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Attested hereto  
*Francis M. Roache*  
Francis M. Roache  
Register of Deeds

50 Northern Avenue  
a/k/a 28 Northern Avenue  
Boston, Massachusetts 02210

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**FIFTY NORTHERN AVENUE LLC,**  
as Mortgagor,

**TO**

**DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LP,**  
as Agent for the Lenders,  
as Mortgagee

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

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Dated: As of June 30, 2011

County: Suffolk  
City: Boston  
State: Massachusetts

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**

Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Michael Rappaport, Esq.

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Please return to: Natalie E. Bray  
Fidelity National Title Ins. Co.  
133 Federal Street, 3<sup>rd</sup> Floor  
Boston, MA 02110

50 Northern Avenue  
Construction Loan Mortgage

Property Address: 50 Northern Avenue  
a/k/a 28 Northern Avenue  
Boston, MA

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

**THIS CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (this "**Security Instrument**") is made as of the 30 day of June, 2011, by **FIFTY NORTHERN AVENUE LLC**, a Delaware limited liability company, having an address at c/o Cornerstone Real Estate Advisers LLC, 180 Glastonbury Boulevard, Suite 200, Glastonbury, Connecticut 06033 ("**Borrower**"), as mortgagor, for the benefit of **DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LP**, a Delaware limited partnership, in its capacity as administrative agent (in such capacity, "**Agent**") for itself and other Lenders (as defined in Article 12 herein), having an address at c/o Fortress Investment Group LLC, 1345 Avenue of the Americas, 46th Floor, New York, New York 10105 (Agent, together with its successors and assigns, "**Mortgagee**").

**RECITALS:**

A. WHEREAS, pursuant to that certain Construction Loan Agreement dated of even date herewith, between Borrower, Eleven Fan Pier Boulevard LLC, a Delaware limited liability company ("**Other Borrower**;" together with Borrower, collectively, "**Borrowers**"), Agent and Lenders (as the same may be consolidated, amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), Lenders have agreed to make available a construction loan to Borrower and Other Borrower in the aggregate maximum principal amount of Three Hundred Fifty-Five Million Dollars (\$355,000,000) (the "**Loan**"), which Loan is (i) secured, among other things, by that certain Construction Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated of even date herewith, executed and delivered by Other Borrower, as mortgagor, and Agent, as mortgagee (as the same may be consolidated, amended, restated, replaced, supplemented, or otherwise modified from time to time, the "**Other Security Instrument**;" together with this Security Instrument, collectively, the "**Mortgages**"), which Other Security Instrument encumbers the 11 Fan Pier Property (as such term is defined in the Loan Agreement); (ii) evidenced by those certain Construction Loan Notes now or hereafter executed by Borrower and Other Borrower and payable to the order of Lenders (as the same may be consolidated, amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the "**Notes**"); and (iii) further evidenced, secured or governed by other instruments and documents executed in connection with the Loan (collectively, the "**Loan Documents**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. WHEREAS, Borrower desires to secure the payment of the Debt and the performance of the Obligations.

C. WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Notes, and that certain Assignment of Leases and Rents of even date herewith, made by Borrower in favor of Mortgagee, and delivered in connection with, inter alia, this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights,

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remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

NOW THEREFORE, in consideration of the making of the Loan and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## ARTICLE 1

### GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Subject to the terms of this Security Instrument, Borrower hereby irrevocably mortgages, grants, bargains, sells, pledges, assigns, warrants, transfers and conveys WITH MORTGAGE COVENANTS to Mortgagee, for the benefit of the Lenders, and their respective successors and assigns, with power of sale (to the extent such power of sale is permitted by applicable law), for the benefit of Mortgagee and other Lenders, Borrower's interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**");

(a) **Land.** The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) **Additional Land.** All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien of this Security Instrument;

(c) **Improvements.** The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) **Equipment.** All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all building materials, machinery, equipment and other personal

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property not yet incorporated into the Improvements, whether stored at the Land or at locations other than the Land, and all machinery, equipment, furnishings, and electronic data-processing and other office equipment, in each case now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto and together with all bills of lading, warehouse receipts, delivery receipts or other documents of title to any of the foregoing (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower, which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property that tenants are entitled to remove pursuant to leases, except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other inventory and personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**") whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "Leases"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the "Bankruptcy Code") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits) accounts and receipts from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of the Obligations;

(i) Condemnation Awards. Subject to the terms of the Loan Agreement, all Awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. Subject to the terms of the Loan Agreement, all Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

(k) Tax Certiorari. Subject to the terms of the Loan Agreement and the rights of tenants at the Improvements, all refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property (to the extent necessary to protect the interest of Mortgagee and other Lenders) and to commence any action or proceeding to protect the interest of Mortgagee and other Lenders in the Property;

(m) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use,

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occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening and during the continuance of any Event of Default, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, internet websites, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Interest Rate Cap Agreement. The Interest Rate Cap Agreement, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;

(q) Proceeds. Subject to the provisions of the Loan Agreement, all proceeds of any of the foregoing, including, without limitation, proceeds of insurance and Awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Mortgagee for the benefit of the Lenders, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

**Section 1.2 Assignment of Rents**. Borrower hereby absolutely and unconditionally assigns to Mortgagee for the benefit of the Lenders all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Security Instrument, Mortgagee and other Lenders grant to Borrower, an exclusive revocable license to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents,

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or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums; provided, however, that such license may not be revoked unless an Event of Default has occurred and is continuing.

**Section 1.3 Security Agreement.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Mortgagee for the benefit of the Lenders, as security for the Obligations, a security interest in all of Borrower's right, title and interest, in, to and under, whether now owned or existing or hereafter acquired or arising and wheresoever located, the Fixtures, the Equipment, the Personal Property and the other property constituting the Property, and all proceeds of the foregoing, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur 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 to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place (at the Land if tangible property) reasonably acceptable to Mortgagee. Borrower shall pay to Mortgagee within ten (10) Business Days any and all expenses, including reasonable legal expenses and attorneys' fees and costs, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Mortgagee or Lenders to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Mortgagee (Secured Party) is as set forth on page one hereof. This instrument is intended to take effect as a construction mortgage pursuant to Massachusetts General Laws Chapter 106, Section 9-334 and a security agreement pursuant to Massachusetts General Laws, Chapter 106, Section 9-101 et seq. The Borrower authorizes Mortgagee and its counsel to file UCC financing statements in form and substance satisfactory to the Mortgagee, describing the collateral as "all assets of the Borrower, whether now owned or existing or hereafter acquired or arising and wheresoever located, and all proceeds and products thereof, including, without limitation, all fixtures on the Land" or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Security Instrument.

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**Section 1.4 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record with the Suffolk County Registry of Deeds shall operate as a financing statement filed as a fixture filing pursuant to Massachusetts General Laws Chapter 106, Section 9-502 upon such of the Property that is or may become fixtures.

**Section 1.5 Pledges of Monies Held.** Borrower hereby pledges to Mortgagee and Lenders all of its right, title and interest in and to any and all monies now or hereafter held by Mortgagee and/or Lenders or on behalf of Mortgagee and/or Lenders in connection with the Loan, including, without limitation, any sums deposited in Tax Funds, Insurance Premium Funds, the Collection Account, the Deposit Account, the I-Cubed Bond Financing Proceeds Reserve Account, the Imprest Account, the Working Capital Account and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument, subject to the provisions of the Loan Agreement.

### CONDITIONS TO GRANT

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

This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of, and conditions imposed upon, Borrower contained herein, the Note, the Loan Agreement and in the other Loan Documents, and the other instruments and agreements evidencing or securing the Debt and Obligations secured hereby shall be kept and fully performed, for any breach of which Mortgagee shall have the STATUTORY POWER OF SALE.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower and Other Borrower shall (a) pay to Mortgagee and Lenders the Debt at the time and in the manner provided in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, and (b) perform the other Obligations as set forth in the Loan Agreement, this Security Instrument and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Mortgagee and Lenders pursuant to the provisions hereof shall survive any such payment or release.

### ARTICLE 2

#### DEBT AND OBLIGATIONS SECURED

**Section 2.1 Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are given for the purpose of securing the Debt.

**Section 2.2 Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are also given for the purpose of securing the Obligations.

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### ARTICLE 3

#### BORROWER'S COVENANTS

Borrower covenants and agrees that:

**Section 3.1 Payment of Debt.** Borrower will pay the Debt and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

**Section 3.2 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Notes and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**Section 3.3 Insurance.** Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Performance of Other Agreements.** Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement and any other Loan Document and any amendments, modifications or changes thereto.

**Section 3.5 Title.** Borrower shall maintain title in accordance with Section 3.1.7, Section 4.1.7 and the other provisions of the Loan Agreement.

### ARTICLE 4

#### OBLIGATIONS AND RELIANCES

**Section 4.1 Relationship of Borrowers, Mortgagee and Lenders.** The relationship between Borrowers and Lenders (including Mortgagee) is solely that of debtor and creditor, and Lenders have no fiduciary or other special relationship with either Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and/or the other Loan Documents shall be construed so as to deem the relationship between Borrowers and Lenders to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lenders.** Borrower is not relying on any Lender's and/or Mortgagee's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.**

(a) Notwithstanding the provisions of Subsections 1.1(h) and (m) or Section 1.2 hereof, Mortgagee and/or Lenders are not undertaking the performance of (i) any obligations

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under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee and/or Lenders pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any Officer's Certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither the Mortgagee nor the other Lenders shall be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee and/or Lenders.

**Section 4.4 Reliance.** Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Mortgagee and Lenders are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 3.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee and/or Lenders; that such reliance existed on the part of Mortgagee and Lenders prior to the date hereof; and that the warranties and representations are a material inducement to Mortgagee and Lenders in entering into the transaction evidenced by the Loan Documents and they would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 3.1 of the Loan Agreement.

## ARTICLE 5

### FURTHER ASSURANCES

**Section 5.1 Recording of Security Instrument, etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, at the request of the Mortgagee, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect and perfect the Lien or security interest hereof upon, and the interest of Mortgagee and Lenders in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all reasonable out of pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Notes, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except in each case

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where prohibited by law so to do, and further subject to the terms and conditions of the Loan Agreement.

**Section 5.2 Further Acts, etc.** Borrower will, at its sole cost, and without expense to Mortgagee and/or Lenders, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee and Lenders the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Mortgagee and Lenders, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, within ten (10) business days of request therefor from Agent or Lenders, will deliver, and in the event it shall fail to so deliver, hereby authorizes Mortgagee to file in the name of Borrower to the extent Mortgagee may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence more effectively the security interest of Mortgagee and Lenders in the Property. If a Default or an Event of Default has occurred and is continuing, Borrower grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Section 5.2.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property and/or the 11 Fan Pier Property for the purpose of taxation or which imposes a tax, on the Debt or Mortgagee's and Lenders' interest in the Property and/or the 11 Fan Pier Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Mortgagee and/or Lenders, unenforceable or provide the basis for a defense of usury, then Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(b) Borrower shall not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes in each case by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents, or shall impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

**Section 5.4 Replacement Documents.** Upon receipt of an affidavit with appropriate representations of an officer of Mortgagee as to the loss, theft, destruction or mutilation of any Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or a replacement of such other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 6

### DUE ON SALE/TRANSFER

**Section 6.1 Lender Reliance.** Borrower acknowledges that Mortgagee and Lenders have examined and relied on the experience of Borrowers and their respective general partners, members, principals and (if either Borrower is a trust) beneficial owners in owning and operating properties such as the Property and the 11 Fan Pier Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property (and Other Borrower's ownership of the 11 Fan Pier Property) as a means of maintaining the value of the Property (and the 11 Fan Pier Property, as the case may be) as security for the repayment of the Debt and the performance of the Obligations. Borrower acknowledges that Mortgagee and Lenders have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Obligations, Mortgagee and Lenders can recover the Debt by a sale of the Property and through the exercise of Mortgagee's and Lenders' other remedies under the Other Security Instrument and the other Loan Documents.

**Section 6.2 No Sale/Transfer.** Borrower shall not Transfer the Property or any part thereof or any interest therein, or permit or suffer the Property or any part thereof or any interest therein to be Transferred in violation of the Loan Agreement.

## ARTICLE 7

### RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.1 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Mortgagee may take such action, without notice or demand, to the fullest extent permitted by law, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

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- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property, or any interest therein, may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing Lien and security interest of this Security Instrument for the balance of the Debt and the other Obligations not then due, unimpaired and without loss of priority;
- (d) by suit or suits at law or in equity or by appropriate proceedings or remedy, sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise (to the extent such power of sale is permitted by applicable law), at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; and, without limiting the foregoing:
  - (i) in connection with any sale or sales hereunder, Mortgagee shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Mortgagee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
  - (ii) Mortgagee shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Mortgagee so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, to the extent permitted by applicable law, as designated by Mortgagee;
  - (iii) should Mortgagee elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Mortgagee shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property as may then be required by law. Thereafter, upon the giving of such notice of sale and the expiration of any required time period as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Mortgagee at the time and place specified in the notice

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of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) if the Property consists of several lots, parcels or items of property, Mortgagee shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Mortgagee designates. Any Person, including Borrower or Mortgagee, may purchase at any sale hereunder. Should Mortgagee desire that more than one sale or other disposition of the Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. If Mortgagee elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Borrower agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Notes, in the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Notes either before, during or after any proceedings for the enforcement of this Security Instrument, the Other Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked, and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee within ten (10) days after written request therefor, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases,

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obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof, (v) require Borrower to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, (vi) require Borrower to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the other Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(i) exercise 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: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property; and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) business days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee and/or Lenders in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Notes;
- (iv) Amortization of the unpaid principal balance of the Notes; and/or

(v) All other sums payable pursuant to the Notes, the Loan Agreement, this Security Instrument, the Other Security Instrument and the other Loan Documents, including, without limitation, the Make Whole Payment, if applicable, and advances made by Mortgagee and/or Lenders pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Mortgagee and/or Lenders may have under applicable law; or

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(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its sole and absolute discretion.

In the event of a sale, by foreclosure, power of sale (to the extent such power of sale is permitted by applicable law) or otherwise, of less than all of the Property, this Security Instrument shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.2 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, to the extent consistent with law.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or to collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and expenses to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee and/or Lenders within ten (10) days of written demand. All such costs and expenses incurred by Mortgagee and/or Lenders in remedying any Default or Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Mortgagee that such cost or expense was incurred and continuing until the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee and/or Lenders, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable within ten (10) days of written demand by Mortgagee therefor.

**Section 7.4 Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Mortgagee, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

**Section 7.5 Recovery of Sums Required To Be Paid.** Mortgagee shall have the right, from time to time, to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure,

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or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** At reasonable times and upon reasonable prior notice (which may be given verbally), Mortgagee, its agents, accountants and attorneys shall have the right to examine the records, books and management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Mortgagee and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior written notice, Mortgagee, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located, and such examination and audit shall be at Mortgagee's expense unless an Event of Default shall have occurred and be continuing, in which case such examination and audit shall be at Borrower's sole cost and expense. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7 Other Rights, etc.**

(a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of its obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Mortgagee shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt and the performance of the Obligations to any other security held by Mortgagee and/or Lenders in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce the Obligations or any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Security Instrument. The rights of Mortgagee (for the benefit of the Lenders) under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee

shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee and/or Lenders shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and Mortgagee 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. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.9 Intentionally Deleted.**

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement, Mortgagee for the benefit of the Lenders and other Indemnified Parties is entitled to enforce the obligations of Borrower with respect to the Loan contained in Section 8.1 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Notes or any of the Property, through foreclosure, exercise of a power of sale (to the extent such power of sale is permitted by applicable law), or acceptance of a deed in lieu of foreclosure or otherwise, and if Mortgagee commences a foreclosure action against the Property or exercises its power of sale pursuant to this Security Instrument, Mortgagee is entitled to pursue a deficiency judgment with respect to such obligations against either or both Borrowers. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Mortgagee from foreclosing or exercising its power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Loan Agreement, the Notes, this Security Instrument, the Other Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Section 8.1 hereof whether or not an action is brought against any other Person (including Other Borrower) and whether or not any other Person is joined in such action or actions. In addition, Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the ADA and Environmental Indemnity.

**Section 7.11 Right of Entry.** Upon reasonable prior written notice to Borrower, and subject to the rights of tenants, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

## ARTICLE 8

### INDEMNIFICATION

**Section 8.1 General Indemnification.** The provisions of Section 10.13 of the Loan Agreement are hereby incorporated by reference.

## ARTICLE 9

### WAIVERS

**Section 9.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee and/or Lenders arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Notes, any of the other Loan Documents or the Obligations.

**Section 9.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument.

**Section 9.3 Waiver of Notice.** To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Mortgagee and/or Lenders except as required by applicable law or with respect to matters for which this Security Instrument, the Loan Agreement or any of the other Loan Documents specifically and expressly provides for the giving of notice by Mortgagee to Borrower and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Security Instrument, the Loan Agreement or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Mortgagee to Borrower.

**Section 9.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of the Debt or performance of the other Obligations.

**Section 9.5 Waiver of Jury Trial.** BORROWER, MORTGAGEE AND LENDERS HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND EACH FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTES, THE LOAN AGREEMENT, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM,

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COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGEE, LENDERS AND BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER, MORTGAGEE AND/OR LENDERS ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

**Section 9.6 Survival.** The indemnifications made pursuant to Article 8 hereof and the representations and warranties, covenants, and other obligations arising under the ADA and Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: (a) any satisfaction, release or other termination of this Security Instrument or any other Loan Document; (b) the assignment or other transfer of all or any portion of this Security Instrument or any other Loan Document or Lenders' interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any assignee or transferee); (c) any exercise of Mortgagee's and/or Lenders' rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure; (d) any exercise of any rights and remedies pursuant to the Loan Agreement, the Notes or any of the other Loan Documents; (e) any transfer of all or any portion of the Property (whether by Borrower or by Mortgagee and/or Lenders following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time); (f) any amendment to this Security Instrument, the Loan Agreement, the Notes or the other Loan Documents; and (g) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations or any portion thereof. Notwithstanding the foregoing, the obligations and liabilities of Borrower under Article 8 hereof shall not apply to any event or condition first occurring after the date on which Mortgagee or its designee or any purchaser takes title to the Property through foreclosure or deed in lieu of foreclosure.

## ARTICLE 10

### NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

## ARTICLE 11

### APPLICABLE LAW

**Section 11.1 Governing Law.** This Security Instrument shall be governed in accordance with the terms and provisions of Section 10.3 of the Loan Agreement.

**Section 11.2 Usury Laws.** Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrowers and Mortgagee and/or Lenders are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Mortgagee and/or Lenders

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pursuant to the Loan Documents shall never exceed the Maximum Legal Rate or the maximum lawful amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrowers to Mortgagee and/or Lenders, and (c) if through any contingency or event, Mortgagee and/or Lenders receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrowers to Mortgagee and/or Lenders, or if there is no such indebtedness, shall immediately be returned to Borrowers.

**Section 11.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## ARTICLE 12

### DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in the singular or plural form and the word "Borrower" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lenders" shall have the meaning ascribed thereto in the Loan Agreement, the word "Mortgagee" shall mean "Mortgagee and any successor under the Loan Agreement and each and any subsequent holder(s) of the Note or any part thereof," the word "Notes" shall mean "the Notes and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees," "legal fees" and "counsel fees" shall include any and all reasonable fees and actual disbursements of attorneys, paralegals and law clerks, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee and/or Lenders in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

**Section 13.1 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Mortgagee, but only by an agreement in writing signed by Mortgagee and Borrower.

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**Section 13.2 Successors and Assigns.** This Security Instrument shall be binding upon and shall inure to the benefit of Borrower, Mortgagee and Lenders and their respective successors and permitted assigns, as set forth in the Loan Agreement. Mortgagee and Lenders shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents, pursuant to the terms and conditions of the Loan Agreement. Any such permitted assignee or transferee of Mortgagee and/or Lenders shall be entitled to all the benefits afforded to Mortgagee and/or Lenders under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Mortgagee, as provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

**Section 13.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Notes and this Security Instrument shall be construed without such provision.

**Section 13.4 Headings, etc.** The headings and captions of the various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 13.5 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural and vice versa.

**Section 13.6 Subrogation.** If any or all of the proceeds of the Notes have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee and/or Lenders shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and Lenders and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Notes and the other Loan Documents and the performance and discharge of the other Obligations.

**Section 13.7 Entire Agreement.** The Notes, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrowers and Mortgagee, in its capacity as agent for Lenders, with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrowers and Mortgagee, in its capacity as agent for Lenders, with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Notes, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Mortgagee and/or Lenders to make, any representations, understandings, stipulations, agreements or

promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 13.8 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee and/or Lenders, nor shall it operate to make Mortgagee and/or Lenders responsible or liable for any waste committed on the Property by the tenants or any other Person (other than waste committed by Mortgagee and/or Lenders or their agents), or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee and/or Lenders a "mortgagee in possession" unless Mortgagee and/or Lenders actually elects in writing to become a "mortgagee in possession."

**Section 13.9 Loan Agreement.** This Security Instrument is made pursuant to a Loan Agreement between Borrower and Mortgagee, in its capacity as agent for Lenders, and is subject to all of the provisions of the Loan Agreement including, without limitation, the provisions thereof entitling Mortgagee to declare the entire indebtedness secured hereby to be immediately due and payable, all of which provisions are incorporated herein with the same force and with like effect as if they were fully set forth herein at length and made a part hereof. In the event of any inconsistency or conflict between the terms and conditions of this Security Instrument and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall govern and control.

#### ARTICLE 14

##### ERISA.

**Section 14.1** The provisions of Section 4.2.11 of the Loan Agreement are hereby incorporated by reference.

#### ARTICLE 15

##### ENTRY OF JUDGMENT.

**Section 15.1** The covenants and obligations of Mortgagor and the rights and remedies of Mortgagee hereunder shall not merge with or be extinguished by the entry of judgment hereunder, and such covenants, obligations, rights and remedies shall survive entry of judgment until payment in full of the Obligations.

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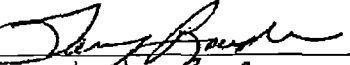
IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

**FIFTY NORTHERN AVENUE LLC,**  
a Delaware limited liability company

By: 50 Northern Avenue Member LLC, its sole member

By: Massachusetts Mutual Life Insurance  
Company, a member

By: Cornerstone Real Estate Advisers  
LLC, its authorized agent

By:   
Name: Larry Boudreau  
Title: Vice President

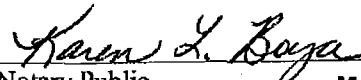
50 Northern Avenue  
Construction Loan Mortgage

STATE OF CONNECTICUT

COUNTY OF HARTFORD

)  
) ss.: Glastonbury  
)

On this 27<sup>th</sup> day of JUNE, 2011, before me, the undersigned notary public, personally appeared LARRY BOYCE, proved to me through satisfactory evidence of identification, which were PERSONALLY KNOWN, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she signed it voluntarily for its stated purpose as the VICE PRESIDENT and on behalf of Cornerstone Real Estate Advisers LLC, a Delaware limited liability company, as the authorized agent and on behalf of Massachusetts Mutual Life Insurance Company, as a member and on behalf of 50 Northern Avenue Member, LLC, a Delaware limited liability company, as the sole member and on behalf of Fifty Northern Avenue LLC, a Delaware limited liability company, as his and their free acts and deeds.



Notary Public

My Commission Expires:

**KAREN L. BOYCE**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES APR. 30, 2015

50 Northern Avenue  
Construction Loan Mortgage

EXHIBIT A

DESCRIPTION OF THE LAND

[SEE ATTACHED]



**PARCEL A**

All those certain parcels of land with the improvements located thereon, situated at Parcel A, Subsurface Parcel A and Below and Above Grade Discontinuance Parcels on Northern Avenue, in the City of Boston, County of Suffolk, and Commonwealth of Massachusetts described as follows:

**PARCEL A:**

A certain parcel of land located on the northeast side of Northern Avenue near the intersection of Courthouse Way in Boston, Massachusetts, bounded and described as follows:

Beginning at a point on the northeasterly sideline of Northern Avenue, said point being S 58° 06' 49" E, a distance of 9.47 feet along said sideline of Northern Avenue from the intersection of the southeasterly sideline of Courthouse Way;

Thence turning and running N 31° 53' 11" E, a distance of 210.00 feet;

Thence turning and running S 58° 06' 49" E, a distance of 230.50 feet;

Thence turning and running S 31° 53' 11" W, a distance of 210.00 feet to a point on the northeasterly sideline of Northern Avenue;

Thence turning and running N 58° 06' 49" W, a distance of 230.50 feet by said sideline of Northern Avenue to the point of beginning.

The above described parcel of land contains an area of about 48,405 square feet (about 1.111 acres) and is shown as Parcel A on a plan titled "Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts," dated April 15, 2011, prepared by Nitsch Engineering, Inc., and recorded as Plan No. 144 of 2011.

**SUBSURFACE PARCEL A:**

A certain parcel of land located on the northeast side of Northern Avenue near the intersection of Courthouse Way in Boston, Massachusetts, bounded and described as follows:

Beginning at a point on the northeasterly sideline of Northern Avenue, said point being S 58° 06' 49" E, a distance of 239.97 feet along said sideline of Northern Avenue from the intersection of the southeasterly sideline of Courthouse Way;

Thence turning and running N 31° 53' 11" E, a distance of 210.00 feet by Parcel A;

Thence turning and running N 58° 06' 49" W, a distance of 230.50 feet by Parcel A;

Thence turning and running N 31° 53' 11" E, a distance of 39.50 feet;

Thence turning and running S 58° 06' 49" E, a distance of 256.00 feet;

Thence turning and running S 31° 53' 11" W, a distance of 249.50 feet by Sub-Surface Parcel F to a point on the northeasterly sideline of Northern Avenue;

Thence turning and running N 58° 06' 49" W, a distance of 25.50 feet along said sideline of Northern Avenue to the point of beginning.

The above described parcel of land has an upper limit that ends at Elevation 15.67 (Boston City Base), contains an area of about 15,467 square feet, and is shown as Sub-Surface Parcel A on a plan titled "Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts," dated April 15, 2011, prepared by Nitsch Engineering, Inc. and recorded as Plan No. 144 of 2011.

**BELOW GRADE DISCONTINUANCE PARCEL:**

A certain parcel of land located on the northeasterly side of Northern Avenue in Boston, South Boston District, Massachusetts, as shown on the plan entitled Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts," dated April 15, 2011, prepared by Nitsch Engineering, Inc., and recorded as Plan No. 144 of 2011, as "Area of Below Grade Discontinuance "A", " and bounded and described as follows:

Beginning at a point on the northeasterly sideline of Northern Avenue, said point being S 58°06'49"E, a distance of 8.03 feet from Courthouse Way;

Thence continuing S 58°06'49"E, a distance of 257.44 feet along said northeasterly sideline of Northern Avenue;

Thence turning and running S 31°53'11"W, a distance of 3.00 feet;

Thence turning and running N 58°06'49"W, a distance of 257.44 feet;

Thence turning and running N 31°53'11"E, a distance of 3.00 feet to the point of beginning.

The above described parcel is vertically below the street from elevation -18.0 to elevation -23.5 and contains an area of 772 square feet according to such plan.

**ABOVE GRADE DISCONTINUANCE PARCEL:**

A certain parcel of land located on the northeasterly side of Northern Avenue in Boston, South Boston District, Massachusetts, as shown on the plan entitled Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts," dated April 15, 2011, prepared by Nitsch Engineering, Inc., and recorded as Plan No. 144 of 2011, as "Area of Above Grade Discontinuance" and bounded and described as follows:

Beginning at a point on the northeasterly sideline of Northern Avenue, said point being S 58°06'49"E, a distance of 106.97 feet from Courthouse Way;

Thence continuing S 58°06'49"E, a distance of 50.00 feet along said northeasterly sideline of Northern Avenue;

Thence turning and running S 31°53'11"W, a distance of 10.50 feet;

Thence turning and running N 58°06'49"W, a distance of 50.00 feet;

Thence turning and running N 31°53'11"E, a distance of 10.50 feet to the point of beginning.

The above described parcel is vertically above the street from elevation 35.4 to elevation 38.9 and contains an area of 525 square feet according to such plan.

Together with the benefit of easements and other rights set forth in the following:

Declaration of Covenants, Easements and Restrictions, dated as of January 31, 2008, by and between Fan Pier Development LLC and Fan Pier Owners Corporation, recorded with said Deeds on February 4, 2008 in Book 43059, Page 1; as affected by a First Amendment to Declaration of Covenants, Easements and Restrictions, dated as of May 4, 2011, by and among Fan Pier Development LLC, Fan Pier Owners Corporation and Fallon Cornerstone One MPD LLC, recorded with said Deeds on May 5, 2011 and recorded in Book 47884, Page 54; as further affected by a Second Amendment to Declaration of Covenants, Easements and Restrictions, dated as of June 27, 2011, by and among Fan Pier Development LLC, Fifty Northern Avenue LLC, Eleven Fan Pier Boulevard LLC, Ten Fan Pier Boulevard LLC and Fallon Cornerstone One MPD LLC, recorded with said Deeds on June 27, 2011 in Book 48069, Page 157, as further affected by Estoppel Certificate and Agreement dated June 30, 2011 and recorded herewith.

Temporary Construction Easement (Fan Pier), dated as of May 4, 2011 by Fan Pier Development LLC, as Grantor, to Fifty Northern Avenue LLC and Eleven Fan Pier Development LLC, as Grantees, recorded with said Deeds on May 5, 2011 and recorded in Book 47884, Page 140.

Permanent Groundwater Cut-Off Easement (Fan Pier Parcel A), dated as of May 4, 2011, by Fan Pier Development LLC, as Grantor, to Fifty Northern Avenue LLC, as Grantee, recorded with said Deeds on May 5, 2011 and recorded in Book 47884, Page 147.

Easement Agreement, dated as of June 27, 2011, by and between Fifty Northern Avenue LLC and Eleven Fan Pier Boulevard LLC, recorded with said Deeds on June 27, 2011 in Book 48069, Page 165.

Garage Reciprocal Easement Agreement dated May 4, 2011, by and among Fan Pier Development LLC, Fallon Cornerstone One MPD LLC, Fifty Northern Avenue LLC, and Eleven Fan Pier Boulevard LLC, recorded on May 5, 2011 and recorded in Book 47884, Page 77, as affected by First Amendment to Garage Reciprocal Easement Agreement dated June 27, 2011 by and among Fan Pier Development LLC, Fifty Northern Avenue LLC, Eleven Fan Pier Boulevard LLC, Ten Fan Pier Boulevard LLC and Fallon Cornerstone One MPD LLC recorded with said Deeds on June 27, 2011 in Book 48069, Page 149, as further affected by Estoppel Certificate and Agreement dated June 30, 2011 and recorded herewith.

Together with the matters set forth in the Quitclaim Deed of Fan Pier Development LLC to Fifty Northern Avenue LLC, dated as of May 4, 2011 and recorded with said Deeds on recorded with said Deeds on May 5, 2011 and recorded in Book 47884, Page 58, as affected by Estoppel Certificate and Agreement dated June 30, 2011 and recorded herewith.



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Page: 1 of 29 07/01/2011 09:56 AM

11 Fan Pier Boulevard  
a/k/a 28 Northern Avenue  
Boston, Massachusetts 02210

*Attested hereto*  
*Francis M. Roache*  
Francis M. Roache  
Register of Deeds

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**ELEVEN FAN PIER BOULEVARD LLC,**  
as Mortgagor,

**TO**

**DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LP,**  
as Agent for the Lenders,  
as Mortgagee

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

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Dated: As of June 30, 2011

County: Suffolk  
City: Boston  
State: Massachusetts

**PREPARED BY AND UPON  
RECORDATION RETURN TO:**

Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Michael Rappaport, Esq.

Please return to: Natalie E. Bray  
Fidelity National Title Ins. Co.  
133 Federal Street, 3<sup>rd</sup> Floor  
Boston, MA 02110

11 Fan Pier Boulevard  
Construction Loan Mortgage

Property Address: 11 Fan Pier  
Boulevard a/k/a 28 Northern Avenue  
Boston, MA

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

**THIS CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT** (this "**Security Instrument**") is made as of the 30 day of June, 2011, by **ELEVEN FAN PIER BOULEVARD LLC**, a Delaware limited liability company, having an address at c/o Cornerstone Real Estate Advisers LLC, 180 Glastonbury Boulevard, Suite 200, Glastonbury, Connecticut 06033 ("**Borrower**"), as mortgagor, for the benefit of **DRAWBRIDGE SPECIAL OPPORTUNITIES FUND LP**, a Delaware limited partnership, in its capacity as administrative agent (in such capacity, "**Agent**") for itself and other Lenders (as defined in Article 12 herein), having an address at c/o Fortress Investment Group LLC, 1345 Avenue of the Americas, 46th Floor, New York, New York 10105 (Agent, together with its successors and assigns, "**Mortgagee**").

**RECITALS:**

A. WHEREAS, pursuant to that certain Construction Loan Agreement dated of even date herewith, between Borrower, Fifty Northern Avenue LLC, a Delaware limited liability company ("**Other Borrower**;" together with Borrower, collectively, "**Borrowers**"), Agent and Lenders (as the same may be consolidated, amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), Lenders have agreed to make available a construction loan to Borrower and Other Borrower in the aggregate maximum principal amount of Three Hundred Fifty-Five Million Dollars (\$355,000,000) (the "**Loan**"), which Loan is (i) secured, among other things, by that certain Construction Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated of even date herewith, executed and delivered by Other Borrower, as mortgagor, and Agent, as mortgagee (as the same may be consolidated, amended, restated, replaced, supplemented, or otherwise modified from time to time, the "**Other Security Instrument**;" together with this Security Instrument, collectively, the "**Mortgages**"), which Other Security Instrument encumbers the 50 Northern Property (as such term is defined in the Loan Agreement); (ii) evidenced by those certain Construction Loan Notes now or hereafter executed by Borrower and Other Borrower and payable to the order of Lenders (as the same may be consolidated, amended, restated, replaced, supplemented or otherwise modified from time to time, collectively, the "**Notes**"); and (iii) further evidenced, secured or governed by other instruments and documents executed in connection with the Loan (collectively, the "**Loan Documents**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. WHEREAS, Borrower desires to secure the payment of the Debt and the performance of the Obligations.

C. WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Notes, and that certain Assignment of Leases and Rents of even date herewith, made by Borrower in favor of Mortgagee, and delivered in connection with, inter alia, this Security Instrument (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Assignment of Leases**"), including the rights,

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Construction Loan Mortgage



remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument.

NOW THEREFORE, in consideration of the making of the Loan and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## ARTICLE 1

### GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Subject to the terms of this Security Instrument, Borrower hereby irrevocably mortgages, grants, bargains, sells, pledges, assigns, warrants, transfers and conveys WITH MORTGAGE COVENANTS to Mortgagee, for the benefit of the Lenders, and their respective successors and assigns, with power of sale (to the extent such power of sale is permitted by applicable law), for the benefit of Mortgagee and other Lenders, Borrower's interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all building materials, machinery, equipment and other personal

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Construction Loan Mortgage

property not yet incorporated into the Improvements, whether stored at the Land or at locations other than the Land, and all machinery, equipment, furnishings, and electronic data-processing and other office equipment, in each case now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto and together with all bills of lading, warehouse receipts, delivery receipts or other documents of title to any of the foregoing (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

(f) **Fixtures.** All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower, which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property that tenants are entitled to remove pursuant to leases, except to the extent that Borrower shall have any right or interest therein;

(g) **Personal Property.** All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other inventory and personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**") whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

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(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, deposits (including, without limitation, security, utility and other deposits) accounts and receipts from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt and the performance of the Obligations;

(i) Condemnation Awards. Subject to the terms of the Loan Agreement, all Awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. Subject to the terms of the Loan Agreement, all Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any Policies, judgments, or settlements made in lieu thereof, in connection with a Casualty to the Property;

(k) Tax Certiorari. Subject to the terms of the Loan Agreement and the rights of tenants at the Improvements, all refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property (to the extent necessary to protect the interest of Mortgagee and other Lenders) and to commence any action or proceeding to protect the interest of Mortgagee and other Lenders in the Property;

(m) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use,

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occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening and during the continuance of any Event of Default, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, internet websites, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement; together with all deposits or wire transfers made to such accounts and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(p) Interest Rate Cap Agreement. The Interest Rate Cap Agreement, including, but not limited to, all "accounts", "chattel paper", "general intangibles" and "investment property" (as such terms are defined in the Uniform Commercial Code) constituting or relating to the foregoing; and all products and proceeds of any of the foregoing;

(q) Proceeds. Subject to the provisions of the Loan Agreement, all proceeds of any of the foregoing, including, without limitation, proceeds of insurance and Awards, whether cash, liquidation or other claims or otherwise; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Mortgagee for the benefit of the Lenders, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

**Section 1.2 Assignment of Rents**. Borrower hereby absolutely and unconditionally assigns to Mortgagee for the benefit of the Lenders all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Security Instrument, Mortgagee and other Lenders grant to Borrower, an exclusive revocable license to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents,

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or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums; provided, however, that such license may not be revoked unless an Event of Default has occurred and is continuing.

**Section 1.3 Security Agreement.** This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Mortgagee for the benefit of the Lenders, as security for the Obligations, a security interest in all of Borrower's right, title and interest, in, to and under, whether now owned or existing or hereafter acquired or arising and wheresoever located, the Fixtures, the Equipment, the Personal Property and the other property constituting the Property, and all proceeds of the foregoing, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur 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 to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Mortgagee at a convenient place (at the Land if tangible property) reasonably acceptable to Mortgagee. Borrower shall pay to Mortgagee within ten (10) Business Days any and all expenses, including reasonable legal expenses and attorneys' fees and costs, incurred or paid by Mortgagee in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Mortgagee or Lenders to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Mortgagee (Secured Party) is as set forth on page one hereof. This instrument is intended to take effect as a construction mortgage pursuant to Massachusetts General Laws Chapter 106, Section 9-334 and a security agreement pursuant to Massachusetts General Laws, Chapter 106, Section 9-101 et seq. The Borrower authorizes Mortgagee and its counsel to file UCC financing statements in form and substance satisfactory to the Mortgagee, describing the collateral as "all assets of the Borrower, whether now owned or existing or hereafter acquired or arising and wheresoever located, and all proceeds and products thereof, including, without limitation, all fixtures on the Land" or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Security Instrument.

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**Section 1.4 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record with the Suffolk County Registry of Deeds shall operate as a financing statement filed as a fixture filing pursuant to Massachusetts General Laws Chapter 106, Section 9-502 upon such of the Property that is or may become fixtures.

**Section 1.5 Pledges of Monies Held.** Borrower hereby pledges to Mortgagee and Lenders all of its right, title and interest in and to any and all monies now or hereafter held by Mortgagee and/or Lenders or on behalf of Mortgagee and/or Lenders in connection with the Loan, including, without limitation, any sums deposited in Tax Funds, Insurance Premium Funds, the Collection Account, the Deposit Account, the I-Cubed Bond Financing Proceeds Reserve Account, the Imprest Account, the Working Capital Account and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument, subject to the provisions of the Loan Agreement.

## CONDITIONS TO GRANT

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

This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of, and conditions imposed upon, Borrower contained herein, the Note, the Loan Agreement and in the other Loan Documents, and the other instruments and agreements evidencing or securing the Debt and Obligations secured hereby shall be kept and fully performed, for any breach of which Mortgagee shall have the STATUTORY POWER OF SALE.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower and Other Borrower shall (a) pay to Mortgagee and Lenders the Debt at the time and in the manner provided in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, and (b) perform the other Obligations as set forth in the Loan Agreement, this Security Instrument and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Mortgagee and Lenders pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE 2

### DEBT AND OBLIGATIONS SECURED

**Section 2.1 Debt.** This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are given for the purpose of securing the Debt.

**Section 2.2 Obligations.** This Security Instrument and the grants, assignments and transfers made in Article 1 hereof are also given for the purpose of securing the Obligations.

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### ARTICLE 3

#### BORROWER'S COVENANTS

Borrower covenants and agrees that:

**Section 3.1 Payment of Debt.** Borrower will pay the Debt and perform the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

**Section 3.2 Incorporation by Reference.** All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Notes and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

**Section 3.3 Insurance.** Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

**Section 3.4 Performance of Other Agreements.** Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement and any other Loan Document and any amendments, modifications or changes thereto.

**Section 3.5 Title.** Borrower shall maintain title in accordance with Section 3.1.7, Section 4.1.7 and the other provisions of the Loan Agreement.

### ARTICLE 4

#### OBLIGATIONS AND RELIANCES

**Section 4.1 Relationship of Borrowers, Mortgagee and Lenders.** The relationship between Borrowers and Lenders (including Mortgagee) is solely that of debtor and creditor, and Lenders have no fiduciary or other special relationship with either Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and/or the other Loan Documents shall be construed so as to deem the relationship between Borrowers and Lenders to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lenders.** Borrower is not relying on any Lender's and/or Mortgagee's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.**

(a) Notwithstanding the provisions of Subsections 1.1(h) and (m) or Section 1.2 hereof, Mortgagee and/or Lenders are not undertaking the performance of (i) any obligations

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under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee and/or Lenders pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any Officer's Certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither the Mortgagee nor the other Lenders shall be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee and/or Lenders.

**Section 4.4 Reliance.** Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, Mortgagee and Lenders are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 3.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee and/or Lenders; that such reliance existed on the part of Mortgagee and Lenders prior to the date hereof; and that the warranties and representations are a material inducement to Mortgagee and Lenders in entering into the transaction evidenced by the Loan Documents and they would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Section 3.1 of the Loan Agreement.

## ARTICLE 5

### FURTHER ASSURANCES

**Section 5.1 Recording of Security Instrument, etc.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, at the request of the Mortgagee, will cause this Security Instrument and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to fully protect and perfect the Lien or security interest hereof upon, and the interest of Mortgagee and Lenders in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all reasonable out of pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Notes, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any other security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except in each case

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where prohibited by law so to do, and further subject to the terms and conditions of the Loan Agreement.

**Section 5.2 Further Acts, etc.** Borrower will, at its sole cost, and without expense to Mortgagee and/or Lenders, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee and Lenders the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Mortgagee and Lenders, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument *or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements.* Borrower, within ten (10) business days of request therefor from Agent or Lenders, will deliver, and in the event it shall fail to so deliver, hereby authorizes Mortgagee to file in the name of Borrower to the extent Mortgagee may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) to evidence more effectively the security interest of Mortgagee and Lenders in the Property. If a Default or an Event of Default has occurred and is continuing, Borrower grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Section 5.2.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property and/or the 50 Northern Property for the purpose of taxation or which imposes a tax, on the Debt or Mortgagee's and Lenders' interest in the Property and/or the 50 Northern Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Mortgagee and/or Lenders, unenforceable or provide the basis for a defense of usury, then Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(b) Borrower shall not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes in each case by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the other Loan Documents, or shall impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

**Section 5.4 Replacement Documents.** Upon receipt of an affidavit with appropriate representations of an officer of Mortgagee as to the loss, theft, destruction or mutilation of any Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or a replacement of such other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

## ARTICLE 6

### DUE ON SALE/TRANSFER

**Section 6.1 Lender Reliance.** Borrower acknowledges that Mortgagee and Lenders have examined and relied on the experience of Borrowers and their respective general partners, members, principals and (if either Borrower is a trust) beneficial owners in owning and operating properties such as the Property and the 50 Northern Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property (and Other Borrower's ownership of the 50 Northern Property) as a means of maintaining the value of the Property (and the 50 Northern Property, as the case may be) as security for the repayment of the Debt and the performance of the Obligations. Borrower acknowledges that Mortgagee and Lenders have a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Obligations, Mortgagee and Lenders can recover the Debt by a sale of the Property and through the exercise of Mortgagee's and Lenders' other remedies under the Other Security Instrument and the other Loan Documents.

**Section 6.2 No Sale/Transfer.** Borrower shall not Transfer the Property or any part thereof or any interest therein, or permit or suffer the Property or any part thereof or any interest therein to be Transferred in violation of the Loan Agreement.

## ARTICLE 7

### RIGHTS AND REMEDIES UPON DEFAULT

**Section 7.1 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Mortgagee may take such action, without notice or demand, to the fullest extent permitted by law, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

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- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property, or any interest therein, may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing Lien and security interest of this Security Instrument for the balance of the Debt and the other Obligations not then due, unimpaired and without loss of priority;
- (d) by suit or suits at law or in equity or by appropriate proceedings or remedy, sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise (to the extent such power of sale is permitted by applicable law), at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; and, without limiting the foregoing:
  - (i) in connection with any sale or sales hereunder, Mortgagee shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Mortgagee shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
  - (ii) Mortgagee shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Mortgagee so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, to the extent permitted by applicable law, as designated by Mortgagee;
  - (iii) should Mortgagee elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Mortgagee has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Mortgagee shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property as may then be required by law. Thereafter, upon the giving of such notice of sale and the expiration of any required time period as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower or Mortgagee at the time and place specified in the notice

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of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) if the Property consists of several lots, parcels or items of property, Mortgagee shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Mortgagee designates. Any Person, including Borrower or Mortgagee, may purchase at any sale hereunder. Should Mortgagee desire that more than one sale or other disposition of the Property be conducted, Mortgagee shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Mortgagee may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Property not sold until all the Obligations have been satisfied in full. If Mortgagee elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Borrower agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Notes, in the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Notes either before, during or after any proceedings for the enforcement of this Security Instrument, the Other Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked, and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys, and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise, and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee within ten (10) days after written request therefor, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat, (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable, (iii) make alterations, additions, renewals, replacements and improvements to or on the Property, (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases,

obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof, (v) require Borrower to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, (vi) require Borrower to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise, and (vii) apply the receipts from the Property to the payment of the Debt and the performance of the other Obligations, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(i) exercise 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: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and/or the Personal Property; and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) business days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee and/or Lenders in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Notes;
- (iv) Amortization of the unpaid principal balance of the Notes; and/or

(v) All other sums payable pursuant to the Notes, the Loan Agreement, this Security Instrument, the Other Security Instrument and the other Loan Documents, including, without limitation, the Make Whole Payment, if applicable, and advances made by Mortgagee and/or Lenders pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Mortgagee and/or Lenders may have under applicable law; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its sole and absolute discretion.

In the event of a sale, by foreclosure, power of sale (to the extent such power of sale is permitted by applicable law) or otherwise, of less than all of the Property, this Security Instrument shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.2 Application of Proceeds.** The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper, to the extent consistent with law.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or to collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and expenses to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee and/or Lenders within ten (10) days of written demand. All such costs and expenses incurred by Mortgagee and/or Lenders in remedying any Default or Event of Default or in appearing in, defending, or bringing any such action or proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Mortgagee that such cost or expense was incurred and continuing until the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee and/or Lenders, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Debt and to be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable within ten (10) days of written demand by Mortgagee therefor.

**Section 7.4 Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Mortgagee, in its sole and absolute discretion, decides should be brought to protect its interest in the Property.

**Section 7.5 Recovery of Sums Required To Be Paid.** Mortgagee shall have the right, from time to time, to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure,

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or any other action, for any Event of Default by Borrower existing at the time such earlier action was commenced.

**Section 7.6 Examination of Books and Records.** At reasonable times and upon reasonable prior notice (which may be given verbally), Mortgagee, its agents, accountants and attorneys shall have the right to examine the records, books and management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Mortgagee and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior written notice, Mortgagee, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located, and such examination and audit shall be at Mortgagee's expense unless an Event of Default shall have occurred and be continuing, in which case such examination and audit shall be at Borrower's sole cost and expense. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.7 Other Rights, etc.**

(a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of its obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Mortgagee shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt and the performance of the Obligations to any other security held by Mortgagee and/or Lenders in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce the Obligations or any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Security Instrument. The rights of Mortgagee (for the benefit of the Lenders) under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee

shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee and/or Lenders shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and Mortgagee 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. This Security Instrument shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.9 Intentionally Deleted.**

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Security Instrument or the Loan Agreement, Mortgagee for the benefit of the Lenders and other Indemnified Parties is entitled to enforce the obligations of Borrower with respect to the Loan contained in Section 8.1 herein without first resorting to or exhausting any security or collateral and without first having recourse to the Notes or any of the Property, through foreclosure, exercise of a power of sale (to the extent such power of sale is permitted by applicable law), or acceptance of a deed in lieu of foreclosure or otherwise, and if Mortgagee commences a foreclosure action against the Property or exercises its power of sale pursuant to this Security Instrument, Mortgagee is entitled to pursue a deficiency judgment with respect to such obligations against either or both Borrowers. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Mortgagee from foreclosing or exercising its power of sale pursuant to this Security Instrument or exercising any other rights and remedies pursuant to the Loan Agreement, the Notes, this Security Instrument, the Other Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Section 8.1 hereof whether or not an action is brought against any other Person (including Other Borrower) and whether or not any other Person is joined in such action or actions. In addition, Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the ADA and Environmental Indemnity.

**Section 7.11 Right of Entry.** Upon reasonable prior written notice to Borrower, and subject to the rights of tenants, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.



## ARTICLE 8

### INDEMNIFICATION

**Section 8.1 General Indemnification.** The provisions of Section 10.13 of the Loan Agreement are hereby incorporated by reference.

## ARTICLE 9

### WAIVERS

**Section 9.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee and/or Lenders arising out of or in any way connected with this Security Instrument, the Loan Agreement, the Notes, any of the other Loan Documents or the Obligations.

**Section 9.2 Marshalling and Other Matters.** To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument.

**Section 9.3 Waiver of Notice.** To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Mortgagee and/or Lenders except as required by applicable law or with respect to matters for which this Security Instrument, the Loan Agreement or any of the other Loan Documents specifically and expressly provides for the giving of notice by Mortgagee to Borrower and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Security Instrument, the Loan Agreement or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Mortgagee to Borrower.

**Section 9.4 Waiver of Statute of Limitations.** To the extent permitted by applicable law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to payment of the Debt or performance of the other Obligations.

**Section 9.5 Waiver of Jury Trial.** BORROWER, MORTGAGEE AND LENDERS HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND EACH FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTES, THE LOAN AGREEMENT, THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM,

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COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGEE, LENDERS AND BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER, MORTGAGEE AND/OR LENDERS ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

**Section 9.6 Survival.** The indemnifications made pursuant to Article 8 hereof and the representations and warranties, covenants, and other obligations arising under the ADA and Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: (a) any satisfaction, release or other termination of this Security Instrument or any other Loan Document; (b) the assignment or other transfer of all or any portion of this Security Instrument or any other Loan Document or Lenders' interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any assignee or transferee); (c) any exercise of Mortgagee's and/or Lenders' rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure; (d) any exercise of any rights and remedies pursuant to the Loan Agreement, the Notes or any of the other Loan Documents; (e) any transfer of all or any portion of the Property (whether by Borrower or by Mortgagee and/or Lenders following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time); (f) any amendment to this Security Instrument, the Loan Agreement, the Notes or the other Loan Documents; and (g) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations or any portion thereof. Notwithstanding the foregoing, the obligations and liabilities of Borrower under Article 8 hereof shall not apply to any event or condition first occurring after the date on which Mortgagee or its designee or any purchaser takes title to the Property through foreclosure or deed in lieu of foreclosure.

## ARTICLE 10

### NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

## ARTICLE 11

### APPLICABLE LAW

**Section 11.1 Governing Law.** This Security Instrument shall be governed in accordance with the terms and provisions of Section 10.3 of the Loan Agreement.

**Section 11.2 Usury Laws.** Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrowers and Mortgagee and/or Lenders are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Mortgagee and/or Lenders

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pursuant to the Loan Documents shall never exceed the Maximum Legal Rate or the maximum lawful amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrowers to Mortgagee and/or Lenders, and (c) if through any contingency or event, Mortgagee and/or Lenders receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrowers to Mortgagee and/or Lenders, or if there is no such indebtedness, shall immediately be returned to Borrowers.

**Section 11.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## ARTICLE 12

### DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in the singular or plural form and the word "Borrower" shall mean "Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lenders" shall have the meaning ascribed thereto in the Loan Agreement, the word "Mortgagee" shall mean "Mortgagee and any successor under the Loan Agreement and each and any subsequent holder(s) of the Note or any part thereof," the word "Notes" shall mean "the Notes and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees," "legal fees" and "counsel fees" shall include any and all reasonable fees and actual disbursements of attorneys, paralegals and law clerks, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee and/or Lenders in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

**Section 13.1 No Oral Change.** This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Mortgagee, but only by an agreement in writing signed by Mortgagee and Borrower.

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**Section 13.2 Successors and Assigns.** This Security Instrument shall be binding upon and shall inure to the benefit of Borrower, Mortgagee and Lenders and their respective successors and permitted assigns, as set forth in the Loan Agreement. Mortgagee and Lenders shall have the right to assign or transfer its rights under this Security Instrument in connection with any assignment of the Loan and the Loan Documents, pursuant to the terms and conditions of the Loan Agreement. Any such permitted assignee or transferee of Mortgagee and/or Lenders shall be entitled to all the benefits afforded to Mortgagee and/or Lenders under this Security Instrument. Borrower shall not have the right to assign or transfer its rights or obligations under this Security Instrument without the prior written consent of Mortgagee, as provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

**Section 13.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Notes and this Security Instrument shall be construed without such provision.

**Section 13.4 Headings, etc.** The headings and captions of the various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 13.5 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural and vice versa.

**Section 13.6 Subrogation.** If any or all of the proceeds of the Notes have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee and/or Lenders shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and Lenders and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Notes and the other Loan Documents and the performance and discharge of the other Obligations.

**Section 13.7 Entire Agreement.** The Notes, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Borrowers and Mortgagee, in its capacity as agent for Lenders, with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrowers and Mortgagee, in its capacity as agent for Lenders, with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Notes, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Mortgagee and/or Lenders to make, any representations, understandings, stipulations, agreements or

promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

**Section 13.8 Limitation on Lender's Responsibility.** No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee and/or Lenders, nor shall it operate to make Mortgagee and/or Lenders responsible or liable for any waste committed on the Property by the tenants or any other Person (other than waste committed by Mortgagee and/or Lenders or their agents), or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee and/or Lenders a "mortgagee in possession" unless Mortgagee and/or Lenders actually elects in writing to become a "mortgagee in possession."

**Section 13.9 Loan Agreement.** This Security Instrument is made pursuant to a Loan Agreement between Borrower and Mortgagee, in its capacity as agent for Lenders, and is subject to all of the provisions of the Loan Agreement including, without limitation, the provisions thereof entitling Mortgagee to declare the entire indebtedness secured hereby to be immediately due and payable, all of which provisions are incorporated herein with the same force and with like effect as if they were fully set forth herein at length and made a part hereof. In the event of any inconsistency or conflict between the terms and conditions of this Security Instrument and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall govern and control.

#### ARTICLE 14

##### ERISA.

**Section 14.1** The provisions of Section 4.2.11 of the Loan Agreement are hereby incorporated by reference.

#### ARTICLE 15

##### ENTRY OF JUDGMENT.

**Section 15.1** The covenants and obligations of Mortgagor and the rights and remedies of Mortgagee hereunder shall not merge with or be extinguished by the entry of judgment hereunder, and such covenants, obligations, rights and remedies shall survive entry of judgment until payment in full of the Obligations.

**[No Further Text on this Page; Signature Page Follows]**

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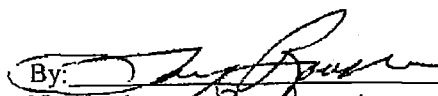
IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

**ELEVEN FAN PIER BOULEVARD LLC,**  
a Delaware limited liability company

By: 11 Fan Pier Boulevard Member, LLC, its sole member

By: Massachusetts Mutual Life Insurance Company, a member

By: Cornerstone Real Estate Advisers LLC, its authorized agent

By:   
Name: *Larry Beaudreault*  
Title: *Vice President*

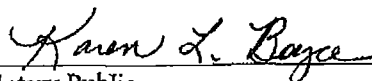
11 Fan Pier Boulevard  
Construction Loan Mortgage

STATE OF CONNECTICUT

COUNTY OF HARTFORD

)  
) ss.: Glastonbury  
)

On this 27<sup>th</sup> day of JUNE, 2011, before me, the undersigned notary public, personally appeared LARRY BONDREAN, proved to me through satisfactory evidence of identification, which were PERSONALLY KNOWN, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she signed it voluntarily for its stated purpose as the VICE PRESIDENT and on behalf of Cornerstone Real Estate Advisers LLC, a Delaware limited liability company, as the authorized agent and on behalf of Massachusetts Mutual Life Insurance Company, as a member and on behalf of 11 Fan Pier Boulevard Member, LLC, a Delaware limited liability company, as the sole member and on behalf of Eleven Fan Pier Boulevard LLC, a Delaware limited liability company, as his and their free acts and deeds.



Notary Public

My Commission Expires:

**KAREN L. BOYCE**  
**NOTARY PUBLIC**

MY COMMISSION EXPIRES APR. 30, 2015

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EXHIBIT A

DESCRIPTION OF THE LAND

[SEE ATTACHED]





**PARCEL B**

A certain parcel of land located northeasterly of Northern Avenue in Boston, Massachusetts, bounded and described as follows:

Beginning at the southwest corner of the herein described parcel, said corner is located N 31°53'11"E, a distance of 252.00 feet from the northeasterly sideline of Northern Avenue;

Thence continuing N 31°53'11"E, a distance of 172.00 feet;

Thence turning and running S 58°06'49"E, a distance of 230.50 feet by Subsurface Parcel B;

Thence turning and running S 31°53'11"W, a distance of 172.00 feet by Subsurface Parcel B;

Thence turning and running N 58°06'49"W, a distance of 230.50 feet by Subsurface Parcel B to the point of beginning.

The above described parcel contains an area of about 39,646 square feet and is shown as Parcel B on a plan titled "Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts" dated April 15, 2011, prepared by Nitsch Engineering, Inc., recorded as Plan No. 144 of 2011.

**SUBSURFACE PARCEL B**

A certain parcel of land located northeasterly of Northern Avenue in Boston, Massachusetts, bounded and described as follows:

Beginning at the southwest corner of the herein described parcel, said corner is located N 31°53'11"E, a distance of 223.25 feet from the northeasterly sideline of Northern Avenue;

Thence continuing N 31°53'11"E, a distance of 28.75 feet;

Thence turning and running S 58°06'49"E, a distance of 230.50 feet by Parcel B;

Thence turning and running N 31°53'11"E, a distance of 172.00 feet by Parcel B;

Thence turning and running N 58°06'49"W, a distance of 230.50 feet by Parcel B;

Thence turning and running N 31°53'11"E, a distance of 40.00 feet;

Thence turning and running S 58°06'49"E, a distance of 273.00 feet;

Thence turning and running S 31°53'11"W, a distance of 214.50 feet by Subsurface Parcel E;

Thence turning and running N 58°06'49"W, a distance of 17.00 feet by Subsurface Parcel F;

Thence turning and running S 31°53'11"W, a distance of 26.25 feet by Subsurface Parcel F;

Thence turning and running N 58°06'49"W, a distance of 256.00 feet by Subsurface Parcel A to the point of beginning.

The above described parcel has an upper limit that ends at Elevation 15.67 (Boston City Base), contains an area of about 25,632 square feet and is shown as Subsurface Parcel B on a plan titled "Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts" dated April 15, 2011, prepared by Nitsch Engineering, Inc., recorded as Plan No. 144 of 2011.

**AIR SPACE PARCEL B**

A certain parcel of land located northeasterly of Northern Avenue in Boston, Massachusetts, bounded and described as follows:

Beginning at a point of the northerly line of Parcel A, said point being S 58°06'49"E, a distance of 84.08 feet from the northwest corner of Parcel A and being the southwest corner of the herein described parcel;

Thence turning and running N 31°53'11"E, a distance of 42.00 feet to a point on the southerly line of Parcel B;

Thence turning and running S 58°06'49"E, a distance of 12.75 feet along said line of Parcel B;

Thence turning and running S 31°53'11"W, a distance of 42.00 feet to a point on the northerly line of Parcel A;

Thence turning and running N 58°06'49"W, a distance of 12.75 feet by said line of Parcel A to the point of beginning.

The above described parcel begins at elevation 72.75, Boston City Base, and extends to Elevation 110.42 Boston City Base, contains an area of about 536 square feet and is shown as Air Space Parcel B on a plan titled "Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts" dated April 15, 2011, prepared by Nitsch Engineering, Inc., recorded as Plan No. 144 of 2011.

Together with the benefit of easements and other rights set forth in the following:

Declaration of Covenants, Easements and Restrictions, dated as of January 31, 2008, by and between Fan Pier Development LLC and Fan Pier Owners Corporation, recorded with said Deeds on February 4, 2008 in Book 43059, Page 1; as affected by a First Amendment to Declaration of Covenants, Easements and Restrictions, dated as of May 4, 2011, by and among Fan Pier Development LLC, Fan Pier Owners Corporation and Fallon Cornerstone One MPD LLC, recorded with said Deeds on May 5, 2011 and recorded in Book 47884, Page 54; as further affected by a Second Amendment to Declaration of Covenants, Easements and Restrictions, dated as of June 27, 2011, by and among Fan Pier Development LLC, Fifty Northern Avenue LLC, Eleven Fan Pier Boulevard LLC, Ten Fan Pier Boulevard LLC and Fallon Cornerstone One MPD LLC, recorded with said Deeds on June 27, 2011 in Book 48069, Page 157, as further affected by Estoppel Certificate and Agreement dated June 30, 2011 and recorded herewith.

Temporary Construction Easement (Fan Pier), dated as of May 4, 2011 by Fan Pier Development LLC, as Grantor, to Fifty Northern Avenue LLC and Eleven Fan Pier Development LLC, as Grantees, recorded with said Deeds on May 5, 2011 and recorded in Book 47884, Page 140.

Permanent Groundwater Cut-Off Easement (Fan Pier Parcel B), dated as of May 4, 2011, by Fan Pier Development LLC, as Grantor, to Eleven Fan Pier Boulevard LLC, as Grantee, recorded with said Deeds on May 5, 2011 in Book 47884, Page 151.

Temporary Ground Water Cut-Off and Parking Easement (Fan Pier Parcel B) dated as of May 4, 2011, by Fan Pier Development LLC, as Grantor, to Eleven Fan Pier Boulevard LLC, as Grantee, recorded with said Deeds on May 5, 2011 in Book 47884, Page 155.

Easement Agreement, dated as of June 27, 2011, by and between Fifty Northern Avenue LLC and Eleven Fan Pier Boulevard LLC, recorded with said Deeds on June 27, 2011 in Book 48069, Page 165.

Garage Reciprocal Easement Agreement dated May 4, 2011, by and among Fan Pier Development LLC, Fallon Cornerstone One MPD LLC, Fifty Northern Avenue LLC, and Eleven Fan Pier Boulevard LLC, recorded on May 5, 2011 and recorded in Book 47884, Page 77, as affected by First Amendment to Garage Reciprocal Easement Agreement dated June 27, 2011 by and among Fan Pier Development LLC, Fifty Northern Avenue LLC, Eleven Fan Pier Boulevard LLC, Ten Fan Pier Boulevard LLC and Fallon Cornerstone One MPD LLC recorded with said Deeds on June 27, 2011 in Book 48069, Page 149, as further affected by Estoppel Certificate and Agreement dated June 30, 2011 and recorded herewith.

Together with the matters set forth in the Quitclaim Deed of Fan Pier Development LLC to Eleven Fan Pier Boulevard LLC, dated as of May 4, 2011 and recorded with said Deeds on recorded with said Deeds on May 5, 2011 in Book 47884, Page 68, as affected by Estoppel Certificate and Agreement dated June 30, 2011 and recorded herewith.