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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0912845092 Fee: \$142.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/08/2009 02:50 PM Pg: 1 of 54

Report Mortgage Fraud
800-532-8733

The property identified as: PIN: 17-09-419-001-0000

Address:

Street: 221 N. LaSalle St

Street line 2:

City: Chicago

State: IL

ZIP Code: 60601

Lender: Texas Capital Bank

Borrower: LAZ 221 N LaSalle Garage, LLC

Loan / Mortgage Amount: \$1,072,500.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 777.0 et seq. because it is commercial property.

Certificate number: 7355AC0B-2B2A-47F4-9E58-942A488BE4FE

Execution date: 04/28/2009

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292050-020 SA

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Property of Cook County Clerk's Office

**MORTGAGE AND SECURITY AGREEMENT IN FAVOR OF
TEXAS CAPITAL BANK, NATIONAL ASSOCIATION**

Dated as of April 28, 2009

**Permanent Index Tax
Identification No.: 17-09-419-001-000**

Property Address:

**221 North LaSalle Street
Chicago, Illinois 60601**

**Prepared By and After Recording Return To:
Christopher J. White, Esq.
Thompson & Knight, L.L.P.
1722 Routh Street, Suite 1500
Dallas, Texas 75201**

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MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement (herein referred to as the "Mortgage"), is entered into as of April 28, 2009, by **LAZ 221 N LASALLE GARAGE, LLC**, a Delaware limited liability company, as Mortgagor, whose mailing address for notice hereunder is at c/o LAZ Parking Realty Investors, 745 Atlantic Avenue, Boston, Massachusetts 02111, Attention: Larry Stubbs, Facsimile: (617) 426-0607, to **TEXAS CAPITAL BANK, NATIONAL ASSOCIATION**, as Mortgagee.

WITNESSETH:

ARTICLE I DEFINITIONS

Section 1.1 DEFINITIONS. As used herein, the following terms shall have the following meanings:

Affiliate: When used with respect to any Person, any other Person that, directly or indirectly, Controls or is Controlled by or is under common Control with such Person.

Architectural Barrier Laws: Any and all architectural barrier laws including, without limitation, the Americans with Disabilities Act of 1990, P.L. 101-336, as amended, or any successor thereto.

Assignment of Rents: The present, unconditional and absolute Assignment of Rents and Leases of even date with this Mortgage executed by Mortgagor as Assignor in favor of the Mortgagee.

CGL: The broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form acceptable to Mortgagee in its sole discretion).

Charges: All fees, charges and/or other things of value, if any, contracted for, charged, received, taken or reserved by Mortgagee in connection with the transactions relating to the Note and the Loan Documents, which are treated as interest under applicable law.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

Constituent Party: Any signatory to this Mortgage that signs on Mortgagor's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

Contracts: All of the right, title, and interest of Mortgagor, including equitable rights, in, to, and under any and all (i) contracts for the purchase of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing,

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including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Mortgagor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Mortgagor may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including but not limited to maintenance and service contracts and management agreements.

Control: The possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the term “controlling” and “controlled” have meanings correlative to the foregoing.

Debt Service: means:

(i) with respect to a calculation of the Debt Service Coverage Ratio in connection with Mortgagor’s election to extend the term of the Loan pursuant to Section 4 of the Note and following any extension of the Original Maturity Date, with respect to all calculations of the Debt Service Coverage Ratio under the Loan Documents, the hypothetical monthly installment of principal and interest for the month in question (determined as of the beginning of such calendar month) that would be payable on the outstanding principal balance of the Loan, assuming (i) equal monthly payments, (ii) an interest rate equal to the Treasury Rate at the time of such computation plus two and fifty one-hundredths percent (2.50%) per annum, and (iii) that the monthly payments would fully amortize the outstanding principal balance of the Loan, over a twenty (20) year period; and

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(ii) with respect to a calculation of the Debt Service Coverage Ratio pursuant to Section 5.12 and Section 5.13 prior to an extension of the Original Maturity Date, the current portion of Mortgagor's actual monthly installments of principal and interest payments under the Note for the period in question.

Debt Service Coverage Ratio: The Net Operating Income generated by the Mortgaged Property, on a consolidated basis, for the trailing three (3) month period as verified by Mortgagee in accordance with its customary underwriting standards and reflected on Mortgagor's fiscal quarter end operating statement, divided by Debt Service for such trailing three (3) month period.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Declaration: That certain Declaration of Covenants, Restrictions and Easements dated August 11, 2008, made by 221 North LaSalle Partners, LLC, a Delaware limited liability company, and recorded on September 4, 2008 as Document Number 0824816018, IN Cook County, Illinois, as amended.

Default Rate: The rate of interest specified in the Note to be paid by the maker of the Note from and after the occurrence of a default in payment under the provisions of the Note and Loan Documents but not in excess of the Maximum Lawful Rate.

Disposition: Any sale, lease (except as permitted under this Mortgage), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Mortgagor (if Mortgagor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

ERISA: The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended, and any and all successor statutes thereof.

Event of Default: Any happening or occurrence described in Article VI hereof.

Extended Maturity Date: April 28, 2015.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Mortgagor and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning,

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call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

GAAP: Generally accepted accounting principles, as promulgated by the Financial Accounting Standards Board.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Guarantor (individually and/or collectively, as the context may require): Those persons, firms, or entities, if any, designated as Guarantor in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That instrument or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Mortgagee guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

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Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; and (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Mortgagee, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Mortgagor and Mortgagee that such future indebtedness may be incurred).

Land: All that certain real property or interest therein situated in the County of Cook, Illinois, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all right, title, interest, and privileges of Mortgagor in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or now or hereafter in effect) together with all security and other deposits or payments made in connection therewith which (i) grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, (ii) are for a period of one (1) year or longer, and (iii) account for twenty percent (20%) or more of the Net Operating Income of the Mortgaged Property.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes (including Architectural Barrier Laws and Environmental Laws), rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Mortgagor, any Constituent Party, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, and (iii) Mortgagor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement.

Loan Documents: The Note, this Mortgage, the Assignment of Rents, the Guaranty, if any, and any and all other documents now or hereafter executed by Mortgagor, Guarantor, or any other person or party in connection with the loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations.

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Material Adverse Effect: Any act, event, condition or circumstance which would materially and adversely affect the business, operations, condition (financial or otherwise) of Mortgagor or any Constituent Party, the ability of Mortgagor or any Constituent Party to perform its obligations under any Loan Document to which it is a party or by which it is bound or the enforceability of any Loan Document.

Maturity Date: The Original Maturity Date or the Extended Maturity Date, as applicable, or such earlier maturity of the Loan, whether by acceleration of the Indebtedness as provided in the Loan Documents, or otherwise.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Mortgagee in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Mortgagee to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges (as herein defined) made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Mortgagee is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or the Related Indebtedness, Mortgagee will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Mortgagee to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Mortgagee will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Mortgagee may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Mortgagor as provided by applicable law now or hereafter in effect.

Minerals: All substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, and any interest of Mortgagor now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts and Leases. As used in this Mortgage, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Mortgagee: TEXAS CAPITAL BANK, NATIONAL ASSOCIATION, a national banking association, whose address for notice hereunder is 500 Throckmorton, Suite 300, Fort Worth, Texas 76102, Attention: Mr. Jeffery A. Moten, Senior Vice President,

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Facsimile: (817) 336-0553 and the subsequent holder or holders, from time to time, of the Note.

Mortgagor: The individual or entity described as Mortgagor in the initial paragraph of this Mortgage and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Mortgagee's consent to any Disposition of all or any part of the Mortgaged Property).

Net Operating Income: The gross revenue actually received from the operation of the Mortgaged Property for the period in question, less all expenditures incurred in connection with the operation and maintenance of the Mortgaged Property that are allocable to such period, calculated on an accrual basis and otherwise in accordance with GAAP consistently applied; provided, however, that such expenditures shall not include (i) any expenditures for nonrecurring items; (ii) non-cash items such as, by way of example and not in limitation thereof, depreciation and amortization; and (iii) debt service. It is acknowledged and agreed that solely for the purpose of calculating Net Operating Income, Mortgagor shall be deemed to have paid from the revenue generated by the Mortgaged Property, in addition to all other operating expenses attributable thereto, a monthly management fee with respect to the management of the Mortgaged Property equal to 3.5% of the gross revenues generated by the operation of the Mortgaged Property for such month.

Note: That certain Promissory Note of even date herewith, incorporated herein by this reference, executed by Mortgagor and payable to the order of Mortgagee in the principal amount of One Million Seventy-Two Thousand Five Hundred and No/100 Dollars (\$1,072,500.00), bearing interest as therein specified, containing an attorneys' fee clause, interest and principal being payable as therein specified, and finally maturing on the Maturity Date, and secured by, among other things, this Mortgage; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, Guarantor, or any other person or party to the Loan Documents to Mortgagee, or others as set forth in the Loan Documents, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Mortgagor is granted a possessory interest in the Land.

Original Maturity Date: April 28, 2014.

Permitted Dispositions: means, so long as any of Alan Lazowski, Jeffrey Karp, or David Lerman remains in Control of LPRI 221 N. LaSalle, LLC, a Connecticut limited liability company ("LPRI"), and LPRI remains the sole manager of Mortgagor, the transfer or issuance of (i) membership interests in LPRI, (ii) direct or indirect ownership interests in Balfour Securities, L.P. or FOSMB, LLC, and (iii) membership interests in Mortgagor whereby (a) a member of Mortgagor makes an inter vivos transfer to a trust in

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which he is the trustee and the beneficiaries are his spouse and immediate family members; (b) a member's membership interests are transferred upon death, by will or by operation of the laws of intestacy, (c) such transfer or issuance does not result in the transfer of voting control of said member to another Person, or (d) a new member is admitted pursuant to Sections 8.6 or 8.7 of the Operating Agreement of Mortgagor dated April __, 2009.

Permitted Exceptions: The liens, easements, restrictions, security interests, and other matters (if any) as reflected on Exhibit "B" attached hereto and incorporated herein by reference and the liens and security interests created by the Loan Documents.

Person. Any individual, firm, corporation, association, partnership, joint venture, trust, other entity, unincorporated organization or Governmental Authority.

Personalty: All of the right, title, and interest of Mortgagor in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and as extracted collateral); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, inventory; (iii) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Mortgagor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Mortgagor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Related Indebtedness: Any and all debt paid or payable by Mortgagor to Mortgagee pursuant to the Loan Documents, except such debt which has been paid or is payable by Mortgagor to Mortgagee under the Note.

Subordinate Mortgage: Any mortgage, deed of trust, pledge, lien, security interest, or charge, or conditional sale or other title retention agreement, covering all or any portion of the Mortgaged Property executed and delivered by Mortgagor, the lien of which is subordinate and inferior to the lien of this Mortgage.

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Substitute Guarantor: A substitute guarantor which (i) has or will assume the obligations of Guarantor pursuant to the Loan Documents as if such substitute guarantor was the original signatory of the Guaranty; and (ii) has been approved by Mortgagee, in its reasonable discretion, in writing (taking into consideration such factors as such substitute guarantor's creditworthiness, business experience, financial condition and managerial capabilities).

Tax Code: The U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

Treasury Rate: means the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the applicable Business Day, in Federal Reserve statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to ten (10) years. Such implied yield shall be determined, if necessary, by (i) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between reported yields.

Section 1.2 ADDITIONAL DEFINITIONS. As used herein, the following terms shall have the following meanings:

- (a) "Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Mortgage or to the other documents or matters being referenced.
- (b) "Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of this Mortgage.
- (c) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.
- (d) "Including" means including, without limitation.
- (e) All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II GRANT

Section 2.1 GRANT. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Mortgagor has GRANTED, MORTGAGED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, MORTGAGE, BARGAIN, SELL and CONVEY, unto Mortgagee the Mortgaged Property (but

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expressly excluding Rents), subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property (but expressly excluding Rents) unto Mortgagee, forever, and Mortgagor does hereby bind itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Mortgagor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations, then at the time of such performance or discharge the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Mortgagee confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact.

ARTICLE III WARRANTIES AND REPRESENTATIONS

Mortgagor hereby unconditionally warrants and represents to Mortgagee, as of the date hereof, as follows:

Section 3.1 ORGANIZATION AND POWER. If Mortgagor or any Constituent Party is a corporation, limited liability company, general partnership, limited partnership, joint venture, trust, or other type of business association, as the case may be, Mortgagor and any Constituent Party, if any, (a) is either a corporation duly incorporated or limited liability company duly organized with a legal status separate from its affiliates, or a partnership or trust, joint venture or other type of business association duly organized, validly existing, and in good standing (if applicable) under the laws of the state of its formation or existence, and has complied with all conditions prerequisite to its doing business in the state in which the Mortgaged Property is located, and (b) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

Section 3.2 VALIDITY OF LOAN DOCUMENTS. The execution, delivery, and performance by Mortgagor of and under the Loan Documents (other than the Guaranty), (a) if Mortgagor, or any signatory who signs on its behalf, is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business association, as the case may be, are within Mortgagor's and each Constituent Party's powers and have been duly authorized by Mortgagor's and each Constituent Party's board of directors, shareholders, partners, members, managers, venturers, trustees, or other necessary parties, and all other requisite action for such authorization has been taken, (b) have received any and all requisite prior governmental approvals in order to be legally binding and enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of, or constitute (with due notice or lapse of time, or both) a default under or violation of any Legal Requirement, Lease or Contract which would have a Material Adverse Effect, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of Mortgagor's and any Constituent Party's or Guarantor's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute the

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legal, valid, and binding obligations of Mortgagor, Guarantor, and others obligated under the terms of the Loan Documents, enforceable in accordance with their respective terms.

Section 3.3 INFORMATION. All information, financial statements, reports, papers, and data given or to be given to Mortgagee with respect to Mortgagor, each Constituent Party, Guarantor, others obligated under the terms of the Loan Documents, or the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading. Since the date of the financial statements of Mortgagor, any Constituent Party, or of any Guarantor or other party liable for payment of the Indebtedness or performance of the Obligations or any part thereof heretofore furnished to Mortgagee, no Material Adverse Effect has occurred, and except as heretofore disclosed in writing to Mortgagee, Mortgagor, each Constituent Party, each Guarantor, or any other such party has not incurred any material liability, direct or indirect, fixed or contingent.

Section 3.4 TITLE AND LIEN. Mortgagor has good and indefeasible title to the Land (in fee simple) Improvements and Fixtures, and good and marketable title to the Personalty, free and clear of any liens, charges, rights of first refusal or first offer, encumbrances, security interests, claims, easements, restrictions, options, leases (other than the Leases), covenants, and other rights, titles, interests, or estates of any nature whatsoever, except the Permitted Exceptions. This Mortgage constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, and to the extent that the term Leases include items covered by the Code, in and to the Leases; all in accordance with the terms hereof, and all subject to the Permitted Exceptions.

Section 3.5 BUSINESS PURPOSES. The loan evidenced by the Note is solely for the purpose of carrying on the business of Mortgagor, and is not for personal, family, household, or agricultural purposes. The Mortgaged Property forms no part of any property owned, used or claimed by Mortgagor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Mortgaged Property is located. Mortgagor hereby disclaims and renounces each and every claim to all or any portion of the Mortgaged Property as a homestead.

Section 3.6 TAXES. Mortgagor, each Constituent Party, and Guarantor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them (including, without limitation, those required under the Tax Code) and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Mortgagor, any Constituent Party, nor Guarantor knows of any basis for any additional assessment in respect of any such taxes and related liabilities. Mortgagor, each Constituent Party and Guarantor believe that their respective tax returns properly reflect the income and taxes of Mortgagor, each Constituent Party and Guarantor for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

Section 3.7 MAILING ADDRESS. Mortgagor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

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Section 3.8 RELATIONSHIP OF MORTGAGOR AND MORTGAGEE. Notwithstanding any prior business or personal relationship between Mortgagor and Mortgagee, or any officer, director or employee of Mortgagee, the relationship between Mortgagor and Mortgagee is solely that of debtor and creditor, Mortgagee has no fiduciary or other special relationship with Mortgagor, Mortgagor and Mortgagee are not partners or joint venturers, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Mortgagor and Mortgagee to be other than that of debtor and creditor.

Section 3.9 NO RELIANCE ON MORTGAGEE. Mortgagor is experienced in the ownership and operation of properties similar to the Mortgaged Property, and Mortgagor and Mortgagee have and are relying solely upon Mortgagor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Mortgagor is not relying on Mortgagee's expertise or business acumen in connection with the Mortgaged Property.

Section 3.10 NO LITIGATION. Except as disclosed in writing to Mortgagee, there are no (i) judicial, administrative, mediation or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or, to the best of Mortgagor's knowledge, information and belief, threatened against or affecting Mortgagor, Guarantor, or any Constituent Party or involving the Mortgaged Property which, if adversely decided, would have a Material Adverse Effect with respect to Mortgagor, Guarantor or any Constituent Party, (ii) outstanding or unpaid judgments against Mortgagor, any Guarantor, any Constituent Party, or the Mortgaged Property, or (iii) defaults by Mortgagor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

Section 3.11 ERISA. Mortgagor is not an "employee benefit plan," as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA and the assets of Mortgagor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101 (1998).

Section 3.12 NO BANKRUPTCY. No bankruptcy or insolvency proceedings are pending or contemplated by Mortgagor or, to the best knowledge, information and belief of Mortgagor, against Mortgagor or by or against any endorser, cosigner or guarantor of the Note.

Section 3.13 COMPLIANCE WITH LEGAL REQUIREMENTS. The Land and the Improvements and the intended use thereof by Mortgagor comply with all Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Mortgaged Property.

Section 3.14 LEGAL LOT. The Land constitutes a legally subdivided lot under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of any portion of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel (except that, as of the date of this Mortgage, the Land is not taxed as a separate tax parcel).

ARTICLE IV

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AFFIRMATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

Section 4.1 PAYMENT AND PERFORMANCE. Mortgagor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

Section 4.2 EXISTENCE, ASSETS AND BUSINESS. Mortgagor will and will cause each Constituent Party to preserve and keep in full force and effect its existence (separate and apart from its affiliates), good standing, rights, franchises, trade names, trademarks and other associated goodwill whether existing at common law or as a federal or state registration. Mortgagor will and will cause each Constituent Party to preserve and maintain all of its leases, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business. Mortgagor will conduct its business in an orderly and efficient manner in accordance with good business practices. Mortgagor will keep or cause to be kept all of Mortgagor's assets which are useful and necessary in their respective businesses in good repair, working order and condition, and will make or cause to be made all necessary repairs, renewals and replacements as may be reasonably required.

Section 4.3 COMPLIANCE WITH LEGAL REQUIREMENTS. Mortgagor will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

Section 4.4 FIRST LIEN STATUS. Mortgagor will protect and preserve the first lien and security interest status of this Mortgage and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

Section 4.5 PAYMENT OF IMPOSITIONS. Subject to the rights to contest contained in Section 8.11 hereof, Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Mortgagor shall deliver to Mortgagee a written receipt evidencing the payment of the respective Imposition.

Section 4.6 REPAIR. Mortgagor will keep the Mortgaged Property in good condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Mortgagor will prevent any act, occurrence, or neglect which might impair the value or usefulness of the Mortgaged Property for its intended usage. In

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instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, Mortgagor shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in Section 5.2 hereof; provided, however, that in instances where such emergency measures are to be taken, Mortgagor will notify Mortgagee in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

Section 4.7 INSURANCE. Mortgagor will, at Mortgagor's own expense, obtain and maintain and keep in full force and effect insurance upon and relating to the Mortgaged Property with such insurers, in such amounts and covering such risks as shall be requested by and satisfactory to Mortgagee, from time to time, including but not limited to the insurance set forth on Exhibit "C" attached hereto. Each insurance policy issued pursuant to this Section 4.7 shall be issued by good and solvent insurance companies satisfactory to Mortgagee, to be licensed in the State of Illinois, and having a "General Policyholders Rating" of at least "A, IX" or better by Best's Insurance Guide and/or "A- or better" by Standard & Poor Insurance Solvency Review, or such better rating as may be required by Mortgagee with respect to such insurance, and all such policies shall provide, by way of endorsements, riders, or as otherwise applicable, that: (a) with respect to the CGL and all other liability insurance, if the policy contains a general aggregate limit, such policy shall include an "Aggregate Limits of Insurance Per Location" endorsement (using the applicable ISO form or an equivalent form acceptable to Mortgagee); (b) with respect to the CGL and all other liability insurance, such insurance shall name Mortgagee as an "Additional Insured" (using the applicable ISO form, or an equivalent form reasonably acceptable to Mortgagee, without modification [and under the commercial umbrella, if any], and which policy shall contain standard CGL "other insurance" wording, unmodified in any way that would make it excess over or contributory with the additional insured's own commercial general liability coverage), and with respect to the property and other applicable insurance, such insurance shall contain a standard "Mortgagee clause" and shall be payable to Mortgagee as a mortgagee and not as a co-insured, and with respect to all policies and insurance carried by Mortgagor for the benefit of Mortgagee, such insurance shall be payable to Mortgagee as Mortgagee's interest may appear; (c) the coverage of Mortgagee under such insurance policies shall not be terminated, reduced, or affected in any manner regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in any such policy; (d) no such insurance policies shall be canceled, endorsed, altered or reissued to effect a change in coverage for any reason and to any extent whatsoever unless the insurer with respect to such policy shall have first given Mortgagee no less than thirty (30) days' prior written notice thereof; and (e) Mortgagee shall be permitted, but shall not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration or reissuance of any such insurance policies, and such payments shall be accepted by the applicable insurer to prevent same. Mortgagee shall be furnished with the original of each such initial policy coincident with the execution of this Mortgage and the original of each renewal policy not less than fifteen (15) days prior to the expiration of the initial, or each immediately preceding renewal, policy, and Mortgagee shall additionally be thereupon concurrently furnished with receipts or other evidence that the premiums on each and all such insurance policies have been paid for at least one (1) year. Mortgagor shall furnish to Mortgagee, on or before thirty (30) days after the close of each of Mortgagor's fiscal years while this Mortgage is in force and effect, a statement certified by

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Mortgagor or a duly authorized officer of Mortgagor of the amounts of insurance maintained in compliance with this Section 4.7, of the risks covered by such insurance and of the insurance company or companies which carry such insurance. For purposes of this Section 4.7, the term "ISO" (herein so called) shall mean Insurance Services office. It is expressly understood and agreed that the insurance coverages required in this Section 4.7 hereinabove represent Mortgagee's minimum requirements and it is further understood and agreed that in any event the insurance coverages required in this Section 4.7 are not to be construed to void or limit Mortgagor's indemnity obligations contained in this Mortgage. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company covering Mortgagor or the Mortgaged Property, (B) the failure of any insurance company to pay claims occurring, nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Mortgagor's indemnity obligations under this Mortgage or any other provision of this Mortgage.

Section 4.8 INSPECTION. Mortgagor will permit Mortgagee and its agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times, without unreasonable interference of the operations at the Mortgaged Property, and with reasonable prior notice to Mortgagor.

Section 4.9 PROPERTY REPORTS. Mortgagor will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and will furnish, or cause to be furnished, to Mortgagee: (i) on or before thirty (30) days after the end of each calendar quarter and on or before one hundred twenty (120) days after the end of each fiscal year of Mortgagor, an operating statement for the Mortgaged Property, such reports to be in such form and in reasonable detail as Mortgagee may request, setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar quarter or fiscal year, as applicable, and a certificate executed by Mortgagor certifying that such report has been prepared in accordance with the cash basis of accounting, applied on a consistent basis that fairly presents the results of the Mortgaged Property's operations for the period covered thereby, (ii) within thirty (30) days after the end of each fiscal quarter, a written statement (rent roll) certified as true, correct and complete by Mortgagor, containing the information specified below as to each of the Leases, (iii) on or before one hundred twenty (120) days after the end of each fiscal year of Mortgagor, a certificate by Mortgagor certifying that, as of the date thereof, there does or does not (as the case may be) exist an event which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default or, if an Event of Default exists, specifying the nature thereof, (iv) immediate notice of any Material Adverse Effect on the Mortgaged Property's financial condition or business prospects, (v) on or before sixty (60) days prior to the start of each fiscal year an annual budget for the Mortgaged Property for the next fiscal year, in form and substance acceptable to Mortgagee, and (vi) upon request of Mortgagee, and at Mortgagor's expense, such other operating, financial and credit information as Mortgagee may reasonably request with respect to the Mortgaged Property. The rent roll specified in clause (ii) above shall contain the following (if applicable): tenant name, suite or unit number, square feet of leased space, commencement and expiration date, lease renewal options, the date rental payments began, rent, expense stop, and other pertinent information. The fiscal year of the Mortgaged Property ends on December 31. At any time and from time to time Mortgagor shall deliver to Mortgagee such other financial data as Mortgagee shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Mortgagee shall have the right, at reasonable times and

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upon reasonable notice, to audit, examine, and make copies or extracts of Mortgagor's books of account and records relating to the Mortgaged Property, all of which shall be maintained and made available to Mortgagee and Mortgagee's representatives for such purpose at the Mortgaged Property, the address specified herein for Mortgagor or at such other location as Mortgagee may approve. Upon Mortgagee's request, Mortgagor shall also furnish Mortgagee with convenient facilities and all books and records necessary for an audit of such statements.

Section 4.10 FINANCIAL STATEMENTS.

(a) Mortgagor. Mortgagor shall maintain full and accurate books of accounts and other records reflecting Mortgagor's financial condition and transactions, and shall furnish, or cause to be furnished, to Mortgagee: (i) within one hundred twenty (120) days after the end of each fiscal year of Mortgagor, financial statements (which shall mean and include a balance sheet, statement of cash flow and income statement for Mortgagor, such reports to be in such form and in reasonable detail as Mortgagee may request, setting forth the financial condition (including all contingent liabilities), cash flow and the income and expenses for Mortgagor for the immediately preceding fiscal year) of Mortgagor, prepared in accordance with the cash basis of accounting, applied on a consistent basis that fairly presents the results of the Mortgaged Property's operations for the period covered thereby consistently applied, and which fairly present the financial condition and transactions of Mortgagor as of the date thereof or for the period covered thereby, and certified to by an independent certified public accountant; (ii) within sixty (60) days after the end of each semi-annual fiscal period of Mortgagor, the same financial statements specified in clause (i) above, except that such financial statements need not be audited by an independent certified public accountant but must be certified to by Mortgagor; (iii) a tax return for each fiscal year of Mortgagor from and after the date hereof, within thirty (30) days after same has been filed with the Internal Revenue Service, but in no event later than one hundred twenty (120) days after the end of each fiscal year (provided, however, if Mortgagor shall have duly filed for an extension of the filing deadline for such tax return, and promptly furnished evidence thereof to Mortgagee, then such tax return shall be delivered to Mortgagee on or before two hundred fifty-five (255) days after the end of such fiscal year); (iv) on or before one hundred twenty (120) days after the end of each fiscal year of Mortgagor, a certificate by Mortgagor certifying that, as of the date thereof, there does or does not (as the case may be) exist an event which constitutes, or which upon due notice or lapse of time or both would constitute an Event of Default or, if an Event of Default exists specifying the nature thereof; and (v) immediate notice of any Material Adverse Effect on the financial condition or business prospects of Mortgagor. The fiscal year of Mortgagor ends on December 31.

(b) Guarantor. Mortgagor shall cause any Guarantor (or if Guarantor is more than one party, then each party constituting Guarantor) to promptly furnish or cause to be furnished to Mortgagee the financial statements, reports and other information required under Section 13 of the Guaranty.

(c) Additional Matters. Mortgagor shall, and shall cause Guarantor to, allow Mortgagee from time to time to inspect all books and records relating to Mortgagor's and

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Guarantor's, as applicable, financial condition and to the Indebtedness, and to make and take away copies of such books and records.

Section 4.11 ENFORCEMENT OF LEASES. Mortgagor shall (i) submit any and all proposed Leases to Mortgagee for approval prior to the execution thereof, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease, (iii) maintain each of the Leases in full force and effect during the term thereof, (iv) appear in and defend any action or proceeding in any manner connected with any of the Leases, (v) deliver to Mortgagee true, correct and complete copies of all Leases, and (vi) deliver to Mortgagee such further information, and execute and deliver to Mortgagee such further assurances and assignments, with respect to the Leases as Mortgagee may from time to time request. Without Mortgagee's prior written consent, Mortgagor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases, (ii) except for security or similar deposits, collect any of the rent more than one (1) month in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing rents, or (iv) amend, modify, rescind, conceal, surrender, assign, or terminate any of the Leases.

Section 4.12 PAYMENT FOR LABOR AND MATERIALS. Mortgagor will promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and, subject to the rights to contest granted in Section 8.11 hereof, never permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

Section 4.13 FURTHER ASSURANCES AND CORRECTIONS. From time to time, at the request of Mortgagee, Mortgagor will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Mortgage or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in Mortgagee's opinion, to carry out more effectively the purposes of this Mortgage and the Loan Documents and to subject to the absolute assignments, liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by Mortgagee in Mortgagee's sole discretion to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) pay all costs connected with any of the foregoing.

Section 4.14 TAX ON MORTGAGE. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof (whether pursuant

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to the Tax Code or otherwise), Mortgagor will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Mortgagor to pay such tax, Mortgagor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Mortgagor to pay such taxes, then Mortgagor must prepay the Indebtedness in full within sixty (60) days after demand therefor by Mortgagee.

Section 4.15 STATEMENT OF UNPAID BALANCE. At any time and from time to time, Mortgagor will furnish promptly, upon the request of Mortgagee, a written statement or affidavit, in form satisfactory to Mortgagee, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

Section 4.16 EXPENSES. Subject to the provisions of Section 8.12 hereof, Mortgagor will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Mortgagee or third parties incident to this Mortgage or any other Loan Document (including without limitation reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Mortgagee is a party involving this Mortgage or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of Mortgagee under any Loan Document, **INCLUDING ANY SUCH LOSS, DAMAGE, COSTS, FEES, EXPENSES, ACTION, CAUSES OF ACTION OR LIABILITY DUE TO MORTGAGEE'S NEGLIGENCE AND/OR STRICT LIABILITY**, but not to the extent any loss, damage, costs, expense, action, causes of action, or liability results from (i) regulatory matters solely applicable to Mortgagee, (ii) Mortgagee's administering or servicing of the Loan in the ordinary course (provided, however, that this exception shall not apply to any out-of-pocket costs paid to third parties and incurred by Mortgagee due to (a) Mortgagee's compliance with regulatory matters or other governmental requirements resulting from circumstances or facts unique to the Mortgaged Property as opposed to requirements generally applicable to Mortgagee or (b) circumstances not in the ordinary course, such as casualty, condemnation or Events of Default), (iii) any income taxes, gross receipt taxes, franchise taxes or capital stock taxes imposed on Mortgagee in connection with the Loan, or (iv) the gross negligence or willful misconduct of Mortgagee.

Section 4.17 ADDRESS. Mortgagor shall give written notice to Mortgagee of any change of address of Mortgagor at least five (5) business days prior to the effective date of such change of address. Absent such official written notice of a change in address for Mortgagor, Mortgagee shall be entitled for all purposes under the Loan Documents to rely upon Mortgagor's address as set forth in the initial paragraph of this Mortgage, as same may have been theretofore changed in accordance with the provisions hereof.

Section 4.18 DISCLOSURES. If at any time Mortgagor shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Effect, Mortgagor shall promptly notify Mortgagee of the existence or occurrence thereof and of Mortgagor's opinion as to what effect such may have on the

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Mortgaged Property or Mortgagor. Mortgagor shall also give prompt notice to Mortgagee of (i) the serious illness or death of any principal or key employee of Mortgagor or Mortgagor's Constituent Parties, (ii) any litigation or dispute, threatened or pending against or affecting Mortgagor, the Mortgaged Property or any Guarantor which could have a Material Adverse Effect, (iii) any Event of Default, (iv) any default by Mortgagor or any acceleration of any indebtedness owed by Mortgagor under any contract to which Mortgagor is a party, (v) any default by Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which Guarantor is a party, which could have a Material Adverse Effect, and (vi) any change in the character of Mortgagor's business as it existed on the date hereof.

Section 4.19 ERISA. If and to the extent that Mortgagor is obligated under any plan governed by or subject to ERISA, Mortgagor shall fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA and the Tax Code. Furthermore, Mortgagor shall comply in all material respects with any and all applicable provisions of ERISA and the Tax Code and will not incur or permit to exist any unfunded liabilities to the Pension Benefit Guaranty Corporation ("PBGC") or to such plan under ERISA or the Tax Code. As soon as possible but in any event not later than 30 days after Mortgagor knows that any event which would constitute a reportable event under § 4043(b) of Title IV of ERISA with respect to any "employee plan" subject to ERISA has occurred, or that the PBGC has instituted or will institute proceedings under ERISA to terminate that plan, Mortgagor will deliver to Mortgagee a certificate of a responsible officer of Mortgagor setting forth details as to such reportable event and the action which Mortgagor or an affiliate of Mortgagor (as defined under ERISA), as the case may be, proposes to take with respect to same, together with a copy of any notice of such reportable event that may be required to be filed with the PBGC, or any notice delivered by the PBGC evidencing its intent to institute those proceedings or any notice to the PBGC that the plan is to be terminated, as the case may be. For all purposes of this Section 4.19, Mortgagor is deemed to have all knowledge of all facts attributable to the plan administrator under ERISA.

Section 4.20 DELIVERY OF CONTRACTS. Mortgagor will deliver to Mortgagee a true, correct and complete copy of each Contract under which Mortgagor is obligated to pay more than \$10,000 in consideration promptly after the execution of same by all parties thereto. Within twenty (20) days after a request by Mortgagee, Mortgagor shall prepare and deliver to Mortgagee a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and other information specified by Mortgagee, or with respect to each of such Contracts, together with a true, correct and complete copy thereof (if so requested by Mortgagee).

Section 4.21 SEPARATE TAX PARCEL. As of the date of this Mortgage, the Land does not have a separate permanent index number and is, instead, taxed as a portion of a larger tax parcel. Mortgagor will (i) or will cause the declarant under the Declaration to, diligently and continuously proceed to obtain a separate permanent index number for the Land as expeditiously as possible so that the Land is taxed separately without regard to any other real estate, and (ii) deliver to Mortgagee, evidence satisfactory to Mortgagee, confirming that the Land constitutes a separate tax parcel under all applicable Legal Requirements. Mortgagor will also promptly upon receipt furnish Mortgagee with copies of any and all notices relating to the taxation of the Land and the tax parcel of which the Land is a part.

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Section 4.22 DEPOSITORY RELATIONSHIP. To induce Mortgagee to establish the interest rates provided for in the Note and if and to the extent permitted by applicable laws, Mortgagor will use and maintain Mortgagee as its principal depository bank, including for the maintenance of business, cash management, operating and administrative deposit accounts.

ARTICLE V NEGATIVE COVENANTS

Mortgagor hereby unconditionally covenants and agrees with Mortgagee until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

Section 5.1 USE VIOLATIONS. Mortgagor will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner which (i) violates any Legal Requirement, (ii) may be dangerous, unless safeguarded as required by law and/or appropriate insurance, (iii) constitutes a public or private nuisance, (iv) makes void, voidable, or cancellable, or increases the premium of, any insurance then in force with respect thereto, or (v) violates any Lease or Contract and which would have a Material Adverse Effect.

Section 5.2 WASTE; ALTERATIONS. Mortgagor will not commit or permit any waste or impairment of the Mortgaged Property and will not (subject to the provisions of Sections 4.3 and 4.6 hereof), without the prior written consent of Mortgagee, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.

Section 5.3 REPLACEMENT OF FIXTURES AND PERSONALTY. Mortgagor will not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for purposes of maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Mortgagor, free and clear of any lien or security interest except as may be approved in writing by Mortgagee.

Section 5.4 CHANGE IN ZONING. Mortgagor will not (i) seek or acquiesce in a zoning reclassification, zoning variance or special exception to zoning of all or any portion of the Mortgaged Property, (ii) grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), (iii) seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without Mortgagee's prior written consent.

Section 5.5 NO DRILLING. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.

Section 5.6 NO DISPOSITION. Mortgagor will not make a Disposition, other than a Permitted Disposition or other Disposition in connection with a release of the Mortgaged

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Property as set forth in Section 11.1 hereof, without obtaining Mortgagee's prior written consent to the Disposition.

Section 5.7 NO SUBORDINATE MORTGAGES. Except as otherwise permitted by Section 8.9, Mortgagor will not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

Section 5.8 ADDITIONAL OBLIGATIONS. Mortgagor shall not guarantee, endorse or otherwise become contingently liable in connection with any obligations of any other person or entity, and shall not create or incur any additional liability, whether contingent or non-contingent, with respect to either Mortgagor or the Mortgaged Property, except as specifically allowed or contemplated pursuant to the Loan Documents.

Section 5.9 BUSINESS CHANGE. Mortgagor shall not make or permit to occur or exist a material change in the character of its business activities as such existed on the date hereof, without Mortgagee's prior written consent.

Section 5.10 NO CHANGE IN MANAGEMENT. As of the date hereof, the Mortgaged Property is to be operated and managed by LAZ Parking Chicago, LLC, a Connecticut limited liability company, and Mortgagor shall not without the prior written consent of Mortgagee, remove or replace such management.

Section 5.11 SINGLE ASSET ENTITY. During the term of the Loan, Mortgagor shall not (i) acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (ii) operate any business other than the management and operation of the Mortgaged Property; or (iii) maintain its assets in a way difficult to segregate and identify.

Section 5.12 DEBT SERVICE COVERAGE RATIO. Calculated as of the end of each semi-annual fiscal period, Mortgagor shall not permit the Debt Service Coverage Ratio to be less than 1.30 to 1 for any semi-annual fiscal period until such time as the Indebtedness is repaid. For purposes of calculating the Debt Service Coverage Ratio pursuant to this Section 5.12, the initial semi-annual fiscal period to which this Section 5.12 shall be applicable will be Mortgagor's semi-annual fiscal period which begins on June 1, 2009. Notwithstanding anything in this Section 5.12 to the contrary, following any extension of the Original Maturity Date, Mortgagor shall not permit the Debt Service Coverage Ratio to be less than 1.30 to 1 for any fiscal quarter until such time as the Indebtedness is repaid.

Section 5.13 RESTRICTED PAYMENTS. Unless (i) no Event of Default exists or will exist after giving effect to the distribution, and (ii) the Debt Service Coverage Ratio is at least 1.30 to 1 for the two immediately preceding fiscal quarters (as reasonably determined by Mortgagee), Mortgagor will not declare or pay any dividends or make any other payment or distribution (in cash, property, or obligations) on account of its equity interests, or redeem, purchase, retire, or otherwise acquire any of its equity interests, or set apart any money for a sinking or other

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analogous fund for any dividend or other distribution on its equity interests or for any redemption, purchase, retirement, or other acquisition of any of its equity interests.

Section 5.14 JUDGMENTS. Mortgagor will not allow any uninsured judgment for the payment of money in excess of \$100,000 rendered against it to remain undischarged, uncontested or un superseded for a period of sixty (60) days during which execution shall not be effectively stayed.

ARTICLE VI EVENTS OF DEFAULT

The term "Event of Default," as used herein and in the Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

Section 6.1 PAYMENT OF INDEBTEDNESS. Mortgagor shall fail, refuse, or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise and such failure, refusal, or negligence continues for a period of ten (10) days after the due date of such installment or portion of the Indebtedness.

Section 6.2 PERFORMANCE OF OBLIGATIONS. Mortgagor shall fail, refuse or neglect or cause the failure, refusal, or neglect to comply with, perform and discharge fully and timely as and when required any of the Obligations and such failure, refusal or negligence continues for a period of thirty (30) days after Mortgagor's receipt of notice from Mortgagee; provided, however, that if such failure, refusal or negligence is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such failure, refusal or negligence within such thirty (30) day period and thereafter diligently, continuously and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Mortgagor in the exercise of due diligence to cure such failure, refusal or negligence, such additional period not to exceed ninety (90) days.

Section 6.3 FALSE REPRESENTATION. Any material representation, warranty, or statement made by Mortgagor, Guarantor, or others under or pursuant to the Loan Documents or any affidavit or other instrument executed or delivered with respect to the Loan Documents or the Indebtedness is reasonably determined by Mortgagee to be false or misleading in any material respect as of the date hereof or when made unless the representation, warranty, or statement is of a nature that can be made to be true and correct as of the then-current date and Mortgagor duly notifies Mortgagee of such fact and diligently proceeds to make and does make such representation, warranty, or statement true and correct and not misleading within twenty (20) days after the earlier of: (i) Mortgagor's discovery that such representation, warranty, or statement is false or misleading in any material respect, and (ii) written notice thereof from Mortgagee.

Section 6.4 DEFAULT UNDER OTHER LIEN DOCUMENT. Mortgagor shall commit an event of default beyond any applicable cure periods under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property.

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Section 6.5 INSOLVENCY; BANKRUPTCY. Mortgagor (i) shall execute an assignment for the benefit of creditors or an admission in writing by Mortgagor of Mortgagor's inability to pay, or Mortgagor's failure to pay, debts generally as the debts become due; or (ii) shall allow the levy against the Mortgaged Property or any part thereof, of any execution, attachment, sequestration or other writ which is not vacated within ninety (90) days after the levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Mortgagor or of the Mortgaged Property or any part thereof, which receiver, trustee or custodian is not discharged within ninety (90) days after the appointment; or (iv) files as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of any Debtor Relief Law, or takes any action in furtherance thereof; or (v) files either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Mortgagee granted in the Note, herein or in any Loan Document; or (vi) allows the filing of a petition, case, proceeding or other action against Mortgagor as a debtor under any Debtor Relief Law or seeks appointment of a receiver, trustee, custodian or liquidator of Mortgagor or of the Mortgaged Property, or any part thereof, or of any significant portion of Mortgagor's other property, and (a) Mortgagor admits, acquiesces in or fails to contest diligently the material allegations thereof, or (b) the petition, case, proceeding or other action results in the entry of an order for relief or order granting the relief sought against Mortgagor, or (c) the petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or ninety (90) days next following the date of filing.

Section 6.6 DISSOLUTION; DISABILITY. Other than a Permitted Disposition, Mortgagor, any Constituent Party, or any Guarantor, shall die, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or become permanently disabled; provided, however, that a Guarantor's death shall not be an Event of Default until the passage of sixty (60) days after such Guarantor's death if, within such 60-day period, a Substitute Guarantor assumes such Guarantor's obligations under the Guaranty with the same extent of liability as if such Substitute Guarantor was the original signatory of the Guaranty.

Section 6.7 NO FURTHER ENCUMBRANCES. Unless the same is being contested in accordance with Section 8.11 hereof, Mortgagor creates, places, or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any Subordinate Mortgage, regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents, with respect to the Mortgaged Property, other than the Permitted Exceptions.

Section 6.8 DISPOSITION OF MORTGAGED PROPERTY OR BENEFICIAL INTEREST IN MORTGAGOR. Mortgagor makes a Disposition, other than a Permitted Disposition in accordance herewith, without the prior written consent of Mortgagee.

Section 6.9 DEBT SERVICE COVERAGE RATIO. Mortgagor shall fail to maintain the Debt Service Coverage Ratio required by Section 5.12 hereof.

Section 6.10 GUARANTOR'S DEFAULT. The occurrence of any event referred to in Sections 6.5 and 6.9 hereof with respect to any Guarantor or other person or entity obligated in any manner to pay or perform the Indebtedness or Obligations, respectively, or any part thereof (as if such Guarantor or other person or entity were "Mortgagor" in such Sections).

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Section 6.11 INTENTIONALLY DELETED.

Section 6.12 EVENT OF DEFAULT IN LOAN DOCUMENTS. The occurrence of any Event of Default as defined in any of the Loan Documents.

ARTICLE VII REMEDIES

Section 7.1 MORTGAGEE'S REMEDIES UPON DEFAULT. Upon the occurrence of an Event of Default, Mortgagee may, at Mortgagee's option, do any one or more of the following:

(a) Right to Perform Mortgagor's Covenants. If Mortgagor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Mortgagee may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Mortgagor promises, upon demand, to pay to Mortgagee, at the place where the Note is payable, all sums so advanced or paid by Mortgagee, with interest from the date when paid or incurred by Mortgagee at the Default Rate. No such payment by Mortgagee shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Mortgagee shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Mortgagee may make an advance, or which Mortgagee may pay.

(b) Right of Entry. Mortgagee may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the rights to rent the same for the account of Mortgagor and to apply such rents as set forth in the Assignment of Rents. If necessary to obtain the possession provided for above, Mortgagee may invoke any and all legal remedies to dispossess Mortgagor, including specifically one or more actions for forcible entry and detainer, trespass to title, and restitution. In connection with any action taken by Mortgagee pursuant to this subsection, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Mortgagee in managing the Mortgaged Property unless such loss is caused by the gross negligence or willful misconduct of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **MORTGAGOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY MORTGAGEE FOR, AND TO HOLD MORTGAGEE HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY MORTGAGEE UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES**

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HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE, EVEN IF SAID CLAIMS ARISE AS A RESULT OF OR IN CONNECTION WITH THE NEGLIGENCE OR STRICT LIABILITY (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF MORTGAGEE OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES. Should Mortgagee incur any such liability, the amount thereof, including without limitation reasonable costs, expenses, and attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Mortgagee for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, except to the extent caused by the gross negligence or willful misconduct of Mortgagee after Mortgagee takes control of the Mortgaged Property, or for any Hazardous Substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Mortgagor hereby assents to, ratifies, and confirms any and all actions of Mortgagee with respect to the Mortgaged Property taken under this subsection.

(c) Right to Accelerate. Mortgagee may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Mortgagor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Mortgagee shall not be deemed to be a waiver of any rights or remedies of Mortgagee under the Loan Documents, at law or in equity.

(d) Foreclosure. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. Mortgagee may, at its option, proceed to foreclose the lien of the Mortgage and pursue all remedies offered to a mortgagee under and pursuant to Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101, *et seq.*) (the "Act"). The Mortgaged Property may be sold in one parcel, several parcels or groups of parcels, and may be foreclosed successively and in parts until all of the Mortgaged Property has been foreclosed against and sold. Mortgagor waives and relinquishes any and all rights that Mortgagor may have to cause or compel a sale of any part or parcel of the Property less than the entire Mortgaged Property. Mortgagee shall be entitled to bid at the sale, and, if Mortgagee is the highest bidder for the Mortgaged

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Property or any part or parts thereof, Mortgagee shall be entitled to purchase the same. In any such foreclosure, or upon the enforcement of any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the default rate set forth in the Note, and shall be secured by this Mortgage as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1)-(5) of Section 5/15-1302 of the Act and shall be included in all determinations of indebtedness owing to Mortgagee and secured by this Mortgage.

(e) Mortgagee's Right to Appointment of Receiver. Mortgagee, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Mortgagor and without any showing of insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the rents, and Mortgagor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(f) Mortgagee's Uniform Commercial Code Remedies. Mortgagee may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code Mortgagee may and Mortgagor agrees as follows:

(i) without demand or notice to Mortgagor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Mortgagee may require Mortgagor to assemble the Personalty and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Personalty; and

(iii) written notice mailed to Mortgagor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

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(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 9.604 of the Code; and

(v) in the event of a foreclosure sale, the Personalty and the other Mortgaged Property may, at the option of Mortgagee, be sold as a whole; and

(vi) it shall not be necessary that Mortgagee take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; and

(viii) after notification, Mortgagee may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Mortgagee's offices or elsewhere, for cash, on credit, or for future delivery. Mortgagor shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Mortgagee in connection with the collection of the Indebtedness and the enforcement of Mortgagee's rights under the Loan Documents. Mortgagee shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4(ii) of this Mortgage. Mortgagor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Mortgagor waives all rights of marshalling in respect of the Personalty; and

(ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Indebtedness, the occurrence of any Event of Default, Mortgagee having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) Mortgagee may dispose of the Personalty or Fixtures in its then present condition, has no duty to repair or clean the Personalty or Fixtures prior to sale and may disclaim warranties of title, possession, quiet enjoyment and the like

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with respect to the Personalty or Fixtures, all without affecting the commercial reasonableness of the sale; and

(xi) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee; and

(xii) Mortgagee shall have the right at any time to enforce Mortgagor's rights against account debtors and obligors.

(g) Other Rights. Mortgagee (i) may surrender the insurance policies maintained pursuant to Section 4.7 hereof or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such premiums; and (ii) apply the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Mortgagee may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(h) Mortgagee as Purchaser. Mortgagee may be the purchaser of the Mortgaged Property or any part thereof, upon any foreclosure of the liens and security interests hereof, or otherwise, and Mortgagee shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unratified portion of the Indebtedness. Mortgagee, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Mortgagee's purchase shall be applied in accordance with Section 7.4 of this Mortgage.

Section 7.2 OTHER RIGHTS OF MORTGAGEE. Should any part of the Mortgaged Property come into the possession of Mortgagee, whether before or after default, Mortgagee may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Mortgagee may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Mortgagee may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Mortgagee in respect of the Mortgaged Property. Mortgagor covenants to promptly reimburse and pay to Mortgagee on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Mortgagee in connection with Mortgagee's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Mortgagee at the Default Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for

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decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Mortgagee's possession.

Section 7.3 POSSESSION AFTER FORECLOSURE. If the liens or security interests hereof shall be foreclosed, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Mortgagor and Mortgagor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

Section 7.4 APPLICATION OF PROCEEDS. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant hereto, or any rents collected by Mortgagee from the Mortgaged Property (following any application of such rents in accordance with the Assignment of Rents), or the reserve for Impositions and insurance premiums, if any, required by the provisions of this Mortgage or sums received pursuant to Section 8.1 hereof, or proceeds from insurance which Mortgagee elects to apply to the Indebtedness pursuant to Section 8.2 hereof, shall be applied by Mortgagee to the Indebtedness in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting rents, proceeds, premiums, or other sums including reasonable attorneys' fees; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Mortgagee of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Trustee and Mortgagee shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Mortgagor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

Section 7.5 INTENTIONALLY DELETED.

Section 7.6 PAYMENT OF FEES. If, following an Event of Default, the Note or any other part of the Indebtedness shall be collected through legal proceedings, non-judicial proceedings or otherwise, or if any of the Obligations shall be enforced by legal proceedings,

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whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Mortgagee to mature same, or if Mortgagee becomes a party to any suit where this Mortgage or the Mortgaged Property or any part thereof is involved, Mortgagor agrees to pay Mortgagee's reasonable attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Rate.

Section 7.7 MISCELLANEOUS.

(a) Discontinuance of Remedies. In case Mortgagee shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in such event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Mortgagee shall, in addition, have all other remedies available to it at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Mortgagee granted in the Note, this Mortgage, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Mortgagor, the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Mortgagee exercising or pursuing any remedy in relation to the Mortgaged Property prior to Mortgagee bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) in the event Mortgagee elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Mortgagor prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Mortgage, shall remain in full force and effect and may be exercised at Mortgagee's option.

(d) Partial Release; Etc. Mortgagee may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Mortgagor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Mortgagee may resort to any of the collateral therefor in such order and manner as Mortgagee may elect. No collateral heretofore, herewith, or hereafter taken by Mortgagee shall in any manner impair or affect the collateral given

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pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Mortgagor. Mortgagor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Mortgagee's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Mortgagor and Mortgagee mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Mortgage and the other Loan Documents. All agreed contractual duties are set forth in this Mortgage, the Note, and the other Loan Documents.

ARTICLE VIII SPECIAL PROVISIONS

Section 8.1 CONDEMNATION PROCEEDS. Mortgagee shall be entitled to receive any and all sums which may be awarded and become payable to Mortgagor for condemnation of the Mortgaged Property or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Mortgagor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Mortgagee, and Mortgagor shall, upon request of Mortgagee, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Mortgagee to collect and receipt for any such sums. Mortgagee shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Mortgagee as a result of condemnation shall be applied to the Indebtedness in accordance with the provisions of Section 7.4 hereof. Should the Mortgaged Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding, or in any other manner, Mortgagee may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all awards and other sums or other relief therefor, and Mortgagor agrees to pay Mortgagee's costs and reasonable attorneys' fees incurred in connection therewith.

Notwithstanding anything in this Section 8.1 to the contrary, provided no Event of Default has occurred, (i) Mortgagor shall have the right to control all such condemnation proceedings, and (ii) in the event that the condemnation proceeds are \$250,000 or less and the Mortgaged Property is capable of being restored to its original condition, Mortgagee shall release such proceeds to Mortgagor for the purposes of effecting an immediate restoration, and Mortgagor covenants and agrees promptly to commence and complete such restoration, and use such proceeds to pay for such a restoration; provided, however, that Mortgagor shall not settle or

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otherwise adjust any condemnation awards without Mortgagee's prior written consent if the sums which may be awarded or become payable to Mortgagor in connection with such proceedings are greater than \$250,000, which consent shall not be unreasonably withheld.

Section 8.2 INSURANCE PROCEEDS. The proceeds of any and all insurance upon the Mortgaged Property (other than proceeds of CGL insurance) shall be collected by Mortgagee, and Mortgagee shall have the option, in Mortgagee's sole discretion, to apply any proceeds so collected either to the restoration of the Mortgaged Property, in the amounts, manner, method and pursuant to such requirements and documents as Mortgagee may require, or to the liquidation of the Indebtedness in accordance with the provisions of Section 7.4 hereof. Mortgagor hereby authorizes and empowers Mortgagee, in its own name or as attorney-in-fact for Mortgagor (which power is coupled with an interest and is irrevocable so long as this Mortgage remains of record), to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Mortgaged Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the adjustment, collection and disbursement of such insurance proceeds or otherwise in connection with the casualty or the restoration of the Mortgaged Property. Each insurance company concerned is hereby irrevocably authorized and directed to make payment of all insurance proceeds directly to Mortgagee. Notwithstanding anything to the contrary, Mortgagee shall not be responsible for any such insurance, the collection of any insurance proceeds, or the insolvency of any insurer.

Notwithstanding anything in this Section 3.2 to the contrary, provided that no Event of Default has occurred, (i) Mortgagor shall have the right to control all insurance claims in which the sums which may be awarded or become payable to Mortgagor in connection with such claims are \$100,000 or less, and (ii) Mortgagee shall release all insurance proceeds which are \$100,000 or less to Mortgagor for restoration of the Mortgaged Property, and Mortgagor covenants and agrees promptly to commence and complete such restoration, and use such proceeds to pay for such restoration; provided, however, that Mortgagor shall not settle or otherwise adjust any insurance claim without Mortgagee's prior written consent if the sums which may be awarded or become payable to Mortgagor in connection with such settlement are greater than \$100,000, which consent shall not be unreasonably withheld.

Section 8.3 RESERVE FOR IMPOSITIONS AND INSURANCE PREMIUMS. At Mortgagee's request, Mortgagor shall create a fund or reserve for the payment of all insurance premiums and Impositions against or affecting the Mortgaged Property by paying to Mortgagee, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the insurance policies covering Mortgagor, the Mortgaged Property or any part thereof or such other insurance policies required hereby or by the Loan Documents, plus Impositions next due on the Mortgaged Property or any part thereof as estimated by Mortgagee, less all sums paid previously to Mortgagee therefor, divided by the number of months to elapse before one month prior to the date when each of such premiums and Impositions will become due, such sums to be held by Mortgagee without interest to Mortgagor, unless interest is required by applicable law, for the purposes of paying such premiums and Impositions. Any excess reserve shall, at the discretion of Mortgagee, be credited by Mortgagee on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Mortgagor to Mortgagee on or before the date when

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Mortgagee demands such payment to be made, but in no event after the date when such premiums and Impositions shall become delinquent. If there exists a deficiency in such fund or reserve at any time when Impositions or insurance premiums are due and payable, Mortgagee may, but shall not be obligated to, advance the amount of such deficiency on behalf of Mortgagor and such amounts so advanced shall become a part of the Indebtedness, shall be immediately due and payable, and shall bear interest at the Default Rate from the date of such advance through and including the date of repayment. Without implying Mortgagee's consent to same, transfer of legal title to the Mortgaged Property shall automatically transfer to the holder of legal title to the Mortgaged Property the interest of Mortgagor in all sums deposited with Mortgagee under the provisions hereof or otherwise.

Section 8.4 **INDEMNITY.** MORTGAGOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS MORTGAGEE, ITS PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED, BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PARTY SO INDEMNIFIED, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING: (i) ANY LITIGATION CONCERNING THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF MORTGAGOR OR MORTGAGEE THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY MORTGAGOR OR MORTGAGEE, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; (ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF MORTGAGOR IF MORTGAGOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF MORTGAGOR IF MORTGAGOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF MORTGAGOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY; (iii) ANY ACTION TAKEN OR NOT TAKEN BY MORTGAGEE WHICH IS ALLOWED OR PERMITTED UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO MORTGAGOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS; AND (iv) FOLLOWING AN EVENT OF DEFAULT, ANY ACTION BROUGHT BY MORTGAGEE AGAINST MORTGAGOR UNDER THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS,

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WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT.

MORTGAGEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTEST OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND MORTGAGEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. MORTGAGOR SHALL REIMBURSE MORTGAGEE FOR ITS REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING REASONABLE EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY MORTGAGEE. ANY PAYMENTS NOT MADE WITHIN FIFTEEN (15) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS MORTGAGE, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY MORTGAGOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE MORTGAGED PROPERTY AND THE EXERCISE BY MORTGAGEE OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS.

Section 8.5 WAIVER OF SUBROGATION. Mortgagor hereby waives any and all right to claim, recover, or subrogation that arises or may arise in its favor and against Mortgagee or its officers, directors, employees, agents, attorneys, or representatives hereto for any and all loss of, or damage to, Mortgagor, the Mortgaged Property, Mortgagor's property, or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of the Loan Documents, **EVEN IF SAID CLAIMS ARISE AS A RESULT OF OR IN CONNECTION WITH THE NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF MORTGAGEE OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES.** Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Mortgage with respect to any loss or damage to property of the parties hereto. Inasmuch as the above waivers preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Mortgagor hereby agrees to immediately give to each insurance company which has issued to it any such insurance policy whether or not it is required to be insured against by the provisions of the Loan Documents written notice of the terms of said waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

Section 8.6 WAIVER OF SETOFF. The Indebtedness, or any part thereof, shall be paid by Mortgagor without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (i) any damage to,

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destruction of, or any condemnation or similar taking of the Mortgaged Property; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or Mortgagor, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee or Mortgagor, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

Section 8.7 SETOFF. Mortgagee shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Mortgagor in and to each and every account and other property of Mortgagor which are in the possession of Mortgagee to the full extent of the outstanding balance of the Indebtedness.

Section 8.8 CONSENT TO DISPOSITION. It is expressly agreed that Mortgagee may predicate Mortgagee's decision to grant or withhold consent to a Disposition, other than a Permitted Disposition or other Disposition in connection with a release of the Mortgaged Property as set forth in Section 11.1 hereof, on such terms and conditions as Mortgagee may require, in Mortgagee's sole discretion, including without limitation (i) consideration of the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, (ii) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Mortgagee's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan Documents, (iv) reimbursement of Mortgagee for all costs and expenses incurred by Mortgagee in investigating the creditworthiness and management or consulting ability of the party to whom such Disposition will be made and in determining whether Mortgagee's security will be impaired by the proposed Disposition, (v) payment to Mortgagee of a transfer fee to cover the cost of documenting the Disposition in its records, (vi) payment of Mortgagee's reasonable attorneys' fees in connection with such Disposition, (vii) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the party to whom such Disposition will be made (with or without the release of Mortgagor from liability for such Indebtedness and Obligations), (viii) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Mortgagee, (ix) endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies insuring Mortgagee's liens and security interests covering the Mortgaged Property, and (x) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations. It is expressly agreed that Mortgagor shall provide Mortgagee with written notice of any Permitted Disposition within fifteen (15) business days after any such Permitted Disposition and that Mortgagor shall provide Mortgagee with copies of such transfer and organizational documents in connection with the

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same as are reasonably requested by Mortgagee. Mortgagor represents that as of the date of this Mortgage, Alan Lazowski, and Jeffrey Karp are the owners of a Controlling interest in LPRI and that LPRI is the sole manager of and Controls Mortgagor.

Section 8.9 CONSENT TO SUBORDINATE MORTGAGE. In the event of consent by Mortgagee to the granting of a Subordinate Mortgage, or in the event the right of Mortgagee to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Mortgagee is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, Mortgagor will not execute or deliver any Subordinate Mortgage unless (i) it shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Mortgage and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Mortgagee; (c) that the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (d) that if any action or proceeding shall be brought to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), written notice of the commencement thereof will be given to Mortgagee contemporaneously with the commencement of such action or proceeding; and (ii) a copy thereof shall have been delivered to Mortgagee not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

Section 8.10 PAYMENT AFTER ACCELERATION. If, following the occurrence of an Event of Default, and an acceleration of the Indebtedness or any part thereof but prior to a foreclosure sale of the Mortgaged Property, Mortgagor shall tender to Mortgagee the payment of an amount sufficient to satisfy the entire Indebtedness or the part thereof which has been accelerated, such tender shall be deemed a voluntary prepayment pursuant to the Indebtedness and, accordingly, Mortgagor, to the extent permitted by applicable law, shall also pay to Mortgagee the premium, if any, then required under the Indebtedness or the Loan Documents in order to exercise the prepayment privilege contained therein.

Section 8.11 CONTEST OF CERTAIN CLAIMS. Notwithstanding the provisions of Sections 4.5 or 4.12 hereof, Mortgagor shall not be in default for failure to pay or discharge any Imposition or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within ten (10) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the Imposition or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure

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payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Imposition or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Imposition or mechanic's or materialman's lien claim does not constitute a default under any other Mortgage, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Imposition or claim notwithstanding such contest, if in the reasonable opinion of Mortgagee the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Mortgagee, the entitlement of such claimant is established.

Section 8.12 MAXIMUM INTEREST. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Note or the Related Indebtedness (or applicable United States federal law to the extent that it permits Mortgagee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (i) contracted for, charged, taken, reserved or received pursuant to the Note, any of the other Loan Documents or any other communication or writing by or between Mortgagor and Mortgagee related to the transaction or transactions that are the subject matter of the Loan Documents, (ii) contracted for, charged or received by reason of Mortgagee's exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness, or (iii) Mortgagor will have paid or Mortgagee will have received by reason of any voluntary prepayment by Mortgagor of the Note and/or the Related Indebtedness, then it is Mortgagor's and Mortgagee's express intent that all amounts charged in excess of the Maximum Lawful Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Mortgagee shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts then collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note have been paid in full before the end of the stated term of the Note, then Mortgagor and Mortgagee agree that Mortgagee shall, with reasonable promptness after Mortgagee discovers or is advised by Mortgagor that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Mortgagor and/or credit such excess interest against the Note and/or any Related Indebtedness then owing by Mortgagor to Mortgagee. Mortgagor hereby agrees that as a condition precedent to any claim seeking usury penalties against Mortgagee, Mortgagor will provide written notice to Mortgagee, advising Mortgagee in reasonable detail of the nature and amount of the violation, and Mortgagee shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Mortgagor or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Mortgagor to Mortgagee. All sums contracted for, charged or

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received by Mortgagee for the use, forbearance or detention of any debt evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note and/or the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

ARTICLE IX SECURITY AGREEMENT

Section 9.1 SECURITY INTEREST. This Mortgage (a) shall be construed as a Mortgage on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute until the grant of this Mortgage shall terminate as provided in Article II hereof. A first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts and Leases. To this end, Mortgagor GRANTS to, has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Mortgagee, a first and prior security interest and all of Mortgagor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts and Leases to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Mortgagor and Mortgagee that this Mortgage encumber all Leases and that all items contained in the definition of "Leases" which are included within the Code be covered by the security interest granted in this Article IX; and all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof. Mortgagor will cooperate with Mortgagee in obtaining control with respect to portions of the Personalty that are either or both deposit accounts or letter of credit rights.

Section 9.2 FINANCING STATEMENTS. Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such "Financing Statements" and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest. Mortgagor authorizes Mortgagee to file such "Financing Statements" without Mortgagor's signature describing such portions of the Mortgaged Property as Mortgagee may desire, including, without limitation, a financing statement covering "all assets of Mortgagor all proceeds therefrom, and all rights and privileges with respect thereto."

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Section 9.3 NO CHANGES. Mortgagor will not change its principal place of business or chief executive office, or change the state of its organization or registration, or change its name, without in each instance the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed. Mortgagee's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect the Mortgagee's security interest in the Mortgaged Property as a result of such changes.

Section 9.4 FIXTURE FILING. This Mortgage shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from either party at the address of such party set forth herein. For purposes of the security interest herein granted, the address of debtor (Mortgagor) is set forth in the first paragraph of this Mortgage and the address of the secured party (Mortgagee) is set forth in Article I hereof.

ARTICLE X INTENTIONALLY DELETED.

Section 10.1 INTENTIONALLY DELETED.

Section 10.2 INTENTIONALLY DELETED.

Section 10.3 INTENTIONALLY DELETED.

Section 10.4 INTENTIONALLY DELETED.

Section 10.5 INTENTIONALLY DELETED.

Section 10.6 INTENTIONALLY DELETED.

Section 10.7 INTENTIONALLY DELETED.

ARTICLE XI MISCELLANEOUS

Section 11.1 RELEASE. If, in accordance with the terms of this Mortgage, the Note, and the other Loan Documents, the Indebtedness is paid in full, and if Mortgagor shall well and truly perform each and every of the Obligations to be performed and discharged in accordance with the terms of this Mortgage, the Note and the other Loan Documents, then this conveyance shall become null and void and be released of record at Mortgagor's request and expense and Mortgagor shall have no further obligations under this Mortgage with respect to the Mortgaged Property, and Mortgagee shall have no further obligation to make advances under and pursuant to the provisions hereof or in the other Loan Documents with respect to the Mortgaged Property.

Section 11.2 PERFORMANCE AT MORTGAGOR'S EXPENSE. Subject to the provisions of Section 8.12 hereof, Mortgagor shall (i) pay all reasonable legal fees incurred by Mortgagee in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Mortgagee, promptly upon

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demand, for all amounts expended, advanced, or incurred by Mortgagee to satisfy any obligation of Mortgagor under the Loan Documents, which amounts shall include (without limitation) all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Mortgagee in connection with any such matters; and (iii) any and all other reasonable costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "Indebtedness," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

Section 11.3 SURVIVAL OF OBLIGATIONS. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section shall limit the obligations of Mortgagor as otherwise set forth herein.

Section 11.4 RECORDING AND FILING. Mortgagor will cause the Loan Documents requested by Mortgagee and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

Section 11.5 NOTICES. All notices or other communications required or permitted to be given pursuant to this Mortgage shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (iv) by prepaid telegram, telex, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; notice given by facsimile shall be effective upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

Section 11.6 COVENANTS RUNNING WITH THE LAND. All Obligations contained in this Mortgage and the other Loan Documents are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Mortgage has been fully released by Mortgagee.

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Section 11.7 SUCCESSORS AND ASSIGNS. Subject to the provisions of Sections 6.7 and 6.8 hereof, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

Section 11.8 NO WAIVER; SEVERABILITY. Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Section 11.9 COUNTERPARTS. To facilitate execution, this Mortgage may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Mortgage to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

Section 11.10 GOVERNING LAW. This Mortgage is executed and delivered as an incident to a lending transaction negotiated and consummated in Tarrant County, Texas, and shall be governed by and construed in accordance with the laws of the State of Texas (without giving effect to Texas' principles of conflicts of law) and the law of the United States applicable to transactions in such State, except to the extent (A) of procedural and substantive matters relating only to the creation, perfection, foreclosure and enforcement of rights and remedies against the Mortgaged Property, which matters shall be governed by the laws of the State of Illinois, and (B) that the laws of the United States of America and any rules, regulations or orders issued or promulgated thereunder are applicable to the affairs and transactions entered into by Mortgagee, otherwise preempt Illinois or Texas law; in which event such federal law shall control. Mortgagor, for itself and its successors and assigns, hereby irrevocably (i) submits to the nonexclusive jurisdiction of the state and federal courts in Texas, (ii) waives, to the fullest extent permitted by law, and objection that it may now or in the future have to the laying of venue of any litigation arising out of or in connection with any Loan Document brought in the District Court of Tarrant County, Texas, or in the United States District Court for the Northern District of Texas, Fort Worth Division, (iii) waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an

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inconvenient forum, and (iv) agrees that any legal proceeding against any party to any Loan Document arising out of or in connection with any of the Loan Documents may be brought in one of the foregoing courts. Mortgagor agrees that service of process upon it may be made by certified or registered mail, return receipt requested, at its address specified herein. Nothing herein shall affect the right of Mortgagee to serve process in any other manner permitted by law or shall limit the right of Mortgagee to bring any action or proceeding against Mortgagor or with respect to any of Mortgagor's property in courts in other jurisdictions. The scope of each of the foregoing waivers is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. Mortgagor acknowledges that these waivers are a material inducement to Mortgagee's agreement to enter into agreements and obligations evidenced by the Loan Documents, that Mortgagee has already relied on these waivers and will continue to rely on each of these waivers in related future dealings. The waivers in this section are irrevocable, meaning that they may not be modified either orally or in writing, and these waivers apply to any future renewals, extensions, amendments, modifications, or replacements in respect of the applicable Loan Document. In connection with any litigation, this Mortgage may be filed as a written consent to a trial by the court.

Section 11.11 REPRESENTATION BY COUNSEL. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 11.12 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

Section 11.13 RIGHTS CUMULATIVE. Mortgagee shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Mortgagor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Mortgagee, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Mortgagee hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

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Section 11.14 PAYMENTS. Remittances in payment of any part of the Indebtedness other than in the required amount in funds immediately available at the place where the Note are payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Mortgagee in funds immediately available at the place where the Note are payable (or such other place as Mortgagee, in Mortgagee's sole discretion, may have established by delivery of written notice thereof to Mortgagor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Mortgagee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

Section 11.15 EXCEPTIONS TO COVENANTS. Mortgagor shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Mortgagee, nor shall Mortgagee be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Mortgagee.

Section 11.16 RELIANCE. Mortgagor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Mortgage, Mortgagee is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in Article III hereof without any obligation to investigate the Mortgaged Property and notwithstanding any investigation of the Mortgaged Property by Mortgagee; that such reliance exists on the part of Mortgagee prior hereto; that such warranties and representations are a material inducement to Mortgagee in making the loan evidenced by the Loan Documents and the acceptance of this Mortgage; and that Mortgagee would not be willing to make the loan evidenced by the Loan Documents and accept this Mortgage in the absence of any of such warranties and representations.

Section 11.17 CHANGE OF SECURITY. Any part of the Mortgaged Property may be released, regardless of consideration, by Mortgagee from time to time without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder. The lien, security interest, and other rights granted hereby shall not be affected by any other security taken for the Indebtedness or Obligations, or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Mortgage, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is fully paid and the Obligations are fully performed and discharged.

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Section 11.18 HEADINGS. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

Section 11.19 ENTIRE AGREEMENT; AMENDMENT. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Mortgagor and Mortgagee.

Section 11.20 WAIVER OF RIGHT TO TRIAL BY JURY. **MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY MORTGAGEE IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS.**

Section 11.21 COUNTING OF DAYS. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located (whether legal or religious in nature), the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized by law to be closed.

Section 11.22 NO MERGER OF ESTATES. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee, or any third party purchaser or otherwise.

Section 11.23 ILLINOIS PROVISIONS. Notwithstanding anything to the contrary contained herein:

(a) Mortgagor 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 property as defined in Section 5/15-1219 of the Act, and pursuant to Section 5/15-1601(B) of the Act, Mortgagor hereby waives any and all rights of redemption. To the extent permitted by law, Mortgagor hereby further waives any right to reinstate the loan including, without limitation, any right to reverse any acceleration of such indebtedness as provided in Section 5/15-1602 of the Act. All waivers by Mortgagor in this Mortgage have been made voluntarily, intelligently and knowingly by

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Mortgagor after Mortgagor has been informed by counsel of Mortgagor's choice as to possible alternative rights. Mortgagor's execution of this Mortgage shall be conclusive evidence of the making of such waivers and that such waivers have been voluntarily, intelligently and knowingly made.

(b) Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, as the same may have been or shall be amended, to be placed in possession of the Mortgaged Property.

(c) In addition to the powers provided in this Mortgage, any receiver appointed with respect to the Mortgaged Property shall have all rights, powers, immunities and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

(d) Mortgagor represents and warrants to Mortgagee that the proceeds of the obligations secured hereby shall be used solely for business purposes and in furtherance of the regular business affairs of Mortgagor, and the entire principal obligations secured by this Mortgage constitute (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(1)(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(1)(l).

(e) In addition to any other obligation secured by this Mortgage, this Security Instrument shall also secure all monies advanced by Mortgagee in accordance with the terms of this Mortgage to (a) preserve or restore the Mortgaged Property, (b) preserve the lien of this Mortgage or the priority thereof, or (c) enforce this Mortgage whether made as an obligation, made at the option of Mortgagee, made after a reduction to a zero (0) or other balance, or made otherwise, to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage; and (ii) future modifications, extensions and renewals of any indebtedness or obligations secured by this Mortgage. The lien of this Security Instrument with respect to such future obligations, advances, modifications, extensions and renewals shall have the same priority to which this Security Instrument otherwise would be entitled under 735 ILCS 5/15-1302 without regard to the fact that such future obligations, advances, modifications, extensions, or renewals may occur after this Security Instrument is executed.

(f) Mortgagor acknowledges that the principal amount of the Indebtedness secured hereby is ONE MILLION SEVENTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,072,500.00) and that the maximum aggregate amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Mortgage is TWO MILLION ONE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,145,000.00).

(g) Mortgagor acknowledges and agrees that (i) the Indebtedness secured hereby constitutes a business loan which comes with the purview of Section 4 of the Interest Act (815 ILCS 205/0.01 *et seq.*) and (ii) that the Debt is an exempt transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 *et seq.*

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(h) Pursuant to Section 10 of the Illinois Collateral Protection Act, 815 ILCS 180/10, Mortgagor is hereby formally notified, and Mortgagor hereby acknowledges and agrees, that unless Mortgagor provides Mortgagee with evidence of the insurance coverage provided by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in Mortgagor's collateral. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the collateral. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the Mortgage. If Mortgagee purchases insurance for the collateral, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee may 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 added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

EXECUTED as of the date first above written.

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SIGNATURE PAGE TO MORTGAGE

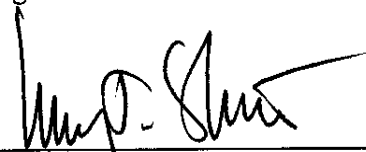
NOTICE OF INDEMNIFICATION:

MORTGAGOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS MORTGAGE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTIONS 7.1(b) AND 8.4 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY MORTGAGOR OF MORTGAGEE FROM CLAIMS OR LOSSES ARISING AS A RESULT OF MORTGAGEE'S OWN NEGLIGENCE.

MORTGAGOR:

LAZ 221 N LASALLE GARAGE, LLC, a
Delaware limited liability company

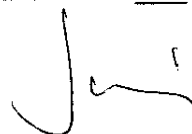
By: LPRI 221 N. LaSalle, LLC,
a Connecticut limited liability company, its
manager

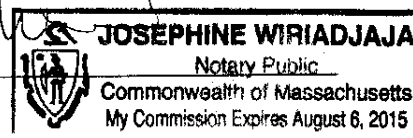
By: 
Name: Larry J. Stubbs
Title: Authorized Representative

STATE OF Massachusetts
COUNTY OF Suffolk)

I, Josephine Wiriadaja, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Larry J. Stubbs, as Manager of LPRI 221 N. LaSalle, LLC, a Connecticut limited liability company, the manager of LAZ 221 N LaSalle Garage, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such MA-Manager of said limited liability company, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of April, 2009.


Notary Public



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List of Attachments:

- Exhibit "A" - Land Description
- Exhibit "B" - Permitted Exceptions
- Exhibit "C" - Insurance

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EXHIBIT "A"

Land Description

PARCEL 1:

LOTS B1C1, B1P1, B2P1, B1C7, B1C2 AND B1C8 IN THE LASALLE-WACKER SUBDIVISION RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS ON SEPTEMBER 4, 2008 AS DOCUMENT NUMBER 0824816018, BEING A SUBDIVISION OF PART OF LOTS 3 AND 4 IN BLOCK 16 IN ORIGINAL TOWN OF CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 29 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 2:

NON-EXCLUSIVE PERMANENT AND PERPETUAL EASEMENTS FOR THE BENEFIT OF PARCEL 1, OVER AND UPON THE COMMON PROPERTIES, AS CREATED BY DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS, MADE BY 221 NORTH LASALLE PARTNERS, LLC, DATED AUGUST 11, 2008 AND RECORDED SEPTEMBER 4, 2008 AS DOCUMENT NUMBER 0824816018 AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF COVENANTS RESTRICTIONS AND EASEMENTS RECORDED ~~APRIL~~ ^{MAY} 05/08/2009, 2009 AS DOCUMENT 0912845088 IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN AGREEMENT OF ADJACENT PROPERTY OWNERS REGARDING SETBACKS AND EASEMENTS FOR LIGHT, AIR AND VIEW, DATED OCTOBER 19, 2006 AND RECORDED OCTOBER 23, 2006 AS DOCUMENT 0629639026.

PARCEL 4:

ENCROACHMENT EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED OCTOBER 23, 2006 AND RECORDED OCTOBER 23, 2006 AS DOCUMENT 0629639027 AND RE-RECORDED OCTOBER 23, 2006 AS DOCUMENT 0629631087.

PARCEL 5:

EASEMENT FOR THE PLACING, MAINTAINING AND INSTALLING ADVERTISING AND WAYFINDING SIGNAGE FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT BY AND BETWEEN 221 NORTH LASALLE PARTNERS, LLC, LAZ 221 N LASALLE GARAGE, LLC AND THE LASALLE WACKER OWNERS ASSOCIATION INC., RECORDED ~~APRIL~~ ^{MAY} 05/08/2009, 2009 AS DOCUMENT 0912845091.

Common Address: 221 North LaSalle Street, Chicago, Illinois 60601

Permanent Index Tax Identification No.: 17-09-419-001-000

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EXHIBIT "B"

Permitted Exceptions

The following items are Permitted Exceptions to the extent they are valid and subsisting and affect the Mortgaged Property:

1. Terms, provisions, and conditions of the Memorandum of Agreement by Unicom Thermal Technologies Inc., and The Lurie Company dated October 13, 1997 and recorded November 25, 1997 as document 97885604 relating to Chilled Water Service Agreement.
2. The land lies within the boundaries of a Special Service Area as disclosed by ordinance recorded February 19, 1991 as document 91075841 and is subject to additional taxes under the terms of said ordinance and subsequent related ordinances.
3. Survey made by National Survey Service, Inc., as Survey No. N-127161, dated March 24, 2008, discloses the following:
 - a. Encroachment of iron guard rails over the South line of the land onto public right-of-way.
 - b. Encroachment of overhead sign over the South line of the land onto public right-of-way.
 - c. Encroachment of overhead sign with clock over the North and East line of the land onto public right-of-way.
 - d. Encroachment of loading dock ramp over the North line of the land onto lower Wacker Drive.
4. Terms and conditions contained in the Agreement of Adjacent Property Owners Regarding Setbacks and Easements for Light, Air and View, made by and between LaSalle Wacker Building, LLC, a Delaware limited liability company and 111 West Wacker Associates, LLC, an Illinois limited liability company, dated October 19, 2006 and recorded October 23, 2006 as document 0629639026, together with the rights of the adjoining owners in and to the concurrent use of said easement.
5. Terms and conditions contained in the Easement Agreement dated October 23, 2006 and recorded October 23, 2006 as document 0629639027 and re-recorded October 23, 2006 as document 0629631087 made by and between LaSalle Wacker Building, LLC, a Delaware limited liability company and 111 West Wacker Associates, LLC, an Illinois limited liability company, together with the rights of the adjoining owners in and to the concurrent use of said easement.
6. Terms, conditions and provisions of the Declaration of Covenants, Restrictions and Easements dated August 11, 2008 and recorded September 4, 2008 as document 0824816018, together with the rights of the adjoining owners in and to the concurrent use of said easement, said Declaration modified by that certain First Amendment to

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Declaration of Covenants, Restrictions and Easements recorded ~~April~~ MAY 8, 2009, 2009 as document 0912845088.

7. Terms, conditions and provisions of that certain Easement Agreement between 221 North LaSalle Partners, LLC, LAZ 221 N LaSalle Garage, LLC and The LaSalle Wacker Owners Association Inc. recorded ~~April~~ MAY 8, 2009, 2009 as document 0912845091.

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EXHIBIT "C"

Insurance

(i) CGL providing coverage against (among others) bodily injury and disease, including death resulting therefrom, personal injury and property damage, written on an "occurrence" basis with respect to the business and any other activities carried on, in or from the Mortgaged Property and with respect to Mortgagor's use and occupancy thereof (including a provision for contractual liability coverage insuring Mortgagor for the performance of its indemnity obligations set forth in this Mortgage), having limits of not less than \$3,000,000 per occurrence (which per occurrence coverage may be accomplished through a combination of primary and excess insurance) and \$10,000,000 general aggregate per location (or with such increased limits as may be required from time to time by Mortgagee by giving notice to Mortgagor), with no deductible or self-insured retention in excess of \$0 to apply to any coverage provided by the CGL policy without the prior written approval of Mortgagee; (ii) the broadest available form of "all risks" or "special form" property insurance (utilizing the then prevailing "ISO Special Form" property insurance form or an equivalent form acceptable to Mortgagee), including but not limited to, coverage for the Mortgaged Property, and all improvements, betterments, alterations and additions to the Mortgaged Property and all furniture, fixtures, equipment, merchandise and all other items of Mortgagor's personal property in, on, at, or about the Mortgaged Property, with no exclusions permitted thereunder with respect to vandalism, malicious mischief, or sprinkler leakage, including earthquake and flood as covered causes of losses and including an agreed amount endorsement for not less than one hundred percent (100%) of the full replacement cost (new, without deduction for depreciation) of the covered items and property and an ordinance or law coverage endorsement, with no deductible or self-insured retention in excess of \$25,000 to apply to any loss covered by such property insurance, and it being the parties' intent that Mortgagor structure its property insurance program so that no coinsurance penalty is imposed and there are no valuation disputes with any insurer or with Mortgagee; (iii) business income and extra expense coverage for no less than six (6) months of income and expenses; (iv) workers' compensation insurance to the statutory limit and employer's liability (and/or commercial umbrella) insurance having a limit of not less than \$5,000,000 per occurrence; (v) automobile liability insurance covering owned, non-owned or rented automotive equipment having the combined single limit of not less than \$1,000,000 with respect to injuries or damages in any one occurrence; and (vi) such other insurance with other coverages or increased coverages, if any, as Mortgagee may require from time to time.