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MORTGAGE AND SECURITY AGREEMENT

Cover Sheet

Dated as of July 11, 2000

Mortgagor: EDWARD ROSE OF INDIANA, L.P.,
an Indiana limited partnership
(Hereinafter sometimes "Borrower")

Mortgagor's Notice Address: 30057 Orchard Lake Road
Suite 100
P. O. Box 9070
Farmington Hills, Michigan 48333-9070
Attention: Warren Rose

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

Mortgagee's Notice Address: 1295 State Street
Springfield, Massachusetts 01111-0001
Attention: Senior Managing Director
Mortgage Portfolio Department
Real Estate Investment Division

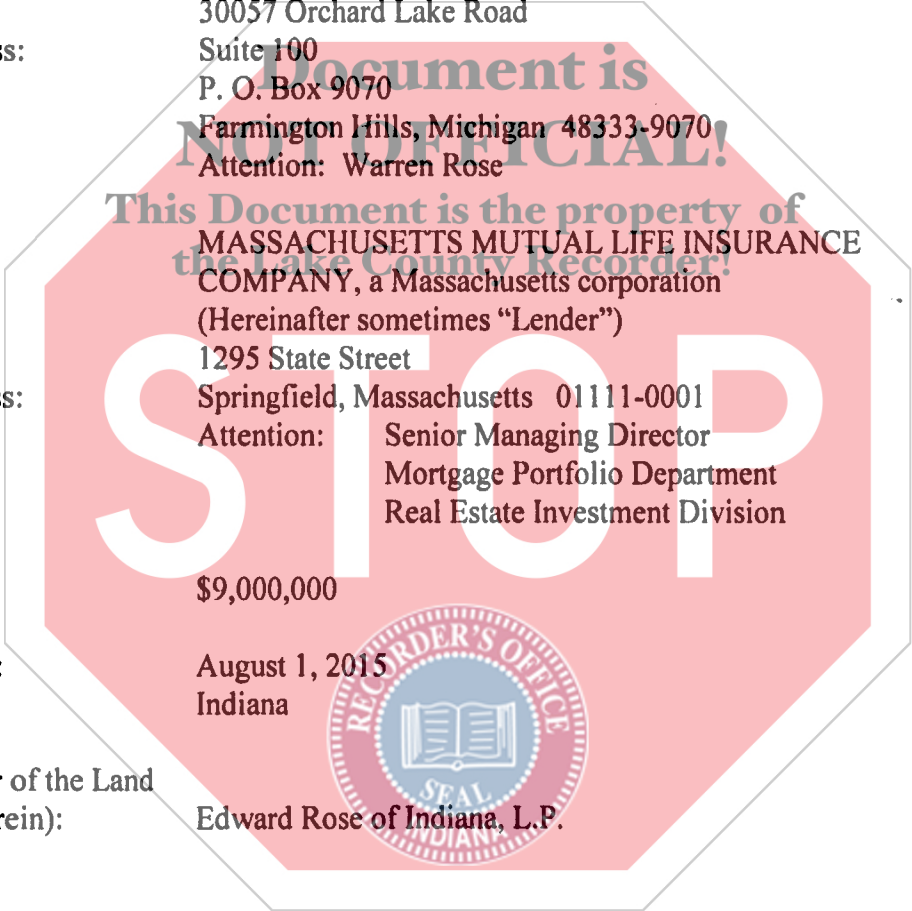
Note Amount: \$9,000,000

Maturity Date: August 1, 2015
State: Indiana

Record Owner of the Land
(as defined herein): Edward Rose of Indiana, L.P.

2000 056015

STATE OF INDIANA
RECORDS & DEEDS
FARMINGTON HILLS, MICHIGAN



After recording, please
return to:

Natalie J. Stucky, Esq.
BOSE McKINNEY & EVANS LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, IN 46204
(317) 684-5000

This document prepared by:

Natalie J. Stucky, Esq.
BOSE McKINNEY & EVANS LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, IN 46204
(317) 684-5000

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HOLD FOR FIRST AMERICAN TITLE

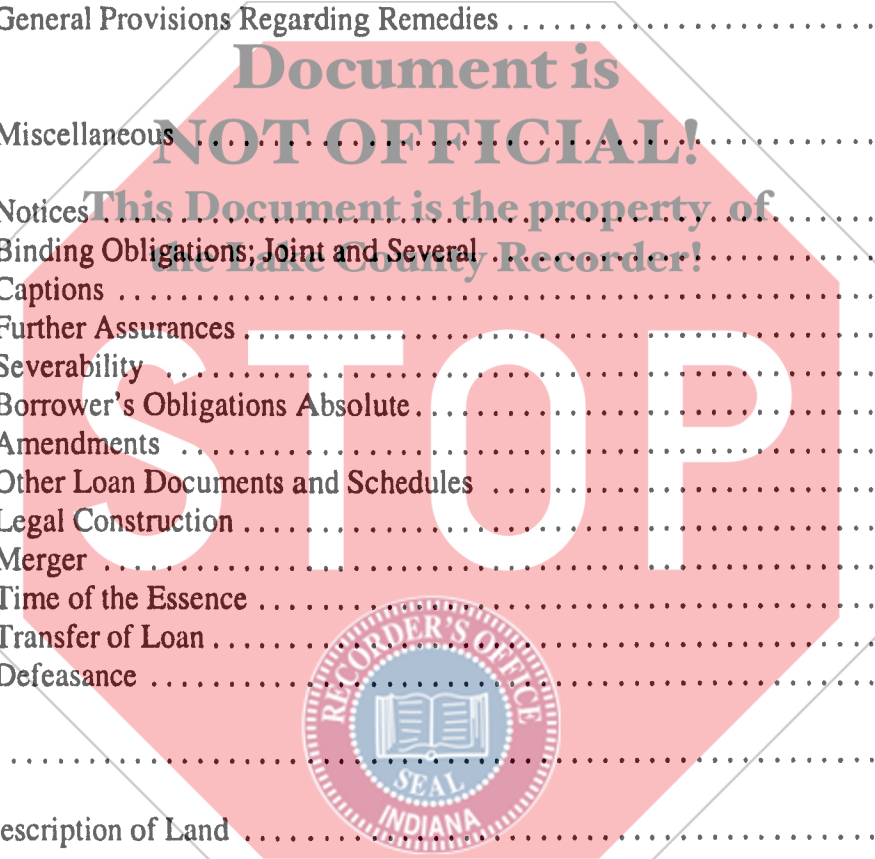
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MORTGAGE AND SECURITY AGREEMENT

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of July 11, 2000, by and between EDWARD ROSE OF INDIANA, L.P., an Indiana limited partnership having an office at 30057 Orchard Lake Road, Suite 100, P. O. Box 9070, Farmington Hills, Michigan 48333-9070 ("Borrower"), and MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation having an office at 1295 State Street, Springfield, Massachusetts 01111-0001 ("Lender").

GRANTING CLAUSES

For good and valuable consideration and to secure the payment of an indebtedness in the principal sum of Nine Million Dollars and 00/100 Dollars (\$9,000,000) lawful money of the United States, to be paid according to that certain Promissory Note of even date herewith from Borrower to Lender in said principal sum and by this reference made a part hereof (said Promissory Note, as the same may hereafter be amended, modified, consolidated or extended, the "Note"), together with all other obligations and liabilities due or to become due to Lender, all amounts, sums and expenses paid hereunder by or payable to Lender according to the terms hereof, and all other covenants, obligations and liabilities of Borrower under the Note, this Mortgage, the Assignment (hereinafter defined) and any other instrument evidencing, securing or executed in connection with the loan evidenced by the Note (all of the foregoing instruments, collectively, the "Loan Documents"), and together with all interest on said indebtedness, obligations, liabilities, amounts, sums, Advances (as hereinafter defined) and expenses (all of the foregoing, collectively, the "Indebtedness"), Borrower does by these presents create a security interest in and MORTGAGE, WARRANT, GRANT, BARGAIN, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Lender, its successors and assigns forever, WITH MORTGAGE COVENANTS and with all other STATUTORY RIGHTS AND COVENANTS in the State (hereinafter defined), the following property:

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

TOGETHER with the buildings, foundations, structures and improvements (including fixtures) now or hereafter located on or in the Land (collectively, the "Improvements");

TOGETHER with all right, title and interest, if any, of Borrower in and to the streets and roads, opened or proposed, abutting the Land, all strips and gores within or adjoining the Land, the air space and right to use the air space above the Land, all rights of ingress and egress to and from the Land, all easements, rights of way, reversions, remainders, estates, rights, titles, interests, privileges, servitudes, tenements, hereditaments, and appurtenances now or hereafter affecting the Land or the Improvements, all royalties and rights and privileges appertaining to the use and enjoyment of the Land or the Improvements, including all air, lateral support, streets, alleys, passages, vaults, drainage, water, oil, gas and mineral rights, development rights, all options to purchase or lease, and all other interests, estates or claims, in law

or in equity, which Borrower now has or hereafter may acquire in or with respect to the Land or the Improvements (collectively, the "Appurtenances");

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

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

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

TOGETHER with all right, title and interest of Borrower in and under all leases, lettings, tenancies and licenses of the Premises or any part thereof now or hereafter entered into and all amendments, extensions, renewals and guaranties thereof, all security therefor, and all moneys payable thereunder (collectively, the "Leases");

TOGETHER with all rents, income, accounts, receivables, issues, profits, security deposits and other benefits to which Borrower may now or hereafter be entitled from the Premises, the Equipment or the Intangibles or under or in connection with the Leases (collectively, the "Property Income"); and

TOGETHER with all proceeds, judgments, claims, compensation, awards of damages and settlements pertaining to or resulting from or in lieu of any condemnation or taking of the Premises by eminent domain or any casualty loss or damage to any of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, and including also, without limitation, the right to assert, prosecute and settle claims arising out of or pertaining to such condemnation or taking or such casualty loss under insurance policies constituting an Intangible and to apply for and receive payments of proceeds under such insurance policies and in any condemnation or taking, the right to apply for and receive all refunds with respect to the payment of property taxes and assessments and all other proceeds from the conversion,

voluntary or involuntary, of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, or any part thereof, into cash or liquidated claims. Collectively, all of the foregoing, are herein referred to as the "Proceeds."

BUT EXCLUDING (i) any satellite master antenna television ("SMATV") system or telephone system located on the Premises, and any components thereof, whether constituting real or personal property, utilized in the reception, processing or transmission of television or telephone service to the Improvements, and (ii) any Property Income from the SMATV system or telephone system located on the Premises and any components thereof.

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

TO HAVE AND TO HOLD the Mortgaged Property, with all the privileges and appurtenances to the same belonging, and with the possession and right of possession thereof, unto Lender and its successors and assigns forever, subject, however, to the Permitted Encumbrances (as hereinafter defined).

ARTICLE I
Definition of Terms

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

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

"Appurtenances" - See Granting Clauses.

"Assignment" - The Assignment of Leases and Rents from Borrower to Lender of even date herewith.

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

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

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

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

"Collateral" - See Granting Clauses.

"Default Rate" - The per annum interest rate equal to the lesser of (i) the highest rate permitted by applicable law as of the date hereof or the date of any Advance hereunder, whichever is higher, to be charged on commercial mortgage loans, or (ii) the sum of three percent (3%) plus the Contract Rate (as defined in the Note).

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

"Equipment" - See Granting Clauses.

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

"Event of Default" - Any one or more of the events described in Section 4.01.

"Fiscal Year" - The 12 month period commencing on January 1st and ending on December 31st during each year of the term of this Mortgage, or such other fiscal year of Borrower as Borrower may select from time to time with prior notice to Lender. During the first year of the term hereof, Borrower's Fiscal Year shall be deemed to have commenced on the date of this Mortgage and shall end on the regular Fiscal Year ending date as indicated in the immediately preceding sentence.

"Hazardous Substance" - Any material, waste or substances which is:

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

- (ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. §172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or
- (iii) explosive, radioactive, asbestos, a polychlorinated biphenyl, oil or a petroleum product.

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

"Indebtedness" - See Granting Clauses.

"Intangibles" - See Granting Clauses.

"Land" - See Granting Clauses.

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

"Leases" - See Granting Clauses.

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

"Loan Documents" - See Granting Clauses.

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

"Mortgaged Property" - See Granting Clauses.

"Note" - See Granting Clauses.

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

"Premises" - See Granting Clauses.

"Proceeds" - See Granting Clauses.

"Property Income" - See Granting Clauses.

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

"Remediation" - Remediation means and includes the following: any response, remedial, removal or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of a Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances and to anything referred to in Section 2.20.

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

ARTICLE II
Covenants of Borrower

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

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

Section 2.02. Title to the Mortgaged Property.

- (a) Borrower has fee simple title (or such lesser estate therein as may be specified in Schedule A) to the Premises and good indefeasible title to the balance of the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances.
- (b) Borrower has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth.

- (c) To the best of Borrower's knowledge, this Mortgage is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property.
- (d) Borrower will preserve such title and will forever warrant and defend the same and the validity and priority of the lien hereof to Lender against all claims whatsoever.

Section 2.03. Maintenance of the Mortgaged Property. Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting or which may be interpreted as affecting the Mortgaged Property. Borrower shall permit Lender to enter upon and inspect the Mortgaged Property including, without limitation, the grounds, roof, clubhouse and common areas, vacant units, and model units, without prior notice at all reasonable hours. Borrower shall not, without the prior consent of Lender, (a) change the use of the Premises, convert the Premises to a condominium, or cause or permit the use or occupancy of any part of the Premises to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (b) consent to any zoning reclassification, modification or restriction affecting the Premises; (c) threaten, commit or permit any waste, structural or material alteration (except as otherwise permitted herein), demolition or removal of the Mortgaged Property or any portion thereof (provided that the Equipment included within the Collateral may be removed if replaced with similar items of equal or greater value); or (d) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership. No provision of this Section 2.03 shall prohibit Borrower from undertaking and completing tenant improvement work authorized under Leases previously approved by Lender or not requiring Lender's prior approval.

Neither Borrower nor any successor owner of the SMATV system or telephone system serving the Improvements shall remove or permit the removal of any cabling or telephones unless simultaneously replaced with other cabling or telephones of equal or greater utility. To the extent Borrower controls the telephone system serving the Mortgaged Property, Borrower will use its best efforts to ensure continuous and uninterrupted telephone service.

Section 2.04. Insurance; Restoration.

- (a) Borrower shall keep the Improvements and the Equipment insured against damage by fire and the other hazards covered by a comprehensive all risk coverage insurance policy in an amount equal to 100% of the full insurable value thereof (which shall mean the full repair and actual replacement value thereof providing for no deductible in excess of \$25,000, without reduction for depreciation or co-insurance) as approved by Lender, and against loss of rents in an amount not less than 12 months' rental income from all Leases. Borrower shall also carry such other insurance, and in such amounts, as Lender may from time to time reasonably require, against insurable risks which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the cost and availability of insurance and to the type of construction, location, utilities, use and occupancy of the Premises or any replacements or substitutions therefor. Such additional insurance may include workers' compensation, boiler and

machinery, flood, earthquake, demolition and contingent liability from the operation of "non-conforming" improvements on the Premises, and shall be obtained within 20 days after demand by Lender. Borrower shall not obtain any umbrella or blanket liability or casualty policy or any separate or additional insurance which is contributing in the event of loss or any other insurance policy not required hereunder. Notwithstanding the foregoing, in the event Borrower obtains an umbrella or a blanket insurance policy or a separate policy or any other insurance policy affecting the Mortgaged Property hereunder, Borrower shall notify Lender of the same and shall cause certified copies of each insurance policy to be delivered as required under Section 2.04(c) below. Any umbrella or blanket insurance policy shall specifically allocate to the Mortgaged Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate policy insuring only the Mortgaged Property in compliance with the provisions of Section 2.04(c), giving Lender all of the rights set forth in this Section 2.04. The Proceeds of insurance paid on account of any damage to or destruction of the Premises or any portion thereof shall be paid over to Lender to be applied as hereinafter provided.

- (b) Borrower shall also maintain public liability insurance with respect to the Premises against personal injury, death and property damage, with limits of liability in amounts satisfactory to Lender in its sole discretion. Lender shall be named as additional insured thereunder.
- (c) All insurance policies and endorsements required pursuant to this Mortgage shall (i) be endorsed to name Lender as an insured thereunder, as its interest may appear, with loss payable to Lender, without contribution, under a long-form, non-contributory mortgagee clause, or otherwise endorsed as Lender may reasonably require; (ii) be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State, with a rating of "A- VIII" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Lender; (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially changed except upon 30 days prior written notice of intention of non-renewal, cancellation or material change to Lender, and that no act or thing done by Borrower or Lender shall invalidate the policy as against Lender; and (iv) be in form and content satisfactory to Lender. Borrower shall deliver all original policies including all endorsements and renewals thereof, or copies thereof certified by the insurance company or authorized agent as being true copies, to Lender together with all endorsements required hereunder, on the date of this Mortgage and thereafter at least 10 days prior to the expiration date of such policies. Borrower may request an extension of time not exceeding 120 days to deliver the foregoing policies, endorsements and renewals or certified copies thereof if Borrower has done all things necessary to obtain the issuance of the policies, endorsements and renewals including, without limitation, the payment of all premiums therefore, and Borrower has delivered to Lender within the above 10 day period an insurance binder satisfactory to Lender issued by the approved insurer showing all required coverage to be in full force and effect for the succeeding 12 month period along with evidence satisfactory to Lender of payment in full of all premiums. If Borrower fails to maintain insurance in compliance with this Mortgage, Lender may (but shall not be obligated to) obtain such insurance and pay the premium therefor and

Borrower shall reimburse Lender on demand for all such Advances. Notwithstanding anything to the contrary contained herein or in any provision of law, the Proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds and Lender shall be entitled to dispose of such Proceeds as hereinafter provided.

(d) In the event of any damage to or destruction of the Premises and/or Equipment in excess of the deductible amount, but in any event in excess of \$25,000, Borrower shall give prompt written notice to Lender and shall in all cases, if Lender makes all proceeds available, promptly commence and diligently continue to complete the repair, restoration and rebuilding of the Premises and/or Equipment so damaged or destroyed in full compliance with all legal requirements and with the provisions of Section 2.04(h)(i) below, and free and clear from any and all liens and claims. Such repair, restoration and rebuilding of the Premises are sometimes hereinafter collectively referred to as the "Work." Borrower shall not adjust, compromise or settle any claim for insurance proceeds without the prior consent of Lender. Lender shall have the option in its sole discretion to apply any insurance Proceeds it may receive pursuant to this Mortgage (less any reasonable and customary cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees) to the payment of the Indebtedness or to allow all or a portion of such Proceeds to be used for the Work. If any insurance Proceeds are applied to reduce the Indebtedness, provided no Event of Default shall have occurred or be continuing, Lender shall apply the same, without any prepayment fee, in the following order:

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

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

(e) In the event of the foreclosure of this Mortgage or other transfer of title to or assignment of the Mortgaged Property in extinguishment of the Indebtedness in whole or in part, all right, title and interest of Borrower in and to all policies of insurance required by this Mortgage and any insurance Proceeds shall inure to the benefit of and pass to Lender or any purchaser or transferee at the foreclosure sale of the Mortgaged Property.

- (f) Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, to apply and make claims for insurance Proceeds under all insurance policies constituting Intangibles, to prosecute and settle such claims and to endorse any checks, drafts or other instruments representing any insurance Proceeds whether payable by reason of loss thereunder or otherwise. Additionally, Lender may notify any and all insurers under casualty and liability insurance policies constituting part of the Intangibles that Lender has a security interest pursuant to the provisions of this Mortgage in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to Lender. Lender's rights under this Section 2.04(f) may be exercised by Lender or a court appointed receiver appointed upon the request of Lender and irrespective of whether or not a default shall have occurred under this Mortgage.
- (g) Notwithstanding the provisions of Section 2.04(d) above, if in Lender's reasonable judgment the cost of the Work shall not exceed fifty percent (50%) of the then outstanding principal balance of the Note, then Lender shall, upon request by Borrower, permit Borrower to use the Proceeds for the Work (subject to the provisions of, and less Lender's costs described in, Section 2.04(h) below), so long as:
- (i) no Event of Default shall then exist nor any matter(s) exist which, after notice of default or passage of time or both, would constitute an Event of Default;
 - (ii) the original Borrower named herein, or a transferee permitted in Section 2.17(c) hereof, continues to be the owner of the Mortgaged Property;
 - (iii) the Work can be completed within 12 months from the date of the damage to or destruction of the Premises;
 - (iv) all sums necessary to effect the Work over and above any available Proceeds shall be at the sole cost and expense of the Borrower and, at Lender's request, Borrower shall deposit such additional amounts, as estimated by Lender in its sole discretion, with Lender prior to commencing any Work and at all times thereafter;
 - (v) at all times during any such Work Borrower shall maintain, at its sole cost and expense, workers' compensation, builders risk and public liability insurance in amounts reasonably satisfactory to Lender and in accordance with the provisions of this Section 2.04; and
 - (vi) any unexpended Proceeds, at the sole option of the Lender, shall either be paid over to the Borrower or shall be applied to the reduction of the Indebtedness.

- (h) If any insurance Proceeds are used for the Work, then such Proceeds shall be held by Lender and shall be paid out from time to time to Borrower as the Work progresses (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:
- (i) If the Work is structural or if the cost of the Work is reasonably estimated to exceed One Hundred Thousand Dollars (\$100,000), the Work shall be conducted under the supervision of a certified and registered architect or engineer reasonably satisfactory to Lender or Borrower's in-house construction and engineering department staff. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Lender shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Premises shall be at least equal in value and general utility to the Premises immediately prior to the damage or destruction.
- (ii) Each request for payment shall be made on not less than seven Business Days prior notice to Lender and shall be accompanied by a certificate of the architect or engineer in (i) above (or a certificate given by Borrower if no architect or engineer is so required) stating (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if required under (i) above, (B) that the sum requested is justly required to reimburse the Borrower for payments by Borrower, or is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by Lender does not exceed the value of the Work done to the date of such certificate, (C) if the sum requested is to cover payment relating to repair and restoration of Equipment required or relating to the Premises, that title to the items of Equipment covered by the request for payment is vested in Borrower, and (D) that the amount of such Proceeds remaining in the hands of Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion). Additionally, each request for payment shall contain a statement signed by Borrower approving both the Work done to date and the Work covered by the request for payment in question.
- (iii) Each request for payment shall be accompanied by waivers of lien reasonably satisfactory to Lender and in compliance with the requirements of applicable law covering that part of the Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Lender that there has not been filed with respect to the Premises any mechanics' or other lien or instrument for the retention of title relating to any part of the Work not discharged of record. Additionally, as to any Equipment covered by the

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

- (iv) Lender shall have the right to inspect the Work at all reasonable times and may condition any disbursement of Proceeds upon the satisfactory completion, as determined in Lender's sole discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by Lender of the plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement.
- (v) Proceeds shall not be disbursed more frequently than every 30 days.
- (vi) Any request for payment made after the Work has been completed shall be accompanied by a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Premises legal.
- (vii) Upon completion of the Work and payment in full therefor, or upon any failure on the part of Borrower to promptly commence the Work or to proceed diligently and continuously to completion of the Work, Lender may apply any such Proceeds it then or thereafter holds to the payment of the Indebtedness; provided, however, that Lender, at its sole option, shall be entitled to apply at any time all or any portion of insurance Proceeds it then holds to the curing of any Event of Default under this Mortgage, the Note or any other Loan Document.
- (i) Any amounts held by Lender shall be deposited in an interest bearing account with the interest earned thereon credited to Borrower
- (j) Notwithstanding any other provision of this Section 2.04, if no Event of Default shall exist or be continuing (nor any matters have occurred which, after notice or passage of time or both, would constitute an Event of Default) and in Lender's reasonable judgment the cost of the Work is less than one percent (1%) of the outstanding principal balance of the Note as of the date of loss or damage to the Premises and/or Equipment and the Work can be completed in less than 60 days, then Lender shall, upon request by Borrower, permit Borrower to apply for and receive the insurance Proceeds directly from the insurer (and Lender shall advise the insurer to pay over such Proceeds directly to Borrower), provided that Borrower shall apply such insurance Proceeds solely to the prompt and diligent commencement and completion of such Work.

Section 2.05. Condemnation. Borrower shall notify Lender immediately of the actual or threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof and shall deliver to Lender copies of any and all papers served in connection with such

proceedings. Lender may participate in such proceedings and Borrower shall deliver to Lender all instruments requested by Lender to permit such participation. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain the Proceeds of any such condemnation and to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Mortgage. Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Lender. All Proceeds of any condemnation, or purchase in lieu thereof, of the Premises or any portion thereof are hereby assigned to and shall be paid to Lender. Borrower hereby authorizes Lender to collect and receive such Proceeds, to give proper receipts and acquittances therefor and, in Lender's sole discretion, to apply such Proceeds (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees and costs allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Premises in the manner and subject to the conditions set forth in Section 2.04(h). If the Proceeds are used to reduce the Indebtedness, they shall be applied in the order provided in Section 2.04(d), without any prepayment fee. Borrower shall promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the condemnation Proceeds to Lender.

Section 2.06. Impositions.

- (a) Borrower shall pay and discharge all Impositions prior to delinquency and shall furnish to Lender validated receipts or other evidence satisfactory to Lender showing the payment of such Impositions within 15 days after the same would otherwise have become delinquent. Borrower's obligation to pay Impositions pursuant to this Mortgage shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon Lender an obligation to pay any property taxes or other Impositions or which otherwise adversely affect Lender's interests, but not Lender's income taxes.

Should Borrower default in the payment of any Impositions, Lender may (but shall not be obligated to) pay such Impositions or any portion thereof and Borrower shall reimburse Lender on demand for all such Advances.

- (b) Borrower shall not be required to pay, discharge or remove any Imposition so long as Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that prior to the date on which such Imposition would otherwise have become delinquent Borrower shall have (i) given Lender prior notice of such contest and (ii) deposited with Lender, and shall deposit such additional amounts as are necessary to keep on deposit at all times, an amount equal to at least 110 per cent of the total of (A) the balance of such Imposition then remaining unpaid and (B) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition as finally determined, together with all interest and penalties payable in connection therewith

upon Lender's release of the deposited funds. Lender shall have full power and authority to apply any amount deposited with Lender under this Section 2.06(b) to the payment of any unpaid Imposition to prevent the sale or forfeiture of the Mortgaged Property for non-payment thereof. Lender shall have no liability, however, for failure to so apply any amount deposited unless Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by Lender after payment of the Imposition for which a deposit was made shall be repaid to Borrower unless an Event of Default shall have occurred under the provisions of this Mortgage, in which case said surplus may be retained by Lender to be applied to the Indebtedness. Notwithstanding any provision of this Section 2.06(b) to the contrary, Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of Lender, the Mortgaged Property is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such Advances. Additionally, in such event, if Lender is prevented by law or judicial or administrative order from paying such Imposition, then Lender, at its option, may declare the entire Indebtedness immediately due and payable.

Section 2.07. Deposits. Borrower shall deposit with Lender, monthly, on the due date of each monthly installment under the Note, 1/12th of the annual charges (as estimated by Lender) for Impositions consisting of taxes, special assessments, and similar charges (but not including sewer rents, ordinary and customary charges for water, for setting or repairing meters, or for other utilities, inspection and license fees, or stamp taxes) and, if required by Lender, insurance premiums with respect to the Mortgaged Property. If required by Lender, Borrower shall also deposit with Lender, simultaneously with such monthly deposits and/or the execution of this Mortgage, a sum of money which together with such monthly deposits will be sufficient to make the payment of each such charge at least 30 days prior to the date initially due. Should such charges not be ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the charges for the prior year or payment period, as reasonably estimated by Lender. When the charges are fixed for the then current year or period, Borrower shall deposit any deficiency on demand. All funds deposited with Lender shall be held without interest (unless the payment of interest thereon is required under applicable law), may be commingled with Lender's other funds, and shall be applied in payment of the foregoing charges when and as payable provided that no Event of Default shall have occurred. Should an Event of Default occur, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as Lender in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. Borrower shall furnish Lender with bills and all other documents necessary for the payment of the foregoing charges at least 10 days prior to the date on which each payment thereof shall first become due. Notwithstanding the foregoing, however, Lender agrees that Borrower shall not be required to make monthly escrow deposits for real estate taxes and insurance premiums so long as (i) the Loan is not in default, and (ii) Borrower provides an unconditional, irrevocable and automatically renewable (unless the issuing bank agrees to give a minimum of 30 days prior written notice of expiration to Lender) commercial letter of credit in form and substance satisfactory to Lender, issued by a federally insured commercial bank

approved by Lender in an amount equal to 100% of the annual real estate taxes actually paid with respect to the Mortgaged Property during the immediately preceding tax year. Borrower agrees that the amount of any such letter of credit shall be adjusted annually based on the real estate taxes actually paid during the preceding tax year as reasonably determined by Lender. Any such letter of credit shall be considered a real estate tax escrow in place.

Upon the occurrence of an Event of Default, which is not cured within any applicable cure period, Borrower's obligation to make real estate tax and insurance escrow payments shall be automatically reinstated.

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

Section 2.09. Loan Documents Authorized.

- (a) The execution and delivery of this Mortgage, the Note and the other Loan Documents have been duly authorized and there is no provision in Borrower's organizational documents, as amended, requiring further consent for such action by any other person or entity.
- (b) Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.
- (c) To the best of Borrower's knowledge after due inquiry, Borrower has all necessary franchises, licenses, authorizations, registrations, permits and approvals and full power and authority to own and operate its properties, including the Mortgaged Property, and carry on its business as now conducted in each jurisdiction where Borrower conducts its business.
- (d) The execution and delivery of and performance of its obligations under the Loan Documents (i) will not result in Borrower's being in default under any provision of its organizational documents, as amended, any court order, or any mortgage or other agreement to which it is a party and (ii), to the best of Borrower's knowledge after due inquiry, do not require the consent of or any filing with any governmental authority.
- (e) All necessary and required actions have been duly taken by and on behalf of Borrower to make and constitute the Loan Documents, and, to the best of Borrower's knowledge after due inquiry,

the Loan Documents constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.

- (f) To the best of Borrower's knowledge after due inquiry, the Mortgaged Property is in compliance with all provisions of all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject.

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

Section 2.11. Payment of Liens. Borrower shall pay when due all payments and charges due under or in connection with any liens and encumbrances on and security interests in the Mortgaged Property or any portion thereof, all rents and charges under any ground leases and other leases forming a part of the Mortgaged Property, and all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any portion thereof, and shall cause the prompt (but in no event later than 30 days after imposition), full and unconditional discharge of all liens imposed on or against the Mortgaged Property or any portion thereof. Borrower shall do or cause to be done, at the sole cost of Borrower, everything necessary to fully preserve the initial priority of the lien of this Mortgage. If Borrower fails to make any such payment or if a lien attaches to the Mortgaged Property or any portion thereof, Lender may (but shall not be obligated to) make such payment or discharge such lien and Borrower shall reimburse Lender on demand for all such Advances.

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

Section 2.13. Costs of Enforcement. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Mortgage or any other Loan Document, any enforcement,

compromise or settlement of this Mortgage, any other Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of Lender in respect of any thereof, by litigation or otherwise.

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

Section 2.15. Indemnification. Borrower shall indemnify and hold Lender and Lender's directors, officers, employees and agents harmless from and against and reimburse them for all Losses which may be imposed upon, asserted against, or incurred or paid by any of them except for losses caused by Lender's gross negligence, bad faith or intentional misconduct (a) by reason of, on account of or in connection with any act or occurrence relating to the Mortgaged Property or any bodily injury, death, other personal injury or property damage occurring in, upon or in the vicinity of the Premises from any cause whatsoever, (b) as a result of the failure of Borrower to perform any of its obligations under any of the Loan Documents, or (c) on account of any transaction otherwise arising out of or in any way connected with the Mortgaged Property, this Mortgage or the Indebtedness.

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

- (a) a current certified rent roll, signed and dated by Borrower, detailing for each of the Leases, the names of all tenants of the Premises, the portion of the Premises occupied by each tenant, the monthly rental, including base rent, additional rent and percentage rent, and any other charges payable and the term of each of the Leases, including the expiration date, within 120 days after the end of each Fiscal Year of the Borrower;
- (b) an annual operating statement of the Premises detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow, to be prepared and certified by Borrower in the form approved by Lender, within 120 days after the close of each Fiscal Year of Borrower;
- (c) an annual balance sheet of Borrower, Warren Rose, and of any indemnitor under any Loan Document, in a form approved by Lender, prepared and certified by Borrower or indemnitor as to the applicable statement. All statements shall be delivered to Lender within 120 days after the close of each Fiscal Year of Borrower;
- (d) Borrower's agreements as set forth in this Section 2.16 constitute material inducements to Lender in making the loan secured by this mortgage. Accordingly, upon the occurrence of an Event of Default not cured within any applicable notice and cure period, Borrower hereby appoints Lender its attorney in fact for the purpose of hiring at Borrower's cost an auditing firm to prepare and

deliver to Lender any overdue rent roll, operating statement or balance sheet in the event Borrower fails or refuses to furnish to Lender those financial reports as and when due. The costs and expenses of the auditor shall be due and payable to Lender upon demand and shall constitute a part of the Indebtedness.

Section 2.17. Prohibition Against Conveyances and Encumbrances.

- (a) Except with the prior consent of Lender, Borrower shall not and shall not permit others to convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest (a) in all or any portion of the Mortgaged Property including the Leases; (b) in the stock of any corporation which is either Borrower or a beneficial owner of all or any portion of Borrower or of the Mortgaged Property; (c) in Borrower (or any trust of which Borrower is a trustee) provided that less than fifty percent (50%) of the ownership interests in Borrower may be pledged as collateral; or (d) if Borrower is a limited or general partnership, limited liability company, joint venture, trust, nominee trust, tenancy in common or other unincorporated form of business association or form of ownership, in any person, firm or entity having a direct or indirect legal or beneficial ownership interest in Borrower, including any legal or beneficial interest in any general partner of Borrower, in any general partner of any general partner of Borrower or in any member of a limited liability company. Any such transfer or encumbrance to which Lender consents must be to a United States citizen or an entity owned or controlled by United States citizens. All requests for Lender's consent under this Section 2.17 shall be on a form previously approved by Lender and shall be accompanied by the payment of Lender's standard processing fee for such transactions then in effect. Lender's consent to any of the foregoing actions, if given (in Lender's sole discretion), may be conditioned upon a change in the interest rate, maturity date, amortization period or other terms under the Note, the payment of a transfer fee and/or any other requirements of Lender. In addition to the standard processing fee and the transfer fee referred to in this Section 2.17, Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable expenses (including reasonable attorneys' fees, title search costs, and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such transaction.
- (b) Notwithstanding the prohibitions of this Section, Lender will permit a one-time transfer of title to the Mortgaged Property without modification of the terms of the Indebtedness, subject, however, to satisfaction of each and every one of the following conditions:
1. At least thirty (30) days prior to such transfer, Borrower shall have provided Lender with written notice of the proposed transfer along with the name(s), address(es) and organizational documents of the proposed purchaser and principals of the proposed purchaser. Additionally, Borrower shall furnish to Lender along with such notice the following: (i) detailed and complete financial statements of the purchaser and principals of purchaser, (ii) information with respect to the business and business experience of the

proposed purchaser and the proposed purchasers and its principals' experience in the ownership and operation of properties similar to the Mortgaged Property and other commercial real estate, (iii) evidence that the Mortgaged Property as of the proposed date of transfer of title and thereafter will be managed by a management company and under a management agreement meeting the requirements of Section 2.23 below, (iv) the terms and conditions of the proposed sale and a copy of the purchase and sales agreement, and (v) such other information as Lender may request to permit it to determine the creditworthiness and management abilities of the proposed transferee, its management plan for the Mortgaged Property and the proposed transferee's status as a "Qualified Real Estate Investor" as defined below.

2. The Indebtedness must be current in all respects and there may not exist an Event of Default either as of the date of the notice given Lender under Subsection 2.17(b)(1) above or thereafter through the date of transfer of title to the Mortgaged Property nor may any event have occurred which, after notice or passage of time or both, would constitute an Event of Default.
3. The purchaser is a "Qualified Real Estate Investor" as defined below.
4. The Mortgaged Property as of the date of transfer and thereafter must be managed by a management company approved by Lender under a management agreement satisfactory to Lender.
5. The proposed purchaser of the Mortgaged Property shall assume the Indebtedness under documents in form and substance satisfactory to Lender, subject to the non-recourse provisions of the Note, this Mortgage and the other Loan Documents existing as of the date of the closing of the sale of the Mortgaged Property. Additionally, at the time of the assumption of the Indebtedness, the proposed purchaser shall furnish to Lender an environmental indemnity in form and substance satisfactory to Lender from a financially responsible person or entity approved by the Lender. Borrower and the proposed purchaser and other person as required by Lender's counsel shall also execute financing statements and such other documents as Lender's counsel shall require in order to effectuate the transaction as contemplated by this Section 2.17(b) and shall furnish evidence of fire and extended coverage insurance as required by the Loan Documents.
6. Along with the notice of transfer under Subsection 2.17(b)(1) above, Borrower shall pay to Lender a fee in the amount of three-quarters percent (3/4%) of the then outstanding balance of the Indebtedness in cash or certified funds. Such fee shall be retained by Lender whether or not the transfer occurs, except in the situations described in the succeeding sentences, and is being paid in order to induce Lender to allow the proposed purchaser to assume the obligations of the Borrower and Indemnitor under this Mortgage, the Note, and all other Loan Documents and to release Borrower and Indemnitor from liability thereunder for all periods from and after the transfer in accordance with these

provisions. Such fee shall be returned, in full, to Borrower only if the Lender disapproves of such transfer as not meeting the requirements of this Section 2.17(b). If Lender approves the transfer but the transfer is not consummated, Lender shall return the fee less Five Thousand Dollars (\$5,000), and Borrower's right to a one-time transfer shall not be extinguished.

7. The cash flow from the Mortgaged Property (i.e., gross income from all sources less all operating expenses including taxes and a reasonable reserve for capital improvements, tenant improvements and leasing commissions but excluding principal and interest payments on the Indebtedness, depreciation and other non-cash charges and proceeds from casualty policies) for the 12-month period ending on the last day of the month which is two months prior to the month of the anticipated date of such transfer of title, shall be not less than 1.29 times the required payments of principal and interest on the Indebtedness for the same 12-month period as determined by Lender in its sole discretion from financial statements for the Mortgaged Property in form and substance satisfactory to Lender and submitted to Lender.
8. The unpaid principal balance of the Indebtedness shall be not more than sixty percent (60%) of the appraised value of the Mortgaged Property according to a current appraisal furnished to and satisfactory to Lender and prepared by an MAI appraiser acceptable to Lender.
9. Borrower shall pay all of Lender's costs and expenses incurred in connection with the proposed sale of the Mortgaged Property whether or not the sale actually occurs including, without limitations, attorneys fees, recording charges, title charges and any endorsement to Lender's title policy that Lender's counsel may require.

For purposes of this Section 2.17(b), "Qualified Real Estate Investor" shall mean any reputable individual, corporation, partnership, joint venture, joint stock company, limited liability company or partnership, bank, insurance company, trust or pension fund domiciled in the U.S. which, in Lender's sole determination, has real estate assets of at least One Hundred Million Dollars (\$100,000,000), a minimum net worth of Twenty-Five Million Dollars (\$25,000,000) and liquid assets of ~~at~~ not less than Two Million Dollars (\$2,000,000), all as of a date which is 30 days prior to the date of the proposed closing of the transfer of title to the Mortgaged Property and on the day after the proposed closing of the transfer. Additionally, neither the proposed purchaser nor any principal of the proposed purchaser, whether on the date for the closing of the transfer of title to the Mortgaged Property or at any time prior thereto, may be (i) in default on any indebtedness or loan from Lender or any affiliate of Lender, (ii) involved as a debtor in any bankruptcy, reorganization or insolvency proceeding, (iii) the subject of any criminal charges or proceedings, (iv) an entity or individual who is or has been involved in litigation which is deemed significant by Lender.

If the one-time transfer is not consummated either as a result of Lender's disapproval for failure to meet the requirements of this Section 2.17(b) or otherwise, the one-time transfer right shall survive and shall not be deemed waived or terminated as a result thereof.

(c) Any restrictions on transfers of ownership herein to the contrary notwithstanding, the following transfers of ownership interest in the Mortgaged Property or the Borrower are expressly permitted provided such transfers are to a Rose Family Entity, as hereinafter defined:

1. Transfers of interest for estate or tax planning purposes, or;
2. Transfers of interest due to the death or incapacity of any present partner, or;
3. Transfers of interest to a limited or general partnership wherein a present partner or an Immediate Family Member continues to act as managing general partner, or;
4. Transfers of interests to a Rose Principal, Immediate Family Member, or company or corporation controlled by a Rose Family Entity.

The foregoing permitted transfers may be effected without first obtaining the Lender's consent and without assessment of any fee other than a Two Thousand Dollar (\$2,000) review fee to the Lender. Borrower shall provide Lender with all applicable transfer documents and agreements.

A "Rose Family Entity" shall mean any company or corporation in which Sheldon Rose, Irving Rose, Leslie Rose or Warren Rose (herein each a "Rose Principal") or any Immediate Family Member hold a controlling interest in the voting stock; or a partnership, trust, or other entity in which any Rose Principal or any Immediate Family Member hold a controlling ownership interest. "Immediate Family Member" shall mean any spouse, any lineal descendant (including any legally adopted children), any spouse of such descendant, any brothers or sisters, and any descendants of any such brothers and sisters of any Rose Principal; and any beneficiaries of a trust of an Immediate Family Member.

Section 2.18. Estoppel Certificates. Within 10 Business Days of a request by Lender, Borrower shall furnish to Lender a duly acknowledged written statement confirming the amount of the outstanding Indebtedness, the terms of payment and maturity date of the Note, the date to which interest has been paid, and whether any offsets or defenses exist against the Indebtedness. If any such offsets or defenses are alleged to exist, the nature thereof shall be set forth in detail.

Section 2.19. Assignment of Leases and Property Income.

(a) Borrower hereby absolutely and unconditionally assigns and transfers to Lender the Leases and the Property Income. Borrower shall not otherwise assign, transfer or encumber in any manner the Leases or the Property Income or any portion thereof. Borrower shall have a license, revocable by Lender upon an Event of Default, to collect and use the Property Income as the

same becomes due and payable, but except in the normal course of business may not collect any Property Income more than 30 days in advance of the date the same becomes due. The assignment in this Section 2.19 shall constitute an absolute and present assignment of the Leases and the Property Income, and not an additional assignment for security, and the existence or exercise of the Borrower's revocable license to collect Property Income shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Lender of any of its rights or remedies under this Section 2.19 shall not be deemed or construed to make Lender a mortgagee-in-possession.

- (b) Except as otherwise consented to by Lender, all Leases shall be written on the standard form of lease which shall have been approved by Lender. No material changes may be made to the Lender-approved standard lease form without the prior written consent of Lender. All proposed Leases and renewals of existing Leases shall be at rental rates and on terms comparable to existing local market rates and terms and shall be arms-length transactions with bona fide, independent third party tenants except that Borrower shall be permitted to have no more than ten leases at any time with its employees, on terms which may not be comparable to existing local market rates and terms. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Lender. All proposed Leases and renewals of existing Leases (other than residential Leases relating to a residential multifamily property and other Leases described in Subsection 2.19(d)) shall be subject to the prior review and approval of Lender and its counsel, at Borrower's expense.
- (c) Borrower shall perform all obligations as lessor under all Leases and shall enforce all of the terms, covenants and conditions contained in upon the part of the lessee thereunder to be performed or observed, short of termination thereof. Additionally, Borrower shall not take any action which would cause any Lease to cease to be in full force and effect. Except with the prior consent of Lender, Borrower shall not (i) cancel, terminate (with the exception of a residential Lease relating to a multifamily property carried out in the manner of a prudent landlord in the ordinary course of business), surrender, sublet or assign any Lease or consent to any cancellation, termination, surrender, subletting or assignment thereof; (ii) amend, modify or subordinate any Lease to any mortgage or security interest that is subordinate to this Mortgage; (iii) enter into any new Lease (except as permitted in Section 2.19(d) below); (iv) waive any default under or breach of any Lease; (v) consent to or accept any prepayment or discount of rent or advance rent under any Lease (with the exception of a residential Lease relating to a multifamily property carried out in the manner of a prudent landlord in the ordinary course of business); (vi) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or the Lender's interest therein; or (vii) alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to any of the Leases or cancel or terminate such guaranty, letter of credit or other credit support without the prior written consent of Lender (with the exception of a residential Lease relating to a multifamily property carried out in the manner of a prudent landlord in the ordinary course of business).

(d) Notwithstanding Section 2.19(b), Lender's prior consent shall not be required for entering into any new residential Lease relating to a residential multifamily property, or renewals thereof, provided that (i) the Lease utilized is on a standard form previously approved by Lender, without material modification, (ii) the Lease or renewal thereof represents an arm's-length transaction and provides for the payment of market rents, and (iii) neither the Lease nor renewal thereof nor the activity of the lessee will violate any provision of any other Lease or restriction or covenant affecting the Premises or this Mortgage or any other Loan Document, including Section 2.20(b) hereof. Except for residential Leases relating to a multifamily property, notice and copies of which shall be furnished only upon request, Borrower shall give Lender notice of any Lease or renewal thereof described in this Section 2.19(d), together with a fully executed and complete copy of such Lease, not later than 10 days after the execution thereof.

(e) In addition to the foregoing, Borrower shall comply with all terms and provisions of the Assignment.

Section 2.20. Environmental Matters, Warranties, Notice, Indemnity.

(a) Borrower represents and warrants to Lender respecting the Premises and the Equipment as follows:

(i) Borrower has not installed, used, generated, manufactured, produced, stored, released, discharged or disposed of in, on, under or about the Premises, or transported to or from any portion of the Premises, any Hazardous Substance or allowed any other person or entity to do so, except under conditions permitted by and in compliance with applicable Environmental Laws;

(ii) Borrower stores and uses certain toxic items such as gasoline, motor oil, cleaning chemicals, fertilizers and pesticides on the Mortgaged Property in compliance with applicable environmental laws;

(iii) to the best of Borrower's knowledge after due inquiry, there are no Hazardous Substances or underground storage tanks in, on, or under or about the Premises, except those that are both (A) in compliance with Environmental Laws and with permits issued pursuant thereto, if necessary, and (B) fully disclosed to Lender in (ii) above or in writing pursuant to the written reports resulting from environmental assessments of the Mortgaged Property delivered to Lender (the "Environmental Report");

(iv) except as permitted or disclosed in (i) or (ii) above, Borrower knows of no past, present or threatened Releases of any Hazardous Substance in, on, under or about the Premises except as defined in the Environmental Report;

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

- (iii) the discovery of any occurrence or condition on the Premises or on any real property adjoining or in the vicinity of the Premises, of which Borrower becomes aware, which might cause the Premises or any portion thereof to be in violation of any Environmental Law or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Law (collectively, an "Environmental Violation").
- (e) Lender may join and participate in, as a party if it so determines, any legal or administrative proceeding or action concerning the Premises or Equipment under any Environmental Law. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with any such action or proceeding.
- (f) Borrower and Warren Rose, but not Sheldon Rose, shall indemnify and hold Lender and Lender's directors, officers, employees and agents harmless from and against any and all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses (including reasonable attorneys' fees) directly or indirectly arising out of or attributable to a breach of any warranty or representation contained in this Section 2.20 or of any other provision thereof including, without limitation, (i) all actual and consequential damages, (ii) the costs of any required Remediation, and (iii) the costs of the preparation and implementation of any plans for Remediation, closure or other required plans. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage including any extinguishment of such lien by foreclosure or deed in lieu thereof, excluding the one-time transfer permitted under the provisions of Section 2.17(b). The indemnity provided for in this Section 2.20(f) shall not extend to Hazardous Substances present on the Mortgaged Property (i) after payment in full of the Indebtedness and the recording of a discharge of this Mortgage provided the Indebtedness has been paid as required without acceleration and without a declared Event of Default; or (ii) after foreclosure and the recording of the deed to the Mortgaged Property resulting from the foreclosure or deed in lieu of foreclosure to Lender and Lender or affiliates or, in the case of a foreclosure, Lender's employees, agents or representatives or any third party successful bidder has taken possession, or (iii) after an approved sale pursuant to Section 2.17(b), provided in each case (a) the Hazardous Substances were Released on the Mortgaged Property by third parties unrelated in any way to Borrower or any person or entity affiliated with or having an interest in Borrower or a member of Borrower, after the dates of such foreclosure and recording of the deed following foreclosure or such deed in lieu of foreclosure or other discharge of this Mortgage or approved sale pursuant to Section 2.17(b) and in each case after the taking of possession by Lender or other third party bidder at the foreclosure sale, and (b) such deposit was not caused by and does not result from the negligent or intentional action of Borrower or any person or entity having a direct or indirect interest in Borrower or affiliated with Borrower or member of Borrower or having a relationship with Borrower.

Section 2.21. Environmental Matters: Remedial Work.

- (a) If any investigation, site monitoring, containment, cleanup, removal, restoration or other Remediation of any kind or nature (collectively, the "Remedial Work") is required, reasonably necessary or desirable under any applicable Environmental Law because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground water, surface water, or soil vapor on, under or about the Premises or any portion thereof, Borrower shall promptly commence and diligently prosecute to completion all such Remedial Work. In all events, such Remedial Work shall be commenced within 45 days after any demand therefor by Lender or such shorter period or longer as may be required under any applicable Environmental Law.
- (b) All Remedial Work shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Lender. All customary costs and expenses of such Remedial Work and Lender's monitoring or review of such Remedial Work (including reasonable attorneys' fees) shall be paid by Borrower. If Borrower does not timely commence and diligently prosecute to completion the Remedial Work, Lender may (but shall not be obligated to) cause such Remedial Work to be performed. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Lender in connection with monitoring, reviewing or performing any Remedial Work. Notwithstanding any provision of this Mortgage to the contrary, so long as Borrower is in possession, custody and control of the Mortgaged Property, Borrower will be permitted to contest, at its sole cost and expense, subject to compliance with the requirements of this paragraph, by appropriate action any investigation or monitoring of site conditions or Remedial Work required under any applicable Hazardous Substances or Environmental Laws, and Lender shall not perform any such Remedial Work on Borrower's behalf, so long as (i) no other uncured default exists under this Mortgage or any other Loan Document and (ii) Borrower has given Lender written notice that Borrower is contesting the same and Borrower actually contests the application, interpretation or validity of such Hazardous Substances or Environmental Laws pertaining to the Remedial Work by appropriate proceedings conducted in good faith with due diligence; provided, such contest shall not subject Lender or any assignee of its interest (including any person having a beneficial interest) in the Loan Documents to civil or other liability and shall not jeopardize any such party's lien upon or interest in the Mortgaged Property or affect in any way the payment of any sums to be paid under the terms of the Loan Documents. Borrower shall give such security or assurances as may be reasonably required by Lender to insure compliance with the Hazardous Substances or Environmental Laws pertaining to the Remedial Work (and payment of all costs, expenses, interest and penalties in connection therewith) and to prevent any sale, forfeiture or loss by reason of such nonpayment or noncompliance.
- (c) Except with Lender's prior consent, Borrower shall not commence any Remedial Work or enter into any settlement agreement, consent decree or other compromise relating to any Hazardous Substances or Environmental Laws which might, in Lender's reasonable judgment, impair the value of Lender's security hereunder. Lender's prior consent shall not be required, however, if

the presence or threatened presence of Hazardous Substances on, under or about the Premises poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Lender's prior consent. In such event Borrower shall notify Lender as soon as practicable of any action taken.

Section 2.22. Environmental Matters; Inspection.

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

Section 2.23. Management. Throughout the period of Borrower's ownership of the Mortgaged Property, the management of the Mortgaged Property must be by Borrower or one of its affiliates. Otherwise, at Lender's option, the entire Indebtedness including any prepayment premium shall be immediately due and payable. Any time the Borrower or one of its affiliates ceases to manage the Mortgaged Property, Borrower shall have a reasonable opportunity not exceeding 90 days to obtain approved and satisfactory management prior to Lender accelerating the Loan. Any leasing commissions or management agreements affecting the Mortgaged Property must be subordinate to the lien of this Mortgage. Borrower and Lender acknowledge that there is currently no management agreement in place and that Lender will require no management agreement so long as Borrower or one of its affiliates continues to manage the Mortgaged Property. Lender agrees that the management of the Mortgaged Property by Borrower is presently satisfactory to Lender. Borrower agrees that the management fee for the Mortgaged Property shall not exceed four percent (4%) of gross collected income from the Mortgaged

Property at any time while an Event of Default has occurred and is continuing. Management fees and leasing commissions shall at all times be subordinate to the payments due under the Loan Documents.

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

This Document is the property of
the Lake County Recorder!
ARTICLE III
Security Agreement

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

- (a) This Mortgage constitutes a security agreement under the Code and serves as a fixture filing in accordance with the Code. This Mortgage creates a security interest in favor of Lender as secured party under the Code with respect to all property (specifically including the Collateral) included in the Mortgaged Property which is covered by the Code. The mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property shall not derogate from or impair in any manner the intention of Borrower and Lender hereby declared that all items of collateral described in this Mortgage are part of the real property encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the Improvements or whether serial numbers are used for the better identification of certain items. Specifically, the mention in any such financing statement of (i) the rights in or the Proceeds of any policy of insurance, (ii) any condemnation Proceeds, (iii) Borrower's interest in any Leases or Property Income, or (iv) any other item included in the Mortgaged Property, shall not be construed to alter, impair or impugn any rights of Lender as determined by this Mortgage or the priority of Lender's lien upon and security interest in the Mortgaged Property. Any such mention shall be for the protection of Lender in the event that notice of Lender's priority of interest as to any portion of the Mortgaged Property is required to be filed in accordance with the Code to be effective against or take priority over the interest of any particular class of persons, including the federal government or any subdivision or instrumentality thereof.

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

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

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

ARTICLE IV
Default and Remedies

Section 4.01. Events of Default. Each of the following shall constitute an Event of Default under this Mortgage, the Note and the other Loan Documents, subject to any applicable notice and cure provisions set forth in the Note:

- (a) failure in the payment of any amount due prior to the expiration of any applicable grace period under this Mortgage, the Note or any other Loan Document;
- (b) failure to pay any Imposition before it becomes delinquent or to maintain insurance as required by this Mortgage;
- (c) default in the due observance or performance of any term, covenant or condition contained in this Mortgage, the Note or any other Loan Document;
- (d) if any representation made herein or in any other Loan Document shall prove to be untrue in any material respect at the time it was made;
- (e) violation of any of the covenants set forth in Section 2.17 with respect to conveyances, sales, encumbrances or other prohibited dispositions of the Mortgaged Property or Borrower or any portion thereof or any interest therein;
- (f) violation of any of the covenants set forth in Section 2.19(a) with respect to the further assignment, transfer or encumbrance by Borrower of the Leases or the Property Income or any portion thereof;
- (g) violation of any of the covenants set forth as items (i) through (vi) of Section 2.19(c) with respect to certain actions concerning Leases which shall not be taken by Borrower without the prior consent of Lender;
- (h) if Borrower, any general partner of Borrower or any managing or principal member of or managing agent for Borrower (if Borrower is a limited liability company) consents to the filing of, or commences or consents to the commencement of, any Bankruptcy Proceeding with respect to Borrower;
- (i) if any Bankruptcy Proceeding shall have been filed against Borrower, any general partner of Borrower, any managing or principal member of or managing agent for Borrower (if Borrower is a limited liability company) and the same is not withdrawn, dismissed, canceled or terminated within 90 days of such filing;

- (j) if Borrower, any general partner of Borrower, any managing or principal member of or managing agent for Borrower (if Borrower is a limited liability company) is adjudicated bankrupt or insolvent or a petition for reorganization of Borrower or any such general partner is granted;
- (k) if a receiver, liquidator or trustee of Borrower, any general partner of Borrower, any managing or principal member of or managing agent for Borrower (if Borrower is a limited liability company) or of any of the properties of Borrower or any such general partner shall be appointed;
- (l) if Borrower, any general partner of Borrower, any managing or principal member of or managing agent for Borrower (if Borrower is a limited liability company) shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due;
- (m) except as otherwise permitted herein, if Borrower, any general partner of Borrower, any managing or principal member of or managing agent for Borrower (if Borrower is a limited liability company) shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such general partner;
- (n) if a default or event of default shall occur under any mortgage, encumbrance, lien or security agreement encumbering all or any portion of the Mortgaged Property which is subordinate or superior to the lien of this Mortgage or if any party under any such instrument shall commence a foreclosure or other collection or enforcement action in connection therewith, provided, however, that this provision shall not be deemed to be a waiver of the provisions of Section 2.17 prohibiting further encumbrances or of any other provision of this Mortgage, it being understood that it is an event of default under this Mortgage to permit any further mortgage, encumbrance, lien or security agreement to encumber all or any portion of the Mortgaged Property without the prior written consent of the Lender;
- (o) except as permitted in this Mortgage, the actual or threatened alteration, demolition or removal of any of the Improvements without the prior consent of Lender; or
- (p) damage to any of the Mortgaged Property in any manner which is not covered by insurance as a result of Borrower's failure to maintain insurance required in accordance with this Mortgage.

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

- (a) Subject to any applicable provisions of the Note, Lender may declare the entire principal balance under the Note then unpaid, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable.
- (b) Lender may enter into or upon the Mortgaged Property, personally or by its agents, nominees or attorneys, and may dispossess Borrower and its agents and servants therefrom, and thereupon Lender at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Lender or in such other name as Lender shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Property Income; and (v) apply the receipts of Property Income to the payment of the Indebtedness (including any prepayment fee payable under the Note) in such order as Lender shall determine in its sole discretion, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its agents, nominees and attorneys.
- (c) Subject to any applicable provisions of the Note, with or without entry, personally or by its agents, nominees or attorneys, Lender may sell all or any portion of the Mortgaged Property and all or any portion of Borrower's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Lender shall have any statutory power of sale as may be provided by law in the State.
- (d) Subject to any applicable provisions of the Note, Lender may institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.
- (e) Subject to any applicable provisions of the Note, Lender may institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due.
- (f) Lender may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

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

Section 4.03. General Provisions Regarding Remedies.

- (a) Effect of Judgment. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any portion thereof, or any rights, powers or remedies of Lender hereunder. Such lien, rights, powers and remedies of Lender shall continue unimpaired as before.
- (b) Continuing Power of Sale. The power of sale conferred upon Lender in this Mortgage shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property remaining unsold, but shall continue unimpaired until all of the Mortgaged Property is sold or all of the Indebtedness is paid.

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

continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless Borrower shall have been released and discharged in writing by Lender.

(g) **Waivers and Agreements Regarding Remedies.** To the full extent Borrower may legally do so, Borrower:

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

- (iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;
- (v) waives the defense of laches and any applicable statutes of limitation; and
- (vi) waives any right to have any trial, action or proceeding tried by a jury.
- (h) Lender's Discretion. Unless otherwise provided, Lender may exercise its rights, options and remedies and may make all decisions, judgments and determinations under this Mortgage and the other Loan Documents in its sole unfettered discretion.
- (i) Recitals of Facts. In the event of a sale or other disposition of the Mortgaged Property pursuant to Section 4.02 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.
- (j) Lender's Right to Waive, Consent or Release. Lender may at any time, in writing, (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (ii) consent to Borrower's doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (iii) release any portion of the Mortgaged Property, or any interest therein, from this Mortgage and the lien of the other Loan Documents. No such act shall in any way impair the rights of Lender hereunder except to the extent specified by Lender in such writing.
- (k) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and after the expiration of any applicable notice and cure period and demand by Lender at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Lender. If Borrower is permitted to remain in possession, such possession shall be as tenant of Lender and such occupant (i) shall on demand pay to Lender monthly, in advance, reasonable use and occupancy charges for the space so occupied, and (ii) in default thereof, may be dispossessed by the usual summary proceedings. Upon demand, Borrower shall assemble the Collateral and make all thereof consisting of tangible personal property available to Lender at the Premises and the balance available at any place Lender may designate to allow Lender to take possession and/or dispose of the Collateral. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any portion thereof. Nothing in this Section 4.03(k) shall be deemed a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Mortgaged Property without Lender's consent.

(l) Limitations on Liability

- (i) Subject to the provisions of this Section, in any action or proceedings brought on this Mortgage, the Note or on any of the Loan Documents in which a money judgment is sought, Lender will look solely to the Mortgaged Property and other property described in the Loan Documents (including the Property Income and any other rents and profits from such property) for payment of the Indebtedness and, specifically and without limitation, Lender agrees to waive any right to seek or obtain a deficiency judgment against Borrower or any partner of Borrower.
- (ii) The provisions of Section 4.03(1)(i) shall not
- (u) constitute a waiver, release or impairment of any obligation evidenced or secured by this Mortgage, the Note or any other Loan Document;
 - (v) be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Indebtedness secured by this Mortgage or to require that all Collateral shall continue to secure all of the Indebtedness owing to Lender in accordance with the Note, this Mortgage and the Loan Documents;
 - (w) impair the right of the Lender to name the Borrower or any principals of Borrower as a party or parties defendant in any action or suit for judicial foreclosure and sale under this Mortgage;
 - (x) affect the validity or enforceability of, or limit recovery under, any indemnity (including the environmental indemnity set forth in Section 2.20(f) of this Mortgage or any separate environmental indemnity agreement, however designated), or similar instrument made in connection with this Mortgage, the Note or the Loan Documents;
 - (y) impair the right of the Lender to obtain the appointment of a receiver; or,
 - (z) impair Lender's rights and remedies under Section 2.19 of this Mortgage regarding the assignment of Leases and Property Income to Lender or under the Assignment.
- (iii) Notwithstanding any provisions of this Subsection 4.03(1), nothing herein shall be deemed to impair or prejudice in any way the right of Lender (which right is specifically reserved) to pursue or obtain personal recourse liability against Borrower, but not Borrower's partners, or any other person or entity, to recover Losses incurred by Lender arising out of or resulting from:

- (a) fraud or material misrepresentation in connection with any Loan Document, affidavit, certification, warranty or representation given by Borrower or any officer, general partner, member or authorized agent of Borrower in connection with the making of the loan evidenced by the Note;
- (b) the application or appropriation of insurance or condemnation Proceeds in a manner contrary to the terms of the Loan Documents;
- (c) the application or appropriation of any tenant security deposits, advance or prepaid rents, cancellation or termination fees or other similar sums paid to or held by Borrower, Borrower's representatives, agents, management company, subcontractors, or any other party which Borrower has retained, hired, or otherwise put in control in connection with the operation of the Premises contrary to the terms of the Loan Documents;
- (d) the failure to return, or reimburse Lender for, all Equipment taken from the Mortgaged Property by or on behalf of Borrower and not replaced with Equipment of the same utility and of the same or greater value;
- (e) any act of arson, malicious destruction or waste by Borrower, Borrower's property manager or partner of Borrower, or by any indemnitor (including any indemnitor under the environmental indemnity contained in the Mortgage, or in a separate environmental indemnity or similar document executed herewith);
- (f) the failure to apply Property Income or Proceeds to payments due under the Loan Documents or to operating expenses of the Mortgaged Property, thereby resulting in, or contributing materially to an Event of Default. Provided, however, that neither Borrower nor any other person or entity shall have any personal liability for Losses based on distributions by Borrower of Property Income or rent loss insurance Proceeds to Borrower, or any general partner, principal, stockholder or member of or managing agent for Borrower (if Borrower shall be a limited liability company) made in good faith (after determining the sufficiency of Property Income and rent loss insurance Proceeds to cover the payments due under the Loan Documents and the operating expenses of the Mortgaged Property) more than 180 days prior to an Event of Default;
- (aa) the filing by Borrower, or the general partner of Borrower, of a voluntary bankruptcy or insolvency proceeding or the filing against Borrower, or the general partner of Borrower, of an involuntary bankruptcy or insolvency proceeding which is not dismissed within ninety (90) days of filing.

- (bb) in the event the Borrower does not have a real estate tax escrow in place pursuant to Section 2.7 of this Mortgage, the Borrower's failure to pay real estate taxes on the date due.
- (m) Subrogation. If all or any portion of the proceeds of the Note or any Advance shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any portion thereof, then Lender shall be subrogated to, and shall have the benefit of the priority of, such other lien or encumbrance and any additional security held by the holder thereof.

Document is
ARTICLE V
Miscellaneous
NOT OFFICIAL!

Section 5.01. Notices. Document is the property of
the Lake County Recorder!

- (a) All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed in either case to any party hereto at its address as stated on the Cover Sheet of this Mortgage, or at such other address and person as shall be designated from time to time by Lender or Borrower, as the case may be, in a written notice to the other party in the manner provided for in this Section 5.01. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, three Business Days after deposit in the United States mail; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. A party receiving a notice which does not comply with the technical requirements for notice under this Section 5.01 may elect to waive any deficiencies and treat the notice as having been properly given.
- (b) Borrower shall notify Lender promptly of the occurrence of any of the following: (i) receipt of any material adverse notice from any governmental authority relating to the Mortgaged Property; (ii) any material change in the occupancy of the Mortgaged Property; (iii) receipt of any notice from the holder of any other lien or security interest in the Mortgaged Property; or (iv) commencement of any material judicial or administrative proceedings by, against or otherwise affecting Borrower, the Mortgaged Property, or any entity controlling Borrower, or any other action by any creditor thereof as a result of any default under the terms of any loan.

Section 5.02. Binding Obligations; Joint and Several. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Borrower, and Lender, their successors and assigns, and shall inure to the benefit of Borrower and Lender, their successors and assigns. If there is

more than one Borrower, all their obligations and undertakings hereunder are and shall be joint and several.

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

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

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

Section 5.06. Borrower's Obligations Absolute. Except as provided elsewhere herein, all sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any Bankruptcy Proceeding relating to Borrower, any general partner of Borrower, or any indemnitor, or any action taken with respect to this Mortgage or any other Loan Document by any trustee or receiver of Borrower or any such general partner, or indemnitor, or by any court, in any such proceeding; (e) any claim not reduced to a judgment which Borrower has or might have against Lender; (f) any default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Borrower which is not yet either adjudicated in favor of Borrower or settled with Lender pursuant to a written settlement agreement; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

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

Section 5.08. Other Loan Documents and Schedules. All of the agreements, conditions, covenants, provisions and stipulations contained in the Note and the other Loan Documents, and each

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

Section 5.09. Legal Construction.

- (a) The enforcement of this Mortgage shall be governed by, and construed and interpreted in accordance with, the laws of the State.
- (b) All terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.
- (c) The terms "include" and "including" as used in this Mortgage shall be construed as if followed by the phrase "without limitation".
- (d) Any provision of this Mortgage permitting the recovery of attorneys' fees and costs shall be deemed to include such fees and costs incurred in all appellate proceedings.

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

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

Section 5.12. Transfer of Loan. Lender, in the management of its investments or for any other reason, may, at any time, sell, transfer or assign the Note, the Mortgage and the other Loan Documents and the servicing rights with respect thereto or grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in the Note, Mortgage and other Loan Documents (collectively, a "Transfer"). As part of a Transfer, Lender may forward to each transferee, assignee, servicer, participant or investor all documents and information which Lender now has or may hereafter acquire relating to the Indebtedness, the Loan Documents and the Mortgaged Property. Borrower agrees to cooperate with Lender in connection with a Transfer including, without limitation, the delivery of any estoppel certificates required under Section 2.18 and such other documents as may be reasonably be requested by Lender.

Section 5.13 Defeasance. If all of the Indebtedness is paid in full in accordance with the Note and the other Loan Documents and all of the covenants, warranties, conditions, undertakings and agree-

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

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

BORROWER

EDWARD ROSE OF INDIANA, L.P.

By: 

Sheldon Rose, Managing General Partner

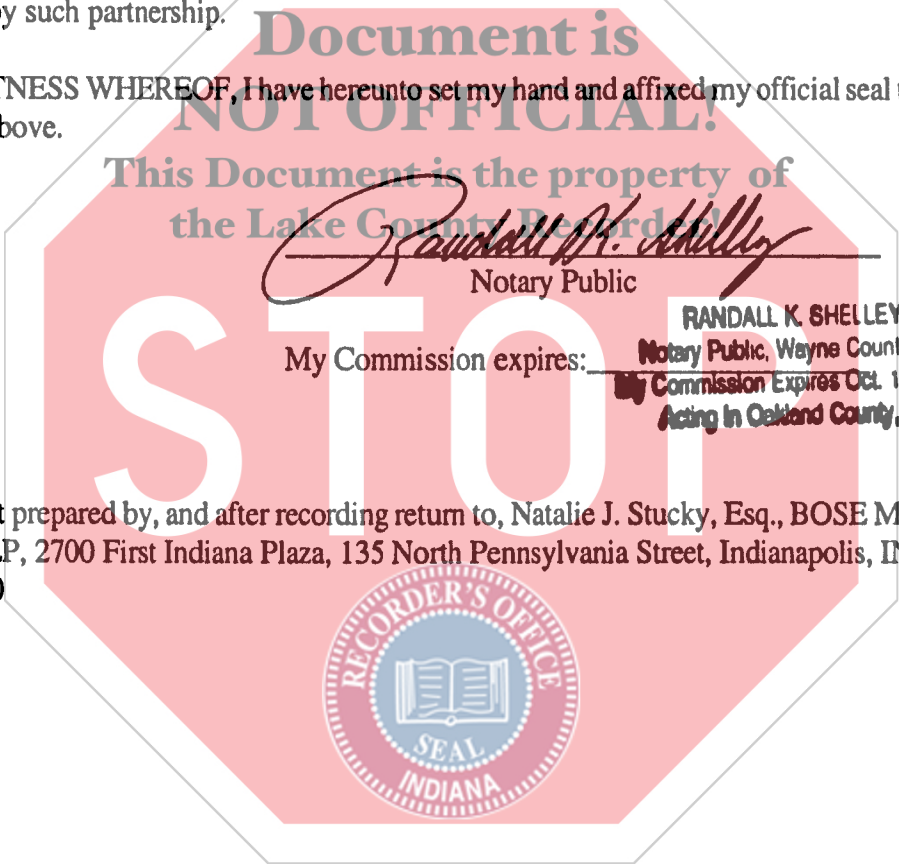


STATE OF MICHIGAN]

COUNTY OF OAKLAND]

On this 10TH day of JULY, 2000, before me, a Notary Public in and for said State, personally appeared Sheldon Rose, known to me to be the person described in and who executed such instrument as managing general partner of Edward Rose of Indiana, L.P., an Indiana limited partnership, and who acknowledged the execution of such instrument as such managing general partner for and on behalf of and as the act and deed of such partnership, pursuant to authority lawfully conferred upon him/her by such partnership.

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



This instrument prepared by, and after recording return to, Natalie J. Stucky, Esq., BOSE McKINNEY & EVANS, LLP, 2700 First Indiana Plaza, 135 North Pennsylvania Street, Indianapolis, IN 46204 (317) 684-5000

SCHEMATIC A

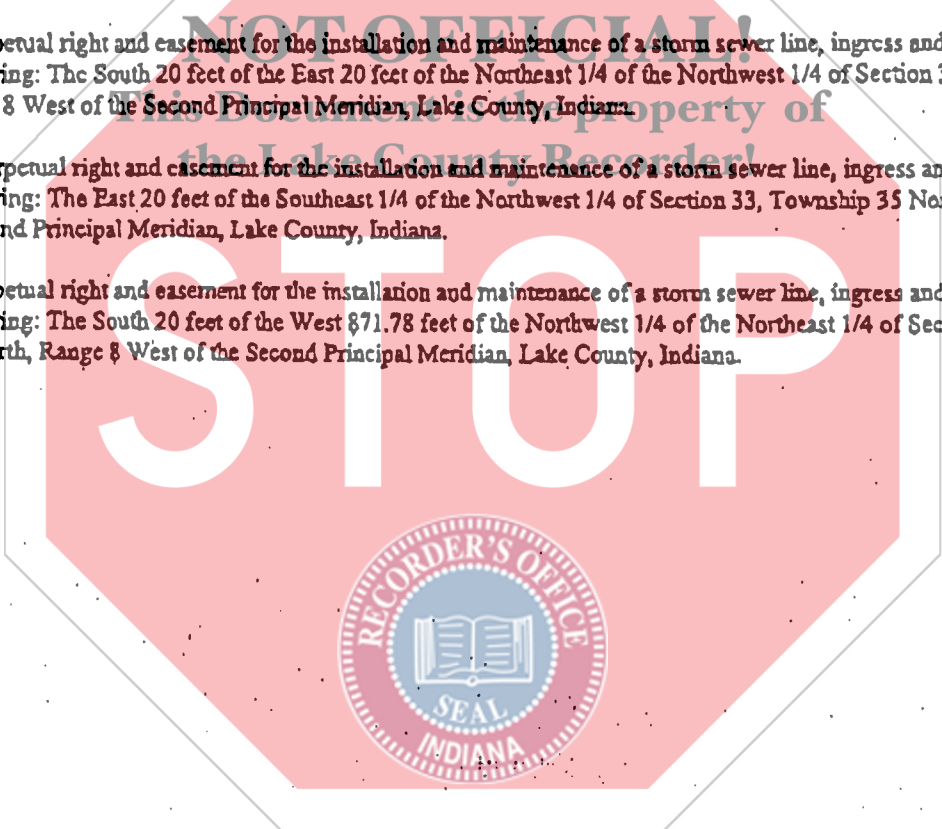
LEGAL DESCRIPTION:

Parcel One: Phase One Mallard Bay, a Planned Unit Development in Crown Point, Indiana, as per the Plat thereof filed in Plat Book 79, Page 30 in the Office of the Recorder of Lake County, Indiana; also Phase Two Mallard Bay, a Planned Unit Development in Crown Point, Indiana, as per the Plat thereof filed in Plat Book 79, Page 65 in the Office of the Recorder of Lake County, Indiana; also Phase Three Mallard Bay, a Planned Unit Development in Crown Point, Indiana, as per the Plat thereof filed in Plat Book 81, Page 72, in the Office of the Recorder of Lake County, Indiana.

Parcel Two: Perpetual right and easement for the installation and maintenance of a storm sewer line, ingress and egress, across the following: The South 20 feet of the East 20 feet of the Northeast 1/4 of the Northwest 1/4 of Section 33, Township 35 North, Range 8 West of the Second Principal Meridian, Lake County, Indiana.

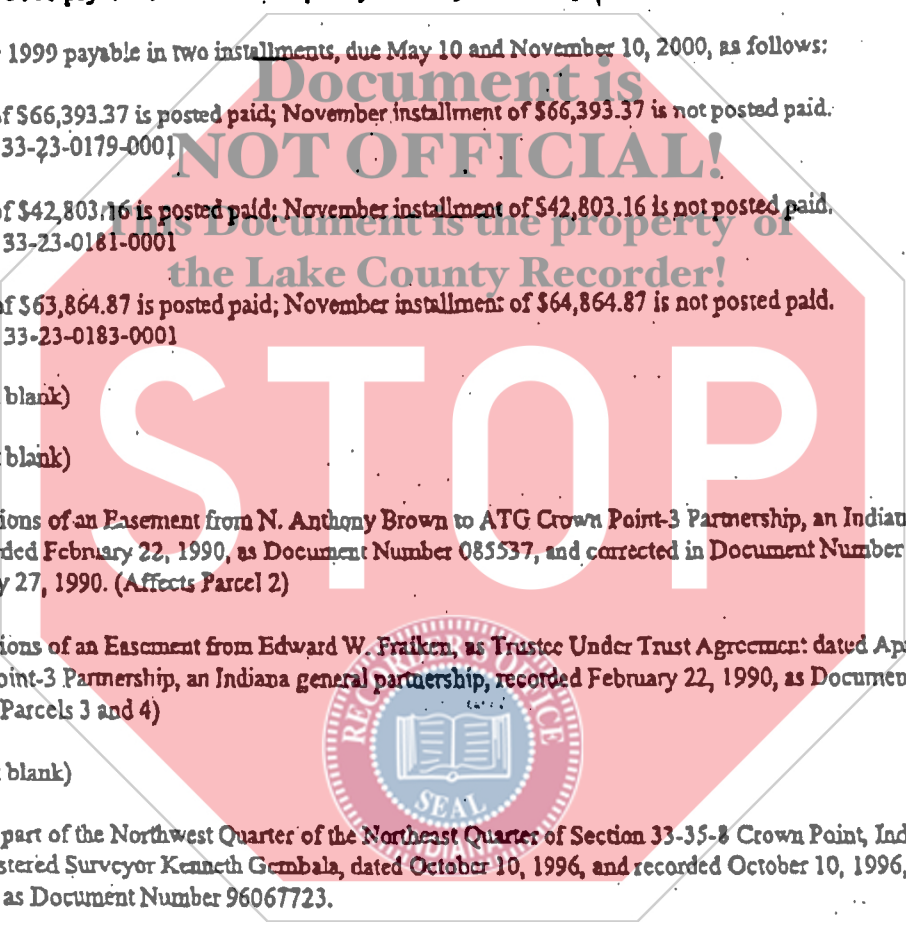
Parcel Three: Perpetual right and easement for the installation and maintenance of a storm sewer line, ingress and egress, across the following: The East 20 feet of the Southeast 1/4 of the Northwest 1/4 of Section 33, Township 35 North, Range 8, West of the Second Principal Meridian, Lake County, Indiana.

Parcel Four: Perpetual right and easement for the installation and maintenance of a storm sewer line, ingress and egress, across the following: The South 20 feet of the West 871.78 feet of the Northwest 1/4 of the Northeast 1/4 of Section 33, Township 35 North, Range 8 West of the Second Principal Meridian, Lake County, Indiana.



SCHEDULE B
(P 1 OF 2)

1. Taxes for the year 2000 payable 2001 and subsequent years not yet due and payable.
2. Taxes for the year 1999 payable in two installments, due May 10 and November 10, 2000, as follows:
 May installment of \$66,393.37 is posted paid; November installment of \$66,393.37 is not posted paid.
 Tax Key Number 33-23-0179-0001
 May installment of \$42,803.16 is posted paid; November installment of \$42,803.16 is not posted paid.
 Tax Key Number 33-23-0181-0001
 May installment of \$63,864.87 is posted paid; November installment of \$64,864.87 is not posted paid.
 Tax Key Number 33-23-0183-0001
3. (Intentionally left blank)
4. (Intentionally left blank)
5. Terms and provisions of an Easement from N. Anthony Brown to ATG Crown Point-3 Partnership, an Indiana general partnership, recorded February 22, 1990, as Document Number 085537, and corrected in Document Number 086292, recorded February 27, 1990. (Affects Parcel 2)
6. Terms and provisions of an Easement from Edward W. Fraiken, as Trustee Under Trust Agreement dated April 7, 1982, to ATG Crown Point-3 Partnership, an Indiana general partnership, recorded February 22, 1990, as Document Number 085539. (Affects Parcels 3 and 4)
7. (Intentionally left blank)
8. Plat of Survey of part of the Northwest Quarter of the Northeast Quarter of Section 33-35-8 Crown Point, Indiana, prepared by Registered Surveyor Kenneth Gembala, dated October 10, 1996, and recorded October 10, 1996, in Plat Book 4, Page 27, as Document Number 96067723.
9. (Intentionally left blank)
10. Utility, drainage and detention, and access easements, private and public roads, streets and rights of way, and building setback lines, and any amendments thereto, as disclosed on the recorded Plats of Mallard Bay, a Planned Unit Development in Crown Point, Indiana, as set forth and shown in Schedule A hereof.
11. Rights of the public and governmental agencies having jurisdiction in and to that part of premises lying within 93rd Avenue, West 93rd Place, Monroe Street, and Madison Street in Phase One Mallard Bay, as per Plat Book 79, Page 30.
12. Rights of the public and governmental agencies having jurisdiction in and to that part of premises lying within Monroe Street, 94th Avenue, Monroe Court, and Madison Street in Phase Two Mallard Bay, as per Plat Book 79, Page 65.



Schedule B id
(p 2 of 2)

13. Rights of the public and governmental agencies having jurisdiction in and to that part of premises lying within Monroe Street, Madison Place, Madison Street, and 95th Avenue in Phase Three Mallard Bay, as per Plat Book 81, Page 72.

16. Rights of tenants as tenants only under unrecorded leases.



RIDER

APPLICABLE STATE LAW PROVISIONS

1. Notwithstanding any provision in this Mortgage relating to a power of sale or other provision for sale of the Mortgaged Property upon default other than under a judicial proceeding, any sale of the Mortgaged Property pursuant to this Mortgage will be made through a judicial proceeding.

2. Anything contained herein or in I.C. 32-8-16-1.5 to the contrary notwithstanding, no waiver made by the Borrower in this Mortgage, or in any of the other terms and provisions of Loan Documents, shall constitute the consideration for or may be deemed to be a waiver or release by Borrower or Lender of the right to seek a deficiency judgment against the Borrower or any other person or entity who may be personally liable for any part of the Indebtedness, which right to seek a deficiency judgment is hereby reserved, preserved and retained by the Lender for its own behalf and its successors and assigns to the extent available under the terms of this Mortgage, the Note and the other Loan Documents.

3. Part of the Mortgaged Property and Collateral is or may become fixtures. It is intended that, as to such fixtures, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of the County in which the Mortgaged Property is located. The information provided in Article III and this paragraph is provided in order that this Mortgage shall comply with the requirements of the Indiana Uniform Commercial Code for a mortgage instrument to be filed as a financing statement pursuant to I.C. 26-1-9-313 and I.C. 26-1-9-402. The Borrower is the "Debtor" and its name and mailing address are set forth on the cover page of this Mortgage. The "Secured Party" is the Lender and its name and mailing address from which information concerning the security interest agreement herein may be obtained are as set forth on the cover page of this Mortgage. A statement describing the portion of the Mortgaged Property and Collateral comprising goods or other personal property that may now or hereafter become fixtures hereby secured is set forth in the Granting clauses hereof. The record owner of the Mortgaged Property and Collateral is the Borrower.

4. Borrower hereby represents and warrants that, to the best of Borrower's knowledge, the Mortgaged Property: (i) does not contain any facility or facilities that are subject to reporting (by either Borrower or any tenant or lessee thereon or other person or entity in possession or occupancy of any portion thereof) under Section 312 of the Federal Emergency Planning and Community Right To Know Act of 1986 (42 USC §11022); (ii) is not the site of any underground storage tanks; and (iii) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS") in accordance with Section 116 of CERCLA (42 USC §9616). By reason of the foregoing, the conveyance made by Borrower to Lender by this Mortgage is not subject to the disclosure or other provisions of the Indiana Responsible Property Transfer Law, I.C. 13-25-3-1 et. seq.

5. Borrower hereby agrees that the costs of enforcement and attorneys' fees under Section 2.13 of this Mortgage include, but shall not be limited to, support staff costs and amounts expended in litigation preparation and computerized research, telephone and telefax expenses, mileage, depositions, postage, photocopies, process service, videotapes and the like, and any costs associated with environmental testing, audits, reviews, inspections, remediation and clean up of the Mortgaged Property.

6. Notwithstanding anything contained in the Mortgage or the other Loan Documents to the contrary, this Mortgage shall secure: (i) the face amount of the Note, including any future obligations and advances made from time to time after the date hereof pursuant to the Note and other Loan Documents up to the maximum amount of \$18,000,000 (whether made as part of the obligations secured hereby, made at the option of Mortgagee, made after a reduction to a zero (0) or other balance, or made otherwise); (ii) all other amounts payable by Mortgagor, or advanced by Mortgagee for the account, or on behalf, of Mortgagor or the Mortgaged Property, pursuant to this Mortgage or the Loan Documents, including amounts advanced with respect to the Mortgaged Property for the payment of Impositions incurred for the protection of the Mortgaged Property to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage; (iii) all other amounts included within the definition of "Indebtedness" in the Granting Clauses of this Mortgage; and (iv) future modifications, extensions and renewals of any Obligation secured by this Mortgage. Pursuant to I.C. 32-8-11-9, the lien of this Mortgage with respect to any future advances, modifications, extensions, and renewals referred to herein and made from time to time shall have the same priority to which this Mortgage otherwise would be entitled as of the date this Mortgage is executed and recorded without regard to the fact that any such future advance, modification, extension, or renewal may occur after this Mortgage is executed.

7. The rights and obligations of Mortgagor and Mortgagee hereunder and under the Assignment of Leases and Rents with respect to tenant security deposits are subject to the provisions of I.C. 32-7-5, and all tenant security deposits shall be received, held, disbursed or applied in accordance with the provisions thereof.

