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This instrument was prepared by the attorney  
referenced below in consultation with  
counsel admitted to practice in the state  
in which the property is located, and when  
recorded, counterparts should be returned to:

Caroline A. Harcourt Esq.  
Pillsbury Winthrop LLP  
1540 Broadway  
New York, New York 10036-4039

Location: Shelby, Alabama

This instrument is a Mortgage, Leasehold Mortgage, Fixture Filing and Financing  
Statement. This instrument encumbers property located in Shelby County, Alabama. This  
Mortgage and Leasehold Mortgage involves a REVOLVING LINE OF CREDIT.

The total outstanding principal amount of indebtedness secured by this instrument at any  
one time shall not exceed Thirty-five Million Dollars (\$35,000,000). This instrument contains  
after-acquired property provisions and secures obligations containing provisions for changes in  
interest rates, extensions of time for payment and other modifications in the terms of the  
obligations.

The mailing address of Mortgagee (as hereinafter defined) is:

The Bank of New York  
One Wall Street  
New York, NY 10286  
Attention: Ms. Cindy L. Rogers

THIS MORTGAGE, LEASEHOLD MORTGAGE, FIXTURE FILING AND FINANCING STATEMENT (as the same may from time to time be extended, spread, split, consolidated, modified, restated and/or renewed, this "Mortgage") made as of May 28, 2004 by RAVE MOTION PICTURES BIRMINGHAM III, L.L.C., a Delaware limited liability company having its principal office at c/o Rave Reviews Cinemas L.L.C., 3333 Welborn Street, Suite 100, Dallas, Texas 75219 ("Grantor"), to THE BANK OF NEW YORK, a New York banking corporation, having an office at One Wall Street, New York, New York 10286, as agent (The Bank of New York, in its capacity as agent and any successor agent appointed in accordance with the Credit Agreement (as hereinafter defined), "Agent") for the Banks (as hereinafter defined), with Agent being the mortgagee hereunder (the "Mortgagee").

W I T N E S S E T H:

WHEREAS, Rave Reviews Cinemas, LLC ("Borrower"), the parent of Grantor, has entered into that certain Amended and Restated Secured Guaranteed Credit Agreement (said credit agreement, as it may be amended, modified or supplemented from time to time, being the "Credit Agreement"), a copy of which may be examined at reasonable times at the office of Agent by persons who do or will hold an interest in the Mortgaged Property (as hereinafter defined), dated as of even date herewith, with the banks listed on Exhibit A attached hereto and made a part hereof (said banks and any banks that may hereafter become parties to the Credit Agreement, being collectively the "Banks" and individually a "Bank") and Agent; and

WHEREAS, pursuant to the Credit Agreement and subject to the terms and conditions therein set forth, the Banks have agreed to make Advances and to issue certain Letters of Credit (as each such term is defined in the Credit Agreement) from time to time from the date hereof until the Termination Date (as hereinafter defined) in the aggregate amount not to exceed, at any time, Thirty-five Million Dollars (\$35,000,000); and

WHEREAS, to evidence such indebtedness, Borrower has executed and delivered the Credit Agreement and will execute and deliver various promissory notes (each a "Note" and collectively, the "Notes") to the order of each of the Banks in the amount of its Commitment (as defined in the Credit Agreement), and each issued pursuant to the Credit Agreement; and

WHEREAS, to further evidence such indebtedness, (i) Borrower has executed and delivered that certain Security Agreement and (ii) Borrower, and its Affiliates and Subsidiaries (as such terms are defined in the Credit Agreement), including Grantor, have executed and delivered that certain Subsidiary Security Agreement (said security agreement, and said subsidiary security agreement, as the same may be amended, modified or supplemented from time to time, collectively being the "Security Agreement"), copies of which may be examined at reasonable times at the office of Agent by persons who do or will hold an interest in the Mortgaged Property, dated as of February 13, 2003, with the Banks and Agent; and

WHEREAS, in connection with such indebtedness, Borrower and its Affiliates and Subsidiaries, including Grantor, have executed and delivered that certain Secured Guaranty Agreement (said guaranty agreement, as it may be amended, modified or supplemented from time to time, being the "Secured Guaranty Agreement"), a copy of which may be examined at



reasonable times at the office of Agent by persons who do or will hold an interest in the Mortgaged Property, dated as of February 13, 2003, with the Banks and Agent; and

WHEREAS, the total indebtedness and liabilities to be secured by this Mortgage are as follows (all such indebtedness and liabilities or the instruments evidencing same, as applicable, being herein collectively called the "Obligations"):

(i) the aggregate principal amount of Thirty-five Million Dollars (\$35,000,000), or so much thereof as may be advanced by the Banks under the Credit Agreement (by the making of Advances or readvances or by the issuance of Letters of Credit); plus

(ii) interest on the principal amount of all amounts so advanced or readvanced by the Banks under the Credit Agreement, as provided in the Credit Agreement; plus

(iii) all amounts, sums, costs and expenses payable by and all other obligations of Borrower, its Affiliates, its Subsidiaries or Grantor (as applicable) under the Credit Agreement, the Notes, the Security Agreement, the Secured Guaranty Agreement, this Mortgage and any other document which relates to (or is entered into in connection with) any of the Credit Agreement, the Notes, the Security Agreement, the Secured Guaranty Agreement, this Mortgage (all such documents, collectively, and as the same may be amended, modified, extended, renewed, or supplemented from time to time, the "Loan Documents"); plus

(iv) the observance, payment and performance of all of the terms, covenants, conditions, obligations, representations and warranties of Grantor under this Mortgage; and

WHEREAS, it has been agreed that the payment and performance of the Obligations shall be secured by, inter alia, this Mortgage.

NOW, THEREFORE, in consideration of the Mortgaged Property (as hereinafter defined) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the punctual payment by Borrower, its Affiliates, its Subsidiaries or Grantor (as applicable) when due, whether at stated maturity, by acceleration or otherwise, of the Obligations and the performance and observance of all other covenants, obligations and liabilities of Grantor under this Mortgage, as the same may be extended, modified or renewed or repledged, Grantor does hereby grant, bargain, sell, mortgage, warrant, convey, alien, remise, release, assign, transfer, set over, deliver, confirm and convey unto Mortgagee, upon the terms and conditions of this Mortgage, with power of sale (if and to the extent permitted by applicable law) and right of entry as provided herein below, each and all of the real properties described in the Granting Clauses herein (which, together with all other property located therein or described in the Granting Clauses herein, is hereinafter collectively called the "Mortgaged Property").

#### GRANTING CLAUSES

All the estate, right, title and interest of Grantor in, to and under, or derived from:

(a) THE LEASE: that certain Lease as to which Grantor is the lessee and the leasehold estate created thereby more particularly described in Exhibit B-1 hereto, as the same may be amended, renewed, modified, supplemented, restated or extended from time to time



(collectively, the "Lease") of and in that certain plot, piece and parcel of land more particularly described in Exhibit B-2 hereto (the "Leased Land"), and any and all reversions or remainders in and to Grantor's right, title and interest as lessee in the Leased Land, all modifications, extensions, replacements, restatements and renewals of the Lease and all credits, deposits, options (including any options to purchase or renew set forth in the Lease), privileges and rights of Grantor under the Lease and all guarantees of the Lease inuring to the benefit of Grantor;

(b) THE ESTATE IN THE LEASED LAND: the tenements, hereditaments, appurtenances and all the estates and rights in and to the Leased Land (and any adjoining areas, as and to the extent provided in the Lease);

(c) THE IMPROVEMENTS: all buildings and improvements now or hereafter located on the Leased Land (hereinafter collectively referred to as the "Improvements") and all right, title and interest, if any, of Grantor in and to the streets, roads, parking areas, sidewalks and alleys abutting the Leased Land, the strips and gores within or adjoining the Leased Land, the air space and right to use said air space above the Leased Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicles to parking facilities on or within or adjoining the Leased Land, all easements now or hereafter affecting the Leased Land, and all rights appertaining to the use and enjoyment of the Leased Land, including alley, drainage, mineral, water, oil and gas rights;

(d) THE FIXTURES: all fixtures and all appurtenances and additions thereto and substitutions or replacements thereof now or hereafter attached to the Leased Land and the Improvements (hereinafter collectively referred to as the "Fixtures");

(e) THE EQUIPMENT: all property, tangible and intangible, and all additions thereto and substitutions or replacements thereof owned now or hereinafter contained in, or used in connection with the Leased Land or the Improvements or placed on any part thereof though not attached thereto, to the extent the same constitutes Mortgaged Property in the state in which the Leased Land is located (all of the foregoing, including the items hereinafter enumerated, collectively referred to as the "Equipment"), including, without limitation, all of the following to the extent removable: window and floor coverings, furniture and furnishings (including concession or food and beverage stands, stadium or other seating equipment, cameras or projectors or any other equipment relating to or used in the operation of a movie theater on the Leased Land), heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures (the Lease, and all other estate, right, title and interest of Grantor in, to or derived from clauses (a) through (e) hereof is hereinafter collectively referred to as the "Leasehold Estate");

(f) TOGETHER WITH: subject to the terms of the Loan Documents and, as to Books and Records, Consumables and Miscellaneous Assets (as such terms are all hereinafter defined), to the extent assignable without the consent of any third party, all right, title and interest of Grantor in and to all "general intangibles," "accounts," "proceeds" (as such terms are defined in the Uniform Commercial Code), Books and Records, Consumables and Miscellaneous Assets, with respect to which Mortgagee shall have, in addition to all rights and remedies



provided in Article X hereof, all of the rights and remedies of a “secured party” under the Uniform Commercial Code;

(g) TOGETHER WITH: subject to the terms of the Loan Documents, all proceeds of any sales or other dispositions of the Mortgaged Property or any part thereof;

(h) TOGETHER WITH: all leases, subleases, lettings and licenses of, and all other contracts, bonds, guarantees and agreements affecting the Mortgaged Property or any part thereof now or hereafter assigned to, taken subject to, assumed by, or granted for the benefit of, Grantor, or entered into by Grantor, and all amendments, modifications, supplements, additions, extensions and renewals thereof (all of the foregoing hereinafter collectively referred to as the “Grantor Subleases”), and all right, title and interest of Grantor thereunder, including cash and securities deposited thereunder (as down payments, security deposits or otherwise), the right to receive and collect the rents, additional rents, increases in rents, advance rents, security deposits, income, proceeds, earnings, royalties, revenues, issues, profits, rights, deposits, benefits and other payments due or to become due under, or otherwise derived from or relating to, the Grantor Subleases (including any claims (i) based on holdover by any lessee, (ii) for damages sustained by Grantor or (iii) arising under any federal, state or other law as a result of or in connection with the bankruptcy or insolvency of any lessee) and the rights to collect and receive all of the foregoing, to enforce, whether at law or in equity or by any other means, all provisions and options thereof or thereunder and all rights of Grantor relating thereto (all of the foregoing hereinafter collectively referred to as the “Rents”) and the right to apply the same to the payment and performance of the Obligations;

(i) TOGETHER WITH: all rights, dividends and/or claims of any kind whatsoever arising out of Grantor’s right, title and interest in and to the Mortgaged Property (including damage, secured, unsecured, lien, priority and administration claims); together with the right to take any action or file any papers or process with any governmental or quasi-governmental authority or in any court of competent jurisdiction, which action or filing may, in the opinion of Mortgagee, be necessary to preserve, protect, or enforce such rights, dividends or claims, including the filing of any proof of claim in any bankruptcy or insolvency proceeding under any state, federal or other laws and any rights, claims or awards accruing to or to be paid to Grantor in its capacity as landlord under any Grantor Sublease or as lessee under the Lease;

(j) TOGETHER WITH: subject to the rights of Grantor under the Loan Documents, all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Grantor and relating to the Mortgaged Property and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property into cash or liquidated claims, including proceeds of hazard and title insurance and all awards and compensation (including interest thereon) heretofore and hereafter made to the present and all subsequent owners of the Leasehold Estate or the Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Leasehold Estate or the Mortgaged Property or any easement or other interest therein, including awards for any change of grade of streets, severance damages, moving expenses, and awards for inverse condemnation; and



(k) TOGETHER WITH: all right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and additional interests and appurtenances to, any of the foregoing hereafter acquired by, or released to, Grantor or constructed, assembled or placed by Grantor on the Mortgaged Property and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assemblage, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, which shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.

[End of Granting Clauses]

The security for such indebtedness shall not be reduced by any prepayment or repayment thereof so long as any portion of such indebtedness shall remain unpaid and that portion of such indebtedness last remaining unpaid shall be deemed secured hereby.

Notwithstanding anything to the contrary herein contained, this Mortgage shall be deemed to be and shall be enforceable as a mortgage and a leasehold mortgage, assignment, assignment of rents and financing statement.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and its respective successors and assigns, forever.

## ARTICLE I

### Certain Definitions

The following terms shall have the following meanings, unless the context of this Mortgage requires otherwise:

- (a) “Action” has the meaning provided in Section 8.10.
- (b) “Affected Property” has the meaning provided in Section 2.12(c).
- (c) “Bankruptcy Code” means the United States Bankruptcy Code of 1978, as amended.
- (d) “Bankruptcy Law” means any bankruptcy, insolvency, reorganization, moratorium or similar law.
- (e) “Books and Records” means, to the extent transferable by Grantor, all books, records, ledgers, files, information and data which is in the possession of Grantor or its agents, representatives or employees relating to the ownership or operation of the Mortgaged Property.
- (f) “Business Day” means any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized to close.



- (g) “Collateral” has the meaning provided in Section 10.1.
- (h) “Condemnation Proceeds” has the meaning provided in Section 2.05.
- (i) “Consumables” means all food and beverage items and all maintenance and housekeeping supplies and inventory, or supplies of any kind, which are used or held in reserve storage for future use in connection with the maintenance and operation of the Mortgaged Property excluding, however, Miscellaneous Assets.
- (j) “Contested Impositions” has the meaning provided in Section 2.10.
- (k) “Environmental Indemnification Agreement” means that certain Environmental Indemnification Agreement dated as of the date hereof made by Borrower to Agent.
- (l) “Environmental Law” means all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any judicial or administrative interpretation thereof (including, without limitation, any judicial or administrative order, consent, stipulation, decree or judgment), or any agreement with any Governmental Authority, relating to the regulation and protection of the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include but are not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) (“CERCLA”); the Hazardous Material Transportation Act, as amended (49 U.S.C. § 180 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 691 et seq.) (“RCRA”); the Toxic Substance Control Act, as amended (42 U.S.C. § 7401 et seq.); the Clean Air Act, as amended (42 U.S.C. § 740 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.); and the Safe Drinking Water Act, as amended (42 U.S.C. § 300 et seq.), and their state and local counterparts or equivalents, all as amended from time to time.
- (m) “Environmental Liabilities and Costs” means all liabilities, obligations, losses, actual damages, punitive, consequential and treble damages (but only to the extent asserted by third parties other than any Indemnitee), costs and expenses (including, without limitation, all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties and sanctions, whether based on or in contract, tort, implied or express warranty, strict liability or criminal or civil statute (including, without limitation, any of the foregoing arising under any Environmental Law, Permit, or order or agreement with any Governmental Authority or other Person), and which arise from a violation of an Environmental Law or a Release or threatened Release.
- (n) “Environmental Lien” means any lien in favor of the Governmental Authority for Environmental Liabilities and Costs.



(o) “Environmental Report” means that certain Phase I Environmental Site Assessment dated March 12, 2002, prepared by Gallet & Associates, Inc., a true and complete copy of which has been delivered to Mortgagee.

(p) “Equipment” has the meaning provided in the Granting Clauses.

(q) “Event of Default” means any of the events or circumstances described as such in Article VI hereof.

(r) “Fixtures” has the meaning provided in the Granting Clauses.

(s) “Governmental Authorities” means any federal, state, county, municipal and local governments and any departments, commissions, boards, bureaus, offices and agencies thereof, in any such case within the United States, and any other entity within the United States exercising executive, legislative, judicial, regulatory or administrative functions in connection therewith.

(t) “Grantor” means the Grantor herein named and its successors and permitted assigns.

(u) “Grantor Subleases” has the meaning provided in the Granting Clauses.

(v) “Hazardous Materials” means materials, substances, pollutants, contaminants or wastes defined as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous air pollutants” or “petroleum products” under any Environmental Law or any substance regulated or forming the basis of liability under Environmental Law, including, without limitation, asbestos and asbestos-containing materials, radon, polychlorinated biphenyls, radioactive materials, petroleum/petroleum products and flammable explosives, as well as any other hazardous or toxic material, substance, pollutant, contaminant or waste.

(w) “Improvements” has the meaning provided in the Granting Clauses.

(x) “Impositions” means all duties, taxes, assessments, dues, charges, fees, excises, levies, license and permit fees, impositions, water rates, sewer rents and other charges (including vault charges and license fees for the use of vaults, chutes and similar areas adjoining any of the Mortgaged Property and all assessments for public improvements or benefit), ordinary or extraordinary, whether foreseen or unforeseen, of any kind whatsoever, (i) now or hereafter levied or assessed or imposed against or upon or in respect of the Mortgaged Property, or (ii) which now is or may be levied or assessed against the income of Grantor by virtue of any present or future Legal Requirement, as well as all income taxes, assessments and other governmental charges levied and imposed by any Governmental Authority upon or against Grantor or in respect of the Mortgaged Property or any part thereof, to the extent the same is in lieu of or in substitution for the items described in the preceding clause (i). In no event, however, shall “Impositions” include any taxes imposed on the net income or gross receipts of, or any franchise taxes of, Mortgagee or any Lender, except as provided in the Loan Agreement.



(y) “Indemnatee(s)” means Mortgagee, the Banks and their respective affiliates, and the directors, officers, employees, agents, attorneys, consultants and advisors of or to any of the foregoing.

(z) “Insurance Proceeds” has the meaning provided in Section 2.05.

(aa) “Involuntary Rate” means the Post-Default Rate, as defined in the Credit Agreement.

(bb) “Landlord” means AIG Baker East Villiage, L.L.C., its successors and assigns.

(cc) “Lease” has the meaning provided in the Granting Clauses.

(dd) “Leased Land” has the meaning provided in the Granting Clauses.

(ee) “Legal Requirement(s)” means all present and future laws, ordinances, orders, judgments, rules, regulations and requirements of any Governmental Authority or arbitrator, which may be applicable to Grantor or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property, including, without limitation, any Environmental Law, the Employee Retirement Income Security Act of 1974 (as amended from time to time), the Americans With Disabilities Act (42 U.S.C. § 12101 et seq.) (as amended from time to time), zoning and subdivision laws and ordinances and any building codes, restrictive covenants, and development orders which at any time are or may be applicable to the Mortgaged Property or any part thereof.

(ff) “Lien” means, with respect to any property or asset of any Person (or any income or profits therefrom), any mortgage, lien, pledge, hypothecation, priority or other security interest of any kind thereupon or in respect thereof.

(gg) “Loan Documents” has the meaning provided in the Recitals.

(hh) “Miscellaneous Assets” means, to the extent transferable by Grantor, all concessions, architectural plans and drawings, surveys, construction, architectural or engineering plans and agreements, copyrights, assignable warranties and guaranties, software, any operating procedure and instruction manuals, customer lists, goodwill, and all other items of intangible personal property relating to the ownership, use, occupancy or operation of the Mortgaged Property (including, without limitation, telephone numbers, listings and directories; receivables, refunds, rebates or other claims, utility and similar deposits), but excluding Grantor Subleases and Books and Records.

(ii) “Mortgagee” means the Mortgagee herein named or at any given time the holder or holders of this Mortgage, and its or their respective heirs, executors, administrators, successors and permitted assigns.



- (jj) “Mortgaged Property” has the meaning provided in the Recitals.
- (kk) “Non-material Amendment” has the meaning provided in Section 2.09(g).
- (ll) “Non-material Sublease Amendment” has the meaning provided in Section 3.01(j).
- (mm) “Notice” has the meaning provided in Section 8.03.
- (nn) “Obligations” has the meaning provided in the Granting Clauses.
- (oo) “Permit” means any permit, approval, authorization, license, consent, variance or permission required from or by a Governmental Authority for the use, operation, maintenance or restoration of the Mortgaged Property or any part thereof in accordance with all Legal Requirements, including, without limitation, a certificate of occupancy.
- (pp) “Permitted Liens” means (i) those Liens, encumbrances and other matters affecting and relating to title to the Mortgaged Property which are listed as exceptions to title in the Policy of Title Insurance issued by Chicago Land Title Insurance Company dated as of the date hereof; (ii) any Lien, encumbrance or other matter securing the obligations under the Loan Documents; (iii) any Lien, encumbrance or other matter which is being contested by Grantor pursuant to the terms thereof; and (iv) any utility or similar easements hereafter granted by Grantor.
- (qq) “Person” means any individual, sole proprietorship, corporation, partnership, unincorporated association, trust, mutual company, joint stock company, estate, union, employee organization or government (or any agency or political subdivision thereof).
- (rr) “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment or into or out of any property, including, without limitation, the movement of Hazardous Materials through or in the air, soil, surface water, ground water or property.
- (ss) “Remedial Action” means any actions required by any Environmental Law to (a) clean up, remove, treat or in any other way address Hazardous Materials in the indoor or outdoor environment, (b) prevent the Release or threatened Release or minimize the further Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.
- (tt) “Termination Date” means February 13, 2008.
- (uu) “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of Alabama.
- (vv) “Work” has the meaning provided in Section 2.05.



## ARTICLE II

### Representations, Warranties and Covenants of Grantor

SECTION 2.01      Payment of Obligations. Grantor shall punctually pay when due, and timely perform, the Obligations.

SECTION 2.02      Legal Status, Authority and Other Matters.

(a)      Legal Status. Grantor represents and warrants that it is a limited liability company duly organized and existing in good standing under the laws of the state of Delaware and has the full power and authority to own the Mortgaged Property and carry out its business in the State of Alabama.

(b)      No Actions Pending. There is no action, suit or proceeding, judicial, administrative or otherwise, pending or, to the best of Grantor's knowledge, threatened or contemplated against or affecting Grantor or the Mortgaged Property.

SECTION 2.03      Warranty of Title. Grantor warrants that it has good and marketable title to the Mortgaged Property, free and clear of all liens, charges and encumbrances of every kind and character, subject only to the Permitted Liens; has and will continue to have full power and lawful authority to encumber and convey the Mortgaged Property as provided herein; owns all other Mortgaged Property free and clear of all liens, charges and encumbrances of every kind and character, subject only to Permitted Liens; this mortgage is and will continue to remain a valid and enforceable first mortgage lien on and security interest in the Mortgaged Property, subject only to Permitted Liens. Grantor further covenants that it will preserve such title and will forever warrant and defend the title to the Mortgaged Property unto Mortgagee against all lawful claims whatsoever and will forever warrant and defend the validity, enforceability and priority of the lien of this Mortgage against the claims of all persons and parties whomsoever.

Grantor covenants that it will, at Grantor's sole cost and expense and at the request of Mortgagee, (i) promptly correct any defect or error which may be discovered in the Loan Documents, (ii) promptly do, execute, acknowledge and deliver, and record and re-record, file and re-file and register and re-register, any and all such instruments as Mortgagee may require from time to time in order to carry out more effectively the purposes of this Mortgage and (iii) will promptly furnish Mortgagee with evidence satisfactory to Mortgagee of every such recording, filing or registration.

SECTION 2.04      Operation and maintenance.

(a)      Repair and Maintenance. Grantor will operate and maintain the Mortgaged Property in good order, repair and operating condition, will promptly make all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, or otherwise necessary to insure that the same as part of the security under this Mortgage shall not in any way be diminished or impaired, and will not cause or allow the Mortgaged Property to be



misused, wasted or to deteriorate. No part of the Improvements shall be removed, demolished or structurally or materially altered nor shall any new building, structure, facility or other improvement be constructed on the Leased Land without Mortgagee's prior written consent in the case of each such removal, demolition, alteration or construction.

(b) Replacement of Equipment. Grantor will keep the Mortgaged Property fully equipped and will replace all worn out or obsolete Equipment with fixtures or personal property comparable thereto when new and will not, without Mortgagee's consent, remove any Equipment or other personal property from the Leased Land or the Improvements unless Grantor replaces the same (in each case) with an article of equal suitability and value when new, owned by Grantor free and clear of any lien or security interest (other than Permitted Liens).

(c) Zoning; Title Matters. Grantor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Mortgaged Property, seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (ii) modify or amend any of the Permitted Liens, (iii) impose any restrictive covenants or encumbrances upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality or (iv) permit or suffer the Mortgaged Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

(d) Status of the Mortgaged Property. (i) The Mortgaged Property is not located in an area identified by the Secretary of Housing and Urban Development or a successor thereto as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law; or if the Mortgaged Property is located in such an area, Grantor will obtain and maintain insurance against damage or loss by flood as provided in Section 2.05(a)(D) below; (ii) the Mortgaged Property is served by all utilities required for the current use thereof; (iii) all streets necessary to serve the Leased Land and the Improvements for the current use thereof have been completed and are serviceable and have been dedicated or accepted by the appropriate governmental entities and Grantor has access from public roads to the Leased Land and the Improvements; and (iv) there is no condemnation or similar proceeding pending or threatened affecting any part of the Mortgaged Property that might affect the Mortgaged Property.

(e) Use. Grantor will use the Mortgaged Property for substantially the same use as in effect as of the date hereof and for no other use unless consented to in writing by Mortgagee.

SECTION 2.05 Insurance; Restoration. (a) Subject to Section 2.05(b), below, (i) Grantor shall procure and maintain continuously in effect with respect to the Mortgaged Property policies of insurance against such risks and in such amounts as are customary for a prudent owner of property comparable to that comprising the Mortgaged Property. Without limiting the generality of the foregoing provision, Grantor shall specifically maintain the following insurance coverages:



(A) "all-risk property and casualty" insurance, including fire, windstorm, sprinkler leakage and other risks covered by extended coverage endorsements on the Improvements and contents in an amount equal to the full insurable value thereof (which, unless Mortgagee shall otherwise agree in writing, shall mean the full repair and replacement value thereof, without reduction for depreciation or co-insurance);

(B) all risk business interruption insurance, including fire, windstorm, sprinkler leakage and other risks covered by extended coverage endorsements, in a commercially reasonable amount which shall be approved by Mortgagee (such approval not to be unreasonably conditioned or withheld) and shall be adequate to cover continuing expenses during any period of repairs or restoration;

(C) comprehensive general liability insurance in respect of the operation of the Improvements, issued on an occurrence basis, including coverage for personal injury (including death), automobile liability (including owned, non-owned and leased automobiles), property damage, and contractual liability, with limits of liability approved by Mortgagee, which limits shall in no event be less than Ten Million Dollars (\$10,000,000.00) for bodily injury per person per occurrence and not less than Five Million Dollars (\$5,000,000.00) for property damage liability per occurrence;

(D) if the Mortgaged Property is located in an area identified by the Secretary of Housing and Urban Development (or by any other official having jurisdiction) as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 (as the foregoing may be modified or amended) and any successor acts thereto, flood insurance in an amount at least equal to the outstanding amount of the Obligations or the maximum limit of coverage available under said Act in respect of the Improvements, whichever is less;

(E) during the course of any construction or repair of the Improvements, workers' compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Grantor engaged on or with respect to the Mortgaged Property in such amounts as are reasonably satisfactory to Mortgagee, or, if such limits are established by law, in such amounts; and

(F) during the course of any construction or repair of the Improvements, builder's completed value risk insurance against "all risks of physical loss", including collapse and transit coverage, in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished; and said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement.

Such insurance policies shall provide for deductible amounts reasonably agreeable to Mortgagee. In addition, Mortgagee may require Grantor to carry such other insurance on the Mortgaged Property in such amounts as may from time to time reasonably be requested by institutional lenders, against insurable casualties (including, without limitation, earthquake and war), all in amounts adequate to cover repair and replacement expenses, and which at the time are commonly insured against in the case of Mortgaged Property similarly situated, due regard being given to the site, the design, the construction, the location and occupancy of, and the



utilities servicing, the Improvements. In addition, from time to time, upon the occurrence of any change in the use, operation or value of the Mortgaged Property or in the availability of insurance in the area in which the Mortgaged Property is located, Grantor shall, within thirty (30) days after demand by Mortgagee, obtain such additional amounts and such other kinds of insurance as Mortgagee may reasonably require. Grantor shall not obtain or continue to maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Mortgagee in all respects.

(ii) All liability insurance policies required pursuant hereto shall name Mortgagee as an additional insured, as its interest may appear. All "casualty" insurance policies required pursuant hereto shall provide for loss payable to the Mortgagee, without contribution, under a standard New York mortgagee clause. Any insurance required hereunder may be maintained by Grantor under a blanket policy covering the Land, Improvements and any other property owned by Grantor or its affiliates. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates, and be in such form and issued by such insurance companies qualified and licensed to do business in the state in which the Mortgaged Property is located, as may be reasonably acceptable to Mortgagee. All insurance companies issuing insurance for the Mortgaged Property shall have a Best's rating of "A-12" or better.

(iii) Each policy shall provide that such policy may not be cancelled or materially changed except upon not less than twenty (20) days' prior written notice to Mortgagee, and that no act or thing done by Grantor shall invalidate the policy as against Mortgagee. In the event Grantor fails to maintain insurance in compliance herewith, or, in the event that a notice of non-renewal, cancellation or material change is given to Mortgagee, as aforesaid, and if within five (5) days after the delivery of such notice Grantor shall fail to deliver to Mortgagee evidence of the purchase of a substitute policy of insurance or a renewal of the existing policy of insurance satisfying the requirements of this Section 2.05, Mortgagee may, but shall not be obligated to, obtain such insurance and pay the premium therefor and Grantor shall, on demand, reimburse Mortgagee for all sums, advances and reasonable expenses incurred in connection therewith, together with interest thereon at the Involuntary Rate from the date that such amounts are advanced until the same are paid to Mortgagee.

(iv) Grantor shall, within thirty (30) days after the execution and delivery of this Mortgage, deliver to Mortgagee copies of all original policies of insurance, certified to Mortgagee by the insurance company or authorized agent as being true copies, together with endorsements thereto, evidencing the insurance required to be maintained hereunder (provided, however, that certificates therefor shall be delivered to Mortgagee on or prior to the execution of this Mortgage). Grantor shall hereafter deliver to Mortgagee all renewal or replacement policies or certificates thereof, which renewals or replacements shall be delivered not less than five (5) days prior to the expiration date of the policy or policies to be renewed or replaced. Grantor shall timely pay all premiums due and payable with respect to such policies, or renewals or replacements thereof, and upon Mortgagee's request provide evidence that such premiums have been paid in full. Mortgagee shall be entitled to dispose of the proceeds of insurance as hereinafter provided.



(v) In the event of any damage to or destruction of the Mortgaged Property, the Grantor shall (A) give prompt written notice thereof to Mortgagee upon Grantor's becoming aware thereof, and such notice shall set forth the Grantor's good faith estimate of (I) the cost of repairing or restoring such damage or destruction, or, if the Grantor cannot reasonably estimate the anticipated cost of such restoration, Grantor shall nonetheless give Mortgagee prompt notice of the occurrence of such damage or destruction, and will diligently proceed to obtain estimates to enable Grantor to quantify the anticipated cost of such restoration, whereupon Grantor shall promptly notify Mortgagee of such good faith estimate and (II) a good faith estimate of the percentage of the Mortgaged Property so damaged or destroyed (the "Damage Percentage"), together with reasonable detail as to the calculation thereof, and (B) subject to the terms hereinafter set forth, shall promptly commence and diligently prosecute to completion the repair, restoration and rebuilding of the Mortgaged Property (such repair, restoration and rebuilding are sometimes hereinafter collectively referred to as the "Work") so damaged or destroyed in full compliance with all applicable Legal Requirements and with the provisions of paragraph (vi) below, and free and clear from any and all liens and claims. Grantor shall not adjust, compromise or settle any claim for insurance proceeds ("Insurance Proceeds") without the prior written consent of Mortgagee; provided, however, that, without limiting or affecting Mortgagee's rights pursuant to paragraph (vi) below, and except after the occurrence and during the continuance of an Event of Default hereunder, Mortgagee's consent shall not be required with respect to the adjustment, compromising or settlement of any claim for Insurance Proceeds in an amount less than \$50,000.00. In the event of any such casualty, Mortgagee shall have the option in its sole discretion to require Grantor to prepay a portion of the Obligations (in the order set forth in Section 5.01 of the Security Agreement) or to allow such Insurance Proceeds to be used for the Work pursuant to the terms and subject to the conditions of paragraph (vi) below. In the event that Mortgagee elects to allow Insurance Proceeds to be used for the Work, any excess Insurance Proceeds remaining after completion of such Work shall be deposited into an account controlled by Mortgagee, in each case to be applied to the payment of the Obligations (in the order set forth in Section 5.01 of the Security Agreement). All Insurance Proceeds paid with respect to any casualty affecting all or any portion of the Mortgaged Property are hereby assigned and shall be paid directly to Mortgagee pursuant to the terms and conditions hereof. Grantor shall cooperate with Mortgagee in obtaining for Mortgagee the benefits of any Insurance Proceeds lawfully or equitably payable in connection with the Mortgaged Property. If any Insurance Proceeds are received by Grantor, such Insurance Proceeds shall be received in trust for Mortgagee, shall be segregated from other funds of the Grantor, and shall be forthwith paid into an account controlled by Mortgagee prior thereto, or paid to Mortgagee to be held in a segregated account, in each case to be applied or disbursed in accordance with the foregoing.

(vi) Rebuilding. If Mortgagee elects, to allow the Insurance Proceeds to be used for the Work in accordance with (v) above, then such Insurance Proceeds shall be held by Mortgagee and shall be paid out from time to time to Grantor as the Work progresses (less any reasonable, out-of-pocket, cost to Mortgagee or Grantor of recovering and paying out such Insurance Proceeds, including, without limitation, reasonable attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:

(A) Insurance Proceeds shall only be disbursed to Grantor only upon delivery to Mortgagee of the following: (1) evidence reasonably satisfactory to Mortgagee of the estimated cost of Work, (2) funds (or assurances reasonably satisfactory to Mortgagee that such



funds are available) sufficient in addition to the proceeds of insurance to complete and fully pay for Work, (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve and (4) an Officer's Certificate stating that no Event of Default exists hereunder or under any Loan Document. Mortgagee shall have the right to inspect the Work at all reasonable times upon reasonable prior notice and may condition any disbursement of Insurance Proceeds upon the completion, in accordance with the plans and specification therefor, of any portion of the Work for which payment or reimbursement is being requested. No payment made prior to the final completion of Work shall exceed ninety percent (90%) of the value of the Work performed from time to time, as such value shall be determined by Mortgagee in its reasonable judgment. Any retained amounts shall not be disbursed to Grantor unless and until Mortgagee shall have received copies of any and all final certificates of occupancy or other certificates, licenses and permits required for the ownership, occupancy and operation of the Mortgaged Property in accordance with all Legal Requirements. Insurance Proceeds held by Mortgagee in accordance with this paragraph (e) shall be held in an interest bearing account if (x) such an account is available at the institution at which Mortgagee holds such Insurance Proceeds, and (y) Mortgagee determines, in its reasonable judgment, that holding the Insurance Proceeds in such an account is practical under the then existing circumstances. Notwithstanding the above, if an Event of Default occurs prior to full disbursement of the Insurance Proceeds and any other funds held by Mortgagee to be disbursed to Grantor, any undisbursed portion of the Insurance Proceeds or other such funds may, at Mortgagee's option, be applied against the indebtedness, in such order and manner as Mortgagee shall select.

(B) Prior to commencement of the Work, and from time to time thereafter if so requested by Mortgagee, Grantor shall deposit with Mortgagee an amount of funds in excess of the Insurance Proceeds (or shall enter into irrevocable commitments reasonably satisfactory to Mortgagee to provide such funds) which together with such Insurance Proceeds shall at all times be at least sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of Work, free and clear of all liens or claims for lien. Funds so deposited by Grantor shall be disbursed prior to the disbursement of any Insurance Proceeds.

(C) If the cost of the Work is reasonably estimated by Mortgagee to be equal to or exceed One Hundred Thousand (\$100,000) Dollars such Work shall be performed under the supervision of an engineer or an architect reasonably acceptable to Mortgagee, and Mortgagee shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall require that the Work be done in a first class workmanlike manner at least equivalent to the quality of the original work in the Improvements, so that, upon completion thereof, the Mortgaged Property shall be at least equal in value and general utility to the Mortgaged Property prior to the damage or destruction.

(D) Upon completion of the Work and payment in full therefor, Mortgagee may apply any such Insurance Proceeds it then or thereafter holds to the payment of the indebtedness in accordance with the provisions of the Note; provided, however, that Mortgagee shall be entitled to apply at any time all or any portion of Insurance Proceeds it then holds to the extent necessary to cure any Event of Default under this Mortgage, the Note or any other Loan Documents.



(vii) Settlement of Claims. Except as set forth in paragraph (d), Mortgagee and Grantor shall settle any insurance claims jointly. Grantor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to obtain, collect and receive any Insurance Proceeds paid with respect to any portion of the Mortgaged Property or the insurance policies required to be maintained hereunder, and to endorse any checks, drafts or other instruments representing any Insurance Proceeds whether payable by reason of loss thereunder or otherwise.

(viii) Condemnation. Grantor shall notify Mortgagee promptly of the commencement or threat of any taking of the Mortgaged Property or any portion thereof promptly after Grantor's becoming aware thereof. Mortgagee is hereby irrevocably appointed as Grantor'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 Grantor's reasonable approval (except no such approval shall be required after the occurrence and during the continuance of an Event of Default). Grantor shall execute and deliver to Mortgagee any and all instruments reasonably required in connection with any such proceeding promptly after request therefor by Mortgagee. Grantor shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Mortgagee. All proceeds of any condemnation, or purchase in lieu thereof, of the Mortgaged Property or any portion thereof (any such proceeds, "Condemnation Proceeds") are hereby assigned to and shall be paid to Mortgagee, and Grantor hereby authorizes Mortgagee to compromise, settle, collect and receive such Condemnation Proceeds, and to give proper receipts and acquittances therefor. Upon a Taking, Grantor shall give prompt written notice thereof to Mortgagee, which notice shall set forth Grantor's good faith estimate of the percentage of the Mortgaged Property so taken (the "Taking Percentage"), together with reasonable detail as to the calculation thereof.

Mortgagee shall have the option in its sole discretion to apply such Condemnation Proceeds (less any cost to Mortgagee or Grantor of recovering and paying out such Condemnation Proceeds, including, without limitation, reasonable attorneys' fees and costs) to require Grantor to prepay a portion of the Obligations in the order set forth in Section 5.01 of the Security Agreement or to allow such Condemnation Proceeds to be used toward the restoration or rebuilding of the Mortgaged Property to a usable whole (the "Restoration Work").

In the event Mortgagee elects to make Condemnation Proceeds available for the Restoration Work, Grantor shall, promptly commence and diligently prosecute to completion such Restoration Work, and such Condemnation Proceeds shall be disbursed in the manner and subject to the conditions set forth in paragraph (d) above as if such condemnation were a casualty. Any excess Condemnation Proceeds remaining after completion of the Restoration Work shall be applied to the repayment of the Obligations. If the Condemnation Proceeds are used to reduce the Obligations, they shall be applied in the order set forth in Section 5.01 of the Security Agreement. Grantor shall promptly execute and deliver all instruments requested by Mortgagee for the purpose of confirming the assignment of the Condemnation Proceeds to Mortgagee.

(ix) Security Interest. Notwithstanding anything to the contrary in any of the Loan Documents, Grantor grants to Mortgagee a security interest in all Insurance Proceeds and Condemnation Proceeds received by Grantor, regardless of whether such proceeds resulted from insurance policies required by the Loan Documents.

(b) Notwithstanding the provisions of subsection (a) of this Section 2.05, for so long as the Lease is in effect and no "Event of Default" (as defined therein) exists thereunder, Grantor



shall not be required to maintain the insurance and adhere to the casualty and condemnation provisions set forth in such subsection (a) (except as specifically set forth below), but in lieu of such provisions:

(i) Grantor shall at all times promptly and diligently comply with and/or enforce (as applicable) all of the insurance, condemnation, and casualty provisions set forth in the Lease; (ii) if Landlord under the Lease fails to comply with any insurance requirements set forth therein, Grantor shall promptly and diligently procure and maintain such required insurance; (iii) Grantor shall ensure that all liability insurance policies shall name Mortgagee as an additional insured, as its interest may appear; (iv) Grantor shall ensure that all "casualty" insurance policies shall provide for loss payable to the Mortgagee, without contribution, under a standard New York mortgagee clause; (v) in the event of any damage to or destruction of the Mortgaged Property, Grantor shall give prompt written notice thereof to Mortgagee immediately upon Grantor's becoming aware thereof, and such notice shall set forth the Grantor's good faith estimate of the cost of repairing or restoring such damage or destruction; (vi) Grantor shall notify Mortgagee promptly of the commencement or threat of any taking of the Mortgaged Property or any portion thereof promptly after Grantor's becoming aware thereof; (vii) if Grantor fails to maintain insurance in accordance with the requirements of the Lease, or if any required insurance policies are cancelled or materially changed, Mortgagee may, but shall not be obligated to, obtain insurance and pay the premium therefor and Grantor shall, on demand, reimburse Mortgagee for all expenses incurred in connection therewith, together with interest thereon at the Involuntary Rate from the date that such amounts are advanced until the same are paid to Mortgagee; (viii) Grantor shall deliver to Mortgagee all insurance certificates, documents, and notices as required in paragraph 2.05(a)(iv) and (v); and (ix) to the extent not prohibited by the Lease, (A) all Insurance Proceeds with respect to the Mortgaged Property shall be adjusted, compromised, settled, disbursed, paid, assigned, and used according to the requirements and procedures of paragraphs 2.05(a)(v)(B), 2.05(a)(vi) and 2.05(a)(vii) above; (B) Grantor shall adhere to the requirements and procedures governing condemnation in paragraph 2.05(a)(viii); and (C) notwithstanding anything to the contrary in any of the Loan Documents, Grantor grants to Mortgagee a security interest in all Insurance Proceeds and Condemnation Proceeds received by Grantor, regardless of whether such proceeds resulted from insurance policies required by the Loan Documents.

#### SECTION 2.06      Liens and Liabilities.

(a) Discharge of Liens. Grantor will pay, bond or otherwise discharge, from time to time when the same shall become due, 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.

(b) Creation of Liens. Grantor will not, without Mortgagee's consent, create, place or permit to be created or placed or allow to remain, and shall discharge and release within (10) days of the placing thereof, any deed of trust, mortgage, trust deed, voluntary or involuntary lien, security interest or other encumbrance against or covering the Mortgaged Property, other than Permitted Liens, whether or not subordinate hereto.

(c) No Consent. Nothing in this Mortgage shall be deemed or construed in any way as constituting the consent or request by Mortgagee, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or



the furnishing of any material for any improvement, construction, alteration or repair of the Mortgaged Property. Grantor further agrees that Mortgagee does not stand in any fiduciary relationship to Grantor.

**SECTION 2.07**      **Impositions and Other Charges.**

(a)      **Impositions.** Grantor will promptly pay when due and before any penalty or interest may be added thereto, all Impositions which may become a lien upon the Mortgaged Property or arising with respect to the occupancy, use or possession thereof. Grantor will also pay any penalty, interest or cost for non-payment of Impositions which may become due and payable.

(b)      **Receipts.** Unless Grantor is making monthly deposits pursuant to Section 2.08, Grantor will furnish to Mortgagee upon Mortgagee's request, proof of payment at the time same is made, and thereafter, upon receipt, validated receipts showing payment in full of all Impositions.

(c)      **Increased Costs.** In the event of the enactment after the date hereof of any law in the state in which the Mortgaged Property is located or any other governmental entity deducting from the value of the Mortgaged Property for the purpose of taxation any lien or security interest thereon, or changing in any way the laws for the taxation of mortgages, deeds of trust or other liens or debts secured thereby, or the manner of collection of such taxes, so as to affect this Mortgage, the Obligations, Mortgagee or the holders of the Obligations, then, and in such event, Grantor shall, on demand, pay to Mortgagee or such holder, or reimburse Mortgagee or such holder for payment of, all taxes, assessments, charges or liens for which Mortgagee or such holder is or may be liable as a result thereof, provided that if any such payment or reimbursement shall be unlawful or would constitute usury or render the Obligations wholly or partially usurious under applicable law, then Mortgagee may, at its option, declare the Obligations immediately due and payable or require Grantor to pay or reimburse Mortgagee for payment of the lawful and non-usurious portion thereof.

**SECTION 2.08**      **Tax and Insurance Deposits.**

(a)      **Amount of Deposits.** Upon an Event of Default, Mortgagee may require that each month Grantor deposit with Mortgagee or any service or financial institution designated for such purposes by Mortgagee (whichever of the foregoing is applicable being the "Depository"), one-twelfth (1/12) of the annual Impositions and premiums for insurance required under Section 2.05, and Grantor shall accordingly make such deposits. In addition, if required by Mortgagee, Grantor shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make payments of Impositions and premiums at least thirty (30) days before such payments are due. If the amount of any such payment is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Mortgagee's estimate thereof, and when such amount is fixed for the then-current year, Grantor shall promptly deposit any deficiency with the Depository.



(b) Use of Deposits. All funds so deposited, until so applied, shall constitute additional security for the Obligations, shall be held by the Depository without interest (except to the extent required under applicable law), may be commingled with other funds of the Depository and, provided that no Event of Default (as defined in Section 6.01) shall have occurred and be continuing hereunder, shall be applied in payment of the aforesaid amounts prior to their becoming delinquent. If an Event of Default shall have occurred and be continuing hereunder, or if the obligations shall be accelerated as herein provided, all funds so deposited may, at Mortgagee's option, be applied to the Obligations in the order determined by Mortgagee. If such deposits are being made with the Depository, at least fifteen (15) days before the date on which such charges first become payable, Grantor shall furnish the Depository with bills for the charges for which such deposits are required to be made hereunder and/or such other documents necessary for the payment of the same.

SECTION 2.09      Covenants Concerning the Lease. Grantor hereby represents, warrants, covenants and agrees that:

(a) The Lease is now a valid and subsisting lease and is in full force and effect in accordance with the terms thereof and has not been modified except as herein set forth; and all of the rental, additional rental and other charges payable under the Lease prior to the execution hereof have been paid, and all of the terms, conditions and agreements contained in the Lease have been performed, and no default exists under the Lease. This Mortgage is lawfully executed and delivered in conformity with the Lease and is and will be kept a valid lien on the interests of Grantor therein.

(b) Grantor will pay when due and payable the rentals, additional rentals and other charges mentioned in and payable under the Lease.

(c) Grantor will perform and observe all of the terms, covenants and conditions required to be performed and observed by Grantor as lessee under the Lease and will do all things necessary to preserve and to keep unimpaired its rights under the Lease. Grantor will enforce the obligations of the lessor under the Lease, to the end that Grantor may enjoy all of the rights granted to it as lessee under the Lease.

(d) Grantor will (i) promptly notify Mortgagee of the receipt by Grantor of any notice from the lessor under the Lease of default by Grantor in the performance or observance of any of the terms, covenants or conditions on the part of Grantor to be performed or observed under the Lease, (ii) promptly notify the Mortgagee of the receipt by Grantor of any notice from any lessor under the Lease of termination of the Lease pursuant to the provisions thereof; and (iii) promptly cause a copy of each such notice received by Grantor from the lessor under the Lease to be delivered to Mortgagee.

(e) Grantor will promptly notify Mortgagee of any request made by either party to the Lease for arbitration proceedings pursuant to the Lease and of the institution of any arbitration proceedings, and will promptly deliver to Mortgagee a copy of the determination of the arbitrators in each such arbitration proceeding.



(f) Grantor will not, without the prior consent of Mortgagee, (1) terminate, cancel, surrender, or suffer or permit any termination, cancellation or surrender of, the Lease, (2) fail or refuse to take timely and appropriate action to renew the Lease pursuant to the provisions thereof, (3) consent or refuse to consent to any action taken or to be taken by the lessor or anyone else under the Lease, the result of which would diminish or impair the security of this Mortgage, (4) further encumber the Mortgaged Property, or (5) subordinate or consent to the subordination of the Lease to any mortgage on the lessor's interest in the Mortgaged Property demised by the Lease.

(g) Grantor will not, without the prior consent of Mortgagee, which consent will not be unreasonably withheld or delayed, modify, supplement or amend, or suffer or permit any modification, supplementation or amendment of, the Lease, which in any way (i) increases or decreases the term; (ii) increases or decreases the monetary obligations thereunder; (iii) materially increases or decreases Landlord's or Grantor's non-monetary obligations; (iv) materially decreases Grantor's rights under the Lease; or (v) constitutes a waiver of any of Grantor's rights under the Lease. Notwithstanding the foregoing, Mortgagee's consent shall not be required with respect to a modification, supplementation or amendment of the Lease that does not meet the criteria set forth in subclauses (i) through (v) of this paragraph (g) (a "Non-material Amendment"). Grantor shall, within ten (10) Business Days of entering into any such Non-Material Amendment, send notice of such Non-Material Amendment to Mortgagee together with copies of all documents executed in connection therewith

(h) Supplementing the provisions of paragraph (f) of this Section 2.09, if the Lease is rejected or disaffirmed by the lessor thereunder (or by any receiver, trustee, custodian or other party who succeeds to the rights of such lessor) pursuant to any Bankruptcy Law, Grantor covenants that it will not elect to treat such Lease as terminated under 11 U.S.C. § 365(h) or any similar or successor law or right, and hereby assigns to Mortgagee the sole and exclusive right to make or refrain from making any such election, and Grantor agrees that any such election, if made by Grantor, shall be void and of no force or effect.

(i) If the lessor under the Lease (or any receiver, trustee, custodian or other party who succeeds to the rights of such lessor) rejects or disaffirms the Lease pursuant to any Bankruptcy Law and Mortgagee elects to have Grantor remain in possession under any legal right Grantor may have to occupy the Mortgaged Property leased pursuant to the Lease, then (A) Grantor shall remain in such possession and shall perform all acts necessary for Grantor to retain its right to remain in such possession for the unexpired term of the Lease (including all renewals thereof), whether such acts are required under the then existing terms and provisions of the Lease or otherwise, and (B) all of the terms and provisions of this Mortgage and the lien created hereby shall remain in full force and effect and shall be extended automatically to such possession, occupancy and interest of Grantor.

(j) Grantor, immediately upon obtaining knowledge of a breach by the lessor under the Lease (or by any receiver, trustee, custodian or other party who succeeds to the rights of such lessor) or any inability of such lessor (or any such receiver, trustee, custodian or other party) to perform the terms and provisions of the Lease (including by reason of a rejection or disaffirmance of the Lease pursuant to any Bankruptcy Law), will notify Mortgagee of any such breach or inability. Grantor hereby assigns to Mortgagee the proceeds of any claim that Grantor



may have against such lessor (or such receiver, trustee, custodian or other party) for any such breach or inability. Mortgagee shall have the sole right to elect either (A) to proceed against such lessor (or such receiver, trustee, custodian or other party) as if it were the named lessee thereunder, in Grantor's name or in Mortgagee's name as agent for Grantor, and Grantor agrees to cooperate with Mortgagee in such action and shall execute any and all documents required in furtherance of such action, or (B) to have Grantor proceed in Grantor's and Mortgagee's behalf in which event Mortgagee may participate in any such proceedings, and Grantor from time to time will deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, shall deliver to Mortgagee copies of all papers served in connection therewith and shall consult and cooperate with Mortgagee and its respective attorneys and agents, in carrying on the defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Grantor without Mortgagee's consent.

(k) If an event described in Section 6.01(g) of the Credit Agreement shall occur, Grantor covenants that (A) it shall not reject or disaffirm the Lease without the prior consent of Mortgagee, and (B) at the direction of Mortgagee it shall, in a timely fashion, (I) take all actions (including curing all existing defaults and providing assurance of future performance) as may be required to permit Grantor to assume any such Lease and (II) assume the Lease.

SECTION 2.10 Contest. Notwithstanding anything to the contrary contained in this Article II, Grantor shall have the right to contest in good faith and at its own expense the validity of any lien, encumbrance, charge or security referred to in Section 2.06 and any Imposition imposed upon the Mortgaged Property (a "Contest") by an appropriate legal proceeding which proceeding must operate to prevent the collection of such Impositions or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that during the pendency of any such Contest, for an amount equal or greater than One Hundred Thousand Dollars (\$100,000.00), Grantor shall provide security satisfactory to Mortgagee, assuring the discharge of Grantor's obligations that are the subject of such Contest ("Contested Impositions") and of any additional interest charge, penalty or expense arising from or incurred as a result of such Contest; and provided, further, that if at any time payment of such Contested Impositions shall become necessary to prevent (i) the delivery of a tax deed conveying the Mortgaged Property because of non-payment or (ii) the imposition of any civil or criminal penalty or liability on Mortgagee or the holders of the Obligations, Grantor shall pay the same in sufficient time to avoid the delivery of such tax deed or the imposition of any such penalty or liability.

SECTION 2.11 Compliance with Legal Requirements.

(a) Grantor shall cause the Mortgaged Property to be operated, in all material respects, in compliance with all Legal Requirements. Grantor shall notify Mortgagee promptly in the event Mortgagee becomes aware that either Grantor, the Mortgaged Property or any tenant or the operation, use and occupancy of the Mortgaged Property, is (or are) not in compliance with any Legal Requirement. Grantor, at its own expense, will promptly cure, or, if such violation is the obligation of a tenant to cure, shall use commercially reasonable efforts to cause such tenant to promptly cure, all violations of any Legal Requirement (including any applicable building code) affecting the Mortgaged Property and the use and operation thereof,



unless the same is being contested in good faith in accordance with the Loan Documents, whether or not the same exists on the date hereof or Mortgagee has been advised of the same.

(b) Grantor will procure, pay for and maintain all Permits and shall use, operate and maintain the Mortgaged Property in compliance therewith.

## SECTION 2.12 Environmental Matters.

(a) Regarding Environmental Matters. Without limiting the generality of Section 2.11 hereof, Grantor represents and covenants that (a) Grantor has not and will not use, store, treat, release, transport, dispose or handle, or permit the use, storage, treatment, release, transportation, disposal or handling by any contractor, agent, employee, tenant or third party of, any Hazardous Materials on, from, under or affecting the Mortgaged Property in violation of any Environmental Law, (b) it has no knowledge, other than as specifically disclosed in the Environmental Report, that any prior owner, tenant or third party has used, stored, treated, released, transported, disposed of or handled any Hazardous Materials on, from, under or affecting the Mortgaged Property in violation of any Environmental Law, (c) there are no wells, septic tanks or underground storage tanks on or under the Mortgaged Property, except as specifically disclosed in the Environmental Report, (d) to the best of Grantor's knowledge, except as specifically disclosed in the Environmental Report, no Hazardous Materials in violation of, or creating the basis for liability under, Environmental Law are incorporated into any Improvement and (e) Grantor shall, in all material respects, comply with, and use commercially reasonable efforts to insure compliance by all tenants with, all Environmental Laws applicable to the Mortgaged Property. To the best of Grantor's knowledge, all Permits required to be obtained under such laws have been duly issued and are in force.

(b) Notice Regarding Environmental Matters. Grantor shall promptly notify Mortgagee in writing of, and shall promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with (a) any Release in violation of, or creating the basis for liability under, Environmental Law or the illegal presence of Hazardous Materials upon the Mortgaged Property, (b) any Remedial Action instituted, pending or threatened pursuant to any Environmental Law affecting the Mortgaged Property and (c) any claims made or threatened by any third party against Grantor or the Mortgaged Property relating to or alleging damage, contribution, cost, loss or injury resulting from Hazardous Materials on, from, under or affecting the Mortgaged Property.

(c) Environmental Indemnification. Grantor agrees to defend, indemnify and hold harmless the Indemnitees from and against any and all claims, damages, liabilities, obligations, losses, penalties, actions, judgments, suits, costs, disbursements and expenses of any kind or nature (including, without limitation, reasonable fees and disbursements of counsel to any such Indemnitee) which may be imposed on, incurred by or asserted against any such Indemnitee by any Governmental Authority or other third party in connection with or arising out of any Release or use, storage, treatment, transportation, disposal or handling of any Hazardous Materials on, from, under or affecting all or any part of the Mortgaged Property (the Mortgaged Property and any surrounding areas to the extent affected by a Release from the Mortgaged Property are hereinafter collectively referred to as the "Affected Property"), including, without limitation, (1) all Environmental Liabilities and Costs incurred by the Indemnitee arising from or



connected with the Affected Property, (2) damages (whether actual, consequential or punitive) incurred by the Indemnitee arising from any personal injury (including wrongful death) or property damage (real or personal) alleged to have resulted from any Release of Hazardous Materials on, upon or into all or any part of the Affected Property, (3) any costs and liabilities incurred by the Indemnitee in connection with the investigation, removal, cleanup and/or remediation of any Hazardous Material present upon all or any part of the Affected Property, (4) to the extent required by Legal Requirements, additional costs incurred by the Indemnitee to treat or to take necessary precautions to protect against the release or migration of Hazardous Materials on, from, under or affecting the Mortgaged Property into the air, any body of surface or subsurface water or any surrounding areas, (5) any costs or liabilities incurred by the Indemnitee in connection with any Environmental Lien, and (6) any costs or liabilities incurred by the Indemnitee in connection with any other matter affecting the Affected Property pursuant to any Environmental Law (except, with respect to any of the foregoing, to the extent the same results from the gross negligence or willful misconduct of any Indemnitee). The indemnity contained in this subparagraph (c) shall not be limited, impaired or terminated by (i) any extensions of time for performance under any of the Loan Documents, (ii) any sale or assignment of this Mortgage, (iii) any sale or transfer of all or a part of the Mortgaged Property, (iv) any foreclosure of this Mortgage or deed to the Mortgaged Property in lieu of foreclosure, or exercise of any other remedies under this Mortgage, (v) the satisfaction, release or termination of this Mortgage, (vi) the release or substitution in whole or in part of any other security for the Obligations or (vii) Mortgagee's participating in the management of, or taking possession of, or title to, the Mortgaged Property or any part thereof whether by foreclosure or otherwise, provided, however, that Grantor's indemnification obligations hereunder shall not extend to (y) any conditions arising subsequent to any sale or transfer of the Mortgaged Property by Grantor or (z) any conditions actually caused by the willful misconduct or gross negligence of an Indemnitee.

(ii) Mortgagee agrees that, in the event any investigation, litigation or proceeding alleging matters of the nature set forth in Section 2.12(a) above is asserted or threatened in writing or instituted against it or any other Indemnitee, or any remedial, removal or response action is requested of it or any of its officers, directors, agents and employees, for which any Indemnitee may desire indemnity or defense hereunder, such Indemnitee shall notify Grantor in writing within fifteen (15) days after obtaining any notice of the foregoing, provided that a failure to so notify Grantor shall not relieve Grantor of any liability hereunder unless such failure materially affects Grantor's ability to defend against such action or proceeding or take other necessary or appropriate action to remediate or mitigate the liability involved. Notwithstanding anything to the contrary, if Grantor has actual knowledge of any of the foregoing, independent of Indemnitee's notice, Grantor shall in no event be relieved of any obligation hereunder.

(iii) Grantor, at the request of any Indemnitee, shall have the obligation to defend against such investigation, litigation or proceeding or requested remedial, removal or response action (using counsel selected by Grantor and reasonably acceptable to the Indemnitee, unless such counsel has been retained by an insurance company that is defending such claim, in which case such counsel shall be deemed to be acceptable to the Indemnitee). Mortgagee hereby confirms that the use of Pillsbury Winthrop LLP as counsel is reasonably acceptable to it. In the event that such Indemnitee requests Grantor to defend against such investigation, litigation or



proceeding or requested remedial, removal or response action, Grantor shall promptly do so, provided, however, that such Indemnitee shall have the right, at such Indemnitee's sole expense, to have legal counsel of its choice participate in such defense. No action taken by legal counsel chosen by such Indemnitee in defending against any such investigation, litigation or proceeding or requested remedial, removal or response action shall vitiate or in any way impair Grantor's obligation hereunder to indemnify and hold harmless such Indemnitee, provided that no such investigation, litigation or proceeding shall be settled or compromised without Grantor's approval if the same would subject Grantor to any cost or liability.

(iv) In the event Grantor is requested to defend an Indemnitee, then Grantor shall give Indemnitee reasonable prior notice of any settlement, compromise or similar disposition by Grantor of any investigation, litigation or proceeding as to which Grantor has an obligation to defend and the decision whether to accept such settlement, compromise or disposition shall be made by Grantor. No such notice shall, however, qualify Grantor's indemnification obligations thereunder. Nothing herein, however, shall qualify Grantor's rights to settle, compromise or dispose of any claim without notice to, or the consent of, the Indemnitee, if such settlement is wholly without cost or liability to the Indemnitee.

(v) The obligations of Grantor under this Section 2.12 shall survive the repayment of the Loans (as defined in the Credit Agreement) and the release of the liens created by this Mortgage.

SECTION 2.13 After-Acquired Property. All right, title and interest of Grantor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property hereafter acquired, constructed, assembled or placed on the Mortgaged Property, and all proceeds from the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or event creating such proceeds, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of Grantor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and incorporated in the Granting Clauses hereof.

SECTION 2.14 Further Assurances. Grantor shall, at Grantor's sole cost and expense, and at the reasonable request of Mortgagee, do, execute, acknowledge and deliver all further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require (a) for filing, registering or recording this Mortgage and all UCC financing and continuation statements delivered in connection with the Loan; and (b) for better assuring, conveying, assigning, transferring and confirming unto Mortgagee the Mortgaged Property or such property which Grantor may be or may hereafter become bound to convey, mortgage or assign to Mortgagee, including, without limitation, amendments and supplements to this Mortgage and UCC financing and continuation statements, the filing or recordation of which are, in the reasonable determination of Mortgagee, necessary or appropriate to create, perfect or maintain the existence or perfected status of any security interest granted pursuant to this Mortgage or any other Loan Document.

SECTION 2.15 Litigation. Grantor shall promptly furnish to Mortgagee written notice of, and copies of any documents or papers requested by Mortgagee relating to, any actions,



suits or proceedings pending, or to the knowledge of Grantor threatened, against or affecting Grantor or all or any portion of the Mortgaged Property which seek damages of One Hundred Thousand Dollars (\$100,000.00) or more. Additionally, Grantor shall promptly deliver a list to Mortgagee, upon Mortgagee's request, of all actions, suits or proceedings pending, or to the knowledge of Grantor threatened, against or affecting Grantor or all or any portion of the Mortgaged Property regardless of the amount of damages sought by any plaintiff thereunder.

SECTION 2.16      Notice Limiting Amount. Grantor covenants that it will not, without the prior written consent of Mortgagee, file of record any notice limiting the maximum principal amount secured by this Mortgage.

### ARTICLE III

#### Assignment of Grantor Subleases, Rents and Other Sums

##### SECTION 3.01      Assignment.

(a) Grantor hereby absolutely and presently bargains, sells, transfers, assigns and sets over to Mortgagee, as further security for the payment of the Obligations, all of its right, title and interest in and to the Grantor Subleases and the Rents payable thereunder and all rights of Grantor thereunder and any and all deposits held as security under the Grantor Subleases, whether before or after foreclosure or during the full period of redemption, if any, and shall, upon demand, deliver to Mortgagee an executed counterpart of each Grantor Sublease. The assignment of the Grantor Subleases and Rents, and of the aforesaid rights with respect thereto, is intended to be and is an absolute present assignment from Grantor to Mortgagee and not merely the passing of a security interest. Such assignment and grant shall continue in effect until the Obligations are paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Grantor to the entry upon and taking possession of the Mortgaged Property by Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Upon an Event of Default, in addition to all of the rights and remedies of Mortgagee under that certain Collateral Assignment of Leases and Contracts of even date herewith (the "Assignment"), Grantor shall promptly pay to Mortgagee (i) all rent prepayments and security or other deposits paid to Grantor pursuant to any Grantor Sublease assigned hereunder and (ii) all charges for services or facilities or for escalation which were paid pursuant to any Grantor Sublease to the extent allocable to any period from and after such Event of Default. Nothing contained in this Section 3.01(a) shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Grantor Sublease or otherwise to impose any obligation on Mortgagee (including any liability under the covenant of quiet enjoyment contained in any Grantor Sublease or under any applicable law in the event that any tenant thereunder shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Property). Without limiting the foregoing, the assignment contained in this Article III shall not operate to make Mortgagee liable for (i) any waste committed on the Mortgaged Property by the lessee under any Grantor Sublease or any other person, (ii) any dangerous or defective condition of the Mortgaged Property or (iii) any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss, injury or death to any lessee or other person. Grantor hereby further grants to Mortgagee



the right to notify the tenant under any Grantor Sublease of the assignment thereof and, after the occurrence of an Event of Default hereunder, (i) to demand that the tenant under any Grantor Sublease pay all amounts due thereunder directly to Mortgagee, (ii) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the Rents, (iii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof, (iv) to let the Mortgaged Property, or any part thereof, and (v) to apply the Rents, after payment of all necessary charges and expenses, on account of the Obligations.

(b) If Grantor is not required to surrender possession of the Mortgaged Property hereunder in the event of any Event of Default, Grantor will pay monthly in advance to Mortgagee, on its entry into possession pursuant to Article VI, or to any receiver appointed to collect said Rents, the fair and reasonable rental value for the use and occupation of the Mortgaged Property or such part thereof as may be in the possession of Grantor. Upon a default in any such payment, Grantor will vacate and surrender such possession to Mortgagee or such receiver, and, in default thereof, may be evicted by summary or any other available proceedings or actions.

(c) Grantor will, as and when requested from time to time by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form approved by Mortgagee, one or more general or specific assignments of the lessor's interest under any Grantor Sublease. Grantor will, on demand, pay to Mortgagee, or reimburse Mortgagee for the payment of any reasonable costs or expenses incurred in connection with the preparation or recording of any such assignment.

(d) The acceptance of the assignment provided for under this Article III and the collection of Rents under any Grantor Sublease shall not constitute a waiver of any of the rights or remedies of Mortgagee under this Mortgage, the Assignment or any other Loan Document. Further, nothing contained in this Article III and no act or action taken or done, or omitted to be taken or done, by Mortgagee pursuant to the powers and rights granted to Mortgagee under this Article III shall be deemed to (i) be a waiver of or to cure any default by Grantor or any Event of Default under this Mortgage, the Assignment or any other Loan Document or (ii) be a waiver by Mortgagee of any of its rights and remedies against Grantor in connection with, or in respect of, the Obligations.

(e) The covenants of Grantor contained in this Article III shall be deemed to be covenants running with the land, and shall be binding upon Grantor named herein and any subsequent owner or owners of the Mortgaged Property and its and their respective successors and assigns. The assignment contained in this Article III, together with all the covenants of Grantor contained in this Article III, shall inure to the benefit of Mortgagee herein named and any subsequent holder or holders of this Mortgage and its and their respective successors and assigns.

(f) The lessees under the Grantor Subleases are hereby authorized to recognize the claims and demands of Mortgagee without investigation as to (i) the reason for any action taken by Mortgagee, (ii) the validity or the amount of indebtedness owing to Mortgagee under the Loan Agreement and the other Loan Documents, (iii) the existence of any Event of Default hereunder or under any of the other Loan Documents or (iv) the application to be made by Mortgagee of any amounts to be paid to Mortgagee. Mortgagee's sole signature shall be sufficient for the exercise of any right under the assignment provided for in this Article III and Mortgagee's sole receipt given for any sums received shall be a full discharge and release therefor to any lessee under any Grantor Sublease.



(g) Mortgagee has not received any security deposits or prepaid rents paid under the terms of the Grantor Subleases, nor have any such security deposits or prepaid rents been transferred to Mortgagee, and Mortgagee assumes no responsibility or liability therefor unless, until, and only to the extent that any security deposits or prepaid rents are actually received by Mortgagee.

(h) Grantor will (1) promptly notify Mortgagee of the receipt by Grantor of any notice from any tenant under any of the Grantor Subleases of any default by Grantor in the performance or observance of any of the terms, covenants or conditions on the part of Grantor to be performed or observed under such Grantor Sublease, (2) promptly notify the Mortgagee of the receipt by Grantor of any notice from any tenant under any of the Grantor Subleases of termination of any such Grantor Sublease pursuant to the provisions thereof and (3) promptly cause a copy of each such notice received by Grantor from any tenant under any of the Grantor Subleases to be delivered to Mortgagee.

(i) Grantor will not, without the prior consent of Mortgagee, (1) terminate, cancel or surrender, or suffer or permit any termination, cancellation or surrender of, any Grantor Sublease, (2) fail or refuse to take timely and appropriate action to renew any Grantor Sublease pursuant to the provisions thereof, (3) consent or refuse to consent to any action taken or to be taken by the lessor or anyone else under any Grantor Sublease, or (4) subordinate or consent to the subordination of any Grantor Sublease to any mortgage on the lessor's interest in the Mortgaged Property demised by such Grantor Sublease.

(j) Grantor will not, without the prior consent of Mortgagee, which consent will not be unreasonably withheld or delayed, modify, supplement or amend, or suffer or permit any modification, supplementation or amendment of, any Grantor Sublease, which in any way (i) increases or decreases the term; (ii) increases or decreases the monetary obligations thereunder; (iii) materially increases or decreases Grantor's or Grantor's Sublessee's non-monetary obligations; (iv) materially decreases Grantor's rights under such Grantor Sublease; or (v) constitutes a waiver of any of Grantor's rights under such Grantor Sublease. Notwithstanding the foregoing, Mortgagee's consent shall not be required with respect to a modification, supplementation or amendment of any such Grantor Sublease that does not meet the criteria set forth in subclauses (i) through (v) of this paragraph (j) (a "Non-material Sublease Amendment"). Grantor shall, within ten (10) Business Days of entering into any such Non-Material Sublease Amendment, send notice of such Non-Material Sublease Amendment to Mortgagee together with copies of all documents executed in connection therewith.

#### ARTICLE IV

##### Additional Advances; Expenses; Indemnity

##### SECTION 4.01 Additional Advances and Disbursements.

(a) Grantor agrees that, if Grantor shall default in any of its obligations hereunder, then Mortgagee shall have the right without notice to Grantor to advance all or any part of amounts owing or to perform any or all required actions. No such advance or performance shall be deemed to have cured such default by Grantor or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions, and all other sums advanced or expenses incurred by Mortgagee hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be



part of the Obligations, shall bear interest at the Involuntary Rate and as provided in the Credit Agreement and shall be secured by this Mortgage.

(b) This Mortgage secures not only existing indebtedness, but also future or additional advances made pursuant hereto or to the Credit Agreement, whether such advances are obligatory or optional.

(c) Grantor and Mortgagee agree that this Mortgage secures indebtedness under the Credit Agreement and other Loan Documents, all of which reflect the fact that all of the respective parties hereto and thereto reasonably contemplate entering into a series of advances, or advances, payments and readvances, it being understood that all such advances or advances, payments and readvances shall, in any event be made upon the terms and conditions of the Credit Agreement and shall be secured by this Mortgage.

SECTION 4.02      Other Expenses. Grantor will pay or, on demand, reimburse Mortgagee or any holder of the Obligations for the payment of any and all costs or expenses (including attorneys' fees and disbursements) incurred in connection with (i) any default or Event of Default by Grantor hereunder, (ii) the exercise or enforcement by or on behalf of Mortgagee or any holder of the Obligations of any of its rights or of Grantor's obligations under the Loan Documents or (iii) the granting, administration, enforcement and closing of the transactions contemplated hereunder.

SECTION 4.03      INTENTIONALLY OMITTED.

SECTION 4.04      Interest After Default. If any payment due hereunder or under the other Loan Documents is not paid in full when due, whether by acceleration or otherwise, then the same shall bear interest hereunder at the Involuntary Rate and as provided in the Credit Agreement, and such interest shall be added to and become a part of the Obligations and shall be secured hereby.

## ARTICLE V

### Sale or Transfer of the Mortgaged Property

Grantor acknowledges that the continuous ownership of the Mortgaged Property by Grantor, except as otherwise permitted in the other Loan Documents, is of a material nature to the transaction hereinabove described and Mortgagee's agreement to create the Obligations. Without Mortgagee's prior written consent, Grantor will not, whether voluntarily or involuntarily, (a) sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise, (b) permit to be the subject of any transaction described in clause (a) above, (c) enter into an agreement for any transaction described in clause (a) above, or (d) grant an option which or take any action which pursuant to the terms of any agreement to which Grantor is a party may result in any transaction described in clause (a) above of, the Mortgaged Property, or any legal, beneficial or equitable interest therein (the foregoing, collectively or severally, "Transfer"). For purposes of this Mortgage, but without limiting the foregoing, (i) the issuance of any equity interest in Grantor (whether stock, partnership interest or otherwise) not in accordance with and pursuant to the Credit Agreement, shall be deemed a Transfer of the Mortgaged Property, (ii) a Transfer of



all or substantially all of the assets of Grantor shall be deemed a Transfer of the Mortgaged Property, (iii) the execution and delivery of any documentation relating to a proposed zoning lot merger or the execution and delivery of any other documentation effecting or purporting to effect, or the taking or suffering of any other action effecting or purporting to effect, a transfer of, or the granting of a right to utilize, any development rights appurtenant to the Mortgaged Property shall be deemed a Transfer of the Mortgaged Property, and (iv) any person or legal representative of Grantor to whom Grantor's interest in the Mortgaged Property passes by operation of law, or otherwise, shall be bound by the provisions of this Mortgage. The provisions of this Section shall apply to each and every such Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein, regardless whether or not Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Transfer of all or any portion of the Mortgaged Property or any legal or equitable interest therein.

## ARTICLE VI

### Defaults and Remedies

SECTION 6.01      Events of Default. The term "Event of Default", as used in this Mortgage, shall mean the occurrence of any of the following events:

(a) without any additional grace or notice period:

- (i) if there shall be a default under Article V; or
- (ii) if there is an "Event of Default", as defined in the Notes, the Credit Agreement or any other Loan Document; or
- (iii) if Grantor or any member of Grantor shall cause or institute any proceeding for the dissolution of Grantor; or
- (iv) if any representation and warranty made in this Mortgage shall be untrue, incorrect or misleading in any respect at the time made, the falsity, incorrectness or misleading nature of which has a Materially Adverse Effect (as defined in the Credit Agreement) on Grantor, the Mortgaged Property or the Loan Documents; or

(b) if Grantor fails to renew or procure substitute insurance in respect of the Real Property, as required hereunder, within thirty (30) days prior to the expiration of any existing policies of insurance, and such failure is not cured within ten (10) days of Grantor's receipt of notice thereof; or

(c) if any payment of interest on the Loan shall not be made when due, in accordance with the terms of the Credit Agreement, the Notes or any other Loan Document (whether at maturity, on any Interest Payment Date (as such term is defined in the Credit Agreement) or interest prepayment date, by reason of acceleration or otherwise) and such failure shall continue unremedied for a period of five (5) Business Days, or any payment of principal on the Loan shall not be made when due, in accordance with the terms of the Credit Agreement, the Notes or any other Loan Document (whether at maturity, on any Interest Payment Date or prepayment date, by reason of acceleration or otherwise); or



(d) if any Lien in an amount greater than Ten Thousand Dollars (\$10,000.00) (other than a lien for local real estate taxes and assessments not yet due and payable) is filed against the Real Property, or if Grantor, directly or indirectly, suffers or permits to be created or to stand against the Real Property or any part thereof, any other lien, adverse claim or charge or any other encumbrance which is subordinate to the lien of this Mortgage, other than the Permitted Liens, and the same is not discharged by bond or otherwise within sixty (60) days after receipt by Grantor or Borrower of written notice thereof; or

(e) if the Real Property, or any part thereof, shall be the subject of any levy, attachment, execution, sequestration or other similar writ and the same is not discharged by bond or otherwise within sixty (60) days after receipt by Grantor or Borrower of notification of the filing of any such levy, attachment, execution, sequestration or other similar writ; or

(f) if the Lien of this Mortgage shall at any time fail (other than through the action of Mortgagee) to be a valid and perfected first priority lien on the Mortgaged Property (subject only to Permitted Liens), and such failure shall not be cured within five (5) Business Days following Grantor's receipt of notice thereof; or

(g) if any easement over, across or under or otherwise affecting the Mortgaged Property or any part thereof in any materially adverse manner shall be granted or released by Grantor without the prior written consent of Mortgagee, except as expressly permitted in the Loan Documents; or

(h) if any default by Grantor under the Lease shall occur and Grantor fails to cure such default after notice thereof within applicable cure periods;

(i) if default (not involving the payment of any monies or any of the defaults described in paragraphs (a) through (h) immediately above) shall be made in the due observance or performance of any other material term, covenant, condition, obligation or agreement made by Grantor in or under this Mortgage, and such default shall not be remedied within thirty (30) days after written notice thereof shall have been given to Grantor by Mortgagee, or, if such default cannot reasonably be cured within such thirty (30) day period, Grantor fails to commence curing such default within such thirty (30) day period, fails thereafter to diligently proceed to cure such default or fails, proceeding with all due diligence, to cure such default within a reasonable time (but not to exceed one hundred twenty (120) days) thereafter).

**SECTION 6.02**      **Remedies.** Upon the occurrence of any one or more Events of Default, or any Transfer without the consent of Mortgagee, Mortgagee may, (subject to notice requirements in Credit Agreement) in addition to any rights or remedies available to it hereunder or under the other Loan Documents and to the extent permitted by applicable law, take such action personally or by its agents or attorneys, with or without entry, and without notice, demand, presentment or protest (each and all of which are hereby waived), as it deems necessary or advisable to protect and enforce its rights and remedies against Grantor and in and to the Mortgaged Property, including the following actions, each of which maybe pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting its other rights or remedies:



(a) declare the entire balance of the Obligations to be immediately due and payable, and upon any such declaration, the entire unpaid balance of the Obligations shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Grantor, anything in any other Loan Documents to the contrary notwithstanding; or

(b) institute a proceeding or proceedings, judicial or otherwise, for the complete or partial foreclosure of this Mortgage under any applicable provision of law; or

(c) sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Mortgagee may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The foregoing power of sale shall in no way impair or limit any remedies otherwise available to Mortgagee; or

(d) institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Loan Documents; or

(e) apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Mortgaged Property, to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to, or the necessity to disprove, the adequacy of the security for the obligations or the solvency of Grantor or any other person liable for the payment of the Obligations, and Grantor and each other person so liable waives or shall be deemed to have waived such necessity and consents or shall be deemed to have consented to such appointment; or

(f) enter upon the Mortgaged Property, and exclude Grantor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Mortgaged Property, and Grantor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Mortgagee on demand after the happening of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Grantor; and upon each such entry and from time to time thereafter may, at the expense of Grantor and the Mortgaged Property, without interference by Grantor and as Mortgagee may deem advisable, (i) insure or reinsure the Mortgaged Property, (ii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iii) in every such case in connection with the foregoing have the right to exercise all rights and



powers of Grantor with respect to the Mortgaged Property, either in Grantor's name or otherwise; or

(g) with or without the entrance upon the Mortgaged Property, collect, receive, sue for and recover in its own name all Rents and cash collateral derived from the Mortgaged Property, and after deducting therefrom all costs, expenses and liabilities of every character incurred by Mortgagee in collecting the same and in using, operating, managing, preserving and controlling the Mortgaged Property, and otherwise in exercising Mortgagee's rights under subsection (f) of this Section, including all amounts necessary to pay Impositions, insurance premiums and other charges in connection with the Mortgaged Property, as well as compensation for the services of Mortgagee and its respective attorneys, agents and employees, to apply the remainder as provided in Section 6.05; or

(h) release any portion of the Mortgaged Property for such consideration as Mortgagee may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release and applied to the Obligations, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder; or

(i) take all actions permitted under the UCC; or

(j) take any other action, or pursue any other right or remedy, as Mortgagee may have under applicable law, and Grantor does hereby grant the same to Mortgagee.

In the event that Mortgagee shall exercise any of the rights or remedies set forth in subsections (f) and (g) of this Section, Mortgagee shall not be deemed to have entered upon or taken possession of the Mortgaged Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession. Mortgagee shall not be liable to account for any action taken pursuant to any such exercise other than for Rents actually received by Mortgagee, nor liable for any loss sustained by Grantor resulting from any failure to let the Mortgaged Property, or from any other act or omission of Mortgagee except to the extent such loss is caused by the willful misconduct or bad faith of Mortgagee.

SECTION 6.03      Rights Pertaining to Sales. Subject to the provisions or other requirements of law and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of this Article VI, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Mortgagee may conduct any number of sales from time to time. The power of sale set forth in Section 6.02(c) hereof shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale



which is not completed or is defective in Mortgagee's opinion, until the obligations shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice. Without limiting the foregoing, in case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings have been discontinued or abandoned for any such reason or shall have been determined adversely to Mortgagee, then in every such case Grantor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

(c) After each sale, Mortgagee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Grantor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true and lawful attorney-in-fact of Grantor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Grantor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Grantor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or such purchaser or purchasers all such instruments as may be advisable, in Mortgagee's judgment, for the purposes as may be designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (c) of this Section given by Mortgagee as to nonpayment of the Obligations, or as to the occurrence of any Event of Default, or as to Mortgagee having declared all or any of the Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to any other act or thing having been duly done by Grantor or Mortgagee, shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited. Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale.

(e) The receipt of Mortgagee for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.



(f) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Grantor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Grantor and any and all persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Grantor to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Mortgagee may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Mortgagee is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(h) In the event that Grantor, or any person claiming by, through or under Grantor, shall transfer or refuse or fail to surrender possession of the Mortgaged Property after any sale thereof, then Grantor, or such person, shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(j) In the event a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale of the Mortgaged Property abandon the sale, and may institute suit for the collection of the obligations and for the foreclosure of this Mortgage, or in the event that Mortgagee should institute a suit for collection of the Obligations, and for the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and require Mortgagee to sell the Mortgaged Property in accordance with the provisions of this Mortgage.

**SECTION 6.04**      **Expenses.** In any proceeding, judicial or otherwise, to foreclose this Mortgage or enforce any other remedy of Mortgagee under the Loan Documents, there shall be allowed and included as an addition to and a part of the Obligations in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred in connection with the exercise by Mortgagee of any of its rights and remedies provided or referred to in Section 6.02, or any comparable provision of any other Loan Document, together with interest thereon at the rate and as provided in the Credit Agreement, and the same shall be part of the Obligations and shall be secured by this Mortgage.

**SECTION 6.05**      **Application of Proceeds.** The purchase money, proceeds or avails of any sale referred to in Section 6.02, together with any other sums which may be held by Mortgagee hereunder, whether under the provisions of this Article VI or otherwise, shall, except as herein expressly provided to the contrary, be applied as follows:



First: To the payment of the costs and expenses of any such sale, including compensation to Mortgagee, its agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, together with interest thereon as provided herein, and all Impositions and other charges, except any Impositions or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment in full of the monetary Obligations (including principal, interest, premium and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Grantor pursuant to any provision of the Loan Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its judgment for the payment of sums which would have been paid by application under clauses First through Third above to Mortgagee, arising out of an obligation or liability with respect to which Grantor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of any withholding tax requirements of the Foreign Investment in Mortgaged Property Tax Act of 1980, as amended.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

SECTION 6.06      Additional Provisions as to Remedies. No delay or omission by Mortgagee to exercise any right or remedy hereunder upon any default or Event of Default shall impair such exercise, or be construed to be a waiver of any such default or Event of Default.

(a)      The failure, refusal or waiver (by consent, waiver or otherwise) of Mortgagee to assert any right or remedy hereunder upon any default or Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence.

(b)      Mortgagee shall not have any obligation to pursue any rights or remedies it may have under any other agreement prior to pursuing its rights or remedies hereunder or under the other Loan Documents.

(c)      Acceptance of any payment after the occurrence of any default or Event of Default shall not be deemed a waiver or a cure of such default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(d)      In the event that Mortgagee shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Grantor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, subject to the lien hereof.



(e) Each right of Mortgagee provided for in this Mortgage shall be cumulative and shall be in addition to every other right provided for in this Mortgage or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise by Mortgagee of any one or more of such rights shall not preclude the simultaneous or later exercise by Mortgagee of any other such right.

SECTION 6.07      Waiver of Rights and Defenses. To the full extent Grantor may lawfully do so, Grantor agrees with Mortgagee as follows:

(a) Grantor will not claim or take the benefit of any statute or rule of law now or hereafter in force providing for any appraisement, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Grantor, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property (other than Mortgagee), hereby waives and releases all rights of redemption, valuation, appraisement, notice of intention to mature or declare due the whole of the obligations, and all rights to a marshaling of the assets of Grantor, including the. Mortgaged Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder; provided, however, that, notwithstanding anything to the contrary herein contained, (i) Grantor will not at any time insist on, plead, claim or take the benefit or advantage of, and (ii) Grantor, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Mortgaged Property (other than Mortgagee), hereby, to the extent permitted by applicable law, explicitly waives, all statutory rights of redemption.

(b) Grantor shall not have or assert and hereby waives any right under any statute or rule of law pertaining to any of the matters set forth in subsection (a) of this Section, to the administration of estates of decedents or to any other matters whatsoever to defeat, reduce or affect any of the rights or remedies of Mortgagee hereunder.

(c) Grantor hereby waives any defense to the recovery by Mortgagee hereunder against Grantor or the Mortgaged Property of any deficiency after a nonjudicial sale. Without limiting the foregoing, Grantor waives any defense arising out of any such nonjudicial sale even though such sale operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Grantor against Borrower or any subsidiary of Borrower or against any collateral security.

## ARTICLE VII

### Release of Lien

SECTION 7.01      Release of Lien. This conveyance is in trust to secure the Obligations. If all of the Obligations shall be fully satisfied, paid and performed, and the Termination Date (as hereinafter defined) shall have occurred, then and in that event only all rights and obligations hereunder (except for the rights and obligations of Grantor under any indemnity herein set forth, including, without limitation, in Sections 2.12 and 8.18 hereof) shall terminate. In such event Mortgagee shall, at the request of Grantor, deliver to Grantor, in



recordable form, all such documents as shall be necessary to release the Mortgaged Property from the liens, security interests, conveyances and assignments created or evidenced hereby.

## ARTICLE VIII

### Additional Provisions

SECTION 8.01      Provisions as to Payments, Advances. To the extent that any part of the Obligations is used to pay indebtedness secured by any Permitted Encumbrance or other outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property or to pay in whole or in part the purchase price therefor, Mortgagee shall be subrogated to any and all rights, Security interests and liens held by any owner or holder of the same, whether or not the same are released. Grantor agrees that, in consideration of such payment by Mortgagee, effective upon such payment Grantor shall and hereby does waive and release all demands, defenses and causes of action for offsets and payments with respect to the same.

SECTION 8.02      Separability. If all or any portion of any provision of this Mortgage or any other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

SECTION 8.03      Notices and Deliveries. (a) Subject to the provisions of Section 8.03(b), any notice, demand, consent, approval, direction, agreement, communication and materials (any "Notice") to be given or delivered pursuant to this Mortgage or any of the other Loan Documents shall given or delivered by registered mail, return receipt requested, internationally recognized overnight courier, personal delivery or fax transmission (provided that in the case of a fax transmission, an original is simultaneously sent by courier or personal delivery) at the following respective addresses and fax numbers and to the attention of the following individuals and departments:

(1) If to Grantor:

Rave Reviews Cinemas, L.L.C.  
3333 Welborn Street  
Suite 100  
Dallas, TX 75219  
Telecopier No.: 972.692.1708  
Attention: Mr. Peter Nelson, Chief Financial Officer

with a copy to:

Bryan Cave LLP  
One Kansas City Place  
1200 Main Street, Suite 3500  
Kansas City, MO 64105-2100



Telecopier No.: 816.374.3300  
Attention: Mr. James P. Pryde, Esq.

(2) If to Mortgagee:

The Bank of New York  
One Wall Street  
New York, NY 10286  
Telecopier No.: 212.635.8595  
Attention: Ms. Cindy L. Rogers, Vice President

with a copy to:

The Bank of New York  
One Wall Street  
New York, NY 10286  
Telecopier No.: 212.635.6366  
Attention: Ms. Ramona Washington, Assistant Treasurer  
Agency Function Administration

or at such other address or fax number or to the attention of such other individual or department as the party to which such information pertains may hereafter specify for the purpose in a notice to the other specifically captioned "Notice of Change of Address."

(b) Each Notice shall be deemed so given or delivered (A) if sent by registered or certified mail, postage prepaid, return receipt requested, on the third Business Day after such notice, communication or material, addressed as above provided, is delivered to a United States post office and a receipt therefor is issued thereby, (B) if sent by any other means of physical delivery, when such notice, communication or material is delivered to the appropriate address as above provided and (C) if sent by telecopier, when such notice, communication or material is transmitted to the appropriate telecopier number as above provided and is received at such number.

SECTION 8.04      Right to Deal. In the event that the Leasehold Estate becomes vested in a person other than Grantor, Mortgagee may, without notice to Grantor, deal with such successor or successors in interest with reference to this Mortgage or the obligations in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the obligations or being deemed a consent to such vesting.

SECTION 8.05      Continuation of Lease.      (a) Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any leases then existing shall not be destroyed or terminated as a result of such foreclosure unless Mortgagee or any purchaser at a foreclosure sale shall so elect by notice to the lessee in question.

(b) If both the lessor's and the lessee's interest under any lease which constitutes a part of the Mortgaged Property shall at any time become vested in any one person, this Mortgage and the lien and security interest created hereby shall not be destroyed or terminated



by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate.

(c) In the event that Grantor acquires the fee or any other interest in the Leased Land, such interest shall, immediately upon such acquisition, become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein, without need for the delivery and/or recording of a supplement to this Mortgage or any other instrument.

**SECTION 8.06**      **Applicable Law.** This Mortgage shall be governed by, and construed in accordance with, the internal law of the state in which the Mortgaged Property is located without regard to principles of conflicts of laws, except that the internal laws of the State of New York (without regard to principles of conflicts of laws) shall govern (i) those terms and conditions contained in the Notes and the Credit Agreement which are incorporated by reference herein and (ii) the resolution of issues arising under the Notes and the Credit Agreement to the extent that such resolution is necessary to the interpretation of this Mortgage.

**SECTION 8.07**      **Sole Discretion of Mortgagee.** Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or either shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee, as the case may be.

**SECTION 8.08**      **Provisions as to Covenants and Agreements.** All of Grantor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

**SECTION 8.09**      **Matters to be in Writing.** This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

**SECTION 8.10**      **Submission to Jurisdiction.** Without limiting the right of Mortgagee to bring any action or proceeding against the undersigned or its property arising out of or relating to the Obligations (an "Action") in the courts of other jurisdictions, Grantor hereby irrevocably submits to the jurisdiction of the state court or Federal court in each jurisdiction in which the Mortgaged Property is located, and Grantor hereby irrevocably agrees that any Action may be heard and determined in such state or federal court. Grantor hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in the jurisdiction. Grantor hereby irrevocably agrees that the summons and complaint or any other process in any Action in any jurisdiction may be served by mailing to any of the addresses set forth herein or by hand delivery to a person of suitable age and discretion at any such address. Such service will be complete on the date such process is so mailed or delivered.

**SECTION 8.11**      **Construction of Provisions.** The following rules of construction shall be applicable for all purposes of this Mortgage and all documents or instruments supplemental hereto, unless the context otherwise requires:



(a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Mortgage, unless expressly otherwise designated in context. All Article, Section and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

(b) The terms “include”, “including” and similar terms shall be construed as if followed by the phrase “without being limited to”.

(c) The terms “Land”, “Leased Land”, “Mortgaged Property”, “Improvements”, “Equipment”, “Mortgaged Property” and “Mortgaged Property” shall be construed as if followed by the phrase “or any part thereof”.

(d) The term “Obligations” shall be construed as if followed by the phrase “or any other sums secured hereby, or any part thereof”.

(e) Words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa. (f) The term “person” shall include natural persons, firms, partnerships, corporations and any other public and private legal entities.

(f) The term “provisions”, when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase “terms, covenants, agreements, requirements, conditions and/or”.

(g) The cover page of and all recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage.

(h) All obligations of Grantor hereunder shall be performed and satisfied by or on behalf of Grantor at Grantor’s sole cost and expense.

(i) The term “lease” shall mean “tenancy, subtenancy, lease or sublease”, the term “lessor” shall mean “landlord, sublandlord, lessor and sublessor” and the term “lessee” shall mean “tenant, subtenant, lessee and sublessee”.

(j) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

**SECTION 8.12**      **Successors and Assigns.** The provisions hereof shall be binding upon Grantor and the heirs, devisees, representatives, successors and permitted assigns of Grantor, including successors in interest of Grantor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Mortgagee, the holders of the Obligations and their respective heirs, successors, legal representatives, substitutes and assigns. Where two or more persons have executed this Mortgage, the obligations of such persons shall be joint and several.

**SECTION 8.13**      **Counterparts.** This Mortgage may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.



SECTION 8.14      Agency. Mortgagee may deal with the Mortgaged Property and may issue any release to be given hereunder pursuant to Section 6.01 or grant any consent or approval or take any other action required or permitted hereunder, without reference to or the approval of the holders of the Obligations and any third party (including any title insurance company issuing a title insurance policy, or a commitment to issue a title insurance policy, in connection with the Mortgaged Property) may conclusively rely on the due authority of Mortgagee to do any or all of the foregoing.

SECTION 8.15      Mortgagee's Relationship to Others.

(a) Mortgagee is not a partner or joint venturer in any manner whatsoever with Grantor or any other person in the ownership, operation or development of the Mortgaged Property. The Loan Agreement and the other Loan Documents are contracts between Mortgagee and/or the other parties thereto for their mutual benefit and no person other than Mortgagee or said parties shall have any right, claim or interest against either Mortgagee or Grantor by virtue of any provision thereof. Without limiting the generality of the foregoing, it is expressly intended that no such other person, including any general contractor, architect, subcontractor, laborer or materialman, shall be a third party beneficiary of any of the Loan Documents. Further, any action taken by Mortgagee pursuant to authority conferred in the Loan Documents, including procuring lien waivers and financial and other information and making or causing to be made any inspection of the Mortgaged Property, will be taken by Mortgagee for its own protection only, and Mortgagee does not and shall not be deemed to have assumed any responsibility to Grantor or any other person or entity with respect to the proper construction, maintenance or operation of the Mortgaged Property.

(b) Mortgagee shall not be responsible for the solvency of any company issuing any policy of insurance pursuant to any of the Loan Documents whether or not approved by it, or for the collection of any amounts due under any such policy, and shall be responsible and accountable only for such money as may be actually received by it, and then only in accordance with the terms of the Loan Documents. Nothing contained in any of the Loan Documents shall be construed as making Mortgagee liable in any way for any loss, damage, or injury resulting from the non-insurance of the Mortgaged Property.

SECTION 8.16      Waiver of Jury Trial. Grantor and Mortgagee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with the Mortgage, the loan secured hereby or any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party. This provision is a material inducement for the Mortgagee accepting this Mortgage and making the loan secured hereby.

SECTION 8.17      The Security Agreement. In the event that a valid and enforceable security interest has been created in any of the Mortgaged Property under the terms of the Security Agreement (as defined in the Credit Agreement) and the terms of the Security Agreement are inconsistent with the terms of this Mortgage, then with respect to such Mortgaged Property, the terms of the Security Agreement shall be controlling in the case of Equipment and



proceeds of insurance policies and the terms of this Mortgage shall be controlling in all other cases.

**SECTION 8.18**      **Indemnity.**

(a) Grantor agrees to indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Mortgagee by reason or on account of, or in connection with, (i) any default or Event of Default by Grantor hereunder, (ii) Mortgagee's exercise of any of its rights and remedies, or the performance of any of its duties hereunder, (iii) the construction, reconstruction or alteration of the improvements, (iv) any negligence or willful misconduct of Grantor or any of its respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (v) any accident, injury, death or damage to any person or property occurring in, on or about the Mortgaged Property or any street, drive, sidewalk, curb or passageway adjacent thereto, or (vi) any other transaction or claim arising out of this Mortgage or in any way connected to the Mortgaged Property to the extent permitted by law, including but not limited to unrecorded interests in or conflicting claims (including those in Bankruptcy) to the Mortgaged Property, defects in or the unenforceability of or failure to perfect and record this Mortgage. Any amount payable to Mortgagee under this Section shall be deemed a demand obligation and if not paid it shall bear interest at the rate specified in the Note.

(b) Grantor's obligations under this Section shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of covering insurance. If any claim, action or proceeding is made or brought against the Mortgagee or any holder of the Obligations which is subject to the indemnity set forth in this Section, Grantor shall, upon notice thereof by the Mortgagee, resist or defend against the same, if necessary in the name of Beneficiary or such holder, by attorneys for Grantor's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by the Mortgagee. Notwithstanding the foregoing, Mortgagee and such holder, in their discretion, may engage their own attorneys to resist or defend, or assist therein, and Grantor shall pay, or, on demand, shall reimburse the Mortgagee or such holder for the payment of, the reasonable fees and disbursement of said attorneys.

(c) Grantor shall obtain such documentation from the Tenant as may be reasonably required by the Mortgagee to extend the indemnity provisions contained in that certain lease for the coverage and benefit of Mortgagee.

**SECTION 8.19**      **Tenant Security Interest.**

If Mortgagee forecloses and takes possession of the Premises, (a) Mortgagee shall assume (or cause to be assumed by a successor tenant) all of Grantor's obligations under the Lease occurring from and after the time it takes possession; (b) Mortgagee shall become liable for the obligations of Grantor under the Lease, including but not limited to the payments of Rent (as that term is defined in the Lease) and other obligations; and (c) the Landlord shall have



continuing approval rights over any replacement tenant or occupant which Mortgagee proposes to continue the business after it takes possession.

## ARTICLE IX

### INTENTIONALLY OMITTED

## ARTICLE X

### Security Agreement; Fixture Filings

SECTION 10.01     This Mortgage is a Security Agreement; Filings. This Mortgage constitutes both a mortgage of Mortgaged Property and a “security agreement” within the meaning of the Uniform Commercial Code. Grantor (as Debtor) hereby grants to Mortgagee (as Creditor and Secured Party) a security interest in all of Grantor’s right, title and interest in and to (a) so much of the Equipment or any other part of the Mortgaged Property as are considered or as shall be determined to be personal property or “fixtures” (as defined in the Uniform Commercial Code) and not real estate, together with all replacements thereof, substitutions therefor or additions thereto, (b) all general intangibles, proceeds and accounts in any way relating to the Mortgaged Property, (c) all Consumables, (d) all Books and Records and (e) all Miscellaneous Assets (said Equipment, personal property, fixtures, general intangibles, proceeds, accounts, Consumables, Books and Records, and all Miscellaneous Assets being sometimes collectively referred to herein as the “Collateral”), subject only to Permitted Liens. Grantor shall execute any and all such documents, including without limitation Financing Statements pursuant to the Uniform Commercial Code, as Mortgagee may reasonably request, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Mortgagee on demand any expenses reasonably incurred by Mortgagee in connection with the preparation, execution and filing of any such documents. Grantor shall execute and file all Financing Statements and refilings and continuations of filings previously executed by Grantor as Mortgagee reasonably deems necessary or advisable to create, preserve and protect said lien and, if it fails to do so within ten (10) days after notice, Mortgagee may execute and file the same, on Grantor’s behalf.

SECTION 10.02     Right to Proceed Against Collateral Upon the Occurrence of an Event of Default. If an Event of Default under this Mortgage shall have occurred and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof and sell the same at one or more public or private sales, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. The parties agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the Mortgaged Property, unless a greater period shall then be mandated by the Uniform Commercial Code, fifteen (15) days’ notice of the sale of the Collateral shall be reasonable notice. Mortgagee’s reasonable expenses of retaking, holding, preparing for sale, selling and the like, including, but not limited to, attorneys’ fees and other legal expenses, shall be assessed against Grantor, added to the Obligations and secured by the lien of this Mortgage. Grantor



agrees that it will not remove or permit to be removed from the Mortgaged Property any of the Collateral necessary or advisable for the operation of the Improvements, except as hereinabove provided. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper.

**SECTION 10.03**     **Replacements, etc.** All replacements, renewals, accessions, attachments and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and the provisions of this Article X. To the best of Grantor's knowledge, all of the Collateral is free and clear of all liens, encumbrances or security interests, except to the extent otherwise permitted in the Loan Documents. Grantor will not encumber the Collateral or any replacements thereof, substitutions therefor or additions thereto, except for Permitted Liens and to the extent otherwise permitted in the Loan Documents.

**SECTION 10.04**     **Filing of Financing Statement Not Derogation of Rights.** Grantor and Mortgagee agree that the filing of Financing Statements shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the operation or use of the Mortgaged Property and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain items of equipment capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any Condemnation Proceeds, or (3) Grantor's interest as lessor in any present or future Grantor Subleases shall never be construed as altering any of the rights of Mortgagee as determined by this instrument or impairing the priority of the lien of this Mortgage, but such mention in the Financing Statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to clauses (1), (2) and (3) of this Section 10.04 that notice of Mortgagee's priority of interest to be effective against a particular class of Persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.


**SECTION 10.05**     **Fixture Filing.** This Mortgage constitutes a fixture filing under the Uniform Commercial Code. For purposes of the foregoing (i) the Mortgagor is the "debtor" and its address is as set forth in the preamble of this Mortgage, (ii) the Mortgagee is the "secured party" and its address is as set forth in the preamble of this Mortgage and (iii) the name of the record owner of the Property is the AIG Baker East Village, L.L.C.



IN WITNESS WHEREOF, the undersigned has executed this Mortgage the day first set forth above.

GRANTOR:

RAVE MOTION PICTURES  
BIRMINGHAM III, L.L.C.

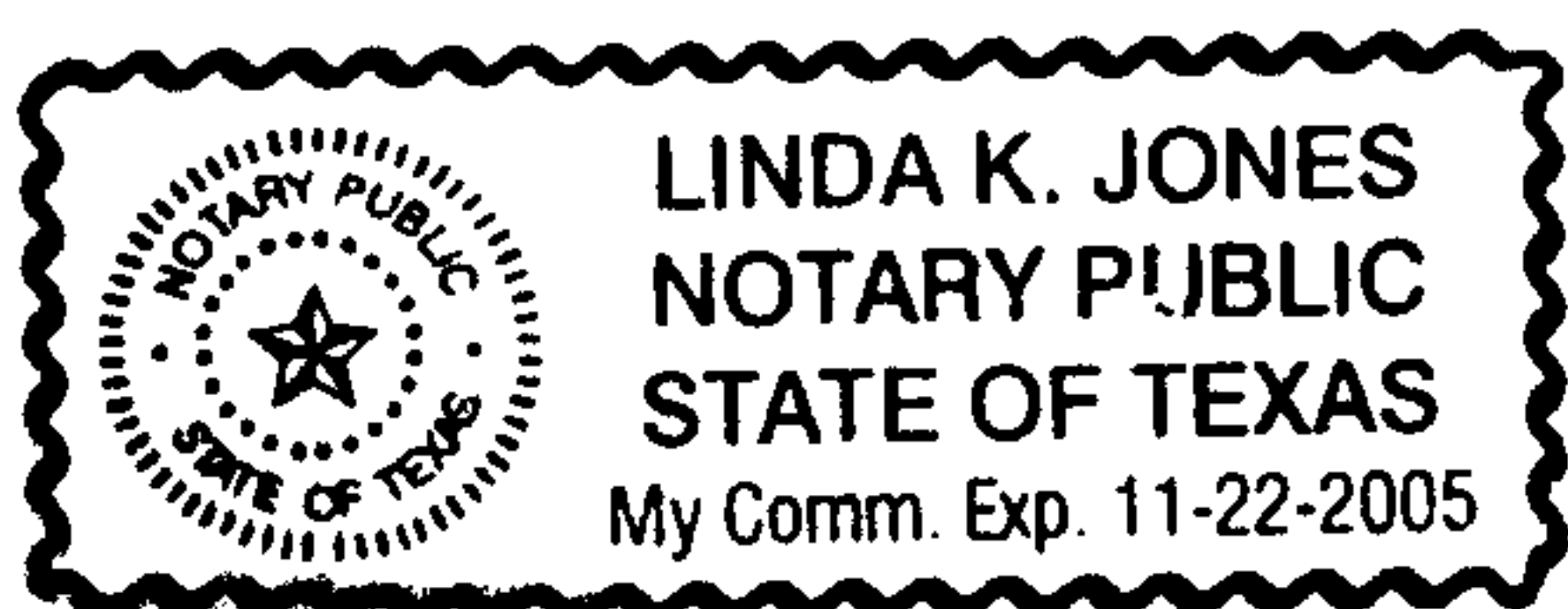
By:   
Name: PETER A. NELSON  
Title: V.P. & CEO



STATE OF TEXAS )  
 ) ss:  
COUNTY OF DALLAS )

I, LINDA K. JONES, a Notary Public in and for said County in said State, hereby certify that PETER B. NELSON whose name as EVP & CFO of Rave Motion Pictures Birmingham III, L.L.C. a limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 17 day of May, 2004.



Linda K. Jones  
(Notary Public)



## EXHIBIT A

### List of Banks As of the Date of this Mortgage

1. The Bank of New York
2. CIT Lending Services Corporation



## **EXHIBIT B-1**

### **Description of the Lease**

Lease Agreement dated December 12, 2003, by and between AIG Baker East Village, L.L.C., as landlord, and Rave Motion Pictures Birmingham III, L.L.C., as tenant, as it may be amended, modified or supplemented from time to time.



**EXHIBIT B-2**

**Description of Leased Land**



Lot 5-A, according to the Survey of A Resubdivision of The Village at Lee Branch, as recorded in Map Book 31, page 130, in the Probate Office of Shelby County, Alabama.

20040713000385760 Pg 51/51 162.00  
Shelby Cnty Judge of Probate,AL  
07/13/2004 10:45:00 FILED/CERTIFIED