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**THIS INSTRUMENT
PREPARED BY AND WHEN
RECORDED, RETURN TO:**

J. Richard White, Esq.
Winstead Sechrest & Minick P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

P.I.N. 07-13-101-013-0000

Street Address: 915, 935 and 955 National Parkway, Schaumburg, Illinois



Doc#: 0605534075 Fee: \$172.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/24/2006 01:16 PM Pg: 1 of 75

TO BE RECORDED IN THE
MORTGAGE RECORDS OF
COOK COUNTY, ILLINOIS

This Mortgage, Security Agreement and Fixture Financing Statement also constitutes a
Fixture Financing Statement.

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

Loan No. CF 353500

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") executed on the date indicated on the acknowledgment attached to this Mortgage, but to be effective as of February 13, 2006, by **ROMANEK SCHAUMBURG LLC**, a Delaware limited liability company, as mortgagor for all purposes hereunder ("Borrower"), having an address at c/o Romanek Properties Ltd., 8410 West Bryn Mawr Avenue, Chicago, Illinois 60631, Attention: Marvin M. Romanek, in favor of **NOMURA CREDIT & CAPITAL, INC.**, a Delaware corporation, as mortgagee for all purposes hereunder ("Lender"), whose address is 2 World Financial Center, 21st Floor, New York, New York 10281-1198. For all state law, statutory and other purposes hereunder, (i) the term "Borrower" as used herein shall be deemed to mean a mortgagor of the Property as described herein the same as if the term "mortgagor" were used in lieu of the term "Borrower" throughout this Mortgage, and (ii) the term "Lender" as used herein shall be deemed to mean a mortgagee of the Property with all of the rights conferred hereby the same as if the term "mortgagee" were used in lieu of the term "Lender" throughout this Mortgage.

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE

MAIL TO

NNNT 010 60191

Co., Inc.

Near North National Tru.
222 N. LaSalle
Chicago, IL 60601

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RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BORROWER HEREBY IRREVOCABLY MORTGAGES, WARRANTS, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER, AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF LENDER AND ITS SUCCESSORS AND ASSIGNS, all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

(A) All that certain real property situated in the County of Cook, State of Illinois, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Real Estate"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto and all of the estate, right, title, interest, claim and demand whatsoever of Borrower then or thereto, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");

(C) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Real Estate or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(D) All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Borrower and now or hereafter located on, attached to or used in or about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Borrower as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Real Estate or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(E) All water, water courses, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights and powers, if any, which are appurtenant to, located on, under or above or used in connection with the Real Estate or the Improvements, or any part thereof, together with (i) all utilities, utility lines, utility commitments, utility capacity, capital recovery charges, impact fees and other fees paid in connection with same, (ii) reimbursements or other rights pertaining to utility or utility services provided to the Real Estate and/or Improvements and (iii) the present or future use or availability of waste water capacity, or other utility facilities to the extent same pertain to or benefit the Real Estate and/or Improvements,

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including, without limitation, all reservations of or commitments or letters covering any such use in the future, whether now existing or hereafter created or acquired;

(F) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Real Estate;

(G) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Mortgage or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Reserves (hereinafter defined);

(H) All leases, licenses, tenancies, concessions and occupancy agreements of the Real Estate or the Improvements now or hereafter entered into (severally, a "Lease", and collectively, the "Leases") and all rents, royalties, issues, profits, bonus money, revenue, income, accounts receivable and other benefits (collectively, the "Rents" or "Rents and Profits") of the Real Estate, the Improvements, or the fixtures or equipment, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any Lease (including, without limitation, oil, gas and mineral leases), license, tenancy, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities (the "Security Deposits") that secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any Leases, licenses, concessions or occupancy agreements, or which may be available to Borrower or its designee to effect repairs or maintenance, whether said cash or securities are to be held until the expiration of the terms of said Leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however, the provisions contained in Section 1.11 of this Mortgage;

(I) All contracts and agreements now or hereafter entered into covering any part of the Real Estate or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Real Estate or the Improvements (including plans, specifications, studies, drawings, surveys, tests, operating and other reports, bonds and governmental approvals) or to the management or operation of any part of the Real Estate or the Improvements;

(J) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Real Estate or the Improvements;

(K) All present and future funds, accounts, instruments (including, without limitation, promissory notes), investment property, letter-of-credit rights, letters of credit, money, supporting obligations, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, payment intangibles and software, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Real Estate or the Improvements, to the extent assignable, all names by which the Real Estate or the Improvements may be operated or known, all rights to carry on business under such names, and

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all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Real Estate or the Improvements) and all notes or chattel paper (whether tangible or electronic) now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements (collectively, the "General Intangibles");

(L) To the extent assignable, all water taps, sewer taps, certificates of occupancy, permits, special permits, uses, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Real Estate or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Real Estate or the Improvements;

(M) All building materials, supplies and equipment now or hereafter placed on the Real Estate or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Real Estate or the Improvements;

(N) All right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

(O) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(P) All other or greater rights and interests of every nature in the Real Estate or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower.

FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions thereof, is hereinafter referred to as the "Note") of even date with this Mortgage, made by Borrower and payable to the order of Lender in the original principal amount of **Twenty-Four Million Three Hundred Fifty Thousand and No/100 Dollars (\$24,350,000.00)** (the "Loan" or the "Loan Amount"), together with interest (including, without limitation, interest at the Default Interest Rate) at a rate per annum as therein specified and having a maturity date of **March 9, 2008**;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Mortgage, the Assignment (as hereinafter defined) and such other agreements, documents and instruments, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are hereinafter collectively referred to as the "Loan");

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Documents") and the payment of all other sums therein covenanted to be paid, including, without limitation, any applicable yield maintenance premiums or prepayment fees;

(3) Any and all future or additional advances (whether or not obligatory) made by Lender to protect or preserve the Property, or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances), together with interest thereon at the Default Interest Rate such advances to be secured to the same extent as if such future advances were made on the date hereof and although there may be no indebtedness outstanding at the time any advance is made; and

(4) **ANY AND ALL OTHER INDEBTEDNESS NOW OWING OR WHICH MAY HEREAFTER BE OWING BY BORROWER TO LENDER, HOWEVER AND WHENEVER INCURRED OR EVIDENCED, WHETHER EXPRESS OR IMPLIED, DIRECT OR INDIRECT, ABSOLUTE OR CONTINGENT, OR DUE OR TO BECOME DUE, AND ALL RENEWALS, MODIFICATIONS, AMENDMENTS, RESTATEMENTS, CONSOLIDATIONS, SUBSTITUTIONS, REPLACEMENTS AND EXTENSIONS THEREOF.**

(All of the sums referred to in Paragraphs (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby"). The principal amount of the indebtedness secured hereby shall not exceed double the original principal amount of the Note.

TO HAVE AND TO HOLD the Property unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof for the purposes and uses herein set forth;

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, this Mortgage shall be satisfied and the estate, right, title and interest of Lender in the Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Lender shall release this Mortgage and the lien hereof by proper instrument.

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ARTICLE I COVENANTS OF BORROWER

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Mortgage, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Borrower represents, covenants and agrees as follows:

1.1 Warranties of Borrower. Borrower, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:

(a) Organization and Existence. Borrower is a duly organized, validly existing entity in good standing under the laws of the state where it was organized and in all other jurisdictions in which Borrower is transacting business.

(b) Authorization. Borrower has the power and authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents and has taken all necessary actions in furtherance thereof including, without limitation, that those partners, shareholders or members of Borrower whose approval or consent is required by the terms of Borrower's organizational documents have duly approved or consented to the transactions contemplated by the Loan Documents and have authorized execution and delivery thereof by the respective signatories. To the best of Borrower's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.

(c) Valid Execution and Delivery. All of the Loan Documents requiring execution by Borrower have been duly and validly executed and delivered by Borrower.

(d) Enforceability. All of the Loan Documents constitute valid, legal and binding obligations of Borrower and are fully enforceable against Borrower in accordance with their terms, subject only to bankruptcy and other laws affecting creditor's rights and general principles of equity.

(e) No Defenses. The Note, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, nor would the operation of any of the terms of the Note, this Mortgage or any of the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(f) Defense of Usury. Borrower knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, the Loan Documents.

(g) No Conflict/Violation of Law. The execution, delivery and performance of the Loan Documents by the Borrower will not cause or constitute a default under or conflict with the organizational documents of Borrower, any indemnitor or any general partner, shareholder or managing member of Borrower or any indemnitor. The execution, delivery and performance of the obligations imposed on Borrower under the Loan Documents will not cause Borrower to be in default, including after due notice or lapse of time or both, under the

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provisions of any agreement, judgment or order to which Borrower is a party or by which Borrower is bound.

(h) Compliance with Applicable Laws and Regulations. All of the Improvements and the use of the Property by the Borrower comply in all material respects with, and shall remain in compliance in all material respects with, all applicable statutes, rules, regulations and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including all applicable statutes, rules and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, environmental protection, zoning and land use. The Improvements comply in all material respects with, and shall remain in compliance with, applicable health, fire and building codes. There is no evidence of any illegal activities relating to controlled substances on the Property. All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operation of the Property for the use currently being made thereof have been obtained and are in full force and effect. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

(i) Consents Obtained. All consents, approvals, authorizations, orders or filings with any court or governmental or administrative agency or body, if any, required for the execution, delivery and performance of the Loan Documents by Borrower have been obtained or made.

(j) No Litigation. There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Property, Borrower or any guarantor of Borrower an adverse outcome of which would materially affect (i) the Borrower's performance under the Note, the Mortgage or the other Loan Documents; (ii) the Property; or (iii) the ability of the Property to continue to generate income, or continue in operation, in a manner consistent with current operations.

(k) Title. The Borrower has good and marketable fee simple title to the Property, subject only to those matters expressly listed as exceptions to title or subordinate matters in the title insurance policy accepted by Lender in connection with this Mortgage (all such items, excluding therefrom, however, all preprinted and/or standard exceptions, are herein referred to as the "Permitted Exceptions"). The possession of the Property has been peaceful and undisturbed and title thereto has not been disputed or questioned. Further, Borrower has full power and lawful authority to grant, bargain, sell, convey, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Property pursuant to any foreclosure.

(l) Permitted Exceptions. The Permitted Exceptions do not and will not materially and adversely affect (1) the ability of the Borrower to pay in full the principal and

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interest on the Note in a timely manner; or (2) the current use of the Property, the current operation of the Property or the value of the Property.

(m) First Lien. Upon the execution by the Borrower and the recording of this Mortgage, and upon the filing of UCC-1 financing statements or amendments thereto, the Lender will have a valid first lien on the Property and a valid security interest in all personal property encumbered hereby, subject to no liens, charges or encumbrances other than the Permitted Exceptions.

(n) ERISA. The Borrower has made and shall continue to make all required contributions to all employee benefit plans established or maintained by it, if any, and the Borrower has no knowledge of any material liability which has been incurred by the Borrower which remains unsatisfied for any taxes or penalties with respect to any such employee benefit plan or any such multi-employer plan, and each such plan has been administered in compliance with its terms and the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and any other federal or state law.

(o) Contingent Liabilities. The Borrower has no known material contingent liabilities.

(p) No Other Obligations. The Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or the Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Property and other than obligations under this Mortgage, the Note and the other Loan Documents.

(q) Fraudulent Conveyance. The Borrower (1) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor; and (2) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loans contemplated by the Loan Documents, the fair saleable value of the Borrower's assets exceed and will, immediately following the execution and delivery of the Loan Documents, exceed the Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities (if permitted hereunder). The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured (if permitted hereunder). The Borrower's assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

(r) Investment Company Act. The Borrower is not (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (2) a "holding company" or a "subsidiary

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company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(s) Access/Utilities. The Property has adequate rights of access to public ways and is served by adequate water, sewer, electric, gas, telephone, cable (where appropriate), sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Property as presently used and enjoyed are located in the public right-of-way abutting the Property or invalidly created easements, and all such utilities are connected so as to serve the Property without passing over other property (except such easements). All roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to Borrower or tenants.

(t) Taxes Paid. Borrower has filed all federal, state, county and municipal tax returns required to have been filed by Borrower or with respect to the Property or has obtained extensions that have not expired, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment relating to the Property, and Borrower has no knowledge of any basis for additional assessment with respect to such taxes. Further, the Property is free from delinquent water charges, sewer rents, taxes and assessments. Borrower has further paid or caused to be paid all sale and payroll taxes applicable to Borrower or the Property.

(u) Multiple Tax Lots. The Real Estate consists of a single tax lot and no portion of said tax lot covers property other than the Real Estate or a portion of the Real Estate and no portion of the Real Estate lies in any other tax lot.

(v) Special Assessments. Except as disclosed in the title insurance policy, there are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Property that may result in such special or other assessments.

(w) Flood Zone. The Property is not located in a flood hazard area as defined by the Federal Insurance Administration.

(x) Seismic Exposure. The Real Estate is not located in Zone 3 or Zone 4 of the "Seismic Zone Map of the U.S.".

(y) Misstatements of Fact. No statement made in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to the Borrower which has not been disclosed which adversely affects, nor as far as the Borrower can foresee, might adversely affect the business, operations or condition (financial or otherwise) of the representing party. Further, and in clarification of the foregoing, all reports, certificates, affidavits, statements and other data furnished by or, to Borrower's knowledge, on behalf of

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Borrower to Lender, or their respective agents, in connection with the Loan are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading.

(z) Condition of Improvements. The Property has not been damaged by fire, water, wind or other cause of loss, and any previous damage to the Property has been fully restored. To Borrower's knowledge and except as shown in the engineering report provided to Lender prior to the date hereof, the Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. To Borrower's knowledge and except as shown in the engineering report provided to Lender prior to the date hereof, all major building systems located within the Improvements, including, without limitation, the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition.

(aa) No Insolvency or Judgment. None of Borrower, any general partner or member of Borrower, or any guarantor of the Loan is currently (a) the subject of or a party to any completed or pending bankruptcy, reorganization or insolvency proceeding; or (b) the subject of any unsatisfied judgment of record or docketed in any court of the state in which the Property is located or in any other court located in the United States. The proposed Loan will not render the Borrower nor any general partner or member of Borrower insolvent. As used in this Mortgage, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.

(bb) No Condemnation. No part of the Property has been taken in condemnation or other like proceeding to an extent which would impair the value of the Property, the Mortgage or the Loan or the usefulness of the Property for the purposes contemplated by the loan application relating to the Loan (the "Loan Application"), nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Property.

(cc) No Labor or Materialmen Claims. All parties furnishing labor and materials to the Property at Borrower's request, have been paid in full (except for amounts being diligently contested by Borrower) and, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Mortgage.

(dd) No Purchase Options. No tenant, person, party, firm, corporation or other entity has an option to purchase the Property, any portion thereof or any interest therein.

(ee) Leases. The Property is not subject to any leases, subleases, licenses, concessions or other agreements related to the leasing or renting of the Property or any portion thereof, except as set forth on the rent roll provided to Lender and certified by Borrower of even date herewith (the "Rent Roll"). No person has any possessory interest in the Property or right to

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occupy the same, except pursuant to the leases shown on the Rent Roll ("Existing Leases"). As of the date hereof, (i) the Borrower is the owner and holder of the landlord's interest under the Existing Leases; (ii) there are no prior assignments of all or any portion of the Existing Leases or any portion of the Rents and Profits which are presently outstanding and have priority over the assignment of leases and rents contained herein in Section 1.11 given by Borrower to Lender; (iii) except as disclosed to Lender in writing prior to the date hereof, all Rents due and payable under each Existing Lease have been paid in full and no said Rents have been paid more than one (1) month in advance of the due dates thereof and (iv) to Borrower's knowledge, there are no offsets or defenses to the payment of any portion of the Rents. The representations set forth in this Paragraph (ee) are in addition to those set forth in Section 1.12 of this Mortgage.

(ff) Appraisal. All requirements and conditions of the appraisal of the Property submitted to Lender as part of the Loan Application, upon which the value of the Property was conditioned, have been fully satisfied.

(gg) Boundary Lines. All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Real Estate encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by title insurance.

(hh) Survey. The survey of the Property delivered to Lender in connection with this Mortgage, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is situated, is certified to the Lender, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with the signature and seal of a licensed engineer or surveyor affixed thereto, and, to Borrower's knowledge, does not fail to reflect any material matter affecting the Property or the title thereto.

(ii) Forfeiture. There has not been and shall never be committed by Borrower or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

(jj) Use of Rents and Profits. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Mortgage and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Borrower and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. Any license agreements which generate income with respect to the Property, including cable licenses or similar arrangements, are not prepaid and the benefits thereof have been assigned for the benefit of Lender.

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(kk) No Broker. No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Borrower in connection with the Loan, except for any broker whose full commission was paid out of the proceeds of the Loan and is set forth in the written instructions from Borrower to Lender regarding disbursement of the proceeds of the Loan.

(ll) Work. All work to be performed by Borrower under any Existing Lease has been substantially performed (to the extent performance is then due), all contributions to be made by Borrower to the tenant have been made and all other conditions precedent to the tenant's obligations thereunder have been satisfied (to the extent conditions are then required to be performed).

(mm) Conviction of Criminal Acts. Each of Borrower, any indemnitor and guarantor of Borrower's obligations under the Loan Documents, and any general partner, shareholder, member, manager, or principal of Borrower, and any such indemnitor or guarantor of Borrower, has never been convicted of a crime and is not currently the subject of any pending or threatened criminal investigation or proceeding.

(nn) Security Agreements. There are no security agreements or financing statements affecting any of the Property other than (i) as disclosed in writing by Borrower to Lender prior to the date hereof and (ii) the security agreements and financing statements created in favor of Lender.

(oo) Homestead. The Property forms no part of any property owned, used or claimed by Borrower as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Real Estate is located. Borrower hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead.

(pp) Contracts. Borrower will comply with all of its obligations under all Contracts which are material to the operation of the Property in accordance with Borrower's current practice, and with all material obligations under all other Contracts or replace Contracts with others providing comparable services.

(qq) No Margin Stock. None of the proceeds of the indebtedness secured hereby will be used for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U or a "margin security" with the meaning of Regulation T issued by the Board of Governors of the Federal Reserve System, or for any other purpose which would be inconsistent with such Regulations T or U or any other Regulations of such Board of Governors, or for any purpose prohibited by legal requirements or by the terms and conditions of the Loan Documents.

1.2 Defense of Title. If, while this Mortgage is in force, the title to the Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attacked directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Lender, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Lender reasonably

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determines that Borrower is not adequately performing its obligations under this Section, Lender may, without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall deem necessary or proper; any and all reasonable costs and expenses incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.3 Performance of Obligations. Borrower shall pay when due the principal of and the interest on the indebtedness secured hereby including all charges, fees and other sums required to be paid by Borrower as provided in the Loan Documents, and shall observe, perform and discharge all obligations, and conditions, and comply with all prohibitions, covenants and agreements to be observed, performed or discharged by Borrower set forth in the Loan Documents in accordance with their terms. In the event that Lender determines that Borrower is not adequately performing any of its obligations under this Mortgage or under any of the other Loan Documents, subject to the notice and cure rights provided in this Mortgage or the other Loan Documents, Lender may, without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall reasonably deem necessary or proper, and any and all costs and expenses reasonably incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.4 Insurance. Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect the following insurance:

(a) Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement (insurable) cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indices, appraisals or information as Lender determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval.

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(b) Comprehensive Commercial General Liability Insurance for personal injury, bodily injury, death and property damage liability in amounts not less than **\$1,000,000.00** per occurrence, **\$2,000,000.00** aggregate and with total excess and umbrella coverage totaling **\$7,000,000.00** (or such lesser amount as Lender may approve in its discretion). During any construction on the Property, each contractor having a contract for construction in an amount equal to or greater than \$100,000.00 shall also provide the insurance required in this Subsection (b), except that the minimum required coverages shall be \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate (both inclusive of umbrella coverage). Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances.

(c) General boiler and machinery insurance coverage is required if steam boilers or other pressure-fired vessels are in operation at the Property. Minimum liability amount per accident must equal the greater of the replacement (insurable) value of the Improvements housing such boiler or pressure-fired machinery or \$2,000,000.00.

(d) If the Property or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the indebtedness secured hereby if replacement cost coverage is not available for the type of building insured); or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program.

(e) During the period of any construction on the Property or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Lender and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.

(f) Loss of rents or loss of business income insurance in amounts sufficient to compensate Borrower for all Rents and Profits during a period of not less than **twelve (12)** months in which the Property may be damaged or destroyed. The amount of coverage shall be adjusted annually to reflect the Rents and Profits or income payable during the succeeding **twelve (12)** month period.

(g) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time reasonably be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Law and Ordinance, Sinkhole, Mine Subsidence, Earthquake and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be with insurers authorized to do business in the state within which the Property is located and who have and maintain a rating of at least "A" (or its

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equivalent) from Standard & Poor's, a Division of The McGraw-Hill Companies, Inc. or any other nationally recognized statistical agency selected by Lender; (ii) contain the complete address of the Property (or a complete legal description); (iii) be for terms of at least one year; (iv) contain deductibles which do not exceed \$10,000.00 or, with respect to the policy described in clause (d) above \$3,000.00; and (v) be subject to the approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates. Without limitation to the generality of the foregoing, the comprehensive all-risk insurance and business income insurance policies required pursuant to Sections 1.4(a) and 1.4(f) above shall be required to cover perils of terrorism and acts of terrorism.

Borrower shall as of the date hereof deliver to Lender evidence that said insurance policies have been paid current as of the date hereof and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Lender. Borrower shall renew all such insurance and deliver to Lender certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to the insurance policies, Borrower further agrees that all such policies shall include a standard, non-contributory, mortgagee clause naming:

Nomura Credit & Capital, Inc.,
and its successors and assigns
2 World Financial Center
21st Floor
New York, New York 10281-1198

(x) as an additional insured under all liability insurance policies; (y) as the first mortgagee on all property insurance policies; and (z) as the loss payee on all loss of rents or loss of business income insurance policies. Borrower further agrees that all such insurance policies: (1) shall provide for at least thirty (30) days' prior written notice to Lender prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Lender; (2) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; (3) shall waive all rights of subrogation against Lender; and (4) in the event that the Real Estate or the Improvements constitute a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages. Lender agrees that such insurance policies may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Borrower hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for one hundred percent (100%) of replacement cost at the time of loss and otherwise meet all of Lender's applicable insurance requirements set forth in this

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Section 1.4. The delivery to Lender of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Borrower to Lender as further security for the indebtedness secured hereby. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Borrower in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title. Approval of any insurance by Lender shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower shall not obtain insurance for the Property in addition to that required by Lender without the prior written consent of Lender, which consent will not be unreasonably withheld provided that (i) Lender is a named insured on such insurance; (ii) Lender receives complete copies of all policies evidencing such insurance; and (iii) such insurance and the related insurer comply with all of the applicable requirements set forth herein.

As required pursuant to the Collateral Protection Act, 815 ILCS 180/10(3), Borrower is hereby notified that in the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance at Borrower's expense to protect Lender's interests in the Property. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained insurance as required by the terms of this Mortgage. If Lender purchases insurance for the Property as set forth herein, Borrower shall pay all amounts advanced by Lender, together with interest thereon at the Default Interest Rate (as defined in the Note) from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

1.5 Payment of Taxes. Borrower shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.6 of this Mortgage, all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Borrower shall furnish Lender with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may in good faith, by appropriate proceedings and upon notice to Lender, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued; (b) Lender determines, in its subjective opinion, that such contest suspends the obligation to pay the tax or assessment and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part

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thereof or any interest of Lender therein; and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Borrower deposits in the Impound Account (as hereinafter defined) an amount determined by Lender to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

1.6 Tax and Insurance Impound Account. Borrower shall establish and maintain at all times while this Mortgage continues in effect an impound account (the "Impound Account") with Lender for payment of real estate taxes and assessments and insurance on the Property and as additional security for the indebtedness secured hereby. Borrower shall deposit in the Impound Account an amount determined by Lender to be sufficient (when added to the monthly deposits described herein) to pay the next due annual installment of real estate taxes and assessments on the Property at least one (1) month prior to the delinquency date thereof and the next due annual insurance premiums with respect to the Property at least one (1) month prior to the due date thereof. Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with the monthly payment due under the Note, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder, each as estimated and determined by Lender. So long as no Event of Default has occurred and is continuing, all sums in the Impound Account shall be held by Lender in the Impound Account to pay said taxes, assessments and insurance premiums in one installment before the same become delinquent. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no Event of Default has occurred and is continuing, Lender shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Lender shall be entitled to rely on any bill, statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. No interest on funds contained in the Impound Account shall be paid by Lender to Borrower and any interest or other earnings on funds deposited in the Impound Account shall be solely for the account of Lender. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Lender for the purposes of the Impound Account, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency.

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1.7 Tenant Improvements and Leasing Commissions Reserve. As additional security for the indebtedness secured hereby, Borrower shall establish and maintain at all times while this Mortgage continues in effect a reserve (the "TILC Reserve") with Lender for the payment of costs and expenses incurred by Borrower for Tenant Improvements and Leasing Commissions. All such sums, together with any interest thereon, are hereinafter collectively referred to as the "TILC Funds". As used herein, the term "Tenant Improvements" shall mean construction or modification of improvements on or installation of fixtures or equipment in the Property as required to be performed by Borrower pursuant to the terms of any lease which is hereafter approved or, if such lease does not require approval by Lender, is hereafter entered into by Borrower and tenant pursuant to Section 1.12 hereof ("Approved Lease"). As used herein, the term "Leasing Commissions" shall mean reasonable and customary commissions paid to a real estate broker licensed in the state where the Property is located in connection with an Approved Lease, pursuant to commission agreements containing such terms and provisions including, without limitation, as to the timing of the payment of the commission, as are then prevailing between third party, unaffiliated owners and brokers for comparable leases of space at properties similar to the Property in the market area in which the Property is located.

(a) Deposits Into the TILC Reserve/Interest on TILC Funds. Simultaneously with the closing of the Loan, Borrower shall pay to Lender an initial deposit into the TILC Reserve in an amount equal to \$1,261,738.00. In addition, Borrower shall deposit into the TILC Reserve any amounts paid to Borrower under Leases containing lease termination options or otherwise paid by tenants in consideration of an early termination of any Lease, other than amounts paid for rent and other charges with respect to periods prior to the Lease termination date. So long as no Event of Default has occurred and is continuing, all sums in the TILC Reserve shall be held by Lender in the TILC Reserve to pay and/or reimburse Borrower for the costs and expenses of Tenant Improvements and for paying Leasing Commissions as herein set forth. Interest on the TILC Funds shall be credited to Borrower as provided in Section 4.28 hereof. Notwithstanding anything herein to the contrary, a portion of the TILC Reserve in an amount equal to \$355,933.00, shall be used exclusively for repayment of the Tenant Improvements allowance owed by Borrower to International Academy of Merchandising & Design (the "IAD-TILC Reserve Amount").

(b) Disbursements from the TILC Reserve. So long as no Event of Default has occurred and is continuing, and to the extent TILC Funds are available for such purpose, Lender shall, within ten (10) days after receipt of a written request from Borrower specifying the amount requested and the applicable Tenant Improvements or Leasing Commissions to be paid for with the requested TILC Funds ("Disbursement Request"), release to Borrower TILC Funds in the amount of the Disbursement Request; subject, however, to the following conditions precedent. Lender shall not be required to make advances from the TILC Reserve more frequently than once in any thirty (30) day period. In making any payment from the TILC Reserve, Lender shall be entitled to rely on such request from Borrower, and on any bill, statement, or estimate from any third party, without any inquiry into the accuracy, validity or contestability of any such amount. Notwithstanding the foregoing, the amount of TILC Funds available to pay the cost of Tenant Improvements or Leasing Commissions shall be reduced by the IAD-TILC Reserve Amount, unless the Disbursement Request is specifically for the disbursement of funds covered by the IAD-TILC Reserve Amount, in which case such funds shall be the source of funding such Disbursement Request.

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(i) With respect to a Disbursement Request to pay for Tenant Improvements, Borrower shall provide evidence reasonably satisfactory to Lender (including, if requested by Lender, access to the Property by Lender and/or an architect and/or an engineer specified by Lender for the purpose of inspecting the work done, at Borrower's expense) that the Tenant Improvements, or such portion thereof, for which the TILC Funds are being requested have been completed in accordance with Section 1.7(c) below. Borrower shall submit to Lender copies of invoices for which TILC Funds are being requested, and if required by Lender, shall also submit waivers of lien. Borrower shall execute and deliver to Lender a certificate (in form and substance reasonably satisfactory to Lender) that the Tenant Improvements covered by the applicable Disbursement Request comply with, and have fully satisfied, the terms and provisions of Section 1.7(c) below. Borrower shall provide Lender with a copy of any and all applicable permanent certificates of occupancy and other governmental permits, if any be required and are customarily issued by the applicable governmental authority, issued by applicable governmental authorities with respect to the Tenant Improvements, which certificates and permits allow the tenant to open for business as contemplated under such Approved Lease. Borrower shall provide such additional documents, certificates and affidavits as Lender may reasonably request.

(ii) With respect to the final Disbursement Request relative to any Approved Lease, Borrower shall provide Lender with (A) an original estoppel certificate, in form and substance satisfactory to Lender, executed by the tenant under the Approved Lease for which such request relates, stating that such tenant has accepted the Tenant Improvements (subject to non-material punchlist items), and has occupied the space covered by the Tenant Improvements and that there are no defaults under such Approved Lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default) and addressing such other issues as Lender may reasonably request; (B) if required by Lender, an original subordination, non-disturbance and attornment agreement in form acceptable to Lender executed by the tenant under the Approved Lease in favor of Lender, and (C) evidence of payment of regular monthly rent by the tenant under the Approved Lease.

(iii) With respect to a Disbursement Request to pay any portion of the Leasing Commissions, Borrower shall provide evidence as reasonably requested by Lender that such Leasing Commissions are then due and payable or have been properly paid, and such additional documents, certificates and affidavits as Lender may reasonably request.

(iv) Notwithstanding any provision of this Section 1.7 to the contrary, TILC Funds disbursed with respect to any Approved Lease (i) for Tenant Improvements shall be an amount not to exceed, under any circumstances, the reasonable costs and expenses actually incurred by Borrower therefor; and (ii) for Leasing Commissions shall be an amount not to exceed, under any circumstances, the commission actually incurred by Borrower therefor which is reasonable and customary for a licensed real estate broker in the market area in which the Property is located.

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(v) To the extent a portion of the TILC Funds are deposited into the TILC Reserve pursuant to Section 1.7(a) relative to a Lease termination in favor of a tenant at the Property, (A) such portion of the TILC Funds shall only be available for disbursement after Borrower's provision of a Disbursement Request and only to pay Tenant Improvements and/or Leasing Commissions for an Approved Lease of space at the Property which was subject to such Lease termination, (B) Borrower shall provide Lender with a fully executed copy of an Approved Lease over the space which was previously subject to the Lease termination arrangement, and (C) Borrower must satisfy all of the requirements of Section 1.7(b)(i), (ii), (iii) and (iv) as to the Approved Lease for which the request is made.

(c) Borrower shall construct and complete all Tenant Improvements within the time periods and as required by, and in accordance with, the Approved Leases. Borrower or tenant shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable laws with regard to the Tenant Improvements, whether necessary for commencement, completion, use or otherwise. Borrower shall perform or cause to be performed all work in connection with the Tenant Improvements in a good and workmanlike manner, in compliance with all applicable laws (including, without limitation, any and all applicable life safety laws, Environmental Laws, as hereinafter defined, and laws for the handicapped and/or disabled) and, with respect only to those Approved Leases requiring Lender approval, with the plans and specifications approved (in writing) by Lender covering the same, which performance by Borrower shall be without regard to the sufficiency of the TILC Funds. Borrower covenants and agrees that Tenant Improvements shall be constructed, installed or completed, as applicable, free and clear of any and all liens (including mechanic's, materialman's or other liens), claims and encumbrances whatsoever.

1.8 Security Interest In Reserves.

(a) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in all sums on deposit or due under this Mortgage and the other Loan Documents including, without limitation, (i) the Impound Account, the TILC Reserve, the Replacement Reserve, the Repair Reserve and any other reserve to the extent set forth on Exhibit B attached hereto (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account into which the Reserves have been deposited being held in Lender's name or the name of any entity servicing the Note for Lender and hereby acknowledges and agrees that Lender, or at Lender's election, such servicing agent, shall have exclusive control over said account, subject to the right of Borrower to receive disbursements from said Reserves as provided in this Mortgage. Notice of the assignment and security interest

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granted to Lender herein may be delivered by Lender at any time to the financial institution wherein the Reserves have been established, and Lender, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Borrower hereby holds Lender harmless with respect to all risk of loss regarding amounts on deposit in the Reserves, except to the extent that any such loss is caused by the gross negligence or intentional misconduct of Lender. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of set-off or other remedy upon an Event of Default. If an Event of Default shall occur, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other obligations of Borrower under the other Loan Documents in such manner as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any Event of Default hereunder or under the other Loan Documents.

(b) The Reserves are solely for the protection of Lender and entail no responsibility on Lender's part beyond the payment of the respective costs and expenses in accordance with the terms thereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Mortgage by Lender, any funds in the Reserves shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. Upon full payment of the indebtedness secured hereby in accordance with its terms (or if earlier, the completion of the applicable conditions to release of each Reserve to Lender's satisfaction) or at such earlier time as Lender may elect, the balance in the Reserves then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

(c) Any amounts received by Lender from Borrower may be invested by Lender (or its Servicer, as defined in the Note) for its benefit, and Lender shall not be obligated to pay, or credit, any interest earned thereon to Borrower except as may be otherwise specifically provided in this Mortgage.

1.9 Casualty and Condemnation. Borrower shall give Lender prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof (collectively, an "Insured Event"). All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and

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Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation; provided, however, that Lender shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$350,000.00. Provided no Event of Default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or under any of the other Loan Documents, Lender shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that Lender receives insurance proceeds or condemnation awards upon the occurrence of an Insured Event in an amount not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$350,000.00, (collectively, the "Threshold Amount"), Borrower shall repair or restore the Property to the condition existing before such Insured Event, and Lender shall, to the extent such insurance proceeds or condemnation awards are available for such purpose, advance such funds to Borrower in accordance with, and satisfaction of, the terms and conditions for disbursement relative to the Replacement Reserve as described on Exhibit B to this Mortgage.

(b) In the event any proceeds or awards from an Insured Event exceed the Threshold Amount but less than fifty percent (50%) of the Improvements located on the Real Estate have been taken or destroyed, then if:

(1) the Property can, in Lender's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage by the earlier to occur of (i) six (6) months after the receipt of insurance proceeds or condemnation awards by either Borrower or Lender, and (ii) prior to the stated maturity date of the Note, and

(2) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in subsection (b)(1) above, and

(3) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Borrower, the full amount of which shall at Lender's option have been deposited with Lender) for such restoration or repair (including, without limitation, for any reasonable costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(4) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the indebtedness

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secured hereby in full with the same coverage ratio considered by Lender in its determination to make the Loan, and

(5) Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report from an appraiser, in form and substance, satisfactory to Lender appraising the value of the Property as proposed to be restored or repaired to be not less than the appraised value of the Property considered by Lender in its determination to make the Loan, and

(6) Borrower so elects by written notice delivered to Lender within ten (10) days after settlement of the aforesaid insurance or condemnation claim, and

(7) The Property can, in Lender's reasonable judgment, be repaired or restored such that the Property, taken as a whole, as repaired or restored, will conform to all applicable governmental laws and ordinances (including, without limitation, current zoning ordinances),

then, Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required to facilitate such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender, which approval shall not be unreasonably withheld, of plans and specifications, contractors and the form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance reasonably satisfactory to Lender. Any remaining proceeds shall be released to Borrower provided that the appraisal value of the Property, as reasonably determined by Lender at such time, exceeds the outstanding principal balance of the Loan, otherwise such proceeds shall be applied by Lender for payment of the indebtedness secured hereby in whatever order as Lender directs. If the Property is to be restored, Borrower shall, in good faith, undertake reasonable efforts to cause the conditions described in this Section 1.9(b) to be fully satisfied (e.g., Borrower shall timely make applications for necessary governmental permits, shall order an appropriate appraisal report, etc.). If such conditions are satisfied, Borrower shall be obligated to undertake restoration and repair of the damaged Improvements subject to the terms of this Section 1.9. Any disbursement pursuant to this clause (b) of sums by Lender shall, subject to Borrower's satisfaction of the provisions hereof, be in a manner to promptly facilitate the restoration or repair of the Property. In the event Borrower fails to meet the requirements of this clause (b) following thirty (30) days written notice from Lender, then Lender may elect in its absolute discretion and without regard to the adequacy of Lender's security, to accelerate the maturity date of the Note and declare any and all of the indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums to the payment of the secured indebtedness in whatever order Lender directs in its sole discretion, with any remainder being paid to Borrower.

(c) In all other cases, namely, in the event that fifty percent (50%) or more of the Improvements located on the Real Estate have been taken or destroyed or in the event the

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conditions described in Section 1.9(b) are not fully satisfied, if applicable, Lender may elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to (i) accelerate the maturity date of the Note and declare any and all indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the secured indebtedness in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower, or (ii) make insurance or condemnation proceeds available to Borrower for repair or restoration if Borrower establishes to the satisfaction of Lender, in its sole discretion, that Borrower otherwise satisfies the requirements of clause (b) above. Should Lender make the election described immediately above in item (ii) of this Section 1.9(c), Borrower shall be obligated to undertake restoration and repair of the damaged Improvements consistent with the provisions of this Section 1.9.

(c) Any reduction in the indebtedness secured hereby resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied against the Note consistent with the prepayment provisions described therein for casualty or condemnation proceeds. If Borrower undertakes to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Borrower hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor.

1.10 Mechanics' Liens. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Real Estate or the Improvements; provided, however, that Borrower shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Lender and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Borrower shall contest any such claim or demand, Borrower shall promptly notify Lender of such contest and thereafter shall, upon Lender's request, promptly provide a

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bond, cash deposit or other security satisfactory to Lender to protect Lender's interest and security should the contest be unsuccessful. If Borrower shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Lender may do so and any and all expenses incurred by Lender, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.11 Assignment of Leases and Rents. As additional and collateral security for the payment of the indebtedness secured hereby and cumulative of any and all rights and remedies herein provided for, Borrower hereby absolutely and presently assigns to Lender all existing and future Leases, and all existing and future Rents and Profits. Borrower hereby grants to Lender the sole, exclusive and immediate right, during the existence of an Event of Default, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Borrower does hereby irrevocably make, constitute and appoint Lender its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof). Lender shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Mortgage, Borrower shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of an Event of Default, Borrower's license shall automatically terminate without notice to Borrower and Lender may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Borrower shall be the agent of Lender in collection of the Rents and Profits and all of the Rents and Profits so collected by Borrower shall be held in trust by Borrower for the sole and exclusive benefit of Lender and Borrower shall, within one (1) Business Day after receipt of any Rents and Profits, pay the same to Lender to be applied by Lender as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Lender, nor the exercise of Lender's rights as assignee of the Leases, shall constitute any assumption by Lender of any obligations under any Lease or other agreement relating thereto. Lender is obligated to account only for such Rents and Profits as are actually collected or received by Lender. Borrower irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Lender of an Event of Default hereunder, pay said Rents and Profits to Lender without liability to determine the actual existence of any Event of Default claimed by Lender. Borrower hereby waives any right, claim or demand which Borrower may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Lender, and any such payment shall discharge such payor's obligation to make such payment to Borrower. All Rents and Profits collected or received by Lender shall be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the indebtedness secured hereby, in whatever order or priority as to any of the items so mentioned as Lender directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Lender of any rights under this Section nor the application of any Rents

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and Profits to the secured indebtedness shall cure or be deemed a waiver of any Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property. As additional security for the indebtedness secured hereby, Borrower has executed and delivered an Assignment of Leases and Rents dated of even date herewith (as hereafter amended, consolidated or modified from time to time, the "Assignment") in favor of Lender covering all of the right, title and interest of Borrower, as landlord, lessor or licensor, in and to any Leases. All rights and remedies granted to Lender under the Assignment shall be in addition to and cumulative of all rights and remedies granted to Lender hereunder.

1.12 Leases and Licenses.

(a) Lease Requirements. Prior to execution of any Leases after the date hereof, Borrower shall submit to Lender, for Lender's prior approval, which approval shall not be unreasonably withheld so long as no Event of Default exists, a copy of the form Lease Borrower plans to use in leasing space in the Improvements. Each Lease executed after the date hereof affecting any of the Real Estate or the Improvements must provide, in a manner approved by Lender, that (i) such Lease is subject and subordinate to this Mortgage, and (ii) the tenant will attorn to, and recognize as its landlord, lessor or licensor, any person succeeding to the interest of Borrower in such Lease upon any foreclosure of this Mortgage or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the tenant shall execute and deliver an instrument or instruments confirming its attornment as provided for in this Section; provided, however, that neither Lender nor any successor-in-interest shall be bound by any payment of rental for more than one (1) month in advance, or any amendment or modification of said Lease made without the express written consent of Lender or said successor-in-interest. No Lease shall contain any option or right of first refusal to purchase all or any portion of the Property. No Lease shall contain any right to terminate the term thereof (except in the event of the destruction of all or substantially all of the Property), if same would result in a term less than five years.

(b) Acts Requiring Consent of Lender. Borrower shall not, without the prior written consent of Lender, (i) enter into any Lease of all or any portion of the Property either (Y) for space in excess of 10,000 rentable square feet, or (Z) for a term (including, without limitation, options exercisable by the lessee thereunder) of greater than ten (10) years (any such Lease, a "Material Lease"); (ii) cancel, terminate, abridge or otherwise modify the terms of any Material Lease, or accept a surrender thereof unless the Lease is being terminated following a material tenant default; (iii) consent to any assignment of, or subletting of all or any portion of the premises demised under, any Material Lease unless required by the terms thereof; (iv) cancel, terminate, abridge, release or otherwise modify any guaranty of any Material Lease or the terms thereof; (v) enter into any Lease not meeting the requirements of Section 1.12(a) of this Mortgage; or (vi) enter into any Lease containing material adverse variations from the current form Lease approved by Lender. The request for approval of each such proposed Lease shall be made to Lender in writing. As part of such request, Borrower shall furnish to Lender (and any Servicer specified from time to time by Lender): (1) such biographical and financial information about the proposed tenant as Lender may require in conjunction with its review, (2) a copy of the proposed Lease; and (3) a summary of the material terms of such proposed Lease (including, without limitation, rental terms and the term of the proposed Lease and any options). If Lender

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fails to respond to a request for consent under this Section 1.12(b) within fifteen (15) Business Days of receipt of all required information and on such request it is prominently noted that Lender's consent shall be deemed given for the failure to timely respond, then Lender's consent shall be deemed given under this Section 1.12(b).

(c) Affirmative Covenants Regarding Leases. Borrower shall at all times promptly and faithfully perform, or cause to be performed, in all material respects, all of the covenants, conditions and agreements contained in all Leases, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Borrower shall promptly send copies to Lender and any Servicer of all notices of default which Borrower shall send or receive under any Lease. Borrower, at no cost or expense to Lender, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the other parties under each Lease. Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so (or within five (5) days in the case of a request relating to a Secondary Market Transaction, as hereinafter defined), and in any event by January 1 of each year, a current rent roll certified by Borrower as being true and correct containing the names of all tenants, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Lender, Borrower shall deliver to Lender (i) a copy of each Lease; and (ii) an estoppel certificate from the tenant under each Lease (provided that Borrower shall not be required to deliver such certificates more frequently than twice in any calendar year).

(d) Negative Covenants Regarding Leases. Borrower shall not enter into any Lease (i) without the prior written consent of Lender where such consent is required pursuant to this Mortgage; (ii) except on terms consistent with the terms for similar Leases in the market area of the Real Estate, including, without limitation, as to the rental rate, security deposit, tenant improvement and work letter terms and free rent periods; (iii) other than with a third-party tenant unrelated to Borrower or any of its affiliates; or (iv) except for an actual occupancy by the tenant, lessee or licensee thereunder. Borrower shall not do or suffer to be done any act that might result in a default by the landlord, lessor or licensor under any Lease or allow the tenant thereunder to withhold payment of rent. Borrower shall not, without the prior written consent of Lender: (1) modify any Lease; (2) terminate or accept the surrender of any Lease; or (3) waive or release any other party from the performance or observance of any obligation or condition under any Lease; provided, however, that with respect to all Leases other than Material Leases, provided no Event of Default exists, Borrower may do any of the foregoing in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Borrower shall not solicit or accept the prepayment of any rents under any Lease for more than one (1) month prior to the due date thereof. Except for the Assignment, Borrower shall not execute any other assignment of the lessor's interest in the Leases or the Rents and Profits.

(e) Security Deposits. All security deposits of tenants, whether held in cash or in any other form, shall not be commingled with any other funds of Borrower or any other person and, if cash, shall be deposited by Borrower at such commercial or savings bank or banks, or otherwise held in compliance with applicable law, as may be reasonably satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and

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effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described; shall be issued by an institution reasonably satisfactory to Lender; shall, if permitted pursuant to any applicable legal requirements, name Lender as payee or mortgagee thereunder or, at Lender's option, be assigned or fully assignable to Lender; and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Upon an Event of Default, Borrower shall, immediately upon Lender's request (if permitted by applicable law), deliver to Lender the security deposits (and any interest previously earned thereon and not disbursed to the person(s) lawfully entitled to receive same) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

(1) Rights of Lender Upon Default. Upon an Event of Default, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Mortgage, forthwith, upon demand of Lender, Borrower shall surrender to Lender and Lender shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys. In such event, Lender shall have, and Borrower hereby gives and grants to Lender, the right, power and authority to make and enter into Leases for such rents and for such periods of occupancy and upon conditions and provisions as Lender may deem desirable in its sole discretion, and Borrower expressly acknowledges and agrees that the term of such Lease may extend beyond the date of any foreclosure sale at the Property; it being the intention of Borrower that in such event Lender shall be deemed to be and shall be the attorney-in-fact of Borrower for the purpose of making and entering into Leases for the rents and upon the terms, conditions and provisions deemed desirable to Lender in its sole discretion and with like effect as if such Leases had been made by Borrower as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by Borrower to Lender shall be deemed to be coupled with an interest, shall not be revocable by Borrower so long as any indebtedness secured hereby is outstanding, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof. In connection with any action taken by Lender pursuant to this Section, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property, except to the extent Lender's acts or omissions constitute gross negligence or willful misconduct, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason of this instrument or the exercise of rights or remedies hereunder. BORROWER SHALL, AND DOES HEREBY, INDEMNIFY LENDER FOR, AND HOLD LENDER HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, DEMANDS, LIABILITIES, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY LENDER UNDER ANY SUCH LEASE OR UNDER THIS MORTGAGE OR BY THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE OTHER THAN THOSE FINALLY DETERMINED TO HAVE RESULTED SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER. Should Lender incur any such

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liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Nothing in this Section shall impose on Lender any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, except to the extent Lender's actions constitute gross negligence or willful misconduct. Borrower hereby assents to, ratifies and confirms any and all actions of Lender with respect to the Property taken under this Section. The foregoing rights are in addition to all other rights and remedies granted to Lender pursuant to this Mortgage.

(g) Representations to Leases. Borrower hereby represents and warrants that (i) each tenant under a non-residential Existing Lease has entered into occupancy of the demised premises; (ii) Borrower has delivered to Lender true, correct and complete copies of all Existing Leases described in the Rent Roll; (iii) each Existing Lease constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against the tenant thereon; (iv) to the best of Borrower's knowledge and belief, each tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors; and (v) except as previously disclosed in writing to Lender, there are no brokerage fees or commissions payable by Borrower with respect to the leasing of the space at the Property, and there are no management fees payable by Borrower with respect to the management of the Property.

1.13 Alienation and Further Encumbrances.

(a) Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 4.5 hereof, in the event that the Property or any part thereof or interest therein shall be sold (including any installment sales agreement), conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 1.12 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Borrower shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Lender being first obtained, which consent may be withheld in Lender's sole discretion, then the same shall constitute an Event of Default and Lender shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Borrower were prepaying the entire indebtedness secured hereby on the date of such

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acceleration. For the purposes of this Section, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) Borrower shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, transfers or assignments of ownership interests in Borrower (or its constituent parties) may be undertaken without the consent of Lender in the following circumstances:

(1) In the case of a Borrower which is a limited partnership, up to 33% of the limited partnership interests in Borrower shall be freely transferable so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.

(2) In the case of a Borrower which constitutes a limited liability company, up to 33% of the non-managing membership interests in Borrower shall be freely transferable so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.

(3) In the case of a Borrower which constitutes a corporation, up to 33% of the aggregate of the issued and outstanding capital stock of Borrower may be sold or assigned, taking into account (i) any prior sales or assignments, and (ii) the effective change in ownership resulting from any issuance of new shares of capital stock in Borrower or its constituent party so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.

(4) Involuntary assignments or transfers caused by the death, incompetence or dissolution of Borrower, one of its constituent parties or the owner of one of its constituent parties are permitted if: (i) Borrower is reconstituted, if required, following such death, incompetence or dissolution, and (ii) those persons responsible for the management and control of Borrower and the Property remain unchanged as a result of such death, incompetence or dissolution or any replacement management is approved by Lender.

In all cases where assignment of ownership interests is allowed pursuant to this Section 1.13(a), the proportionate ownership which is proposed to be transferred shall be calculated so as to take into account prior transfers or assignments. Furthermore, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) any guarantor of Borrower's obligation hereunder or under any of the other Loan Documents shall constitute an Event of Default and Lender shall have the right to exercise its various remedies described hereinabove; provided, however, ownership interests in any such guarantor may be transferred in a manner consistent with the allowable transfers of ownership interests in Borrower described hereinabove.

(b) Intentionally Deleted.

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1.14 Payment of Utilities, Assessments, Charges, Etc. Borrower shall pay when due all utility charges which are incurred by Borrower or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Real Estate and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Real Estate and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

1.15 Access Privileges and Inspections. Lender and the agents, representatives and employees of Lender shall, subject to the rights of tenants and upon one (1) Business Day notice to Lender have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.

1.16 Waste; Alteration of the Property. Borrower shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Borrower shall maintain the Property in good condition and repair, ordinary wear and tear excepted. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Lender. Without the prior written consent of Lender, Borrower shall not commence construction of any improvements on the Real Estate other than improvements required for the maintenance or repair of the Property, required by any Lease or required by applicable laws.

1.17 Zoning; Use. Without the prior written consent of Lender, Borrower shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Real Estate or the Improvements, except for changes to allow additional related uses. Borrower shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Real Estate or the Improvements. Borrower shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Borrower shall keep all licenses, permits, franchises, certificates of occupancy, consents, and other approvals necessary for the operation of the Property in full force and effect. Borrower shall operate the Property as one or more office complexes for so long as the indebtedness secured hereby is outstanding. If, under applicable zoning provisions, the use of all or any part of the Real Estate or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Further, without Lender's prior written consent, Borrower shall not file or subject any part of the Real Estate or the Improvements to any declaration of condominium or cooperative or convert any part of the Real Estate or the Improvements to a condominium, cooperative or other form of multiple ownership and governance.

1.18 Financial Statements and Books and Records. Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender and its duly authorized representatives shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times, upon one (1) Business

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Day prior notice to Borrower. So long as this Mortgage continues in effect, Borrower shall provide to Lender, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct by Borrower or the entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Lender:

- (a) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing;
- (b) quarterly operating statements for the Property, within ninety (90) days after the end of each March, June, September and December, provided, operating statements shall be delivered monthly for the first twelve (12) full calendar months of the Note within thirty (30) days after each such month-end;
- (c) current rent rolls for the Property, within ninety (90) days after the end of each March, June, September and December, provided, rent rolls shall be delivered monthly for the first twelve (12) full calendar months of the Note within thirty (30) days after each such month-end;
- (d) annual balance sheets, statements of income and expenses and statements of changes in financial position for the Property and annual financial statements for Borrower, each principal, managing member or general partner in Borrower, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Loan within sixty (60) days after the end of each calendar year audited by an independent certified public accountant; and
- (e) such other information with respect to the Property, Borrower, the principals, managing members or general partners in Borrower, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Loan, which may be requested from time to time by Lender, within a reasonable time after the applicable request.
- (f) Borrower shall also furnish Lender, concurrently with the operating statements required pursuant to Section 1.18(b) above, a narrative statement of accounts receivable, bad debt and cash collections, a comparison of actual results of operations for such period and for the year to date to budgeted results of operations for such period and the year to date, and Manager's (hereinafter defined) written discussion and analysis of any material changes or trends in the financial condition and results of operations for the current period and the year to date, including, where applicable, occupancy levels (paid and occupied), leasing activity, actual results of operations compared to budgeted results of operations, variance analysis, construction activity, renovations, repositioning plans, management plans, goals and targets for the next period, and a leasing and rental rate trend report for such period. Lender shall have the right to request a monthly meeting with the Manager to discuss the financial status of the Property and its operations and the Manager's discussion and analysis.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods, Lender is dissatisfied with the contents (but not the substantive information contained

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therein) of any of the foregoing and such materials are not corrected or delivered within thirty (30) days of notice thereof from Lender, in addition to any other rights and remedies of Lender contained herein, Lender shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Lender, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Borrower agrees that any and all materials furnished hereunder are the property of Lender (and its Servicer) and may be released and made available to such parties as Lender or its Servicer deems appropriate, including any Rating Agency responsible for rating securities issued in any Secondary Market Transaction.

1.19 Further Documentation. Borrower shall, on the request of Lender in its reasonable discretion and at the expense of Borrower, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in any of the other Loan Documents and promptly execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents or as may be deemed reasonably advisable by Lender to protect, continue or preserve the liens and security interests hereunder including, without limitation, security instruments, financing statements and continuation statements.

1.20 Payment of Costs; Advances to Protect Property.

(a) Payment of Costs. Borrower shall pay all reasonable costs and expenses of every character incurred in connection with the closing of the Loan or otherwise attributable or chargeable to Borrower as the owner of the Property including, without limitation, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees and reasonable attorneys' fees. Unless otherwise specified herein, with respect to any action by Borrower permitted hereunder, Borrower shall pay all of its own costs and expenses relating thereto as well as any costs and expenses incurred by Lender or any party involved in such actions as a result of a Secondary Market Transaction, to the extent relating to Borrower's actions or any approval thereof; provided that Lender shall be responsible for all its costs and expenses of entering into a Secondary Market Transaction.

(b) Advances to Protect Property. Without limiting or waiving any other rights and remedies of Lender hereunder, if Lender determines that Borrower is not adequately performing or has failed to perform any of its obligations, covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such inadequacy or failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might adversely affect Lender's interest in the Property or Lender's right to enforce its security, then Lender may, at its option, with or without notice to Borrower (except as hereinabove required), make any appearances, disburse or advance any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Borrower to perform its covenants and agreements (without, however, waiving any Event of Default or other default hereunder of Borrower).

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Borrower agrees to pay on demand all expenses of Lender reasonably incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Lender incurs such expenses until reimbursement thereof by Borrower. Any such expenses so incurred by Lender, together with interest thereon as provided above, shall be additional indebtedness of Borrower secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Lender in its sole and absolute discretion. Subject to the rights of tenants, Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this Section 1.20(b) shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrower of a voluntary case or the filing against Borrower of an involuntary case pursuant to or within the meaning of Title 11, United States Code (the "Bankruptcy Code"), or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. This indemnity shall survive payment in full of the indebtedness secured hereby. This Section 1.20(b) shall not be construed to require Lender to incur any expenses make any appearances or take any actions.

1.21 Security Interest. This Mortgage is also intended to encumber and create a security interest in, and Borrower hereby grants to Lender a security interest in, all Reserves (as hereinabove defined), fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Lender. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Mortgage when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Lender, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Mortgage except such as is replaced by an article of equal suitability and value as above provided, owned by Borrower free and clear of any lien or security interest except that created by this Mortgage and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.13 of this Mortgage. All of the Collateral shall be kept at the location of the Real Estate except as otherwise required by the

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terms of the Loan Documents and except for Borrower's books and records which may be at its corporate offices. Borrower shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

1.22 Security Agreement. This Mortgage constitutes both a real property mortgage and a "security agreement" between Borrower and Lender with respect to the Collateral in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Borrower hereby authorizes Lender to prepare, file of record or otherwise effectuate new financing statements or financing statement amendments which describe all or any portion of the assets of Borrower as collateral thereunder. Borrower specifically agrees that Lender may cause such financing statements and financing statement amendments to be filed without any signature of a representative of the Borrower appearing thereon, where such filings are permitted by applicable law. Borrower hereby further agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section 1.22 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable Uniform Commercial Code.

(a) In the event of a foreclosure sale, the Property may, at the option of Lender, be sold as a whole;

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section 1.22 is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

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

Borrower will not change the principal place of business or chief executive office set forth below, or change the state of its organization or registration, or change its name, without in each instance, the prior written consent of Lender. Lender's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Collateral as a result of such changes. The name, principal place of business and chief executive office of Borrower (as Debtor under any applicable Uniform Commercial Code), as of the date hereof, are:

Romanek Schaumburg LLC
c/o Romanek Properties Ltd.
8410 West Bryn Mawr Avenue
Chicago, Illinois 60631
Attention: Marvin M. Romanek

The name and address of Lender (as Secured Party under any applicable Uniform Commercial Code), as of the date hereof, are:

Nomura Credit & Capital, Inc.
2 World Financial Center
21st Floor
New York, New York 10281-1198

The record owner of the Property is Parkway Corporate Place, L.L.C.

1.23 Easements and Rights-of-Way. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Lender. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Mortgage and may take immediate possession of the Property free from and despite the terms of, such grant of easement or right-of-way. If Lender consents to the grant of an easement or right-of-way, Lender agrees to grant such consent without charge to Borrower other than reasonable expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in the review of Borrower's request and, if applicable, in the preparation of documents relating to the subordination of this Mortgage to such easement or right-of-way.

1.24 Compliance with Laws.

(a) Borrower shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological

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requirements, even if such compliance shall require structural changes to the Property; provided, however, that Borrower may, upon providing Lender with security satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Borrower shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any Lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

(b) Borrower agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 and all other state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("Access Laws"). Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

1.25 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages, deeds of trust or security agreements or debts secured by mortgages, deeds of trust or security agreements or the interest of the mortgagee, beneficiary or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the indebtedness secured hereby or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable in full, thirty (30) days from the giving of such notice.

1.26 Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the indebtedness secured hereby prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. To the full extent permitted by law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any

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federal, state or local law now or hereafter in effect, the administration of estates of decedents or any other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property, for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of the indebtedness secured hereby out of the proceeds of sale of the Property in preference to every other claimant whatever. Borrower, for Borrower and Borrower's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel waives, releases, relinquishes and forever forgoes: (a) all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the secured indebtedness (except such notices as are specifically provided for herein); (b) all right to a marshalling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; (c) all rights and periods of redemption provided under 735 ILCS 5/15-1601(b) or any other applicable law; and (d) all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the indebtedness secured hereby to the fullest extent permitted by law and agrees that it shall not solicit or aid the solicitation of the filing of any Petition (as hereinafter defined) against the Borrower, whether acting on its own behalf or on behalf of any other party. Without limiting the generality of the foregoing, Borrower shall not (i) provide information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency, except to Lender; or (ii) pay the legal fees or expenses of any creditor or interest holder in Borrower with respect to any matter whatsoever, except to Lender.

1.27 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF ILLINOIS OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION PRESIDING OVER COOK COUNTY, ILLINOIS, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 4.4 HEREOF, AND CONSENTS**

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AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(b) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

1.28 Contractual Statute of Limitations. Borrower hereby agrees that any claim or cause of action by Borrower against Lender, or any of Lender's directors, officers, employees, agents, accountants or attorneys, based upon, arising from or relating to the indebtedness secured hereby, or any other matter, cause or thing whatsoever, whether or not relating thereto, occurred, done, omitted or suffered to be done by Lender or by Lender's directors, officers, employees, agents, accountants or attorneys, whether sounding in contract or in tort or otherwise, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one (1) year after Borrower first acquires or reasonably should have acquired knowledge of the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based and service of a summons and complaint on an officer of Lender or any other person authorized to accept service of process on behalf of Lender, within thirty (30) days thereafter. Borrower agrees that such one (1) year period of time is reasonable and sufficient time for a borrower to investigate and act upon any such claim or cause of action. The one (1) year period provided herein shall not be waived, tolled or extended except by the specific written agreement of Lender. This provision shall survive any termination of this Mortgage or any of the other Loan Documents.

1.29 Management. The management of the Property shall be by either: (a) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a first class manner, or (b) a professional property management company approved by Lender, which approval shall not be unreasonably withheld (any such person or entity which manages the Property, other than Borrower, is hereinafter referred to as the "Manager"). Any such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Lender. Each and any manager approved by Lender (whether such manager is an entity affiliated with Borrower or is a professional property management company) shall enter into a written agreement in recordable form with Lender subordinating any liens in favor of such manager to the lien of this Mortgage. In no event shall any Manager be removed or replaced or the terms of any management agreement modified or amended in any material respect without the prior written consent of Lender. In the event (w) of an Operations Shortfall (as defined in the Cash

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Management Agreement), (x) of an Event of Default or a default under any management contract then in effect, which default is not cured within any applicable grace or cure period, or (y) of a change in control (fifty percent or more) of the ownership of Manager or if Manager provides cause for termination, including, without limitation, gross negligence, willful misconduct or fraud, or (z) of the Manager becoming insolvent or a debtor in any bankruptcy or insolvency proceeding, Lender shall have the right to terminate, or to direct Borrower to terminate, such management contract upon thirty (30) days' notice and, in any such event of termination of the management contract, to retain, or to direct Borrower to retain, a new management agent approved by Lender. Whenever the approval or consent of Lender is required hereunder, such approval or consent may be conditioned, without limitation, on Lender's obtaining evidence in writing from the Rating Agency to the effect that the proposed change in management company will not result in a re-qualification, reduction, downgrade or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction or, if no such rating has been issued, in Lender's good faith judgment, such change in management shall not adversely affect the level of rating attainable in connection with the Loan. In addition, if within forty-five (45) days before the end of each calendar quarter Borrower does not provide evidence of the achievement of a debt service coverage ratio, based on a minimum debt constant of 7.25%, of not less than 1.00:1.0 (the "Required DSCR"), Borrower, at Lender's request made at any time after such Required DSCR is not maintained, shall terminate the then current management agreement, or any subsequent agreement relating to the operation and management of the Property approved by Lender, and replace the then current Manager with a Manager approved by Lender or if no management agreement is then in place enter into a management agreement acceptable to Lender with a Manager approved by Lender. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Mortgage and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Borrower and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

1.30 Hazardous Materials and Environmental Concerns.

(a) Borrower hereby represents and warrants to Lender that, as of the date hereof and except as disclosed to Lender in the environmental reports delivered to Lender prior to the date hereof: (i) the Property is not, and to the best of Borrower's knowledge, information and belief, after due inquiry and investigation as required by Environmental Laws (as defined herein) to be an innocent owner, the Property has not been, in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, remediation or human health and safety (including the regulation or remediation of Hazardous Substances as defined below) (collectively, "Environmental Laws"), all as amended; (ii) to the best of Borrower's knowledge, information and belief, after due inquiry and investigation as required by Environmental Laws (as defined herein) to be an innocent owner, no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials which may include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on

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or have been handled, manufactured, generated, stored, processed, transported to or from, or disposed of on or Released or discharged from the Property (including underground contamination) except for those substances used by Borrower in the ordinary course of its business and in compliance with all Environmental Laws; (iii) to the best of Borrower's knowledge, information and belief, after due inquiry and investigation as required by Environmental Laws (as defined herein) to be an innocent owner, the Property is not subject to any private or governmental lien or judicial, administrative or other notice or action relating to Hazardous Substances or noncompliance with Environmental Laws, nor is Borrower aware of any basis for such lien, notice or action; (iv) to the best of Borrower's knowledge, information and belief, there are no underground storage tanks or other underground storage receptacles (whether active or abandoned) for Hazardous Substances on the Property; (v) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, after due inquiry and investigation as required by Environmental Laws to be an innocent owner, there does not exist any, investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Borrower know of any basis for such investigation, action, proceeding or claim; (vi) Borrower has received no notice that, and to the best of Borrower's knowledge and belief after due inquiry and investigation as required by Environmental Laws to be an innocent owner, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance, trespass or any other liability or adverse condition on any other property, nor does Borrower know of any basis for such notice or claim, and (vii) to the best of Borrower's knowledge, information and belief, after due inquiry and investigation as required by Environmental Laws to be an innocent owner, there are no present environmental conditions or events or past environmental conditions or events on or near the Property that could be reasonably anticipated to materially adversely affect the value of the Property.

(b) Borrower shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower or tenants in the ordinary course of their respective business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants of space in the Improvements (except those substances used by tenants in the ordinary course of their activities and in compliance with all Environmental Laws), invitees and trespassers, and, without limiting the generality of the foregoing, during the term of this Mortgage, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos. If required by Lender (including if recommended in any third-party environmental report delivered to Lender) or under any Environmental Law, Borrower shall maintain an Operations and Maintenance Program ("O&M Program") for the management of asbestos, lead-based paint, radon or any other Hazardous Substances at the Property.

(c) Borrower shall promptly notify Lender if Borrower shall become aware of (i) any Hazardous Substances at, on, under, affecting or threatening to affect the Property (except those substances used by Borrower or tenants in the ordinary course of their business or activities, respectively, and in compliance with all Environmental Laws), (ii) any lien, action or notice affecting or threatening to affect the Property or Borrower resulting from any violation or

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alleged violation of Environmental Law, (iii) any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (iv) any occurrence, condition or state of facts which would render any representation or warranty in this Section incorrect in any respect if made at the time of such discovery. Further, immediately upon receipt of the same, Borrower shall deliver to Lender copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential non-compliance with any Environmental Laws in connection with the Property or presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property (except those substances used in the ordinary course of Borrower's or tenants' respective business and in compliance with all Environmental Laws). Borrower shall, promptly and when and as required and regardless of the source of contamination, at Borrower's sole cost and expense, take all actions as shall be necessary or advisable for compliance with the terms of this Section 1.30 or for the remediation of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment, remedial and response actions in accordance with all applicable Environmental Laws (and in all events in a manner reasonably satisfactory to Lender), and shall further pay or cause to be paid, at no expense to Lender, all remediation, response, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Borrower fails to do so after thirty (30) days notice from Lender (i) Lender may, but shall not be obligated to, undertake remediation at the Property or other affected property necessary to bring the Property into conformance with the terms of Environmental Laws, and (ii) Borrower hereby grants to Lender and its agents and employees access to the Property and a license to do all things Lender shall deem necessary to bring the Property, subject to the rights of tenants, into conformance with Environmental Laws. Any and all costs and expenses reasonably incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. **BORROWER COVENANTS AND AGREES, AT BORROWER'S SOLE COST AND EXPENSE, TO INDEMNIFY, DEFEND (AT TRIAL AND APPELLATE LEVELS, AND WITH ATTORNEYS, CONSULTANTS AND EXPERTS ACCEPTABLE TO LENDER), AND HOLD LENDER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS AND EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS', CONSULTANTS' AND EXPERTS' FEES AND DISBURSEMENTS ACTUALLY INCURRED IN INVESTIGATING, DEFENDING, SETTLING OR PROSECUTING ANY CLAIM, LITIGATION OR PROCEEDING) WHICH MAY AT ANY TIME BE IMPOSED UPON, INCURRED BY OR ASSERTED OR AWARDED AGAINST LENDER OR THE PROPERTY, AND ARISING DIRECTLY OR INDIRECTLY FROM OR OUT OF: (i) THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER, AFFECTING OR THREATENING TO AFFECT ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS,**

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REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF BORROWER; (ii) THE VIOLATION OF ANY ENVIRONMENTAL LAWS RELATING TO, AFFECTING OR THREATENING TO AFFECT THE PROPERTY, WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF BORROWER; (iii) THE FAILURE BY BORROWER TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF THIS SECTION 1.30; (iv) THE BREACH OF ANY REPRESENTATION OR WARRANTY CONTAINED IN THIS SECTION 1.30; OR (v) THE ENFORCEMENT OF THIS SECTION 1.30, INCLUDING, WITHOUT LIMITATION, THE COST OF ASSESSMENT, CONTAINMENT AND/OR REMOVAL OF ANY AND ALL HAZARDOUS SUBSTANCES ON AND/OR FROM ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS, THE COST OF ANY ACTIONS TAKEN IN RESPONSE TO THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER OR AFFECTING ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS TO PREVENT OR MINIMIZE SUCH RELEASE OR THREAT OF RELEASE SO THAT IT DOES NOT MIGRATE OR OTHERWISE CAUSE OR THREATEN DANGER TO PRESENT OR FUTURE PUBLIC HEALTH, SAFETY, WELFARE OR THE ENVIRONMENT, AND COSTS INCURRED TO COMPLY WITH THE ENVIRONMENTAL LAWS IN CONNECTION WITH ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS, EXCEPT TO THE EXTENT SUCH HAZARDOUS SUBSTANCES ARE FIRST RELEASED ON OR FROM THE PROPERTY FOLLOWING LENDER'S POSSESSION, CONTROL, FORECLOSURE OR DEED IN LIEU OF FORECLOSURE AND TO THE EXTENT LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES SUCH HAZARDOUS SUBSTANCES TO BE PRESENT ON THE PROPERTY. THE INDEMNITY SET FORTH IN THIS SECTION 1.30(c) SHALL NOT INCLUDE ANY DIMINUTION IN THE VALUE OF THE SECURITY AFFORDED BY THE PROPERTY OR ANY FUTURE REDUCTION IN THE SALES PRICE OF THE PROPERTY BY REASON OF ANY MATTER SET FORTH IN THIS SECTION 1.30(c). THE INDEMNITY SET FORTH HEREIN SHALL ALSO INCLUDE ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS OR EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO INJURY OR DEATH DUE TO EXPOSURE FROM HAZARDOUS SUBSTANCES THAT MAY BE PRESENT OR RELEASED AT, ON, UNDER OR FROM THE PROPERTY. LENDER'S RIGHTS UNDER THIS SECTION SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY AND SHALL BE IN ADDITION TO ALL OTHER RIGHTS OF LENDER UNDER THIS MORTGAGE, THE NOTE AND THE OTHER LOAN DOCUMENTS, PROVIDED LENDER'S RIGHTS UNDER THIS SECTION SHALL TERMINATE IF NO CLAIM HAS BEEN MADE WITHIN FIVE (5) YEARS FOLLOWING REPAYMENT OF THE LOAN IN FULL.

(d) Upon Lender's request, at any time after the occurrence of an Event of Default or at such other time as Lender has reasonable grounds to believe that Hazardous Substances are or have been handled, generated, stored, processed, transported to or from, or Released or discharged from or disposed of on or around the Property (other than in the normal

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course of Borrower's or the tenants' business or activities, respectively, and in compliance with all Environmental Laws) or that Borrower, any tenant or the Property may be in violation of Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender indicating the presence or absence of Hazardous Substances on the Property (including asbestos-containing material or lead-based paint). If Borrower fails to provide such inspection or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Property, subject to the rights of tenants, and a license to undertake such inspection or audit. The cost of such inspection or audit, together with interest thereon at the Default Interest Rate from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(e) Without limiting the foregoing, Lender and its authorized representatives may, upon one (1) Business Day prior notice to Borrower, during normal business hours and at its own expense, inspect the Property and Borrower's records related thereto for the purpose of determining compliance with Environmental Laws and the terms and conditions of this Section 1.30.

(f) As used herein, the term "Release" or "Released" shall include, without limitation, any intentional or unintentional placing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning of any Hazardous Substance, other than in the normal course of business or activities of its tenants, and in compliance with all Environmental Laws.

1.31 INDEMNIFICATION; SUBROGATION.

(a) **BORROWER SHALL INDEMNIFY, DEFEND AND HOLD LENDER HARMLESS AGAINST: (i) ANY AND ALL CLAIMS FOR BROKERAGE, LEASING, FINDER'S OR SIMILAR FEES WHICH MAY BE MADE RELATING TO THE PROPERTY OR THE SECURED INDEBTEDNESS, (ii) ANY AND ALL LIABILITY, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, LIENS, CHARGES, ENCUMBRANCES, COSTS AND EXPENSES (INCLUDING LENDER'S ATTORNEYS' FEES, TOGETHER WITH APPELLATE COUNSEL FEES, IF ANY) OF WHATEVER KIND OR NATURE WHICH MAY BE ASSERTED AGAINST, IMPOSED ON OR INCURRED BY LENDER UNDER ANY LEASE OR OCCUPANCY AGREEMENT FOR ANY LOSS ARISING FROM A FAILURE OR INABILITY TO COLLECT RENTS AND PROFITS OR IN CONNECTION WITH THE SECURED INDEBTEDNESS, THIS MORTGAGE, THE PROPERTY, OR ANY PART THEREOF, OR THE EXERCISE BY LENDER OF ANY RIGHTS OR REMEDIES GRANTED TO IT UNDER THIS MORTGAGE, AND ANY EVENT OF DEFAULT OR ANY OTHER DEFAULT UNDER THIS MORTGAGE, (iii) ANY LIENS (WHETHER JUDGMENTS, MECHANICS', MATERIALMEN'S OR OTHERWISE), CHARGES AND ENCUMBRANCES FILED AGAINST THE PROPERTY, AND (iv) ANY CLAIMS AND DEMANDS FOR DAMAGES OR INJURY, INCLUDING CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR WRONGFUL DEATH, ARISING OUT OF OR IN**

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CONNECTION WITH ANY ACCIDENT OR FIRE OR OTHER CASUALTY ON THE REAL ESTATE OR THE IMPROVEMENTS OR ANY NUISANCE OR TRESPASS MADE OR SUFFERED THEREON, INCLUDING, IN ANY CASE, ATTORNEY'S FEES, COSTS AND EXPENSES AS AFORESAID, WHETHER AT PRETRIAL, TRIAL OR APPELLATE LEVEL FOR ANY CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDINGS. SHOULD LENDER INCUR ANY LIABILITY UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, THE AMOUNT THEREOF, INCLUDING, WITHOUT LIMITATION, COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES, TOGETHER WITH INTEREST THEREON AT THE DEFAULT INTEREST RATE FROM THE DATE INCURRED BY LENDER UNTIL ACTUALLY PAID BY BORROWER, SHALL BE IMMEDIATELY DUE AND PAYABLE TO LENDER BY BORROWER ON DEMAND AND SHALL BE SECURED HEREBY AND BY ALL OF THE OTHER LOAN DOCUMENTS SECURING ALL OR ANY PART OF THE INDEBTEDNESS EVIDENCED BY THE NOTE. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO OBLIGATE BORROWER TO INDEMNIFY, DEFEND AND HOLD HARMLESS LENDER FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, COSTS OR EXPENSES ASSERTED AGAINST, IMPOSED ON OR INCURRED BY LENDER BY REASON OF LENDER'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR WHICH RELATE TO EVENTS THAT OCCUR AFTER LENDER HAS TAKEN TITLE TO THE PROPERTY. THIS INDEMNITY SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY.

(b) Lender may engage the services of attorneys if it is made a party defendant to any litigation (or threatened action or claim) or to enforce the terms of this Mortgage or to protect its rights hereunder. In the event of any such engagement, Lender shall pay Lender's attorneys' fees and expenses if in Lender's reasonable judgment the interests of Borrower and Lender are aligned and no Event of Default has occurred; and if in Lender's reasonable judgment, the interests of Lender and Borrower are not aligned or an Event of Default has occurred, then Borrower shall pay Lender's attorneys' fees (together with reasonable appellate counsel fees, if any), consultants' fees, expert's fees, and expenses reasonably incurred by Lender, whether or not an action is actually commenced against Borrower. All references to "attorneys" in this Subsection and elsewhere in this Mortgage shall include without limitation any attorney or law firm engaged by Lender and Lender's in-house counsel, and all references to "fees and expenses" in this Subsection and elsewhere in this Mortgage shall include without limitation any fees of such attorney or law firm and any allocation charges and allocation costs of Lender's in-house counsel.

(c) A waiver of subrogation shall be obtained by Borrower from its insurance carrier and, consequently, Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

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1.32 Covenants with Respect to Indebtedness; Operations and Fundamental Changes of Borrower. Borrower represents, warrants and covenants as of the date hereof and until such time as the indebtedness secured hereby is paid in full, that Borrower:

(a) has not owned, does not own and will not own any asset other than (i) the Property, (ii) incidental personal property necessary for the operation of the Property, (iii) cash, money market or similar financial instruments in connection with the ownership and operation of the Property, and (iv) other assets in connection with the ownership and operation of the Property;

(b) has not engaged, is not engaged and will not engage in any business other than the ownership, management, leasing and operation of the Property;

(c) will not enter into any contract or agreement with any shareholder, general partner, principal, member or affiliate of Borrower or any affiliate of any of the foregoing, except in the ordinary course of business and upon terms and conditions that are intrinsically fair and are no less favorable to it than those that would be available on arms-length basis with an unrelated third party;

(d) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the secured indebtedness, and (ii) trade payables or accrued expenses and operational debt incurred in the ordinary course of business of operating the Property not outstanding for more than sixty (60) days with trade creditors and in amounts as are normal and reasonable under the circumstances, but, in no event, to exceed \$250,000 in the aggregate;

(e) will not cause or allow any debt whatsoever to be secured (senior, subordinate or pari passu) by the Property, (subject to Borrower's right to contest mechanics' liens), except the indebtedness secured hereby;

(f) has not made and will not make any loans or advances to any third party (including any shareholder, general partner, principal, member or affiliate of Borrower, or any guarantor);

(g) is and will be solvent and pay its debts from its assets as the same shall become due;

(h) has done or caused to be done and will do all things necessary to preserve its existence and corporate, limited liability company and partnership formalities (as applicable), and will not, nor will any partner, limited or general, or member or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate or articles of incorporation or organization, or by-laws or operating agreement or regulations, in a manner which adversely affects Borrower's, or any such partner's, member's or shareholders' existence as a single-purpose, single-asset "bankruptcy remote" entity;

(i) will conduct and operate its business as presently conducted and operated;

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(j) has maintained, and will maintain books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members;

(k) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower, any constituent party of Borrower, any guarantor or any affiliate of any constituent party or guarantor); has corrected, and shall correct any known misunderstanding regarding its status as a separate entity; has conducted, and shall conduct, its business in its own name; has paid, and will pay, its own liabilities out of its own funds and assets; has not, and shall not identify itself or any of its affiliates as a division or a part of the other; and has maintained and utilized, and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity;

(l) will file its own tax returns;

(m) will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(n) will not, nor will any shareholder, partner, principal, member or affiliate, seek the dissolution or winding up, in whole or in part, of Borrower;

(o) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

(p) has not, and will not commingle the funds and other assets of Borrower with those of any shareholder, general partner, principal, member or affiliate, or any other person;

(q) has maintained, and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;

(r) has, and any general partner or managing member of Borrower has, at all times since their respective formation, observed all legal and customary formalities regarding their respective formation and will continue to observe all legal and customary formalities;

(s) does not and will not hold itself out to be responsible for the debts or obligations of any other person;

(t) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise pursuant to Section 105 or any other provision of the Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or

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indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

(u) if Borrower is a limited partnership or a limited liability company, the general partner or managing member or manager (if manager-managed) (the "SPC Entity") shall be a corporation whose sole asset is its interest in Borrower and the SPC Entity will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 1.32 as if such representation, warranty or covenant was made directly by the SPC Entity. If Borrower is a corporation or a manager managed limited liability company, Borrower itself shall comply with each of the representations, warranties and covenants contained in this Section 1.32 as an SPC Entity. Borrower shall at all times cause there to be at least one duly appointed member of the board of directors or board of managers, as applicable (an "Independent Director") of the SPC Entity reasonably satisfactory to Lender who shall not have been at the time of such individual's appointment, and may not have been at any time during the preceding five (5) years (i) a shareholder of, member, manager (except if serving as an Independent Director) or an officer, director, attorney, counsel, partner or employee of, Borrower or any of its shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, Borrower or any of its shareholders, members, managers, subsidiaries or affiliates, (iii) a person or other entity controlling or under common control with any such shareholder, member, manager, partner, supplier or customer, or (iv) a member of the immediate family of any such shareholder, member, manager, officer, director, partner, employee, supplier, customer or any other director of the SPC Entity. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise;

(v) has not caused and shall not cause, as applicable, the board of directors of Borrower, the members or managers of Borrower, or the board of directors, members or managers of any general partner of Borrower to take any action which, under the terms of the organizational documents for Borrower and its general partner or manager, as applicable, requires the unanimous affirmative vote of one hundred percent (100%) of the members of the board of directors, members or manager, unless at the time of such action there shall be at least one director, member or manager, as applicable, who is an Independent Director;

(w) shall conduct its business so that the assumptions of fact made with respect to Borrower in that certain opinion letter dated the date hereof delivered by DLA Piper Rudnick Gray Cary US LLP (the "Non-Consolidation Opinion") with respect to non-consolidation issues, delivered in connection with the execution and delivery of the Loan Documents shall be true and correct, in all material respects at all times; and

(x) is and shall remain organized in the State of Delaware, has and shall maintain in effect an operating agreement which provides for the continued existence of Borrower in the event of the bankruptcy or dissolution of the sole member, and shall conduct its business so that the assumptions of fact made with respect to Borrower in that certain single member limited liability company opinion letter dated on or about the date hereof and delivered by Borrower's counsel (the "Single Member LLC Opinion") in connection with the execution and delivery of the Loan Documents shall be true and correct, in all material respects at all times.

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1.33 Litigation. Borrower will give prompt written notice to Lender and any Servicer of any litigation or governmental proceedings pending or threatened (in writing) against Borrower which might have a Material Adverse Effect. As used herein, the term "Material Adverse Effect" shall mean any judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Borrower (and, if Borrower is a partnership, any of its general partners or if Borrower is a limited liability company, any member of Borrower) or the Property which, if adversely determined, would have a material adverse effect on (a) the Property, (b) the business, prospects, profits, operations or condition (financial or otherwise) of Borrower, (c) the enforceability, validity, perfection or priority of the lien of any Loan Document, or (d) the ability of Borrower to perform any obligations under any Loan Document.

1.34 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Mortgage or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(x) Equity interests in Borrower are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2) as amended from time to time or any successor provision;

(y) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2) as amended from time to time or any successor provision; or

(z) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c) as amended from time to time or any successor provision or (e) or an investment company registered under the Investment Company Act of 1940.

(c) BORROWER SHALL INDEMNIFY LENDER AND DEFEND AND HOLD LENDER HARMLESS FROM AND AGAINST ALL CIVIL PENALTIES, EXCISE TAXES, OR OTHER LOSS, COST DAMAGE AND EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS AND COSTS INCURRED IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF CLAIMS AND LOSSES INCURRED IN CORRECTING ANY

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PROHIBITED TRANSACTION OR IN THE SALE OF A PROHIBITED LOAN, AND IN OBTAINING ANY INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION UNDER ERISA THAT MAY BE REQUIRED, IN LENDER'S SOLE DISCRETION) THAT LENDER MAY INCUR, DIRECTLY OR INDIRECTLY, AS A RESULT OF A DEFAULT UNDER THIS SECTION. THIS INDEMNITY SHALL SURVIVE ANY TERMINATION, SATISFACTION OR FORECLOSURE OF THIS MORTGAGE.

1.35 Intentionally Deleted.

1.36 Anti-Terrorism and Money Laundering Legislation. Borrower hereby represents and warrants to, and covenants with, Lender, as of the date hereof and until such time as the secured indebtedness shall have been paid in full, as follows:

(a) None of Borrower, any guarantor or indemnitor of any of the Loan or other obligations under the Loan Documents, or any principal of any of them, or any of their respective direct or indirect constituents or affiliates, any of their respective officers or directors (including officers or directors of any such constituents or affiliates), and any of their respective brokers, investors or other agents acting or benefiting in any capacity in connection with the Loan, is a Prohibited Person (as defined below).

(b) None of Borrower, any guarantor or indemnitor of any of the Loan or other obligations under the Loan Documents, or any principal of any of them, or any of their respective direct or indirect constituents or affiliates, any of their respective officers or directors (including officers or directors of any such constituents or affiliates) (i) to Borrower's knowledge after due inquiry, has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) to Borrower's knowledge after due inquiry, has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order (as defined below); or (iii) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the requirements or prohibitions set forth in the Executive Order or the PATRIOT Act (as defined below).

(c) To Borrower's knowledge after due inquiry, none of Borrower's or any of such aforesaid guarantor's, indemnitor's or any principal's respective brokers, investors or other agents acting in any capacity in connection with the Property or Loan (i) has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) has dealt or will deal in, or otherwise has engaged or will engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the requirements or prohibitions set forth in the Executive Order or the PATRIOT Act.

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(d) Borrower has implemented procedures to ensure that no person who now or hereafter owns a direct or indirect interest in Borrower or any guarantor of the Loan is a Prohibited Person.

(e) To the best of Borrower's knowledge, as of the date hereof, no tenant at the Property currently is a Prohibited Person and Borrower will direct the manager of the Property to promptly implement procedures, approved by Borrower, to ensure that no future commercial tenant at the Property is a Prohibited Person.

(f) Borrower covenants and agrees to deliver to Lender any certification or other evidence requested from time to time by Lender in its sole discretion, confirming Borrower's compliance with this Section 1.36.

(g) Borrower represents and warrants that Borrower and any of such aforesaid guarantor, indemnitor and principal, and all of their respective affiliates (including any officers and directors of any of the foregoing) are in full compliance with all applicable orders, rules and regulations issued by, and recommendations of, the U.S. Department of the Treasury and OFAC (as defined below) pursuant to IEEPA (as defined below), the PATRIOT Act, other legal requirements relating to money laundering or terrorism and any executive orders related thereto.

(h) Borrower is advised that, by law, Lender may be obligated to "freeze its account" or any account of its investors, either by prohibiting additional funds, declining any withdrawal, redemption, or transfer request(s) and/or segregating assets in compliance with governmental regulations, and Lender may also be required to report such action to governmental or regulatory authorities, including OFAC.

(i) Borrower has established and maintains an anti-money laundering and/or terrorism program and/or procedures in accordance with all applicable laws, rules and regulations of its own jurisdiction including, without limitation, where applicable, the PATRIOT Act. Borrower further covenants that it will adopt appropriate policies, procedures and internal controls to be fully compliant with any additional laws, rules or regulations relating to money laundering and/or terrorism, including the PATRIOT Act, to which it may become subject.

(j) Borrower has taken appropriate due diligence efforts to know each investor, including whether the investor is a Prohibited Person. Borrower has taken appropriate due diligence efforts to know if any investor is a "Senior Foreign Political Figure" (as defined in the PATRIOT Act) and, to the extent that any investor is a Senior Foreign Political Figure, has disclosed such information to Lender.

(k) Borrower will notify or report unusual or suspicious activity in accordance with the laws or requirements of its own jurisdiction including, where applicable, the PATRIOT Act.

(l) Borrower applies, and will continue to apply, its anti-money laundering program and/or procedures to all investors, and will take appropriate steps in accordance with the laws of its own jurisdiction to ensure that all required relevant documentation is retained, including identification relating to those investors.

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(m) Borrower does not believe, and after appropriate due diligence, has no reason to believe, that any of its investors is a "Prohibited Foreign Shell Bank" (as defined in the PATRIOT Act), or is named on any available lists of known or suspected terrorists, terrorist organizations or of other sanctioned persons issued by the United States government and/or the government(s) of any jurisdiction(s) in which Borrower is doing business.

(n) Borrower has taken appropriate due diligence efforts to know the person or entity from whom Borrower acquired the Property, including whether such person or entity is a Prohibited Person or an immediate family member or close associate of a Prohibited Person.

(o) Borrower does not believe, and after appropriate due diligence, has no reason to believe, that the person or entity from whom Borrower acquired the Property is a Prohibited Foreign Shell Bank, or is named on any available lists of known or suspected terrorists, terrorist organizations or of other sanctioned persons issued by the United States government and/or the government(s) of any jurisdiction(s) in which Borrower is doing business.

(p) Each of Borrower and each of the aforesaid guarantor, indemnitor and principal has adopted reasonable procedures in accordance with applicable law as of the date hereof designed to elicit information that substantiates the statements contained in this Section 1.36.

(q) Borrower will advise Lender immediately of any material change that would affect the representations, covenants and warranties provided in this Section 1.36.

(r) As used herein, the following terms shall have the meaning so specified below:

"IEEPA" shall mean the International Emergency Economic Power Act, 50 U.S.C. §1701 et seq.

"OFAC" shall mean the U.S. Department of Treasury's Office of Foreign Asset Control.

"PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56).

"Prohibited Person" shall mean any person, organization or entity:

(1) listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order");

(2) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of the Executive Order;

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(3) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the PATRIOT Act and the Executive Order;

(4) that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(5) that is named as a "specifically designated national" or "blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn>, or at any replacement website or other replacement official publication of such list or is named on any other U.S. or foreign government or regulatory list maintained for the purpose of preventing terrorism, money laundering or similar activities;

(6) that is covered by IEEPA, OFAC or any other law, regulation or executive order relating to the imposition of economic sanctions against any country, region or individual pursuant to United States law or United Nations resolution; or

(7) that is an affiliate (including any principal, officer, immediate family member or close associate) of a person or entity described in one or more of clauses (1)-(6) of this definition of Prohibited Person.

1.37 Multiple Tracts. Borrower recognizes that the Property consists of multiple parcels or tracts. At Lender's request, Borrower agrees to amend and/or supersede this Mortgage and other Loan Documents with two (2) or more Mortgages and corresponding Loan Documents, each such new instrument corresponding to a portion of the Property such that all the new instruments will collectively encumber the Property. Borrower further agrees that such new multiple Mortgages and other new instruments may include such partial release provisions as Lender may require; provided, however, any such new partial release provisions shall not be economically inconsistent with those currently provided in this Mortgage. Borrower further agrees to cooperate with Lender with respect to Lender's reasonable request for additional or supplemental documents relative to the new instruments described in this Section 1.36 (e.g., title updates or endorsements, evidence of authority, etc.) provided, Lender shall reimburse Borrower's reasonable costs incurred in complying with such requests.

1.38 Business Loan. Borrower certifies and agrees that the proceeds of the loans secured by this Mortgage will be held for the purposes specified in Section 4 of the Illinois Interest Act (815 ILCS 205/1 et seq.), and that the principal obligation secured hereby constitutes a "business loan" within the definition and purview of said Section.

1.39 Not Residential or Agricultural Real Estate. Borrower hereby acknowledges that the Land does not constitute agricultural real estate or residential real estate, as such terms are defined in the Act.

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ARTICLE II EVENTS OF DEFAULT

2.1 Events of Default. The indebtedness secured hereby shall become immediately due and payable at the option of Lender upon the happening of any one or more of the following events of default (each, an "Event of Default"):

(a) Borrower fails to (i) make any payment under the Note when due, or (ii) timely make any regularly scheduled monthly deposit into a Reserve when due.

(b) Borrower fails to punctually perform any other covenant, agreement, obligation, term or condition hereof which requires payment of any money to Lender (except those specified in Section 2.1(a) above) and such failure continues for ten (10) days after Lender's written notice to Borrower of such amount due (it being expressly agreed and understood that no notice or grace period whatsoever shall be applicable with respect to those items described in Section 2.1(a) hereinabove).

(c) Borrower fails to provide insurance as required by Section 1.4 hereof (except if sufficient funds for such insurance have been timely deposited in the Impound Account and Lender fails to timely pay such insurance premiums) or fails to perform any covenant, agreement obligation, term or condition set forth in Section 1.16 or Section 1.30 hereof.

(d) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 2.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(e) Any representation or warranty made herein, in or in connection with any application or commitment relating to the Loan or in any of the other Loan Documents to Lender by Borrower, by any principal, managing member or general partner in Borrower or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan is determined by Lender to have been false or misleading in any material respect at the time made.

(f) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property, Borrower or its owners, or any portion thereof or any interest therein, in violation of Section 1.13 hereof.

(g) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

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(h) Borrower, any principal, general partner or managing member (as applicable) in Borrower or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Borrower, for any such principal, general partner or managing member (as applicable) of Borrower or for any such indemnitor or guarantor or for a substantial part of the assets of Borrower, of any such principal, managing member or general partner of Borrower or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect. Notwithstanding the occurrence of any event pursuant to this Section 2.1(h) with respect to the manager or member of Borrower, it shall not be an Event of Default if, within thirty (30) days after such event, Borrower shall have replaced such manager or member with a substitute manager or member reasonably acceptable to Lender.

(i) An involuntary petition ("Petition") is filed or any case, proceeding or other action is commenced against Borrower, against any principal, general partner or managing member of Borrower or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Borrower, against any principal, managing member or general partner of Borrower or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such principal, managing member or general partner of Borrower or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Borrower, for any such principal, managing member or general partner of Borrower or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Borrower, of any such principal, managing member or general partner of Borrower or of any such indemnitor or guarantor, and if any such event shall occur, such Petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced. Notwithstanding the occurrence of any event pursuant to this Section 2.1(i) with respect to the manager or member of Borrower, it shall not be an Event of Default if, within thirty (30) days after such event, Borrower shall have replaced such manager or member with a substitute manager or member reasonably acceptable to Lender.

(j) Borrower solicits or aids the solicitation of the filing of any Petition against Borrower including, without limitation: (i) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency, or (ii) paying the legal fees or expenses of any creditor or interest holder in Borrower with respect to any matter whatsoever.

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- (k) The Property or any part thereof shall be taken on execution or other process of law in any action against Borrower.
- (l) Borrower abandons all or a portion of the Property.
- (m) The holder of any lien or security interest on the Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Mortgage or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, subject to Borrower's right to contest mechanics' liens as long as Lender's security is not in jeopardy.
- (n) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Lender determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.
- (o) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, any of its principals, managing members or general partners.
- (p) If any of the facts forming the basis of the assumptions set forth in the Non-Consolidation Opinion, shall no longer be true and correct in all material respects.
- (q) If any of the facts forming the basis of the assumptions set forth in the Single Member LLC Opinion, shall no longer be true and correct in all material respects.
- (r) An Event of Default under any of the Loan Documents.

ARTICLE III REMEDIES

3.1 Remedies Available. If there shall occur an Event of Default, then this Mortgage is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently.

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Without in any way curing or waiving any default or Event of Default of Borrower, either in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, or by a receiver appointed by a court and without

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regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process are waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Real Estate, to preserve and/or enhance the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Lender therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, all in such order as Lender in its discretion may determine.

(d) Appointment of Receiver. Upon, or at any time prior or after instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application, ex parte, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Borrower or any person or persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions of this Mortgage or the Assignment. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the indebtedness secured hereby, pursuant to the applicable statutes in such case and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. In the event foreclosure proceedings are instituted by Lender, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Mortgage and by all of the other Loan

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Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. Lender may, by following the procedures and satisfying the requirements prescribed by law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of the Mortgage on the remaining portion of the Property not foreclosed.

(f) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by Lender, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Property. This remedy shall be cumulative of any other non-judicial remedies available to the Lender with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of the Lender.

(g) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

3.2 Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Mortgage shall be applied to the extent funds are so available to the following items in such order as Lender in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', auctioneers', managers' and other professional fees, title charges and transfer taxes.

(b) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate.

(c) To payment of the secured indebtedness and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

(d) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.

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3.3 Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney. Upon the occurrence of an Event of Default, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Borrower and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such Leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their Leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Lender by this Mortgage; and (r) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under any Lease, contract, concession, license or other agreement to Lender without proof of the Event of Default or other default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such Lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any Event of Default or other default under this

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Mortgage or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding. Any money advanced by Lender in connection with any action taken under this Section 3.3, together with interest thereon at the Default Interest Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Mortgage and by every other instrument securing the secured indebtedness.

3.4 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower (except tenants of space in the Improvements subject to Leases entered into prior to the date hereof or entered into after the date hereof in compliance with the terms of this Mortgage), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

3.5 Notice to Account Debtors. Lender may, at any time after an Event of Default, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

3.6 Cumulative Remedies. All remedies contained in this Mortgage are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any Event of Default or other default hereunder. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.7 Payment of Expenses. Borrower shall pay on demand all of Lender's expenses reasonably incurred in any efforts to enforce any terms of this Mortgage, whether or not any

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lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Lender until actually paid by Borrower at the Default Interest Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

3.8 Mortgagee Receives Benefit of Act. Lender shall have the benefit of all of the provisions of the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

ARTICLE IV MISCELLANEOUS TERMS AND CONDITIONS

4.1 Time of Essence. Time is of the essence with respect to all provisions of this Mortgage.

4.2 Release of Mortgage. If and when Borrower has paid all of the secured indebtedness as the same becomes due and payable, then, and in such event only, all rights under this Mortgage shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender in due form at Borrower's cost. Borrower shall be responsible for the recordation of such release and payment of any recordation costs associated therewith.

4.3 Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the indebtedness secured hereby, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Mortgage or any agreement subordinating the lien hereof.

4.4 Notices. Any notice, report, demand, request or other instrument authorized or required to be given or furnished hereunder, under any of the other Loan Documents or as required by law shall be in writing and shall be given as follows: (a) by hand delivery; (b) by deposit in the United States mail as first class certified mail, return receipt requested, postage paid; (c) by expedited, prepaid, nationwide courier service, either commercial or United States Postal Service, with proof of actual or attempted delivery; or (d) by telecopy transmission (other than for notices of default) with a confirmation copy to be delivered by duplicate notice in accordance with any of clauses (a)-(c) above, in each case, addressed to the intended addressee at its address set forth on the first page of this Mortgage or at such other address as may be designated by such party as herein provided. Copies of all notices to Borrower shall be given to:

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DLA Piper Rudnick Gray Cary US LLP, 203 North LaSalle Street, Suite 1800, Chicago, Illinois 60601-1293, Attention: David Glickstein, provided that Lender's failure to provide a copy of such notice shall not make any notice to Borrower ineffective. Any party may change the address to which any such notice is to be delivered to any other address within the United States of America, by furnishing fifteen (15) days prior written notice of such change to the other parties in accordance with the provisions of this Section 4.4. All notices, demands and requests shall be effective upon personal delivery, or one (1) Business Day after being deposited with the private courier service, or two (2) Business Days after being deposited in the United States mail as required above. The inability to deliver notices because of a changed address of which no notice was given, or rejection or refusal to accept any notice offered for delivery shall be deemed to be receipt of the notice, demand or request sent as of the date of such inability to deliver or rejection or refusal to accept delivery. Notice for either party may be given by its respective counsel. Additionally, notice from Lender may also be given by the Servicer.

4.5 Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest in and to all or any part of the Property, and shall inure to the benefit of Lender, and its successors and assigns and shall constitute covenants running with the land. If Borrower consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Borrower.

4.6 Severability. If any provision under this Mortgage or the application thereof to any entity, person or circumstance shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Mortgage and the application of the provisions hereof to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

4.7 General Interpretative Principles. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

4.8 Waiver; Discontinuance of Proceedings. Lender may waive any single Event of Default or other default hereunder by Borrower hereunder without waiving any other prior or subsequent Event of Default or other default hereunder, and may remedy any Event of Default or other default hereunder by Borrower hereunder without waiving the Event of Default or other default hereunder remedied. Neither the failure or delay by Lender in exercising any right, power or remedy upon any Event of Default or other default hereunder by Borrower shall be construed as a waiver of such Event of Default or other default hereunder or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the

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amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default or other default hereunder.

4.9 Section Headings. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.10 GOVERNING LAW. **THIS MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, PROVIDED THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING**

4.11 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Real Estate is located, the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

4.12 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

4.13 Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Mortgage.

4.14 Cross Default. A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

4.15 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (if applicable, pursuant to the laws of the state in which the Property is located), bear interest at the Default Interest Rate.

4.16 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

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4.17 No Merger. It is the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Property.

4.18 Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement this Mortgage, the Note or any of the other Loan Documents and to extend the maturity date of the indebtedness secured hereby and to increase the amount of the indebtedness secured hereby and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

4.19 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals or general partners in Borrower, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

4.20 After-Acquired Property. All property acquired by Borrower after the date of this Mortgage which by the terms of this Mortgage shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further deed, mortgage, conveyance or assignment become subject to the lien and security interest created by this Mortgage.

4.21 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

4.22 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

4.23 Personal Liability. Notwithstanding anything to the contrary contained in this Mortgage, the liability of Borrower and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Lender may have

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under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Lender in accordance with the Note, this Mortgage and the other Loan Documents.

4.24 Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Lender shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Lender, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Property.

4.25 Entire Agreement and Modifications. This Mortgage and the other Loan Documents contain the entire agreements between the parties and supersede any prior agreements (oral or written), and may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

4.26 Maximum Interest. The provisions of this Mortgage and of all agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("Interest"), to Lender for the use, forbearance or retention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Borrower and Lender shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then ipso facto the obligation to be performed or fulfilled shall be reduced to such limit and if, from any circumstance whatsoever, Lender shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or at the option of Lender be paid over to Borrower, and not to the payment of Interest. All Interest (including any amounts or payments judicially or otherwise under law deemed to be Interest) contracted for, charged, taken, reserved, paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Note, including any extensions and renewals thereof until payment in full of the principal balance of the Note so that the Interest thereon for such full term will not exceed at any time the maximum amount permitted by applicable law. This Section will control all agreements between Borrower and Lender.

4.27 Application of Default Interest Rate Not a Waiver. Application of the Default Interest Rate shall not be deemed to constitute a waiver of any Event of Default or other default or any rights or remedies of Lender under this Mortgage, any other Loan Document or applicable legal requirements, or a consent to any extension of time for the payment or performance of any obligation with respect to which the Default Interest Rate may be invoked.

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4.28 Interest Payable by Lender. Lender shall cause funds in the Replacement Reserve and the TILC Reserve (the "Funds") to be deposited into interest bearing accounts of the type customarily maintained by Lender or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. The Funds shall be held in an account in Lender's name (or such other account name as Lender may elect) at a financial institution or other depository selected by Lender (or its Servicer) in its sole discretion (collectively, the "Depository Institution"). Borrower shall earn no more than an amount of interest on the Funds equal to an amount determined by applying to the average monthly balance of such Funds the quoted interest rate for the Depository Institution's money market savings account, as such rate is determined from time to time (such allocated amount being referred to as "Borrower's Interest"). Lender or its Depository Institution shall be entitled to report under Borrower's Federal tax identification number, Borrower's Interest on the Funds. If the Depository Institution does not have an established money market savings account (or if an interest rate for such account cannot otherwise be determined in connection with the deposit of such Funds), a comparable interest rate quoted by the Depository Institution and acceptable to Lender (or its Servicer) in its reasonable discretion shall be used. The amount of Borrower's Interest allocated to Funds shall be added to the balance in the Replacement Reserve and the TILC Reserve and shall be disbursed for payment of the items for which other Funds in the Replacement Reserve and the TILC Reserve are to be disbursed.

4.29 Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit B attached hereto, if any, shall be a part of this Mortgage and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Mortgage, be deemed to control.

4.30 Relationship of the Parties. The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

4.31 Fixture Filing. This Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth in Section 1.22 above.

4.32 Sale of Note and Securitization. At the request of the Lender and, to the extent not already required to be provided by Borrower under this Mortgage, Borrower shall use reasonable efforts to satisfy the market standards to which the Lender customarily adheres or which may be reasonably required in the marketplace or by the Rating Agencies in connection with any Secondary Market Transaction of rated single or multi-class securities (the "Securities") secured by or evidencing ownership interests in the Note and this Mortgage, including, without limitation, to:

(a) (i) provide such financial and other information with respect to the Property, the Borrower, its partners, shareholders or members and the Manager; (ii) provide budgets relating to the Property; (iii) perform or permit or cause to be performed or permitted such site inspection, appraisals, market studies, environmental reviews and reports (Phase I's

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and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the Property, as may be reasonably requested by the Lender or the Rating Agencies or as may be necessary or appropriate in connection with the Secondary Market Transaction; and (iv) make such representations and warranties as of the closing date of the Secondary Market Transaction with respect to the Property, Borrower and the Loan Documents as are customarily provided in securitization transactions and as may be reasonably requested by the Lender or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents (collectively, the "Provided Information"), together, if customary, with appropriate verification and/or consents of the Provided Information through letters of auditors or opinions of counsel or independent attorneys acceptable to the Lender and the Rating Agencies;

(f) at Borrower's expense, cause its counsel to render opinions, which may be relied upon by the Lender, the Rating Agencies and their respective counsel, agents and representatives, as to non-consolidation, fraudulent conveyance, and true sale or any other opinion customary in securitization transactions with respect to the Property and Borrower and its affiliates, which counsel and opinions shall be reasonably satisfactory to the Lender and the Rating Agencies; and

(c) execute such amendments to the Loan Documents and organizational documents, enter into a lockbox or similar arrangement with respect to the Rents and establish and fund such reserve funds (including, without limitation, reserve funds for deferred maintenance and capital improvements) as may be requested by the Lender or the Rating Agencies or otherwise to effect the Secondary Market Transaction; provided, however, that the Borrower shall not be required to modify or amend any Loan Document if such modification or amendment would (i) change the interest rate, the stated maturity or the amortization of principal set forth in the Note; or (ii) modify or amend any other material economic term of the Loan. Without limiting the foregoing, at Lender's request, Borrower shall cooperate in causing the Note and Mortgage to be split into two or more notes, parts or interests, in whatever proportion Lender deems appropriate, which may be in the form of pari passu interests, senior and junior interests, or other interests.

Borrower agrees to cooperate with Lender to facilitate any such action, the transfer or disposition of the Loan, the rating of the Loan or of a securitization in which the Loan is included. Borrower's cooperation obligation shall continue until the Loan has been repaid in full, and shall include, without limitation, all of the foregoing as each may be reasonably required from time to time by Lender, Servicer, or any Lender. For purposes hereof, a "Secondary Market Transaction" shall be (a) any sale or assignment of this Mortgage, the Note and the other Loan Documents to one or more investors as a whole loan; (b) a participation of the Loan to one or more investors; (c) any deposit of this Mortgage, the Note and the other Loan Documents with a trust or other entity which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or other entity or similar securitization; (d) any other sale, assignment or transfer of the Loan or any interest therein to one or more investors; or (e) any securitization of all or any portion of Lender's interest in the Loan including a securitization where Lender causes the Note and Mortgage to be split into two or more notes, parts or interests, in whatever proportion Lender deems appropriate, which may be in the form of pari passu interests, senior and junior interests, or other interests, and thereafter sells, assigns,

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participates, syndicates or securitizes all or any part of either such severed or split note and mortgage. At any time during which the Loan is an asset of a securitization or is otherwise an asset of any rated transaction, "Rating Agency" shall mean the rating agency or rating agencies that from time to time rate the Securities, certificates or other instruments issued in connection with such securitization or other transaction.

All reasonable third party costs and expenses incurred by Lender in connection with Borrower's complying with requests made under this Section shall be paid by Borrower.

In the event that the provisions of this Mortgage or any of the other Loan Documents require the receipt of written confirmation from each Rating Agency with respect to the ratings on the Securities, or, in accordance with the terms of the transaction documents relating to a Secondary Market Transaction, such a rating confirmation is required in order for the consent of the Lender to be given, the Borrower shall pay all of the costs and expenses of the Lender, or its Servicer and each Rating Agency in connection therewith, and, if applicable, shall pay any fees imposed by any Rating Agency as a condition to the delivery of such confirmation.

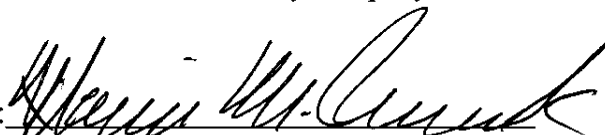
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IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Mortgage to be effective as of the date set forth in the first paragraph hereof.

BORROWER:

ROMANEK SCHAUMBURG LLC,
a Delaware limited liability company

By: 

Name: Marvin M. Romanek

Title: Manager

Property of Cook County Clerk's Office

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STATE OF ILLINOIS

§
§
§

COUNTY OF COOK

This instrument was ACKNOWLEDGED before me on February 16, 2006 by Marvin M. Romanek as Manager of ROMANEK SCHAUMBURG LLC, a Delaware limited liability company, on behalf of said limited liability company.

[SEAL]



Notary Public, State of Illinois

My Commission Expires:

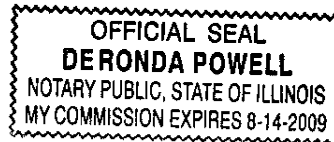
8/14/09

Deronda Powell

Printed Name of Notary Public

EXHIBIT LIST

- Exhibit A - Legal Description
- Exhibit B - Additional Stipulations



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EXHIBIT A

LEGAL DESCRIPTION

Street Address: 915, 935 and 955 National Parkway

PIN No. 07-13-101-013-0000

Parcel 1

Lot 2 in Oxford Capital Partner's Resubdivision being a resubdivision of Lot 1 in Anderson's Third Resubdivision, a resubdivision of part of Lot 2 in Anderson's Second Resubdivision, a resubdivision of Anderson's Resubdivision of part of Lot 11 in Anderson's Woodfield Park, a subdivision of part of the Northwest 1/4 of Section 13, Township 41 North, Range 10, East of the Third Principal Meridian, except that part thereof described as follows:

Beginning at the Southwest corner of Lot 2 aforesaid; thence north along the west line of said lot, 20.00 feet; thence Southeasterly to a point on the south line of said lot 20.00 feet east of the southwest corner thereof; thence west, along said south line, 20.00 feet to the point of beginning, in Cook County, Illinois.

Easement Estate Parcel 2:

A permanent, non-exclusive reciprocal easement for vehicular and pedestrian access and parking as described in the Reciprocal Easement Agreement for Access and Parking recorded in document no. 0408918051, Cook County Recorder of Deeds, Cook County, Illinois.

Easement Estate Parcel 3:

A permanent, non-exclusive, irrevocable and perpetual easement for pedestrian and vehicular ingress and egress to and from East Woodfield Road as described in the Easement Agreement recorded in document no. 0010457075, Cook County, Recorder of Deeds, Cook County, Illinois.

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EXHIBIT B

ADDITIONAL STIPULATIONS

- B-1 Cash Management Stipulations. Borrower, Lender and any Manager have, of even date herewith, entered into that certain Cash Management Agreement (the "Cash Management Agreement") of even date herewith which, among other things, provides for the disposition of Rents and Profits from the Property. It is specifically agreed that (i) the Cash Management Agreement is one of the Loan Documents (as defined in this Mortgage), and (ii) the Reserves shall be maintained as Sub-Accounts of the Central Account (as such terms are described or defined in the Cash Management Agreement). The Reserves and any disbursement therefrom shall be subject to both this Mortgage, the Cash Management Agreement and the other Loan Documents. All references in this Mortgage to the Impound Account and to the other Reserves shall be deemed to refer to the Sub-Account of the Central Account (as defined in the Cash Management Agreement) into which the proceeds of each such Reserve have been deposited pursuant to the Cash Management Agreement. All payments from Borrower to Lender with respect to Reserves shall be made by disbursement from the Rent Account (as defined in the Cash Management Agreement) or as otherwise provided in the Cash Management Agreement.
- B-2 Repair Reserve. Prior to the execution of this Mortgage, Lender has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Borrower has established with the Lender a reserve in the amount of \$-0- (the "Repair Reserve"), which amount represents 125% of the estimated cost to complete such items of Deferred Maintenance (as defined herein), by depositing such amount with Lender. Borrower shall cause each of the items described in that certain engineering report (the "Engineering Report") dated December 20, 2005 and prepared by LandAmerican Assessment Corporation, relative to the Property, copies of which have been provided to, and receipt of which is hereby acknowledged by, Borrower (the "Deferred Maintenance") to be completed, performed and corrected to the satisfaction of Lender and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before one year from the effective date hereof, as such time period may be extended by Lender in its sole discretion. So long as no Event of Default has occurred and is continuing (i) all sums in the Repair Reserve shall be held by Lender in the Repair Reserve to pay the costs and expenses of completing the Deferred Maintenance, and (ii) Lender shall, to the extent funds are available for such purpose in the Repair Reserve, disburse to Borrower the amount paid or incurred by Borrower in completing, performing, remediating or correcting the Deferred Maintenance upon (a) the receipt by Lender of a written request from Borrower for disbursement from the Repair Reserve which shall include a certification by Borrower that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Mortgage, (b) delivery to Lender of invoices, receipts or other evidence satisfactory to Lender verifying the costs of the Deferred Maintenance to be reimbursed, (c) if required by Lender in its discretion, for any single Deferred Maintenance item in excess of \$24,000.00 (or for any Deferred Maintenance item structural in nature) and prior to disbursement of the final \$20,000.00, delivery to Lender of (1) a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Lender describing the completed work, verifying the completion of the work and the value of the completed work and, if applicable, certifying that the Property is, as a result of such work, in compliance with all applicable laws, ordinances, rules and regulations relating to the Deferred Maintenance so performed, and (2) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Deferred Maintenance, if said new certificate of occupancy is required by law, or certification by Borrower that no new certificate of occupancy is required by law, and (d) delivery to Lender of affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens in an amount in excess of \$2,000.00 and are furnishing or have furnished materials or labor to the Property have been paid all amounts due for such labor and materials furnished to the Property. Lender shall not be required to make advances from the Repair Reserve more frequently than one time in any calendar month. In making any payment from the Repair Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of

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any such amount. No interest or other earnings on the funds contained in the Repair Reserve shall be paid to Borrower and any interest or other earnings on funds deposited into the Repair Reserve shall be solely for the account of Lender. In the event that the amounts on deposit or available in the Repair Reserve are inadequate to pay the costs of the Deferred Maintenance, Borrower shall pay the amount of such deficiency.

- B-3** Replacement Reserve. As additional security for the indebtedness secured hereby, Borrower shall establish and maintain at all times while this Mortgage continues in effect a repair and replacement reserve (the "Replacement Reserve") with Lender for payment of costs and expenses incurred by Borrower in connection with capital improvements, repairs and replacements performed at the Property, including, but not limited to, the performance of work to the roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, exterior walls, exterior doors and doorways, windows, carpets, appliances, fixtures, elevators and mechanical and HVAC equipment (collectively, the "Repairs"). Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with the monthly payment due under the Note, a deposit to the Replacement Reserve in an amount equal to \$2,695.67 per month. So long as no Event of Default has occurred and is continuing, (i) all sums in the Replacement Reserve shall be held by Lender in the Replacement Reserve to pay the costs and expenses of Repairs, and (ii) Lender shall, to the extent funds are available for such purpose in the Replacement Reserve, disburse to Borrower the amount paid or incurred by Borrower in performing such Repairs within ten (10) days following: (a) the receipt by Lender of a written request from Borrower for disbursement from the Replacement Reserve and a certification by Borrower to Lender that the applicable item of Repair has been completed; (b) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the Repairs; and (c) for disbursement requests (i) in excess of \$24,000.00 with respect to any single Repair, or (ii) for any single Repair that is structural in nature, delivery to Lender of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens in an amount in excess of \$2,000.00 and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (2) if required by Lender in its discretion, a certification from an inspecting architect or other third party acceptable to Lender describing the completed Repairs and verifying the completion of the Repairs and the value of the completed Repairs; and (3) a new (or amended) certificate of occupancy for the portion of the improvements covered by such Repairs, if said new certificate of occupancy is required by law, or a certification by Borrower that no new certificate of occupancy is required by law. Lender shall not be required to make advances from the Replacement Reserve more frequently than one time in any calendar month. In making any payment from the Replacement Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Lender may, at Borrower's expense (not to exceed \$2,500.00 annually), make or cause to be made during the term of this Mortgage an annual inspection of the Property to determine the need, as determined by Lender in its reasonable judgment, for further Repairs of the Property. In the event that such inspection reveals that further Repairs of the Property are required, Lender shall provide Borrower with a written description of the required Repairs and Borrower shall complete such Repairs to the reasonable satisfaction of Lender within ninety (90) days after the receipt of such description from Lender, or such later date as may be approved by Lender in its reasonable discretion. Interest or other earnings on the funds contained in the Replacement Reserve shall be credited to Borrower as provided in Section 4.28 hereof. In the event that the amounts on deposit or available in the Replacement Reserve are inadequate to pay the cost of the Repairs, Borrower shall pay the amount of such deficiency.
- B-4** Curtailment Reserve. During any Curtailment Period (as defined in the Cash Management Agreement), Borrower shall be required to establish and maintain a reserve (the "Curtailment Reserve") to be funded, maintained and disbursed in accordance with the terms and provisions of the Cash Management Agreement.
- B-5** Interest Rate Cap/Cap Reserve. Borrower shall purchase and at all times maintain in effect, from the date hereof until the Maturity Date, an interest rate cap or collar (the "Interest Rate Cap" or the "Rate Cap Transaction") that shall (a) be in an amount equal to the Notional Principal Amount (defined below),

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(b) effectively cap the LIBOR Rate (as defined in the Note) at four and fifty-seven one-hundredths of one percent (4.57%) per annum or such other rate acceptable to Lender in its sole and absolute discretion, (c) be with a cap provider rated "AA" or better by S&P and by such other rating agencies as Lender may require, and (d) otherwise be acceptable to Lender in its sole and absolute discretion. The Interest Rate Cap shall be pledged or collaterally assigned to Lender as additional security for the Loan, pursuant to a Collateral Assignment of Interest Rate Hedge Agreement (in form and substance acceptable to Lender) from Borrower and acknowledged by the Cap Agreement Issuer (as hereinafter defined). For purposes hereof, "Notional Principal Amount" shall equal \$24,350,000.00 from the date hereof until the Maturity Date. If Borrower or Lender receives any funds from the provider of the Interest Rate Cap (the "Cap Agreement Issuer"), Borrower shall pay all such funds to Lender to be held in a reserve (the "Cap Reserve"). Interest or other earnings on the funds contained in the Cap Reserve shall be credited to Borrower as provided in Section 4.28 hereof. Lender may, in its reasonable discretion, elect to apply any amounts in the Cap Reserve against the indebtedness secured hereby, in whatever order Lender may subjectively determine, or Lender may continue to hold such amounts in the Cap Reserve as security for the indebtedness secured hereby; provided, however, that Lender shall not declare an Event of Default to have occurred pursuant to Section 2.1(a)(1) hereof to the extent there are funds in the Cap Reserve sufficient to offset any Note payment deficiency.

B-6 Debt Service Reserve. Contemporaneously with the execution of this Mortgage, Borrower has established with the Lender a reserve in the amount of \$690,000.00 (the "Debt Service Reserve") by depositing such amount with Lender. The Debt Service Reserve shall be held by Lender as additional security for the Loan. If, on any Payment Date, there are insufficient funds in the Debt Service Payment Reserve (as defined in the Cash Management Agreement) to pay the Debt Service (as defined in the Cash Management Agreement) then due and payable, then Lender shall cause funds from the Debt Service Reserve in an amount equal to such insufficiency to be transferred to the Debt Service Payment Reserve and used as specified in the Cash Management Agreement. So long as the Disbursement Conditions (hereinafter defined) are timely satisfied, all of the Debt Service Reserve shall be released to Borrower upon ten (10) business days prior written request by Borrower to Lender. As used herein, the term "Disbursement Conditions" shall collectively refer to the following conditions to Borrower's right to receive any funds from the Debt Service Reserve: (i) the Note has been fully paid and satisfied; and (ii) no default shall have occurred and be continuing hereunder or under any of the other Loan Documents.

B-7 Rent Abatement Reserve. Contemporaneously with the execution of this Mortgage, Borrower has established with the Lender a reserve in the amount of \$285,000.00 (the "Rent Abatement Reserve") by depositing such amount with Lender. The Rent Abatement Reserve shall be held by Lender as additional security for the Loan. So long as the Disbursement Conditions (hereinafter defined) are timely satisfied, the applicable Tenant's Rent Abatement Amount (as herein defined) of the Rent Abatement Reserve shall be released to Borrower upon ten (10) business days prior written request by Borrower to Lender. The Rent Abatement Reserve has been allocated to the rent abatement under the Leases for the following tenants and in the following amounts (each such rent abatement amount under the Lease for such tenant is referred to as the "Tenant's Rent Abatement Amount"):

<u>Tenant</u>	<u>Tenant's Rent Abatement Amount</u>
KB Homes	\$68,335
Illinois Toll Works	\$227,788

As used in this Section B-7, the term "Disbursement Conditions" with respect to each respective Tenant's Rent Abatement Amount shall collectively refer to the following conditions to Borrower's right to receive such Tenant's Rent Abatement Amount from the Rent Abatement Reserve: (i) evidence that such respective tenant's rent abatement period under its Lease has unconditionally terminated and such respective tenant has initiated the payment of normal monthly rental, as provided in such respective Lease, which payment shall be evidenced by a canceled check or other documentation reasonably acceptable to Lender, and (ii) no default shall have occurred and be continuing hereunder or under any of the other Loan Documents. Upon

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the full payment and satisfaction of all amounts owing under the Note and the other Loan Documents, any balance in the Rent Abatement Reserve shall be disbursed to Borrower.

- B-8 American Charter Termination Reserve. Contemporaneously with the execution of this Mortgage, Borrower has established with the Lender a reserve in the amount of \$395,000.00 (the "American Charter Termination Reserve") by depositing such amount with Lender. The American Charter Termination Reserve shall be held by Lender as additional security for the Loan. So long as the Disbursement Conditions (hereinafter defined) are duly satisfied, the American Charter Termination Reserve shall be released to Borrower upon ten (10) business days prior written request by Borrower to Lender.

As used in this Section B-8, the term "Disbursement Conditions" shall collectively refer to the following conditions to Borrower's right to receive the American Charter Termination Reserve: (i) the lease termination option included in the lease ("American Charter Lease") of a portion of the Property to American Charter has fully and unconditionally terminated or lapsed, as demonstrated by the delivery to Lender by a letter or tenant estoppel certificate executed by such tenant which contains the following unequivocal, unconditional statement by such tenant:

"The lease termination option contained in Section 28 of that certain Office Lease dated January 10, 2001, as amended by Notice of Lease Commencement, undated, First Amendment to Office Lease dated March 22, 2001 and Second Amendment to Office Lease dated September 10, 2002, between the undersigned, as tenant, and Parkway Corporate Place, LLC, as landlord, has irrevocably and unconditionally lapsed and expired without the election or exercise thereof by the undersigned and is now and for the remainder of the term (whether the original or any extended term) of such lease void and of no further force and effect."

or other evidence thereof approved by Lender, and (ii) no default shall have occurred and be continuing hereunder or under any of the other Loan Documents. If the Distribution Conditions have not been satisfied on or before December 28, 2006, then the American Charter Termination Reserve shall be disbursed to Lender into the following reserves, in the specified amount, and to be held and disbursed as otherwise provided in the Loan Documents with respect to such reserve account, and in the following order of priority:

TILC Reserve: An amount equal to \$15.00 per square foot of leased premises in the Charter Bank Lease; then

Debt Service Reserve: The balance of funds in the American Charter Termination Reserve.

Upon the full payment and satisfaction of all amounts owing under the Note and the other Loan Documents, any balance in the American Charter Termination Reserve shall be disbursed to Borrower.

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