee and principals, affiliates and parent 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 parent or other majority owners, as applicable, and their experience

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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 Mortgagee 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 Mortgagee under subparagraph 1 above or thereafter through the date of transfer of title to the Mortgaged Property.
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 Mortgagee, which approval shall not be unreasonably withheld, under a management agreement satisfactory to Mortgagee.
5. The proposed transferee shall assume the Loan under documents in form and substance reasonably satisfactory to Mortgagee, 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 Mortgagee an environmental indemnity in form and substance reasonably satisfactory to Mortgagee (which form may be different from any form executed by Borrower (and/or other indemnitors) as a result of Mortgagee's updating its standard form of environmental indemnity or as a result of specific environmental conditions at the Mortgaged Property) or reasonably acceptable Environmental Insurance and, if the proposed transferee is a special purpose entity, a non-recourse carveout guaranty in form and substance reasonably satisfactory to Mortgagee, each from a financially responsible person or entity approved by Mortgagee. Borrower and the proposed transferee and such other entities or persons as Mortgagee 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

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Mortgagee'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 Mortgagee in its sole reasonable discretion and otherwise in form and substance reasonably acceptable to Mortgagee, (v) opinions of counsel acceptable to Mortgagee on such matters as Mortgagee shall reasonably require, (vi) evidence of fire and extended coverage insurance and such other insurance, including, without limitation, terrorism insurance, as shall be required by the Loan Documents and Mortgagee and (vii) such other documents as Mortgagee shall reasonably require in order to effectuate the transaction as contemplated by this Section 2.17(B). At the closing of any approved transfer under this subsection (B), the proposed transferee shall deposit with Mortgagee sufficient funds to pay when due all real estate taxes, assessments and municipal charges, and insurance premiums, and to pay any ground rents. In addition, the Mortgagee may require the proposed transferee to establish with Mortgagee at the time of closing of any approved transfer a reserve for future tenant improvements, leasing commissions and/or capital improvements. To the extent the Loan Documents require any other reserves or deposits 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 Mortgagee with respect to Borrower either in this Mortgage, the Loan Documents or in any side letter or agreement executed by Mortgagee.

6. At the closing of any approved transfer, Borrower shall pay to Mortgagee a fee in the amount of one percent (1%) of the then outstanding balance of the Loan if the transfer occurs between the date of this Mortgage and March 31, 2007 and three quarters of one percent (.75%) of the then outstanding balance of the Loan if the transfer occurs thereafter, in cash or certified funds, less the amount of the Processing Fee previously paid (the "Transfer Fee"). The Transfer Fee is being paid in order to induce Mortgagee to allow the proposed transferee to assume the obligations of the Borrower under the Loan Documents and to release Borrower from liability thereunder for Borrower'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 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 Mortgagee, 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 1.8 times the required payments of principal and interest on the Loan for the same 12-twelve month period as

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determined by Mortgagee in its sole discretion from financial statements for the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee and submitted to Mortgagee.

8. The unpaid principal balance of the Loan shall be not more than sixty percent (60%) of the appraised value of the Mortgaged Property according to a current appraisal furnished to and satisfactory to Mortgagee and prepared by an MAI appraiser acceptable to Mortgagee.
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 Mortgagee's and Lenders' reasonable costs and expenses incurred in connection with the proposed transfer of the Mortgaged Property whether or not the transfer actually occurs including, without limitation, reasonable attorneys' fees, recording and filing charges, title charges and any endorsement to Mortgagee's title policy.

Mortgagee 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 Mortgagee has received all of the items, including the Processing Fee, required to be delivered to Mortgagee pursuant to this Section 2.17(B).

For purposes of this Section 2.17(B), "Qualified Real Estate Investor" shall mean any reputable individual or entity which is domiciled in the U.S. with principals who are U.S. citizens and which is reasonably determined by Mortgagee 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 \$700,000,000, (b) net worth of not less than \$300,000,000, 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 Mortgagee or the Lenders or any affiliate of Mortgagee or the Lenders, (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, or (iv) involved in litigation which is deemed significant by Mortgagee. 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.

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(C) Notwithstanding the prohibitions of Section 2.17(A), Mortgagee, without requiring the payment of a fee or other payment except as set forth below, or an increase in the interest rate of the Loan or modification of the Loan Documents except as hereinbelow provided, but subject nevertheless to the conditions set forth below, will permit transfers of membership interests in Borrower not more often than once in any twelve (12) month period (i) among those members who are members of Borrower on the date of this Mortgage (collectively, the “Members”), (ii) for estate planning purposes, from the principals of the Members to the “family members” of the principals of the Members, (iii) to any member of a Member, or to any entity under common ownership or control with such Member, (iv) to general or limited partnerships, limited liability companies or trusts of which a principal of any Member or a family member of such principal is a general partner, the managing partner, managing member, manager or beneficiary, as the case may be, owning not less than a 51% interest in said partnership, limited liability company or trust, as the case may be (as measured by both a percentage of capital and allocation of profits), or (v) to a corporation of which a principal of any Member or a family member is the chief operating officer and owns and controls not less than 51% of the voting stock of the corporation entitled to elect the board of directors. 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) Marvin J. Herb or family members of Marvin J. Herb, or entities owned or controlled by said family members, own directly or indirectly not less than a 51% interest in Borrower (as measured by both percentage of capital and allocation of profits), (iv) Borrower notifies Mortgagee within 30 days following the transfer of the name and address of the transferee and the interest transferred and certifies to Mortgagee in that notice that the required ownership and control described above continues to exist and, (v) Borrower pays any reasonable out-of-pocket costs incurred by Mortgagee relative to the review of transfer documents or fees for required changes to loan servicing systems. For purposes of this special provision, the term “family members” shall mean the spouse(s) of any principal of a Member, his or her children or grandchildren and spouses of such children or grandchildren, the parents of those principals of the Members and any trusts established for estate planning purposes for the benefit of any of the foregoing parties or any of the foregoing family member(s).

Section 2.18 Estoppel Certificates. Within 10 Business Days of a request by Mortgagee, Borrower shall furnish to Mortgagee 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 offsets or defenses 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 request, and shall exert commercially reasonable efforts to obtain from tenants, within 30 days of Mortgagee’s request therefor, tenant estoppel letters from such tenants of the Premises as Mortgagee may require, but such requests as to any one tenant shall not be made more often than once in a calendar year period.

Section 2.19 Assignment of Leases and Property Income.

- (a) Borrower hereby absolutely and unconditionally assigns and transfers to Mortgagee (on behalf of the Lenders) the Leases and the Property Income. Borrower shall not otherwise assign, transfer or encumber in any manner the

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Leases or the Property Income or any portion thereof. Borrower shall have a license, revocable by Mortgagee, 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. 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 Mortgagee of any of its rights or remedies under this Section 2.19 shall not be deemed or construed to make Mortgagee or the Lenders a mortgagee-in-possession.

- (b) 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 Leases described in Subsection 2.19(d)) shall be subject to the prior review and approval of Mortgagee and its counsel, at Borrower's expense. Except as otherwise consented to by Mortgagee, all Leases shall be written on the standard form of lease which shall have been approved by Mortgagee. Borrower shall furnish Mortgagee with executed copies of all Leases within 10 days after execution thereof. No material changes may be made to the Mortgagee-approved standard lease form without the prior written consent of Mortgagee. 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 Mortgagee.
- (c) Borrower shall perform all obligations as lessor under all Leases and shall enforce all of the terms, covenants and conditions contained in upon the part of the lessee thereunder to be performed or observed, short of termination thereof. Additionally, 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 Mortgagee, 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 or discount of rent or advance rent under any Lease more than 30 days in advance; (vi) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or the Mortgagee's interest therein; or (vii) alter, modify or change in any material respect 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 Mortgagee.

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Notwithstanding the foregoing, Borrower shall have the right to terminate Leases in the following situation without first obtaining Mortgagee's consent therefor: (A) Borrower may enter into an agreement to terminate any Lease where such termination is necessary in order to make effective a new Lease for such space (or the expansion of an existing Lease) which satisfies all conditions of Section 2.19(d) hereof; and (B) Borrower shall have the right to terminate, whether by agreement or by enforcement proceeding any Lease for less than 10,000 square feet of rentable area and any Lease whose stated term expires in less than six (6) months. Any Lease other than those described in (A) and (B) may be terminated only with the prior written consent of Mortgagee; provided, however, that in the event of a default by any tenant under the terms and provisions of the applicable Lease nothing herein shall prevent Borrower from taking any appropriate enforcement action in the ordinary course of business short of termination.

- (d) Notwithstanding Section 2.19(b) and (c), Mortgagee's prior consent shall not be required for entering into any Lease covering less than 50,000 square feet of net rentable area, provided that (i) with respect to a Lease covering between 15,000 square feet of net rentable area and 49,000 square feet of net rentable area (and multiple Leases to any one tenant shall be aggregated together for purposes of determining the aforesaid threshold), the gross base rental rate is in excess of \$27.00 per square foot averaged over the term of the Lease (ii) the Lease utilized is on a standard form previously approved by Mortgagee, without material modification, (iii) the Lease represents an arm's-length transaction and provides for the payment of reasonable market rents, and (iv) 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. If any of the aforesaid requirements are not satisfied then Mortgagee's prior consent shall be required for entering into such Lease. Borrower shall give Mortgagee notice of any Lease described in this Section 2.19(d), together with a fully executed and complete copy of such Lease, not later than 10 days after the execution thereof. Mortgagee's prior approval shall be required with respect to all Leases, including renewals, amendments and modifications thereof, for space of 50,000 square feet or more, which approval shall not unreasonably be withheld, delayed or conditioned, so long as any such proposed Leases, or renewals, amendments or modifications thereof shall be at rental rates and on terms comparable to existing local market rates and terms and shall constitute arms-length transactions with bona fide, independent third-party tenants. As used herein, the term "gross base rent" means the aggregate rent paid by the tenant, including amounts "passed through" to the tenant for the tenant's proportionate share of taxes and operating expenses.
- (e) In addition to the foregoing, Borrower shall comply with all terms and provisions of the Assignment.
- (f) If any tenant is required to pay a lease termination fee in excess of \$100,000 as a result of such tenant terminating its Lease, upon such Lease termination, the entire

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amount so required to be paid by such tenant shall be collaterally assigned to Mortgagee as additional collateral for the Loan and deposited with Mortgagee in an interest bearing account ("Lease Termination Escrow Account"), with interest accruing for the benefit of the Borrower. Once the space vacated as a result of the Lease termination is occupied and the new tenant is paying rent, the portion of the Lease Termination Escrow Account relating to the Lease termination payment for the applicable space (inclusive of interest attributable thereto) shall be refunded to Borrower. 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 Mortgagee 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 Mortgagee as herein provided.

- (g) Upon occurrence of an Event of Default, Mortgagee 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 Mortgagee; 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.

Section 2.20 Environmental Matters; Warranties; Notice; Indemnity.

- (a) Borrower represents and warrants to Mortgagee and the Lenders 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 the best of 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 Mortgagee in writing pursuant to the written reports resulting from environmental assessments of the Mortgaged Property delivered to Mortgagee (the "Environmental Report");
 - (iii) to the best of 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;

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- (iv) to the best of 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 the best of 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) 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 Mortgagee, 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 Mortgagee, 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. Mortgagee acknowledges that there is a "drop-off and pick up" dry cleaner service in the lower level retail concourse of the Premises and consents to the presence thereof so long as the actual cleaning process is not done on the Mortgaged Property.
- (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 provide notice to Mortgagee 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;

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- (ii) all claims made or threatened in writing 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) Mortgagee 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 Mortgagee on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Mortgagee in connection with any such action or proceeding.
- (f) To the extent not covered by the proceeds of the Environmental Insurance, Borrower shall indemnify, defend and hold the Lenders and Mortgagee and the Lenders' and Mortgagee'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.

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 (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 diligently prosecute to completion all such Remedial Work. In all events, such Remedial Work shall be commenced within 45 days after any demand therefor by Mortgagee or such shorter period as may be required under any applicable Environmental Law.

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- (b) All Remedial Work shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Mortgagee. All costs and expenses of such Remedial Work and Mortgagee'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, Mortgagee may (but shall not be obligated to) cause such Remedial Work to be performed. Borrower agrees to bear and shall pay or reimburse Mortgagee on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Mortgagee in connection with monitoring, reviewing or performing any Remedial Work.
- (c) Except with Mortgagee's prior consent, 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 Mortgagee's sole judgment, impair the value of Mortgagee's security hereunder. Mortgagee'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 Mortgagee's prior consent. In such event Borrower shall notify Mortgagee as soon as practicable of any action taken.
- (d) Borrower shall have no obligation to perform Remedial Work pursuant to this Section 2.21 which is made necessary because of any action of Mortgagee, Mortgagee's agent or any receiver or any successor owner of the Mortgaged Property occurring after Borrower has been divested of possession and control of the Mortgaged Property in connection with any enforcement proceeding initiated by Mortgagee. Borrower shall at all times, however, remain liable for any condition of the Mortgaged Property which makes necessary any Remedial Action and which condition was present prior to the date that Borrower was divested of possession and control of the Mortgaged Property as provided herein.

Section 2.22 Environmental Matters; Inspection.

- (a) Mortgagee shall have the right at all reasonable times 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. Mortgagee may select a consulting engineer to conduct and prepare reports of such inspections. The inspection rights granted to Mortgagee in this Section 2.22 shall be in addition to, and not in limitation of, any other inspection rights granted to Mortgagee 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 Mortgagee on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or

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incurred by Mortgagee in connection with the inspections and reports described in this Section 2.22 in the following situations:

- (i) If Mortgagee 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 satisfactory to Mortgagee, and pursuant to a management agreement reasonably satisfactory to Mortgagee. If at any time either the management company or the management agreement is not reasonably satisfactory to Mortgagee, the Mortgagee shall notify Borrower, and Borrower shall have ninety (90) days after such notice to rectify the situation to Mortgagee's satisfaction. If by the expiration of said ninety (90) day period Borrower has not rectified the situation to Mortgagee's 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, Mortgagee approves Lincoln Property Company Commercial Inc. as manager of the Mortgaged Property, reserving the right, however, to revoke such approval.

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; 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 Mortgagee 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 Mortgagee such certifications or other evidence of compliance with the provisions of this Section 2.24 as Mortgagee may from time to time request.

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Section 2.25 Engagement in Other Businesses; Other Indebtedness. Borrower will (a) own no material assets, and not engage in any business, other than the assets and the businesses specifically contemplated by the Loan Documents, and (b) not incur any indebtedness for borrowed money other than in the ordinary course of business of owning, operating and managing the Mortgaged Property.

Section 2.26 Terrorism and Anti-Money Laundering.

- (a) As of the date hereof and throughout the term of this Mortgage: (i) Borrower; (ii) any Person controlling or controlled by Borrower; (iii) any Person having a 5% or more ownership interest in Borrower; (iv) if Borrower is a privately held entity, any Person having a beneficial interest in Borrower; or (v) any Person for whom Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.
- (b) To comply with applicable Anti-Money Laundering Laws, all payments by Borrower to Mortgagee or from Mortgagee to Borrower will only be made in Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.
- (c) Borrower agrees to provide Mortgagee at any time and from time to time during the term of the Loan with such information as Lender determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Person controlling or controlled by Borrower or any Person having a beneficial interest in Borrower, from any governmental authority, self-regulatory organization or financial institution in connection with its Anti-Money Laundering Laws and compliance procedures, or to update such information.
- (d) The representations and warranties set forth in this Section 2.26 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender under the Note, this Mortgage and the other Loan Documents or receives any payment from Mortgagee. Borrower agrees promptly to notify Mortgagee in writing should Borrower become aware of any change in the information set forth in these representations.

Section 2.27 Late Charges. If any monthly deposit for taxes, ground rent, insurance, replacements and other sums if required under this Mortgage or any other Loan Document, shall not be paid as required under this Mortgage or any other Loan Document, as the case may be, within ten (10) days from the date on which the same shall be due, Borrower shall pay to Mortgagee a late charge (the "Late Charge") of one cent (\$0.01) for each dollar so overdue in order to compensate Mortgagee for its loss of the timely use of the money and frustration of

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Mortgagee in the meeting of its financial commitments and to defray part of Mortgagee's incurred cost of collection occasioned by such late payment. Any Late Charge incurred shall be immediately due and payable. If, however, during any consecutive twelve (12) month period Borrower on more than three (3) occasions shall pay any such deposits after the due dates thereof (whether prior to or after the time that the Late Charge is payable as above), then the time period after which a Late Charge will be charged and paid shall thereafter be reduced from ten (10) days to two (2) days after a due date. Nothing herein contained shall be deemed to constitute a waiver or modification of the due date for such deposits or the requirement that Borrower make all payment of installments and deposits as and when the same are due and payable.

Section 2.28 LIBOR Rate Cap Agreement.

- (a) On or prior to the date of this Mortgage, Borrower shall enter into, and Borrower shall thereafter maintain in effect, a "LIBOR Rate Cap Agreement" from an issuer acceptable to Mortgagee ("Issuer"), for a term equal to 2 years, in a notional amount not less than the aggregate outstanding principal balance of the Note. The LIBOR Rate Cap Agreement shall provide that if the LIBOR Rate (as defined in the Note) then in effect under the Note is at any time greater than 8% (the "Strike Price"), then the issuer shall pay to Mortgagee, on the dates when monthly payments of interest are required to be paid to the Lenders under the Note, an amount equal to interest on the then outstanding principal balance of the Note at the Excess Rate (as hereinafter defined).
- (b) As used herein, "Excess Rate" shall mean an amount equal to the LIBOR Rate then in effect under the Note minus the Strike Price.
- (c) The cost of the LIBOR Rate Cap Agreement shall be paid for prior to the date of this Mortgage.
- (d) The LIBOR Rate Cap Agreement shall be collaterally assigned to Mortgagee (on behalf of the Lenders) pursuant to a collateral assignment in form and substance satisfactory to Mortgagee which assignment shall be consented to by the Issuer.

ARTICLE III Security Agreement

Section 3.01 Warranties, Representations and Covenants of Borrower. Borrower covenants, warrants, represents and agrees with and to Mortgagee 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 Mortgagee (on behalf of the Lenders), a security interest in favor of Mortgagee 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 is covered by the Code. The mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property

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shall not derogate from or impair in any manner the intention of Borrower and Mortgagee 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 Mortgagee as determined by this Mortgage or the priority of Mortgagee's lien upon and security interest in the Mortgaged Property.

Any such mention shall be for the protection of Mortgagee in the event that notice of Mortgagee'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. Borrower shall notify Mortgagee 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 Mortgagee.
- (d) The Collateral is not used or bought for personal, family or household purposes.
- (e) The Collateral shall be kept on or at the Premises, and Borrower shall not remove the Collateral from the Premises without the prior consent of Mortgagee, 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 Delaware. Borrower shall not change its place of formation or its entity name without providing Mortgagee 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 Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Code forms or continuation statements, Borrower shall, promptly after request, execute, file and

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record such Code forms or continuation statements as Mortgagee shall deem necessary (subject to Mortgagee's right to sign such statements on behalf of Borrower as provided in Subsection 3.01(g)), and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall initially pay such expenses, Borrower shall promptly reimburse Mortgagee for the expenses.

- (g) Borrower hereby authorizes Mortgagee to file with the appropriate public office at Borrower's expense, any initial financing statements, amendments or continuations thereof, evidencing Borrower, as debtor, and Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.
- (h) Borrower represents that its exact legal name is set forth in the first paragraph of this Mortgage.
- (i) Borrower's Federal Tax Identification Number is 37-1436681.
- (j) Borrower's organizational identification number is 0075256-8.
- (k) Borrower shall not file any termination statements concerning the Mortgaged Property without Mortgagee'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 Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee.

Borrower will cooperate with the Mortgagee 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 state of organization and organizational ID number of Borrower and the address of Mortgagee from which information concerning the security interest granted hereby may be obtained are set forth herein. Borrower shall immediately notify Mortgagee 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 Mortgagee 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.

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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 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 other than terms, covenants and conditions otherwise specifically referred to in this Section 4.01, which cannot be cured by the payment of money and which is not cured within thirty (30) days after notice from Lender of such default, provided that if such default cannot reasonably, with the exercise of due diligence, be cured within such 30-day period, then Borrower shall have such additional time (but not exceeding an additional 60 days) as may reasonably be necessary to cure such default, so long as Borrower shall commence such cure within such 30-day period and thereafter diligently shall prosecute such cure to completion;
- (d) if any representation made herein or in any other Loan Document shall prove to be untrue in any material respect when made;
- (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 (vi) of Section 2.19(c) with respect to certain actions concerning Leases which shall not be taken by Borrower without the prior consent of Mortgagee;
- (h) if Borrower, any general partner of Borrower or any managing 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;

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- (i) if any Bankruptcy Proceeding shall have been filed against Borrower, any general partner of Borrower, any managing 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 90 days of such filing;
- (j) if Borrower, any general partner of Borrower, any managing 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 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 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 member of Borrower (if Borrower is a limited liability company) or any guarantor of the Note 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) 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 which shall not be dismissed within 90 days after its commencement, 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 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 Mortgagee;
- (o) except as permitted in this Mortgage, the actual or threatened alteration, demolition or removal of any of the Improvements without the prior consent of Mortgagee; or

Section 4.02 Remedies. Upon the occurrence of any Event of Default, Mortgagee may take such actions against Borrower (on behalf of the Lenders) 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

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actions taken by Mortgagee shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Mortgagee may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Mortgagee or the Lenders permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Such actions may include the following:

- (a) Subject to any applicable provisions of the Note, Mortgagee 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) Mortgagee 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 Mortgagee 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 Mortgagee or in such other name as Mortgagee shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Mortgagee 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 Lease, 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 Mortgagee 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 Mortgagee, its agents, nominees and attorneys.
- (c) Subject to any applicable provisions of the Note, with or without entry, personally or by its agents, nominees or attorneys, Mortgagee 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 Mortgagee shall have any statutory power of sale as may be provided by law in the State.
- (d) Subject to any applicable provisions of the Note, Mortgagee 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.

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- (e) Subject to any applicable provisions of the Note, Mortgagee 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) Mortgagee 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) Mortgagee 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) Subject to any applicable provisions of the Note, Mortgagee (on behalf of the Lenders) may recover judgment on the Note, either before, during or after any proceedings for the foreclosure or enforcement of this Mortgage.
- (i) Mortgagee 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 Mortgagee to receive the Property Income pursuant to this Mortgage or the Assignment.
- (j) Mortgagee 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) Mortgagee may pursue any other rights and remedies of Mortgagee permitted by law, equity or contract or as set forth herein or in the other Loan Documents.
- (l) Mortgagee may apply any funds then on deposit with Mortgagee for payment of Impositions, ground rent or insurance premiums in the manner provided for in Section 2.07.
- (m) Mortgagee 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.

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- (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 5.16 of this Mortgage in such order and priority as Mortgagee deems appropriate in its sole discretion.
- (b) Effect of Judgment. No recovery of any judgment by Mortgagee 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 Mortgagee hereunder. Such lien, rights, powers and remedies of Mortgagee shall continue unimpaired as before.
- (c) Continuing Power of Sale. The power of sale conferred upon Mortgagee 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, Mortgagee or any 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. Mortgagee 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 Mortgagee's sole discretion and without prejudice to Mortgagee.
- (f) No Waiver or Release. Mortgagee 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 Mortgagee'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 Mortgagee 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 Mortgagee of any payment after the occurrence of an Event of Default and no payment by Mortgagee 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 Mortgagee or any Lender, and no extension of time for the payment of the whole or any portion of the Indebtedness or any other indulgence given by Mortgagee or any Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Mortgagee'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

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received by Mortgagee. No waiver by Mortgagee or any 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 Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which the Lenders or Mortgagee may grant with respect to any of the Indebtedness; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which the Lenders or Mortgagee 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 Mortgagee 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 Mortgagee.
- (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 the Lenders or Mortgagee 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 the Lenders or Mortgagee 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 the Lenders' or Mortgagee'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

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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 Mortgagee), but such separate action shall not thereafter be consolidated with Mortgagee's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Mortgagee'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) Mortgagee's Discretion. Mortgagee 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) Mortgagee's Right to Waive, Consent or Release. Mortgagee 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 Mortgagee hereunder except to the extent specified by Mortgagee in such writing.
 - (l) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and demand by Mortgagee at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Mortgagee. If Borrower or any other occupant is permitted to remain in possession, such possession shall be as tenant of Mortgagee and such occupant

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(i) shall on demand pay to Mortgagee 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 Mortgagee may designate to allow Mortgagee 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, Mortgagee 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, Mortgagee 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 Mortgagee or the Lenders 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 Mortgagee and the Lenders in accordance with the Note, this Mortgage and the Loan Documents;
 - (c) impair the right of the Mortgagee or the Lenders to name the 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 indemnity (including the environmental indemnity set forth in Section 2.20(f) of this Mortgage or any separate environmental indemnity agreement, however designated), guaranty, lease or similar instrument made in connection with this Mortgage, the Note or the Loan Documents;

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- (e) impair the right of the Mortgagee to obtain the appointment of a receiver; or,
 - (f) impair Mortgagee's rights and remedies under Section 2.19 of this Mortgage regarding the assignment of Leases and Property Income to Mortgagee 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 Mortgagee or the Lenders (which right is specifically reserved) to pursue or obtain personal recourse liability against Borrower, (or any other person or entity that specifically has agreed to indemnify Lender with respect to the following), to recover Losses incurred by Mortgagee or the Lenders 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 or any other person in connection with the operation of the Premises contrary to the terms of the Loan Documents or the Leases;
 - (d) the failure to return, or reimburse Mortgagee 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 thereof, or by any guarantor or indemnitor (including any indemnitor under the environmental indemnity contained in the Mortgage, or in a separate environmental indemnity or similar document executed herewith); and
 - (f) the failure to apply Property Income or Proceeds to payments due under the Loan Documents or to operating expenses of the Mortgaged Property (including, without limitation, any reserves or escrows required by the Loan Documents), thereby resulting in, or

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contributing materially to a Default. Provided, however, that neither Borrower nor any other person or entity shall have any personal liability for Losses based on distributions by Borrower of Property Income or rent loss insurance Proceeds to Borrower, or any general partner, principal, stockholder or member of or managing agent for Borrower (if Borrower shall be a limited liability company) 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 180 days prior to a Default.

- (v) Notwithstanding the foregoing, the agreement of Mortgagee 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 or MJH Realty LLC 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 in collusion with Borrower or MJH Realty LLC and the same is not dismissed within 90 days of such filing.
- (v) Notwithstanding the foregoing, the agreement of Mortgagee 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 of a Default under Section 2.17 of this Mortgage.
- (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 Mortgagee 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

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Sheet of this Mortgage, or at such other address and person as shall be designated from time to time by Mortgagee 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 Mortgagee 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, the Mortgaged Property, or any entity controlling, controlled by or under common control with Borrower or any guarantor, 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 Mortgagee and the Lenders and their respective 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 Mortgagee may reasonably require from time to time to better assure, transfer and confirm unto Mortgagee the rights now or hereafter intended to be granted to Mortgagee 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. 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

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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 the Lenders or Mortgagee; (f) any default or failure on the part of the Lenders or Mortgagee 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.

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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) The Lenders, in the management of its investments or for any other reason, may, 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"). As part of a Transfer, Mortgagee 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 Mortgagee 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 Mortgagee 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.

(B) Borrower shall cooperate and shall cause any guarantor and any indemnitor of the Loan to cooperate with Mortgagee and the Lenders 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 Mortgagee 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) provided, Borrower shall not be required to deal with multiple servicing contacts or tender multiple monthly payments as the result of any such bifurcation of the Loan. In the event that Securities are issued in connection with the Loan, all funds held by Mortgagee 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 adverse effect on Borrower. Notwithstanding anything herein to the contrary, after a Transfer, the transferring Mortgagee and the Lenders (in addition to the transferee) shall continue to have the benefits of any indemnifications and rights contained herein which such assigning Mortgagee and the Lenders 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, then in that event only all rights of Mortgagee 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

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Mortgagee 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 Mortgagee 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 Mortgagee 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 Mortgagee 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 Mortgagee, 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.

Section 5.15 Amendments Require Consent. Borrower agrees that it will not amend, modify or terminate any of the Permitted Encumbrances without the prior written consent of Mortgagee.

Section 5.16 Application of Payments. Each payment received by Mortgagee hereunder or under the Note or under any of the other Loan Documents shall be applied in the following order:

- (a) First, to the interest due on any Advances;
- (b) Next, to the principal amount of any Advances;
- (c) Next, to Late Charges, attorney's fees or any other amount due hereunder or under a Loan Document save for the amounts described in (d) through (f) immediately below;
- (d) Next, to any Prepayment Premium required to be paid under the Note; and
- (e) Next, to accrued interest due under the Note;
- (f) Finally, to the principal balances of the Note.

NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THERE IS AN EVENT OF DEFAULT, THE MORTGAGEE AT ITS OPTION SHALL APPLY ANY PAYMENTS IT RECEIVES TO THE FOREGOING ITEMS IN SUCH ORDER AS MORTGAGEE DEEMS APPROPRIATE IN ITS SOLE DISCRETION.

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Section 5.17 Administrative Agent. The Lenders have appointed, designated and authorized Mortgagee, as administrative agent (“**Administrative Agent**”) to take such action on behalf of the Lenders under this Mortgage and to exercise such powers and perform such duties as are expressly delegated to “Mortgagee” by the terms of this Mortgage, together with such powers as are reasonably incidental thereto. Therefore, without limiting the generality of the foregoing, (1) Borrower (a) is entitled to rely on the Administrative Agent for any waiver, amendment, approval or consent given by “Mortgagee” hereunder and (b) shall adhere only to waivers, amendments, approvals or consents given by Administrative Agent, as “Mortgagee”, hereunder and (2) Administrative Agent is entitled, on behalf of the Lenders, to take all actions, including exercising all remedies, permitted to be taken by “Mortgagee” under this Mortgage (either by law or pursuant to the terms of this Mortgage). Until Borrower is otherwise notified by the Lenders, the Administrative Agent is Massachusetts Mutual Life Insurance Company. Appointment of a successor Administrative Agent shall also constitute appointment of a successor “Mortgagee” under this Mortgage and such appointed successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring “Mortgagee” hereunder. The use of the term “agent” in this Mortgage with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. All warranties, certifications, indemnities, waivers, rights under insurance policies and other terms, covenants and conditions inuring to the benefit Mortgagee under the Loan Documents shall also inure to the benefit and may be enforced by the Lenders.

Section 5.18 Indemnity and Guaranty. By acceptance of this Mortgage, Mortgagee acknowledges that on this date Marvin J. Herb has not personally agreed to guaranty or indemnify Lender with respect to the Loan.

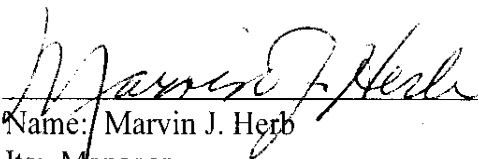
Section 5.19 Lincoln/Fulcrum. Notwithstanding anything in this Mortgage to the contrary, in no event shall either Lincoln Hartford II LLC or Fulcrum Wacker, LLC be deemed to be a managing or principal member of Borrower unless Borrower’s organizational documents are hereafter modified to so provide.

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

Borrower:

MJH WACKER LLC, a Delaware
limited liability company

By: 
Name: Marvin J. Herb
Its: Manager

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STATE OF ILLINOIS

COUNTY OF COOK

On this 28th day of February, 2008, before me, a Notary Public in and for said State, personally appeared Marvin J. Herb, known to me to be the person described in and who executed such instrument as the manager of MJH Wacker LLC, a Delaware limited liability company, and who acknowledged the execution of such instrument as such authorized signatory and member for and on behalf of and as the act and deed of such limited liability company, pursuant to authority lawfully conferred upon him/her 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.

Meta Suzanne Petter
Notary Public

My Commission Expires 1-23-11



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SCHEDULE A

DESCRIPTION OF LAND

Parcel 1

Lots 1, 2, and 3 (excepting from said Lots those parts heretofore conveyed to the City of Chicago for the widening of the South Branch of the Chicago River; also excepting from said Lots those parts thereof conveyed to and taken by the City of Chicago for the widening of South Wacker Drive and also excepting that part of said Lot 3 which lies South of a line perpendicular to the West line of said widened Wacker Drive which intersects said West line at a point 23.78 feet South from the North line of said Lot 3) in Block 79 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 17-16-207-004

Parcel 2

Lots 3 and 4 (except from said Lots those parts heretofore conveyed to the City of Chicago for the widening of the South Branch of the Chicago River; also excepting from said Lots those parts thereof conveyed to and taken by the City of Chicago for widening of South Wacker Drive, and except that part of said Lot 3 which lies North of a line perpendicular to the West line of said widened Wacker Drive which intersects said West line at a point 23.78 feet South from the North line of said Lot 3) in Block 79 of School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 17-16-207-005

Street Address: 100-150 South Wacker Drive Chicago, Illinois

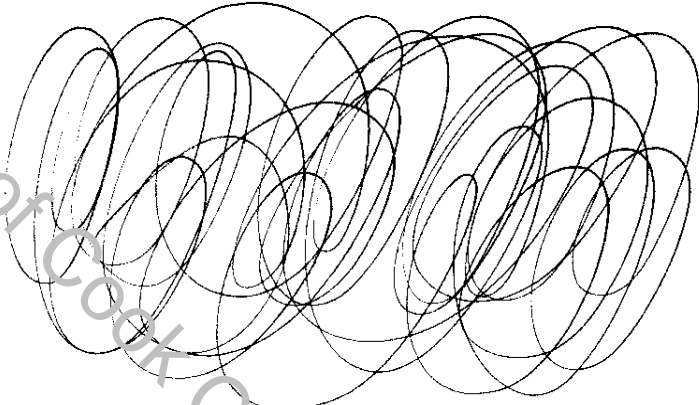
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SCHEDULE B

PERMITTED ENCUMBRANCES

Those exceptions to title listed in Schedule B of that certain loan policy of title insurance No. CC15660 issued by First American Title Insurance Company.

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RIDER

APPLICABLE STATE LAW PROVISIONS

1. Compliance with Illinois Mortgage Foreclosure Law.

a. **Benefits to Act.** Borrower and Mortgagee shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101) (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference. 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. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

b. **Insurance.** Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

c. **Protective Advances.** All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure of the Mortgaged Property, and at any time prior to sale of the Mortgaged Property, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage to:

- (1) preserve or maintain, repair, restore or rebuild the improvements upon the mortgaged real estate;
- (2) preserve the lien of the Mortgage or the priority thereof; or
- (3) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Mortgagee of:

- (1) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance;
- (2) 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 thereof;
- (3) other obligations authorized by the Mortgage; or
- (4) with court approval, any other amounts in connection with other liens,

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encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

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

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of the Mortgage as referred to in Sections 1504 (d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to the Mortgage or the mortgaged real estate;

(v) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Borrower's 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; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Property imposed by Subsection (c)(1) of Section 5/15-1504 of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the mortgaged real estate 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; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Mortgaged Property for amounts required to be paid by mortgagor; and (9) if the Mortgage is insured, payments of FHA or private mortgage insurance required to keep insurance in force.

All Protective Advances shall be so much additional indebtedness secured by the Mortgage, and shall become immediately due and payable without notice and with interest

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thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

The Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) determination of the amount of indebtedness secured by the Mortgage at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the 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;

(iii) if right of redemption has not been waived by the Borrower in the Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(v) application of income in the hands of any receiver or Mortgagee in possession; and

(vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

d. Mortgagee in Possession. In addition to any provision of the Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee 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 Mortgagee, 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.

e. Waiver of Redemption. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601 and 5/15-0602 of the Act, Borrower hereby waives any and all right to redemption and reinstatement.

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2. Maximum Principal Amount. This Mortgage shall secure the payment of any amounts advanced from time to time under the Note or other 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 Lenders 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 Mortgagee in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Mortgage. Notwithstanding the aforesaid, although the Indebtedness secured by this Mortgage may increase or decrease from time to time, in no event shall the total amount of the Indebtedness secured by this Mortgage exceed \$170,000,000.

3. Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Mortgagee with evidence of the insurance coverage required by this Mortgage, or any of the other Loan Documents, Mortgagee may purchase insurance at Borrower's expense to protect Mortgagee'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 Mortgagee 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 Mortgagee but only after providing Mortgagee with evidence that Borrower has obtained insurance as required by the Mortgage or any of the other Loan Documents. If Mortgagee 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 Mortgagee 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.

4. Type of Property. The Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq., herein the "Act"), or residential real estate (as defined in the Act). Borrower waives its rights of redemption pursuant to the Act.

5. Business Loan. The Borrower stipulates, represents, warrants, affirms, and agrees that the Indebtedness secured by this Mortgage constitute "Business loans" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.