

**MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS**

Made By: _____, as Mortgagor

To: _____, as Mortgagee

Dated:

Location:

Block:

Lot:

Street Address:

RECORD AND RETURN TO:

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THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF
LEASES AND RENTS (the “**Mortgage**”) made the ____ day of _____, 20____,
between _____, a
_____ having an office at _____ (the
“**Mortgagor**”), and _____, a
_____ having an office at _____ (the “**Mortgagee**”).

W I T N E S S E T H:

WHEREAS the Mortgagor is

the owner of a fee estate in the premises described in Exhibit A attached
hereto (the “**Premises**”);¹

*the owner of a leasehold estate in the premises described in Exhibit A
attached hereto (the “**Premises**”) under and pursuant to the provisions of
the lease described in Exhibit A-1 attached hereto (the “**Mortgaged
Lease**”);²*

MORTGAGE OF THE MORTGAGED PROPERTY

NOW THEREFORE, to secure the payment of an indebtedness in the principal
sum of _____ and ____/100 Dollars
(\$_____), lawful money of the United States of America, to be paid with interest
(said indebtedness, interest and all other sums which may or shall become due hereunder
or secured hereby, collectively, the “**Debt**”) according to a certain Note dated the date
hereof given by the Mortgagor to the Mortgagee (the “**Note**”), the Mortgagor hereby
mortgages to the Mortgagee, and grants the Mortgagee a security interest in, all right, title
and interest of the Mortgagor now owned, or hereafter acquired, in and to the following
property, rights and interests (such property, rights and interests, collectively, the
“**Mortgaged Property**”):

(a) the Premises;³

*(a)(1) the Mortgaged Lease and the leasehold estate created thereunder;
(2) all modifications, extensions and renewals of the Mortgaged Lease and all
credits, deposits, options, purchase options, privileges and rights of the
Mortgagor under the Mortgaged Lease, including, but not limited to, the right, if*

¹ For leasehold mortgage, strike this subparagraph.

² For fee mortgage, strike this subparagraph.

³ For fee mortgage, strike this paragraph (a).

³ For leasehold mortgage, strike this paragraph (a).

*any, to renew or extend the Mortgaged Lease for a succeeding term or terms, or to acquire fee title to or other interest in all or any portion of the Premises or the Improvements (hereinafter defined); and (3) all of the Mortgagor's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**"), including, without limitation, all of the Mortgagor's right thereunder to remain in possession of the Premises and the Improvements;*⁴

(b) all buildings and improvements now or hereafter located on the Premises (the "**Improvements**");

(c) all of the estate, right, title, claim or demand of any nature whatsoever of the Mortgagor, either in law or in equity, in possession or expectancy, in and to the Mortgaged Property or any part thereof;

(d) all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Premises or now or hereafter transferred to the Premises) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

(e) all machinery, apparatus, equipment, fittings, fixtures and other property of every kind and nature whatsoever and all additions thereto and renewals and replacements thereof, and all substitutions therefor now owned or hereafter acquired by the Mortgagor, or in which the Mortgagor has or shall have an interest, now or hereafter located upon or in, or attached to, any portion of the Mortgaged Property or appurtenances thereto, and used or usable in connection with the present or future operation and occupancy of the Mortgaged Property and all building equipment, materials and supplies of any nature whatsoever owned by the Mortgagor, or in which the Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property and whether stored at the Mortgaged Property or off-site if used in connection with such operation and occupancy (collectively, the "**Equipment**"), and the right, title and interest of the Mortgagor in and to any of the Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of New York), superior in lien to lien of this Mortgage and all proceeds and products of any of the above;

⁴ For fee mortgage, strike this paragraph (a).

(f) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Mortgaged Property;

(g) all leases and other agreements (*other than the Mortgaged Lease*)⁵ affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (the “**Leases**”) and the rents, royalties, issues and profits of the Mortgaged Property (the “**Rents**”;

(h) all right, title and interest of the Mortgagor in and to (i) all contracts from time to time executed by the Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Mortgaged Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Mortgaged Property or any property which is adjacent or peripheral to the Mortgaged Property, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Mortgaged Property or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Mortgaged Property;

(i) all trade names, trade marks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Mortgaged Property or any part thereof; all general intangibles related to the operation of the Mortgaged Property now existing or hereafter arising;

(k) all proceeds, both cash and non-cash, of the foregoing;

(l) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property; and

(m) all refunds, rebates or credits in connection with any reduction in real estate taxes and assessments against the Mortgaged Property as a result of tax certiorari or other proceedings for the reduction of such taxes or assessments.

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the proper use and benefit of the Mortgagee, and the successors and assigns of the Mortgagee, forever.

⁵ For fee mortgage, strike this parenthetical phrase.

COVENANTS, AGREEMENTS, REPRESENTATIONS AND WARRANTIES

AND the Mortgagor covenants and agrees with and represents and warrants to the Mortgagee as follows:

1. Payment of Debt.

The Mortgagor will pay the Debt at the time and in the manner provided for its payment in the Note and in this Mortgage.

2. Warranty of Title.

(a) Subject only to those exceptions to title specifically set forth in the title policy issued or to be issued by _____ to the Mortgagee (the “**Title Policy**” and insuring the lien of this Mortgage, the Mortgagor represents and warrants to the Mortgagee that the Mortgagor possesses unencumbered *fee simple/leasehold*⁶ estate in the Premises and owns the Improvements, the Equipment and the balance of the Mortgaged Property free and clear of all liens, encumbrances and charges. The Mortgagor shall forever warrant, defend and preserve such title and priority of the lien of this Mortgage against claims of all persons whomsoever. The Mortgagor represents and warrants that (i) the Mortgagor is now, and after giving effect to this Mortgage, will be in a solvent condition, (ii) the execution and delivery of this Mortgage by the Mortgagor does not constitute a “fraudulent conveyance” within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and (iii) no bankruptcy or insolvency proceedings are pending or contemplated by or against the Mortgagor. *In addition, the Mortgagor represents and warrants that (i) the Mortgaged Lease is in full force and effect and has not been modified in any manner whatsoever, (ii) there are no defaults under the Mortgaged Lease and no event has occurred, which but for the passage of time, or notice, or both, would constitute a default under the Mortgaged Lease, (iii) all rents, additional rents and other sums due and payable under the Mortgaged Lease have been paid in full, and (iv) no action has commenced and no notice has been given or received for the purpose of terminating the Mortgaged Lease.*⁷

(b) The Mortgagor additionally represents and warrants that: (i) it has full power, authority and legal right to execute this Mortgage and to mortgage the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on the Mortgagor’s part to be performed and all such actions have been duly authorized by all necessary proceedings on its part, (ii) if the Mortgagor is a corporation, partnership or limited liability company, the Mortgagor is duly organized and validly existing under applicable law and all necessary action has been taken under the Borrower’s organizational documents and applicable law to authorize the execution and delivery of this Mortgage and the performance of Mortgagors obligations thereunder

⁶ Strike inapplicable term.

⁷ For fee mortgage, strike this italicized sentence.

and this Mortgage has been duly executed by the person(s) executing same on behalf of the Mortgagor.

3. Insurance.

The Mortgagor (i) will keep the Improvements and the Equipment insured against loss or damage by fire and standard extended coverage perils (by means of an "all risk" policy with an extended coverage endorsement, failure of a boiler and other machinery and equipment, if generally available) and such other hazards as the Mortgagee shall from time to time require in amounts (including applicable deductibles) approved by the Mortgagee, which amounts shall in no event be less than 100% of the full replacement value of the Improvements and the Equipment without deduction for depreciation, but inclusive of footings and foundations, and shall be sufficient to meet all applicable co-insurance requirements, (ii) will maintain rental loss or business interruption insurance in an amount sufficient to cover any loss of income from the Mortgaged Property for a period of not less than twenty-four (24) months, (iii) will maintain (A) commercial general liability insurance in an amount not less than \$_____ per occurrence and \$_____ in the aggregate, (B) commercial automobile liability insurance with a limit of not less than \$_____ combined single limit, endorsed to cover owned, hired and non-owned automobiles, and (C) worker's compensation insurance covering all of the Mortgagor's employees, if any, situated at the Premises, and (iv) will maintain such other forms of insurance coverage with respect to the Mortgaged Property as the Mortgagee shall from time to time require in amounts approved by the Mortgagee. All policies of insurance (the "**Policies**") shall be issued by insurers in a financial size category of not less than X and having a minimum general policy holders' rating of "A" and financial class VII per the latest rating publication of Property and Casualty Insurers by A.M. Best Company and who are lawfully doing business in New York and are otherwise acceptable in all respects to the Mortgagee. All Policies shall contain the standard New York mortgagee non-contribution clause endorsement or an equivalent endorsement satisfactory to the Mortgagee naming the Mortgagee as the person to which all payments made by the insurer thereunder shall be paid, other than the Policies referred to in clause (iii) above, and the policy referred to in clause (iii)(A) above shall name the Mortgagee as an additional insured, and shall otherwise be in form and substance satisfactory in all respects to the Mortgagee.

Nothing contained in this Section shall prevent the Mortgagor from obtaining the required insurance under a policy or policies of blanket insurance which may cover the Premises and other property not subject to the lien of this Mortgage, provided that any such policy of blanket insurance shall: (i) specify therein, or the Mortgagor shall furnish the Mortgagee with a written statement from the insurers under such policies (which shall bind such insurers) so specifying, the amount of the total insurance separately allocated to the Premises and stating that such coverage is applicable only to the Premises, which amount shall not be less than the amount which the

Mortgagor is required to carry under this Section; and (ii) in all other respects comply with the other provisions of this Section.

The Mortgagor shall pay the premiums for the Policies as the same become due and payable. At the request of the Mortgagee, the Mortgagor will deliver the Policies to the Mortgagee. Not later than ten (10) days prior to the expiration date of each of the Policies, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to the Mortgagee. If at any time the Mortgagee is not in receipt of written evidence that all insurance required hereunder is in force and effect, the Mortgagee shall have the right without notice to the Mortgagor to take such action as the Mortgagee deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as the Mortgagee in its sole discretion deems appropriate, and all expenses incurred by the Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be secured by this Mortgage and paid by the Mortgagor to the Mortgagee upon demand. The Mortgagor shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. If the Premises, or any portion of the Improvements or the Equipment, is located in a Federally designated "special flood hazard area," in addition to the other Policies required under this paragraph, a flood insurance policy shall be delivered by the Mortgagor to the Mortgagee. If no portion of the Premises is located in a Federally designated "special flood hazard area" such fact shall be substantiated by a certificate in form satisfactory to the Mortgagee from a licensed surveyor, appraiser or professional engineer or other qualified person. If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other property hazard or casualty, the Mortgagor shall give prompt notice thereof to the Mortgagee. Sums paid to the Mortgagee by any insurer may be retained and applied by the Mortgagee toward payment of the Debt whether or not then due and payable in such order, priority and proportions as the Mortgagee in its discretion shall deem proper or, at the discretion of the Mortgagee, the same may be paid, either in whole or in part, to the Mortgagor for such purposes and upon such terms as the Mortgagee shall designate. If the Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by the Mortgagee and actually applied by the Mortgagee in reduction of the Debt. The provisions contained herein with respect to insurance shall apply notwithstanding any contrary provisions of subdivision 4 of Section 254 of the Real Property Law of New York.

4. Payment of Taxes, etc.

The Mortgagor shall pay all taxes, assessments, water rates, sewer rents and other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the

Mortgaged Property, and all common charges, common area maintenance charges, dues and assessments imposed by any condominium association, all amounts due in respect of any business improvement district or like organization, and all insurance premiums (the “**Taxes**”) prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof. The Mortgagor shall deliver to the Mortgagee, upon request, receipted bills, canceled checks and other evidence satisfactory to the Mortgagee evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof.

5. Escrow Fund.

The Mortgagor will, at the option of the Mortgagee, pay to the Mortgagee on the first day of each calendar month one-twelfth of an amount (the “**Escrow Fund**”) which would be sufficient to pay the Taxes payable, or estimated by the Mortgagee to be payable, during the ensuing twelve (12) months. The Mortgagee will apply the Escrow Fund to the payment of Taxes which are required to be paid by the Mortgagor pursuant to the provisions of this Mortgage. If the amount of the Escrow Fund shall exceed the amount of the Taxes payable by the Mortgagor pursuant to the provisions of this Mortgage, the Mortgagee shall, in its discretion, (a) return any excess to the Mortgagor, or (b) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, the Mortgagee may deal with the person shown on the records of the Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the Taxes, as the same become payable, the Mortgagor shall pay to the Mortgagee, upon request, an amount which the Mortgagee shall estimate as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Escrow Fund may be commingled with the general funds of the Mortgagee and shall constitute additional security for the Debt and shall not bear interest.

6. Permitted Contests.

After prior written notice to the Mortgagee, the Mortgagor at its expense may contest, or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any taxes, any legal requirement (as hereinafter defined) or insurance requirement (as hereinafter defined) with respect to the Premises, provided that (a) in the case of any unpaid taxes, such proceedings shall suspend the collection thereof from the Mortgagor, the Mortgagee, the Premises and any rent or other income therefrom and shall not interfere with the payment of any such rent or income, (b) neither the Premises nor any rent or other income therefrom nor any part thereof or interest therein would be in any danger of being sold, forfeited, lost or interfered with, (c) in the case of a legal requirement, neither the Mortgagor nor the Mortgagee would be in any danger of any criminal liability or, with respect to the Mortgagee, any civil liability, for failure to comply therewith, (d) the Mortgagor shall have furnished such security, if any, as may be

required in the proceedings or as may be reasonably requested by the Mortgagee, (e) the nonpayment of the whole or any part of any taxes, assessment or charge will not result in the delivery of a tax deed to the Premises or any part thereof because of such nonpayment, (f) the payment of any sums required to be paid under this Mortgage (other than any unpaid taxes or charge at the time being contested in accordance with this Article 6) shall not be interfered with or otherwise affected, and (g) in the case of any insurance requirement, the failure of the Mortgagor to comply therewith shall not affect the validity of any insurance required to be maintained by the Mortgagor under this Mortgage. As used herein, (i) the term “**insurance requirements**” shall mean all provisions of any insurance policy covering or applicable to the Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any part thereof or any use or condition of the Premises or any part thereof and (ii) the term “**legal requirements**” shall mean all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all government departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Premises or any part thereof (whether to the use, operations, ownership or otherwise), or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Premises or any part thereof.

7. Condemnation.

Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Mortgagor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by the Mortgagee to the discharge of the Debt. The Mortgagee may apply the entire amount of any such award or payment to the discharge of the Debt whether or not then due and payable in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt, whichever is less. The Mortgagor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the Mortgagee. The Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receive any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for

the purpose of assigning any such award or payment to the Mortgagee, free and clear of any encumbrances of any kind or nature whatsoever.

8. Assignment of Leases and Rents.

(a) As of the date of this Mortgage, as security in addition to the property described in this Mortgage, the Mortgagor hereby absolutely and unconditionally assigns to the Mortgagee all of its right, title and interest in and to all Leases and any extensions, modifications and renewals thereof together with any and all guarantees of lessee's performance thereunder and all credits, deposits, claims, options, powers, benefits, privileges, and other rights arising thereunder, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, covering the Mortgaged Property, or any part thereof (but without an assumption by the Mortgagee of liabilities of the Mortgagor under any such Leases by virtue of this assignment), and the Mortgagor hereby absolutely and unconditionally assigns to the Mortgagee the Rents and other benefits of the Mortgaged Property now or hereafter arising from the Leases to be applied by the Mortgagee in payment of the Debt, and of all other sums payable under this Mortgage. Notwithstanding the foregoing, so long as no default shall exist and be continuing hereunder, the Mortgagor shall have a license to collect the Rents (subject to the provisions of this Mortgage). The Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. The license granted to the Mortgagor to collect the Rents may be revoked by the Mortgagee upon any default by the Mortgagor under the terms of the Note or this Mortgage by giving notice of such revocation to the Mortgagor. Following such notice the Mortgagee may retain and apply the Rents toward payment of the Debt in such order, priority and proportions as the Mortgagee, in its discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, irrespective of whether the Mortgagee shall have commenced a foreclosure of this Mortgage or shall have applied or arranged for the appointment of a receiver.

(b) The Mortgagor shall not, without the prior written consent of the Mortgagee, make, or suffer to be made, any Leases which are not in conformity with prevailing market rents and terms for similar space in the area where the Mortgaged Property is located. Except as provided in Paragraph 8(c) below, the Mortgagor will not modify or cancel or accept surrender of any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. The Mortgagee shall have all of the rights against tenants of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. The Mortgagor shall (i) fulfill or perform each and every provision of the Leases on the part of the Mortgagor to be fulfilled or performed, (ii) promptly send copies of all notices of default which the Mortgagor shall send or receive under the Leases to the Mortgagee, and (iii) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. In addition to the rights

which the Mortgagee may have herein, in the event of any default under this Mortgage, the Mortgagee, at its option, may require the Mortgagor to pay monthly in advance to the Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of the Mortgagor. Upon default in any such payment, the Mortgagor will vacate and surrender possession of the Mortgaged Property to the Mortgagee, or to such receiver, and, in default thereof, the Mortgagor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on the Mortgagee any of the obligations of the lessor under the Leases.

(c) Anything contained in this Paragraph 8 to the contrary notwithstanding, and provided that the Mortgagor is not in default hereunder, the Mortgagor shall have the right to terminate or modify any existing Lease provided that the replacement Lease shall provide for the payment of rents that are at least equal to the existing payment provided for in the existing Lease and for a term to end no sooner than that of the existing Lease, shall be with a tenant having a credit rating at least as good as that of the existing tenant and shall contain such other terms and conditions as are comparable for buildings of like character in the area in which the Mortgaged Property is situate. Subject to the provisions of the preceding paragraph, the Mortgagor shall have the right to replace or to modify existing residential Leases or to enter into new residential Leases with respect to vacant apartment units on condition that the rent payable under the replacement Lease, or the new Lease, as the case may be, shall be equal to the lesser of market rents or the maximum rent allowable by law. The Mortgagor shall on request furnish to the Mortgagee a report of its leasing activities (including an itemized rent roll) with respect to the Mortgaged Property.

9. Maintenance of the Mortgaged Property.

The Mortgagor shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the prior written consent of the Mortgagee. The Mortgagor shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Mortgaged Property, or any portion thereof or the use thereof. The Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such fire or other property hazard or casualty shall be covered by the Policies, the Mortgagor shall remain obligated to repair, replace or rebuild such portion of the Mortgaged Property notwithstanding that the proceeds from such Policies may be

insufficient to affect such repair, replacement or rebuilding or that the Mortgagee shall exercise its rights under Section 3 hereof to retain and apply all or any portion of such proceeds to the Debt. The Mortgagor will not, without obtaining the prior consent of the Mortgagee, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Mortgaged Property or any part thereof.

10. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term “**Hazardous Material**” shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials, lead or polychlorinated biphenyls, (ii) the “**Environmental Requirements**” shall collectively mean all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term “**Governmental Authority**” shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) The Mortgagor hereby represents and warrants to the Mortgagee that (i) no Hazardous Material is currently located at, on, in, under or about the Mortgaged Property, except as specifically set forth in _____, (ii) no Hazardous Material is located at, in, on, under or about the Mortgaged Property in manner which violates any Environmental Requirement, or which requires cleanup or corrective action of any kind under any Environmental Requirement, (iii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Environmental Requirement, (iv) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is outstanding under any Environmental Requirement, nor does the Mortgagor have knowledge or reason to believe that any such notice will be received or is being threatened, and (v) the Mortgaged Property and the operation thereof are in full compliance with all Environmental Requirements. Mortgagor will promptly notify Mortgagee if, at any time, the foregoing representation and warranty shall not be true and correct in all respects.

(c) The Mortgagor shall comply, and shall cause all tenants or other occupants of the Mortgaged Property to comply, in all respects with all Environmental Requirements. The Mortgagor shall notify the Mortgagee promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Mortgaged Property which is required to be reported to a Governmental Authority under any Environmental Requirement or if it shall receive any notice from any Governmental Authority that the Mortgaged Property fails to comply with an Environmental Requirement, and Mortgagor will promptly take, at the Mortgagor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements. Mortgagor will pay and discharge any fine, penalty, imposition, liability or lien that may be imposed or levied with respect to any Environmental Requirement. Mortgagor shall provide Mortgagee with copies of all notices and other communications to or from any Governmental Authority which pertain to Environmental Requirements as applicable to the Mortgaged Property, including, without limitation, any violation of or non-compliance with Environmental Requirements, or any spill, release or remediation.

(d) If the Mortgagor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, the Mortgagee may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the Mortgagee (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from the Mortgagor and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by the Mortgagee until the date any such sums are repaid by the Mortgagor to the Mortgagee.

(e) The Mortgagee may, at its option, at intervals of not less than one year, or more frequently if the Mortgagee reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental assessment or audit of the Mortgaged Property or portions thereof to be conducted to confirm the Mortgagor's compliance with the provisions of this paragraph, and the Mortgagor shall cooperate in all reasonable ways with the Mortgagee in connection with any such assessment or audit. If such assessment or audit discloses that a violation of or a liability under an Environmental Requirement exists or if such assessment or audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, the Mortgagor shall pay all costs and expenses incurred in connection with such assessment or audit; otherwise, such costs and expenses shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by the Mortgagee.

(f) If this Mortgage is foreclosed, or if the Mortgaged Property is sold pursuant to the provisions of this Mortgage, or if the Mortgagor tenders a deed or assignment in lieu of foreclosure or sale, the Mortgagor shall deliver the Mortgaged Property to the purchaser at foreclosure or sale or to the Mortgagee, its nominee, or wholly-owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements.

(g) The Mortgagor will defend, indemnify, and hold harmless the Mortgagee, its co-lenders, participants, employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Mortgagor of any of the provisions of this Paragraph 10, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Mortgaged Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Mortgaged Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Mortgaged Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit, proceeding or investigations brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement or any policy or requirement of the Mortgagee hereunder. The aforesaid indemnification and other obligations of the Mortgagor under this Paragraph 10 shall, notwithstanding any exculpatory or other provision of any other document or instrument now or hereafter executed and delivered in connection with the loan evidenced by the Note and secured by this Mortgage, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

(h) The obligations and liabilities of the Mortgagor under this Paragraph 10 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to the provisions of this Mortgage or acceptance by the Mortgagee, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

11. Estoppel Certificates.

The Mortgagor, within ten (10) days after request by the Mortgagee and at the Mortgagor's expense, will furnish the Mortgagee with a statement, duly

acknowledged and certified, setting forth the amount of the Debt outstanding and any claimed offsets or defenses thereto, and that the Note and the Mortgage are valid, legal and binding obligations of the Mortgagor and have not been modified, or, if modified, giving the particulars of such modification.

12. Transfer or Encumbrance of the Mortgaged Property.

No part of the Mortgaged Property nor any interest of any nature whatsoever therein nor any direct or indirect interest of any nature whatsoever in the Mortgagor, or in any Guarantor (whether partnership, membership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner, directly or indirectly, be further encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred, assigned or conveyed without the prior written consent of the Mortgagee, which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee. The provisions of the foregoing sentence of this paragraph shall apply to each and every such further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not the Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of law or is otherwise made.

Notwithstanding the foregoing and provided that no default shall then exist hereunder, it shall not be a default hereunder if, upon the death of the Mortgagor or any Guarantor, a general partner of the Mortgagor or any Guarantor, shareholder(s) of the Mortgagor or any Guarantor or member(s) of the Mortgagor or any Guarantor or any other person owning a direct or indirect interest in the Mortgagor or in any Guarantor (the “**Deceased**”), the interest of the Deceased in the Mortgaged Property and/or the Mortgagor or any Guarantor is transferred, in the case of an interest in the Mortgaged Property, subject to the lien of this Mortgage, to the estate of the Deceased, and thereafter to the spouse and/or the lineal descendants of the Deceased or trusts for the exclusive benefit of such spouse or lineal descendants without the prior written consent of the Mortgagee, provided each such transferee shall notify the Mortgagee in writing within five (5) days of such transfer and thereafter shall promptly execute and deliver such documents, including without limitation, any assumption of mortgage agreement, as may be required by the Mortgagee, all in form and in content satisfactory to the Mortgagee in all respects. In all other respects the provisions of this Paragraph 12 shall continue to apply with full force and effect.

13. Notice.

Any notice, request, demand, statement, authorization, approval or consent made hereunder (including, without limitation, any notice to be given under Article 14 of the Real Property Actions and Proceedings Law) shall be in writing and shall be hand delivered or sent by a nationally recognized overnight courier service, or by postage pre-

paid registered or certified mail, return receipt requested, and shall be deemed given (i) when received at the following addresses if hand delivered or sent by a nationally recognized overnight courier service or, if refused, when refused by or on behalf of the person designated below to receive notices on behalf of such party, and (ii) three (3) business days after being postmarked and addressed as follows if sent by registered or certified mail, return receipt requested:

If to the Mortgagor:

Attention: _____

With a copy to:

Attention: _____

If to the Mortgagee:

Attention: _____

With a copy to:

Attention: _____

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective.

14. Sale of Mortgaged Property.

If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of the Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

15. Changes in Laws Regarding Taxation.

In the event of the passage after the date of this Mortgage of any law of the State of New York deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, the Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by the Mortgagee, whichever is less, provided, however, that if, in the opinion of the attorneys for the Mortgagee, the Mortgagor is not permitted by law to pay such taxes, the Mortgagee shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to the Mortgagor of not less than thirty (30) days.

16. No Credits on Account of the Debt.

The Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt. If at any time this Mortgage shall secure less than all of the principal amount of the Debt, it is expressly agreed that any repayment of the principal amount of the Debt shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the principal amount of the Debt outstanding.

17. Offsets, Counterclaims and Defenses.

Any assignee of this Mortgage and the Note shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the Mortgagor may have against any assignor of this Mortgage and the Note, and no such offset, counterclaim or defense shall be interposed or asserted by the Mortgagor in any action or proceeding brought by any such assignee upon this Mortgage or the Note and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Mortgagor.

18. Other Security for the Debt.

The Mortgagor shall observe and perform all of the terms, covenants and provisions contained in the Note and in all other mortgages and other instruments or documents evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the loan evidenced and secured thereby.

19. Documentary Stamps.

If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note or this Mortgage, the Mortgagor will pay for the same, with interest and penalties thereon, if any.

20. Right of Entry.

Upon prior reasonable notice, the Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times.

21. Books and Records.

The Mortgagor will keep and maintain or will cause to be kept and maintained on a fiscal year basis in accordance with generally accepted accounting practices consistently applied proper and accurate books, records and accounts reflecting all of the financial affairs of the Mortgagor and all items of income and expense in connection with the operation of the Mortgaged Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Mortgaged Property. The Mortgagee shall have the right from time to time upon reasonable notice to examine such books, records and accounts at the office of the Mortgagor or other person maintaining such books, records and accounts and to make copies and extracts thereof as Mortgagee shall desire. Within sixty (60) days after the end of each fiscal year of the Mortgagor, the Mortgagor shall furnish to the Mortgagee a certificate signed by a duly authorized representative of the Mortgagor certifying on the date thereof either that there does or does not exist an event which constitutes, or which upon notice or lapse of time or both would constitute, a default or an Event of Default under this Mortgage and if such default or Event of Default exists, the nature thereof and the period of time it has existed. The Mortgagor shall furnish to the Mortgagee, within ten (10) days after request, such further detailed information covering the operation of the Mortgaged Property and the financial affairs of the Mortgagor, any affiliate of the Mortgagor, or any Guarantor (as hereinafter defined), as may be reasonably requested by the Mortgagee.

22. Performance of Other Agreements.

The Mortgagor shall observe and perform each and every term to be observed or performed by the Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

23. Events of Default.

The Debt shall become due at the option of the Mortgagee upon the occurrence of any one or more of the following events (herein collectively referred to as Events of Default):

(a) if any portion of the Debt is not paid within five (5) days after notice by the Mortgagee to the Mortgagor that the same is past due or the entire Debt is not paid in full on the maturity date of the Note; or

(b) if (except as permitted by Paragraph 6) the Mortgagor shall fail to pay any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Mortgaged Property; or

(c) if any Federal tax lien is filed against the Mortgagor, any Guarantor or the Mortgaged Property and the same is not discharged of record within thirty (30) days after the same is filed; or

(d) if (except as specifically provided to the contrary in Paragraph 12 above) without the consent of the Mortgagee (which consent in any and all circumstances may be withheld in the sole and absolute discretion of the Mortgagee) any part of the Mortgaged Property or any interest of any nature whatsoever therein or any interest of any nature whatsoever in the Mortgagor or any Guarantor (whether partnership, membership interest, stock, equity, beneficial, profit, loss or otherwise) is in any manner, by operation of law or otherwise, whether directly or indirectly, voluntary or involuntary, further encumbered, sold, transferred, assigned or conveyed; or,

(e) if without the consent of the Mortgagee any Improvement or the Equipment (except for the normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair; or

(f) if (except as permitted by Paragraph 6) the Mortgagor shall fail to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the Mortgaged Property within three (3) months from the issuance thereof, or the time period set forth therein, whichever is less; or

(g) if the Policies are not kept in full force and effect, or if the Policies are not delivered to the Mortgagee upon request; or

(h) if on application of the Mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue Policies; or

(i) if (except as permitted by Paragraph 6) the Mortgagor shall fail to pay the Mortgagee on demand for all Premiums and/or Taxes paid by the Mortgagee pursuant to this Mortgage, together with any late payment charge and interest thereon calculated at the Default Rate; or

(j) if (except as specifically provided to the contrary in Paragraph 8 above) without the consent of the Mortgagee any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance (except for estimated taxes and operating expenses required to be paid in advance under a Lease) or if any of the Rents are further assigned; or

(k) if any representation or warranty of the Mortgagor, or of any person (together with such person's executors, administrators, legal representatives, successors and assigns, "**Guarantor**") guaranteeing payment of the Debt or any portion thereof, or of operating expenses of the Mortgaged Property or guaranteeing performance by the Mortgagor of any of the terms of this Mortgage made herein or in any such guaranty (the "**Guaranty**"), or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, or any such Guaranty, shall prove false or misleading in any material respect; or

(l) if the Mortgagor or any Guarantor shall make an assignment for the benefit of creditors; or

(m) if a court of competent jurisdiction enters a decree or order for relief with respect to the Mortgagor or any Guarantor under Title 11 of the United States Code as now constituted or hereafter amended or under any other applicable Federal or state bankruptcy law or other similar law, or if such court enters a decree or order appointing a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of the Mortgagor or any Guarantor, or of any substantial part of their respective properties, or if such court decrees or orders the winding up or liquidation of the affairs of the Mortgagor or any Guarantor; or

(n) if the Mortgagor or any Guarantor files a petition or answer or consent seeking relief under Title 11 of the United States Code as now constituted or hereafter amended, or under any other applicable Federal or state bankruptcy law or other similar law, or if the Mortgagor or any Guarantor consents to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Mortgagor or any Guarantor, or of any substantial part of their respective properties, or if the Mortgagor or any Guarantor fails generally to pay their respective debts as such debts become due, or if the Mortgagor or any Guarantor takes any action in furtherance of any action described in this subparagraph; or

(o) if the Mortgagor or other person shall be in default beyond any applicable notice and/or grace period under the Note, or under any other mortgage,

instrument or document evidencing, securing or guaranteeing payment of the Debt, in whole or in part, or otherwise executed and delivered in connection with the Note, this Mortgage or the loan evidenced and secured thereby; or

(p) if the Mortgagor or other person shall be in default beyond any applicable notice and/or grace period under any mortgage or deed of trust covering any part of the Mortgaged Property whether superior or inferior in lien to this Mortgage, and including, without limitation, any such mortgage or deed of trust now or hereafter held by the Mortgagee; or

(q) if the Mortgaged Property shall become subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's lien, mechanic's or materialman's lien or other lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of the Mortgagee by the title company insuring the lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in lien or other priority to the lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate lien or encumbrance on the Mortgaged Property or is only a matter of record or notice; or

(r) if any Guarantor or any other person shall be in default beyond any applicable grace period under any Guaranty; or

(s) if the Mortgagor shall continue to be in default under any of the other terms, covenants or conditions of this Mortgage for five (5) days after notice from the Mortgagee in the case of any default which can be cured by the payment of a sum of money or for twenty (20) days after notice from the Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such twenty (20) day period and the Mortgagor shall have commenced to cure such default within such twenty (20) day period and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for so long as it shall require the Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days; or

(t) *if the Mortgagor shall default in the observance or performance of any term, covenant or condition of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be observed or performed, unless any such observance or performance shall have been waived or not required in writing by the lessor under the Mortgaged Lease, or if any one or more of the events referred to in the Mortgaged Lease shall occur which would or may cause the Mortgaged Lease to terminate without notice or action by the lessor thereunder or which would entitle the lessor under the Mortgaged Lease to terminate the Mortgaged Lease and the term thereof by giving notice to the Mortgagor, as lessee thereunder, or if the leasehold estate created by the Mortgaged*

Lease shall be surrendered, in whole or in part, or if the Mortgaged Lease shall be terminated or canceled for any reason or under any circumstance whatsoever, or if any of the terms, covenants or conditions of the Mortgaged Lease shall in any manner be modified, changed, supplemented, altered or amended without the consent of the Mortgagee; or⁸

(u) if the Mortgagor shall, without the Mortgagee's prior written approval, elect to treat the lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made by the Mortgagor, as holder of the fee or leasehold estates in the Mortgaged Property, without the Mortgagee's prior written consent, in addition to constituting an Event of Default, shall be void; or⁹

(v) if the Mortgagor shall fail to fully and punctually perform each and every obligation on the part of the Mortgagor to be performed in connection with the Condominium Documents or, without the prior written consent of the Mortgagee, shall join in or consent to any amendment thereof or to any amendment thereof.¹⁰

24. Right to Cure Defaults.

If default in the performance of any of the covenants of the Mortgagor herein occurs, the Mortgagee may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to the Mortgagor or any person in possession thereof holding under the Mortgagor. If the Mortgagee shall remedy such a default or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, the costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be secured by this Mortgage and paid by the Mortgagor to the Mortgagee upon demand. All such costs and expenses incurred by the Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid by the Mortgagor to the Mortgagee upon demand, with interest (calculated for the actual number of days elapsed on the basis of a 360-day year) at a rate per annum equal to 5% plus the rate of interest provided in the Note (herein referred to as the "**Default Rate**"), provided, however, that the Default Rate shall in no event exceed the maximum interest rate which the Mortgagor may by law pay, for the period after notice from the Mortgagee that such costs or expenses were incurred to the date of payment to the Mortgagee. To the extent any of the aforementioned costs or expenses paid by the Mortgagee after default by the Mortgagor shall constitute payment of (i) Taxes, (ii) premiums on insurance policies covering the Mortgaged Property, (iii) expenses incurred in upholding the lien of this Mortgage, including, but not limited to,

⁸ For fee mortgage, strike this paragraph (t).

⁹ For fee mortgage, strike this paragraph (u).

¹⁰ Include this paragraph (v) only if mortgage covers one or more condominium units.

the costs and expenses of any litigation to collect the indebtedness secured by this Mortgage or to prosecute, defend, protect or preserve the rights and the lien created by this Mortgage, or (iv) any amount, cost or charge to which the Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, such costs, expenses and amounts, together with interest thereon at the Default Rate, shall be added to the indebtedness secured by this Mortgage and shall be secured by this Mortgage. Notwithstanding anything to the contrary contained in this Mortgage, the maximum amount of the principal indebtedness secured by this Mortgage at execution or which under any contingency may become secured by this Mortgage is _____ and ____/100 Dollars (\$ _____), plus all amounts expended by the Mortgagee after default by the Mortgagor, as hereinabove set forth in this paragraph.

25. Appointment of Receiver.

The Mortgagee, in any action to foreclose this Mortgage or upon the actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of any default hereunder, shall be at liberty, without notice, to apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of the Debt.

26. Non-Waiver.

The failure of the Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. The Mortgagor shall not be relieved of the Mortgagor's obligation to pay the Debt at the time and in the manner provided for its payment in the Note and this Mortgage by reason of (i) failure of the Mortgagee to comply with any request of the Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt, or (iii) any agreement or stipulation between the Mortgagee and any subsequent owner or owners of the Mortgaged Property or other person extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any other mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or any portion thereof, without first having obtained the consent of the Mortgagor, and in the latter event, the Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note and this Mortgage, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by the Mortgagee in writing. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, the

Mortgagee may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of the Note or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. The Mortgagee may resort for the payment of the Debt to any other security held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Mortgagee thereafter to foreclose this Mortgage. The Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of the Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

27. Liability.

If the Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

28. Choice of Law/Construction.

The terms of this Mortgage shall be construed in accordance with the laws of the State of New York without reference to the choice of law provisions thereof and without regard to any presumption or other rule requiring construction against the party causing same to have been drafted.

29. Security Agreement.

This Mortgage constitutes both a real property mortgage and a “security agreement,” within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of the Mortgagor in the Mortgaged Property. The Mortgagor by executing and delivering this Mortgage has granted to the Mortgagee, as security for the Debt, a security interest in the Equipment. If the Mortgagor shall default under the Note or this Mortgage, the Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Equipment or any part thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Equipment. Upon request or demand of the Mortgagee, the Mortgagor shall at its

expense assemble the Equipment and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Mortgagor shall pay to the Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by the Mortgagee in protecting its interest in the Equipment and in enforcing its rights hereunder with respect to the Equipment. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Equipment sent to the Mortgagor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to in writing by the Mortgagor within five (5) days after receipt by the Mortgagor of such notice. The proceeds of any sale or disposition of the Equipment, or any part thereof, may be applied by the Mortgagee to the payment of the Debt in such order, priority and proportions as the Mortgagee in its discretion shall deem proper. If any change shall occur in the Mortgagor's name, the Mortgagor shall promptly cause to be filed at its own expense, new financing statements as required under the Uniform Commercial Code to replace those on file in favor of the Mortgagee.

30. Splitting of Lien.

This Mortgage and the Note may, at any time until the same be fully paid and satisfied, at the sole election of the Mortgagee, be split or divided into two or more notes and two or more mortgages constituting liens on the Mortgaged Property or portions thereof in such principal amounts as may be agreed upon, but in no event to exceed the aggregate principal amount evidenced by the Note and secured, or which under any contingency may be secured, by this Mortgage. The Mortgagor, upon request of the Mortgagee, shall execute, acknowledge and deliver to the Mortgagee and/or its designee or designees such documents as may be necessary to effectuate the foregoing, including, without limitation, such supplemental or substitute mortgages, assignments of rents and leases and security agreements and supplemental or substitute notes as the Mortgagee may require. If the splitting of the lien is at the Mortgagor's request, the Mortgagor shall pay all expenses in connection with the making and recording of such documents, including recording fees, mortgage recording taxes, if any, the fees and disbursements of the Mortgagee's attorneys, fees and expenses relating to examination of title and title insurance premiums, if any.

31. Further Acts, etc.

The Mortgagor will, at the cost of the Mortgagor, and without expense to the Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as the Mortgagee shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and

rights hereby mortgaged or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this mortgage and, on demand, will execute and deliver and hereby authorizes the Mortgagee to execute in the name of the Mortgagor to the extent the Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property.

32. Headings, etc.

The headings and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

33. Filing of Mortgage, etc.

The Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon, and the interest of the Mortgagee in, the Mortgaged Property. The Mortgagor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. The Mortgagor shall hold harmless and indemnify the Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

34. Usury Laws.

This Mortgage and the Note are subject to the express condition that at no time shall the Mortgagor be obligated or required to pay interest on the principal balance due under the Note at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note, the Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such

maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note.

35. Sole Discretion of Mortgagee.

Except as may otherwise be expressly provided to the contrary, wherever pursuant to the Note, this Mortgage or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, the Mortgagee exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of the Mortgagee to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of the Mortgagee and shall be final and conclusive.

36. Reasonableness.

If at any time the Mortgagor believes that the Mortgagee has not acted reasonably in granting or withholding any approval or consent under the Note, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the loan secured hereby, as to which approval or consent either (i) the Mortgagee has expressly agreed to act reasonably, or (ii) absent such agreement, applicable law would nonetheless require the Mortgagee to act reasonably, then the Mortgagor's sole remedy shall be to seek injunctive relief or specific performance, and no action for monetary damages or punitive damages shall in any event or under any circumstance be maintained by the Mortgagor against the Mortgagee.

37. Recovery of Sums Required To Be Paid.

The Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

38. Actions and Proceedings.

The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which the Mortgagee, in its discretion, determines should be brought to protect its interest in the Mortgaged Property.

39. Duplicate Originals.

This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

40. Certain Definitions.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided in this Mortgage, words used in this Mortgage shall be used interchangeably in singular or plural form and the word “**Mortgagor**” shall mean each the Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the word “**Mortgagee**” shall mean the Mortgagee or any subsequent holder of the Note; the word “**Note**” shall mean the Note or any other evidence of indebtedness secured by this Mortgage; the word “**person**” shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity; the words “**Mortgaged Property**” shall include any portion of the Mortgaged Property or interest therein; and the word “**Debt**” shall mean all sums secured by this Mortgage; and the word “**default**” shall mean the occurrence of any default by the Mortgagor or other person in the observance or performance of any of the terms, covenants or provisions of the Note or this Mortgage on the part of the Mortgagor or such other person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

41. Waiver of Notice.

The Mortgagor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provides for the giving of notice by the Mortgagee to the Mortgagor, and the Mortgagor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage or the Loan Documents do not specifically and expressly provide for the giving of notice by the Mortgagee to the Mortgagor.

42. No Oral Change.

This Mortgage may only be modified, amended or changed by an agreement in writing signed by the Mortgagor and the Mortgagee, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Mortgagee. No waiver of any term, covenant or provision of this Mortgage shall be effective unless given in writing by the Mortgagee and if so given by the Mortgagee shall

only be effective in the specific instance in which given. The Mortgagor acknowledges that the Note, this Mortgage, and the other documents and instruments executed and delivered in connection therewith or otherwise in connection with the loan secured hereby (the “**Loan Documents**”) set forth the entire agreement and understanding of the Mortgagor and the Mortgagee with respect to the loan secured hereby and that no oral or other agreements, understanding, representation or warranties exist with respect to the loan secured hereby other than those set forth in the Note, this Mortgage and such other executed and delivered documents and instruments.

43. Absolute and Unconditional Obligation.

The Mortgagor acknowledges that the Mortgagor’s obligation to pay the Debt in accordance with the provision of the Note and this Mortgage is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to the Note or this Mortgage or the obligation of the Mortgagor thereunder to pay the Debt or the obligations of any other person relating to the Note or this Mortgage or the obligations of the Mortgagor under the Note or this Mortgage or otherwise with respect to the loan secured hereby, and the Mortgagor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligation of the Mortgagor to pay the Debt in accordance with the provisions of the Note and this Mortgage or the obligations of any other person relating to the Note or this Mortgage or obligations of the Mortgagor under the Note or this Mortgage or otherwise with respect to the loan secured hereby in any action or proceeding brought by the Mortgagee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other Loan Document, in whole or in part (provided, however, that the foregoing shall not be deemed a waiver of the Mortgagor’s right to assert the defense of payment of the Debt or any compulsory counterclaim maintained in a court of the United States, or of the State of New York if such counterclaim under local law or rule of procedure is compelled or would be deemed waived if not asserted in such action (as opposed to be asserted in a separate action), nor shall the foregoing be deemed a waiver of the Mortgagor’s right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against the Mortgagee in any separate action or proceeding).

44. Trust Fund.

Pursuant to Section 13 of the Lien Law of New York, the Mortgagor shall receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement and shall apply such advances first to the payment of the cost of any such improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

45. Non-Residential Property.

This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooking facilities.

46. Foreclosure by Power of Sale.

In the event of a default hereunder, the Mortgagee, to the extent permitted by law, may choose to utilize the procedures set forth in Article 14 of the Real Property Actions and Proceedings Law and foreclose this Mortgage by power of sale which power is hereby granted by Mortgagor to Mortgagee. To the extent permitted by law, the Mortgagor waives any right granted pursuant to Section 1421 or any other provision of the Real Property Actions and Proceedings Law to challenge the Mortgagee's election to enforce this Mortgage by means of such non-judicial foreclosure by power of sale other than the Mortgagee's failure to comply with the provisions of said Article 14.

47. Waiver of Trial by Jury.

The Mortgagor hereby irrevocably and unconditionally waives, and the Mortgagee by its acceptance of the Note and this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to the Note, this Mortgage or any other document or instrument now or hereafter executed and delivered in connection therewith or the loan secured by this Mortgage.

48. Waiver of Statutory Rights.

The Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that the Mortgagor may do so under applicable law. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. The Mortgagor hereby waives for itself and all who may claim through or under it, and to the full extent the Mortgagor may do so under applicable law, any and all rights of redemption from sale under any order of decree of foreclosure of this Mortgage or granted under any statute now existing or hereafter enacted.

49. Brokerage.

The Mortgagor covenants and agrees that no brokerage commission or other fee, commission or compensation is to be paid by the Mortgagee on account of the loan or other financing obligations evidenced by the Note and/or secured by this Mortgage except for brokerage fee payable to _____. Mortgagor agrees to be solely responsible for the fees payable to _____ and to indemnify the Mortgagee against any claims for any fees, commissions or other compensation claimed by any broker, finder or other person claiming to have acted in a similar capacity.

50. Indemnity.

Anything in this Mortgage or the other Loan Documents to the contrary notwithstanding, the Mortgagor shall indemnify and hold the Mortgagee harmless and defend the Mortgagee at the Mortgagor's sole cost and expense against any loss or liability, cost or expense (including, without limitation, title insurance premiums and charges and reasonable attorneys' fees and disbursements of the Mortgagee's counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (i) any ongoing matters arising out of the transaction contemplated hereby, the Debt, this Mortgage, the Note or any other Loan Document and/or the Mortgaged Property, including, but not limited to, all costs of reappraisal of the Mortgaged Property or any part thereof, whether required by law, regulation, the Mortgagee or any governmental or quasi-governmental authority, (ii) any amendment to, or restructuring of, the Debt and this Mortgage, the Note or any of the other Loan Documents, (iii) any and all lawful action that may be taken by the Mortgagee in connection with the enforcement of the provisions of this Mortgage or the Note or any of the other Loan Documents, whether or not suit is filed in connection with the same, or in connection with the Mortgagor, any Guarantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding, and (iv) the past, current and/or future sale or offering for sale of equity or other interests in the Mortgagor, including, without limitation, liabilities under any applicable securities or blue sky laws. All sums expended by the Mortgagee shall be payable on demand and, until reimbursed by the Mortgagor pursuant hereto, shall be deemed additional principal of the Debt and secured hereby and shall bear interest at the Default Rate. The obligations of the Mortgagor under this paragraph shall, notwithstanding any exculpatory or other provisions of any nature whatsoever set forth in the Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

51. Enforceability.

Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be unenforceable or prohibited by or invalid under applicable law, such

provision shall only be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

52. Relationship.

The relationship of the Mortgagee to the Mortgagor hereunder is strictly and solely that of lender and borrower and mortgagee and mortgagor and nothing contained in the Note, this Mortgage, or any other Loan Document is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Mortgagee and the Mortgagor other than as lender and borrower.

53. Condominium Obligations.¹¹

*The Mortgaged Property includes units in, together with undivided interests in common elements of, the condominium known as _____ (the “**Condominium**”). If the owners’ association or other entity which acts for the Condominium (the “**Condominium Association**”) holds title to property for the benefit or use of its members or shareholders, the definition of the Mortgaged Property shall also include the Mortgagor’s interest in the Condominium Association and the uses, proceeds and benefits of the Mortgagor’s interest. The Mortgagor covenants and agrees as follows:*

(a) *The Mortgagor shall fully and faithfully perform each and every obligation on the part the Mortgagor to be performed in connection with (i) the declaration establishing a plan for condominium ownership for the premises of which the Mortgaged Property forms a part, (ii) the by-laws of the Condominium Association and (iii) the rules and regulations promulgated by the board of managers or other executive body of the Condominium Association from time to time, and all other instruments of any nature affecting the Mortgaged Property from time to time, as the same may be amended from time to time (collectively, the “**Condominium Documents**”);*

(b) *The Mortgagor will not, without obtaining the prior written consent of Mortgagee, initiate, join in or consent to any amendment of any kind to the Condominium Documents; and*

(c) *The Mortgagor shall cause the Condominium Association to name the Mortgagee as first mortgagee and loss payee to the Mortgaged Property under the master condominium insurance policy maintained by the Condominium Association.*

¹¹ Include this Paragraph 53 only if mortgage covers one or more condominium units.

54. The Mortgaged Lease.¹²

(a) *The Mortgagor shall: (i) pay all rents, additional rents and other sums required to be paid by the Mortgagor as lessee under and pursuant to the provisions of the Mortgaged Lease, (ii) diligently perform and observe all of the terms, covenants and conditions of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the lessor under the Mortgaged Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Mortgagor, as lessee, under the Mortgaged Lease, (iii) promptly notify the Mortgagee in writing of any default by the Mortgagor or lessor under the Mortgaged Lease in the performance or observance of any of the terms, covenants or conditions on the part of, respectively, the Mortgagor or lessor to be performed or observed under the Mortgaged Lease, (iv) promptly notify the Mortgagee of the giving of any notice by the lessor under the Mortgaged Lease to the Mortgagor (other than notices customarily sent on a regular basis) and of any notice noting or claiming any default by the Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed and deliver to the Mortgagee a true copy of each such notice, (v) promptly notify the Mortgagee in writing of any request made by either party to the Mortgaged Lease for arbitration proceedings pursuant to the Mortgaged Lease and of the institution of any arbitration proceedings, as well as of all proceedings thereunder, and promptly deliver to the Mortgagee a copy of the determination of the arbitrators in each such arbitration proceeding, it being acknowledged and agreed that the Mortgagee shall have the right to participate in such arbitration proceedings in association with the Mortgagor or on its own behalf as an interested party, (vi) furnish to the Mortgagee, within ten (10) days after demand, proof of payment of all items which are required to be paid by the Mortgagor pursuant to the Mortgaged Lease, and (vii) not consent to the subordination of the Mortgaged Lease to any mortgage of the fee interest of the lessor under the Mortgaged Lease in the Mortgaged Property except such as agreed to by the Mortgagor.*

(b) *The Mortgagor, shall not, without the prior written consent of the Mortgagee, surrender the leasehold estate created by the Mortgaged Lease or terminate or cancel the Mortgaged Lease or modify, change, supplement, alter or amend the Mortgaged Lease, in any respect, either orally or in writing, and the Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of the Mortgagor, as lessee under the Mortgaged Lease, to surrender the leasehold estate created by the Mortgaged Lease or to terminate, cancel, modify, change, supplement, alter or amend the Mortgaged Lease, and any such surrender of the leasehold estate created by the Mortgaged Lease or termination, cancellation, modification, change, supplement, alteration or amendment of*

¹² Include this Paragraph 54 only in a leasehold mortgage.

the Mortgaged Lease without the prior written consent of the Mortgagee shall be void and of no force and effect.

(c) *Supplementing the provisions of subparagraph (b) above, it is understood and agreed that the Mortgagor shall not, without the Mortgagee's prior written consent, elect to treat the Mortgaged Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without the Mortgagee's prior written consent shall be void. The Mortgagor hereby unconditionally assigns, transfers and set over to the Mortgagee all of the Mortgagor's claims and rights to the payment of damages arising under the Bankruptcy Code from any rejection by the lessor under the Mortgaged Lease. The Mortgagee shall have the right to proceed in its own name or in the name of the Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of the Mortgaged Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of such lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the indebtedness and obligations secured by the Mortgage shall have been satisfied and discharged in full. Any amounts received by the Mortgagee as damages arising out of the rejection of the Mortgaged Lease as aforesaid shall be applied first to all costs and expenses of the Mortgagee (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph and then shall be applied against the Debt in such order, priority and proportion as the Mortgagee shall determine. If any action, motion or notice shall be commenced or filed in respect of the Mortgagor, as lessee under the Mortgaged Lease, or all or any portion of the Mortgaged Property in connection with any case under the Bankruptcy Code, the Mortgagor shall give the Mortgagee prompt written notice thereof and the Mortgagee shall have the option, to the exclusion of the Mortgagor, exercisable upon notice from the Mortgagee to the Mortgagor, to conduct and control any such litigation with counsel of the Mortgagee's choice. The Mortgagee may proceed in its own name or in the name of the Mortgagor in connection with any such litigation, and the Mortgagor agrees to execute any and all powers, authorizations, consents and other documents required by the Mortgagee in connection therewith. The Mortgagor shall, upon demand, pay to the Mortgagee all costs and expenses (including attorneys' fees) paid or incurred by the Mortgagee in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by the Mortgagor as aforesaid shall be secured by the lien of the Mortgage and shall be added to the Debt. The Mortgagor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Mortgaged Lease in any such case under the Bankruptcy Code without the prior written consent of the Mortgagee. The Mortgagor shall, immediately after obtaining knowledge thereof, notify the Mortgagee and its counsel, by telecopy to the numbers set forth in Paragraph 13, of any filing by or against the lessor under the Mortgaged Lease of a petition under the Bankruptcy Code. The Mortgagor shall thereafter forthwith give written notice of such filing to the*

Mortgagee, setting forth the date of such filing, the court in which the petition was filed and the relief sought therein. The Mortgagor shall promptly deliver to the Mortgagee, following receipt, any and all notices, summonses, pleadings, applications and other documents received by the Mortgagor in connection with any such petition and any proceedings relating thereto.

(d) *If the Mortgagor shall default in the performance or observance of any term, covenant or condition of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing the Mortgagor from any of its obligations hereunder, the Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Mortgaged Lease on the part of the Mortgagor, as lessee thereunder, to be performed or observed to be promptly performed or observed on behalf of the Mortgagor, to the end that the rights of the Mortgagor in, to and under the Mortgaged Lease shall be kept unimpaired and free from default. If the Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, the Mortgagee will notify the Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. All sums so paid by the Mortgagee and all costs and expenses incurred by the Mortgagee in connection with the performance of any such act shall be paid by the Mortgagor to the Mortgagee upon demand with interest at the Default Rate from the date of the payment or incurrence thereof, and the same shall be deemed to be secured by this Mortgage and shall be a lien on the Mortgaged Property prior to any right, title to, interest in or claim upon the Mortgaged Property attaching subsequent to the lien of this Mortgage. In any such event, subject to the rights, if any, of lessees and other occupants under the Leases, the Mortgagee and any person designated by the Mortgagee shall have, and are hereby granted, the right to enter upon the Mortgaged Property at any time and from time to time for the purpose of taking any such action. If the lessor under the Mortgaged Lease shall deliver to the Mortgagee a copy of any notice of default sent by said lessor to the Mortgagor, as lessee under the Mortgaged Lease, such notice shall constitute full protection to the Mortgagee for any action taken or omitted to be taken by the Mortgagee, in good faith, in reliance thereon.*

(e) *The Mortgagor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which in the reasonable opinion of the Mortgagee may be necessary or desirable to preserve any rights of the Mortgagor in, to or under the Mortgaged Lease, or any occupancy lease, license or concession, including, without limitation, the right (but not the obligation) to cure any defaults of the Mortgagor as lessee under the Mortgaged Lease, preserve any rights of the Mortgagor whatsoever in respect of any part of the Mortgaged Property or to execute an extension or renewal of the Mortgaged Lease as hereinafter set forth. The Mortgagor shall, within ten (10) days of request by the Mortgagee, obtain from the lessor under the Mortgaged Lease such*

certificates of estoppel with respect to compliance by the Mortgagor with the terms of the Mortgaged Lease as may be requested by the Mortgagee. The Mortgagor shall exercise each individual option, if any, to extend or renew the term of the Mortgaged Lease upon demand by the Mortgagee made at any time within one (1) year of the last day upon which any such option may be exercised, and the Mortgagor hereby expressly authorizes and appoints the Mortgagee the Mortgagor's attorney-in-fact to exercise, either jointly or individually, any such option in the name of and upon behalf of the Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

(f) *The generality of the provisions of this paragraph relating to the Mortgaged Lease shall not be limited by other provisions of this Mortgage or any other agreement between the Mortgagee and the Mortgagor, setting forth particular obligations of the Mortgagor which are also required of the Mortgagor as tenant under the Mortgaged Lease.*

55. *New Mortgaged Lease with Mortgagee.*¹³

If the Mortgaged Lease shall be terminated prior to the natural expiration of its term due to an event of default thereunder, and if, pursuant to any provision of the Mortgaged Lease, the Mortgagee or its designee shall acquire from the lessor under the Mortgaged Lease a new lease of the Premises and the Improvements, the Mortgagor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

56. *No Merger of Fee and Leasehold Estates.*¹⁴

So long as any portion of the Debt shall remain unpaid, and unless the Mortgagee shall otherwise consent, the fee title to the Premises and the Improvements and the leasehold estate therein created pursuant to the provisions of the Mortgaged Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in the Mortgagor or in any other person, by purchase, operation of law or otherwise. If the Mortgagee shall acquire the fee title to the Premises and the Improvements and the leasehold estate therein created pursuant to the provisions of the Mortgaged Lease, by foreclosure of this Mortgage or otherwise, such estates shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until the Mortgagee shall elect to merge such estates. Without limitation or derogation of the foregoing, if the Mortgagor acquires the fee interest (including any reversionary interest) in the Premises or any portion thereof (including, without limitation, pursuant to a conveyance of such fee interest pursuant to the Mortgaged Lease), or any other interest in the Premises or any portion thereof, the lien of this Mortgage shall, ipso facto, without the necessity of any further assignment,

¹³ Include this Paragraph 55 only in a leasehold mortgage.

¹⁴ Include this Paragraph 56 only in a leasehold mortgage.

mortgage or conveyance, simultaneously with such acquisition, be spread to cover said fee or other interest and, as so spread, shall be prior to the lien of any mortgage placed on said fee or other interest subsequent to the date of this Mortgage. Without limitation or derogation of the foregoing sentence, the Mortgagor nevertheless agrees to execute all instruments and documents which the Mortgagee may require to ratify, confirm and further evidence the Mortgagee's lien on the fee interest. The Mortgagor hereby irrevocably appoints the Mortgagee its true and lawful attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to prepare, execute, deliver, file and record all such instruments and documents in the name and behalf of the Mortgagor.

57. Consolidation.¹⁵

(a) *The Mortgagee is the owner and holder of each mortgage covering the Mortgaged Property (collectively, the "**Prior Mortgage**") set forth on Exhibit B hereto and of the note(s), bond(s) or other obligation secured thereby (collectively, the "**Prior Note**").*

(b) *In consideration of the making of the loan secured by this Mortgage, the Mortgagor hereby assumes, and covenants and agrees to pay, in U.S. Dollars, the principal sum and interest owing under the Prior Note, and covenants and agrees to comply with the other terms and provisions of the Prior Note and the Prior Mortgage, as modified hereby and by the Note Modification Agreement.*

(c) *The Mortgagor covenants that there is now owing upon the Prior Mortgage and the Prior Note, without offset or defense of any kind, the principal sum of \$ _____, and that interest has been paid to the date hereof.*

(d) *The Mortgagor and the Mortgagee hereby mutually covenant and agree that the Prior Note and the Note and the respective debts evidenced thereby are hereby combined and consolidated to constitute one joint indebtedness and that the lien of the Prior Mortgage and the lien of this Mortgage are hereby consolidated, coordinated and spread, so that together they shall hereafter constitute in law but one [first] mortgage, a single lien, securing said joint indebtedness, which is in the principal sum of _____ AND ____/100 DOLLARS (\$ _____), and interest, upon the Mortgaged Property [, of which only _____ AND ____/100 DOLLARS (\$ _____) have been advanced to date], that the terms of the Prior Note and the Note as consolidated have been modified by a note modification agreement of even date herewith between the Mortgagor and the Mortgagee (the "**Note Modification Agreement**"), and that the terms and provisions of the Prior Mortgage are hereby modified and superseded to the extent required to conform with the terms and provisions of this Mortgage. All*

¹⁵ Include this Paragraph 57 and Exhibit B only if other mortgages are being consolidated with this mortgage.

references to this Mortgage herein shall be deemed to refer to this Mortgage and the Prior Mortgage as consolidated hereby. All references in this Mortgage to the Note shall be deemed to refer to the Note and the Prior Note as consolidated hereby and as modified pursuant to the Note Modification Agreement.

IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

a _____

By: _____

Name: _____

Title: _____

In the Presence of:

Acknowledgment

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Acknowledgment

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

(Description of Premises)

[EXHIBIT A-1

(Description of Mortgaged Lease)]

[EXHIBIT B

(Prior Mortgages Being Consolidated with this Mortgage)]