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Mortgage Loan No.: 07207

Doc#: 0734718014 Fee: \$168.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 12/13/2007 10:39 AM Pg: 1 of 73

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## MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING Cover Sheet

Date: As of December 11, 2007

Borrower: **WEST MONROE FUND INVESTORS, LLC**, a  
Delaware limited liability company and **WEST MONROE  
LIFE INVESTORS, LLC**, a Delaware limited liability  
company

Borrower's Organizational  
ID Number: West Monroe Fund Investors, LLC: 3845122  
West Monroe Life Investors, LLC: 3827197

Lender: **MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY**, a Massachusetts corporation

Note Amounts: \$82,000,000

Maturity Date: January 1, 2013

State: Illinois

**ATTENTION: COUNTY RECORDER – THIS MORTGAGE CONSTITUTES A  
FIXTURE FILING UNDER THE ILLINOIS COMMERCIAL CODE AND COVERS  
GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE LAND DESCRIBED  
HEREIN, AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE  
MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS  
MORTGAGE IS TO BE FILED IN THE INDEX OF FINANCING STATEMENTS  
UNDER THE NAMES OF MORTGAGOR (AS DEFINED BELOW), AS "DEBTOR",  
AND MORTGAGEE (AS DEFINED BELOW), AS "SECURED PARTY".  
MORTGAGOR IS A RECORD OWNER OF AN INTEREST IN THE LAND  
DESCRIBED HEREIN. THE MAILING ADDRESSES OF MORTGAGOR (DEBTOR)  
AND MORTGAGEE (SECURED PARTY) ARE REFERENCED BELOW.**

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## MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING

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## MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of December 11, 2007, by and between **WEST MONROE FUND INVESTORS, LLC**, a Delaware limited liability company ("WMFI") and **WEST MONROE LIFE INVESTORS, LLC**, a Delaware limited liability company ("WMLI"), both having an address at c/o Principal Real Estate Investors, LLC, 801 Grand Avenue, Des Moines, Iowa 50392 (WMFI and WMLI are collectively referred to herein as, "Borrower"), and **MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY**, a Massachusetts corporation having an address at c/o Babson Capital Management LLC, 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115-5189, Attention: Managing Director, Real Estate Finance Group ("Lender"), as payment and servicing agent for itself and the other Note Holders (as defined below)

### GRANTING CLAUSES

For good and valuable consideration and to secure the payment of an indebtedness in the principal sum of Eighty Two Million and 00/100 Dollars (\$82,000,000.00) payable in lawful money of the United States, to be paid according to that certain Promissory Note of even date herewith from Borrower to Lender in the principal sum of Forty One Million and 00/100 Dollars (\$41,000,000.00) (as the same may hereafter be amended, modified, consolidated, severed or extended, the "MassMutual Note") and the certain Promissory Note of even date herewith from Borrower to New York Life Insurance Company ("New York Life") in the principal sum of up to Forty One Million and 00/100 Dollars (\$41,000,000.00) (as the same may hereafter be amended, modified, consolidated, severed or extended, the "New York Life Note"), both with a maturity date of January 1, 2013, and by this reference made a part hereof (the MassMutual Note and the New York Life Note are collectively referred to herein as the "Note"), together with all other obligations and liabilities due or to become due to the Note Holders, all amounts, sums and expenses paid hereunder by or payable to the Note Holders according to the terms hereof, and all other covenants, obligations and liabilities of Borrower under the Note, this Mortgage, the Assignment (as hereinafter defined) and any other instrument executed by Borrower evidencing, securing or delivered in connection with the loan evidenced by the Note (all of the foregoing instruments, collectively, the "Loan Documents"), and together with all interest on said indebtedness, obligations, liabilities, amounts, sums, Advances (as hereinafter defined) and expenses (all of the foregoing, collectively, the "Indebtedness"), Borrower has created a security interest in and mortgaged, warranted, granted, bargained, sold, conveyed, assigned, pledged, transferred and set over, and does by these presents create a security interest in and MORTGAGE, WARRANT, GRANT, BARGAIN, SELL, CONVEY, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Lender (for the benefit of the Note Holders), its successors and assigns forever, together with all interest that Borrower may hereafter acquire in, the following property:

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

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

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

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

TOGETHER with all equipment, fittings, furniture, furnishings, appliances, apparatus, and machinery in which Borrower now or hereafter has a possessory or title interest and now or hereafter installed in or located upon the Premises and all building materials, supplies and equipment now or hereafter delivered to the Premises and intended to be installed therein or located thereon; all fixtures, inventory, other goods and personal property of whatever kind and nature now contained on or in or hereafter placed on or in the Premises and used or to be used in connection with the letting or operation thereof, in which Borrower now has or hereafter may acquire a possessory or title interest and all renewals or replacements of any of the foregoing property or articles in substitution thereof, including beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, silverware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, ice makers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, and other equipment used in the operation of the Premises (collectively, the "Equipment");

TOGETHER with all right, power, privilege, option, title and interest of Borrower in and under all present or future accounts, deposit accounts, documents, instruments, chattel paper, and general intangibles (including "payment intangibles"), as the foregoing terms are defined in the Code (as hereinafter defined), all deposits, monies or escrows held by Lender or Lender's agent

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or any accounts established pursuant hereto or pursuant to any other Loan Documents, and all contract rights, equipment leases, operating leases and licenses, Operating Agreements (as hereinafter defined), derivative investments, letters of credit, and rate cap agreements, including casualty insurance policies and liability insurance policies (irrespective of whether such policies are required to be obtained or maintained in force pursuant to this Mortgage or other Loan Documents), trade names, trademarks, servicemarks, logos, copyrights, goodwill, franchises, books, records, plans, specifications, permits, licenses, approvals, actions, claims under the Federal Bankruptcy Code (as hereinafter defined) and causes of action which now or hereafter relate to, are derived from or are used in connection with the Premises or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the "Intangibles");

TOGETHER with all right, power, privilege, option, title and interest of Borrower in and under all existing and future leases, lettings, tenancies, occupancy agreements, licenses to occupy and other similar arrangements affecting the Premises or any part thereof now or hereafter entered into and all amendments, extensions, renewals and guaranties thereof, all security therefor, including letter of credit rights, guaranties and other supporting obligations, and all moneys payable thereunder, whether entered into before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code (collectively, the "Leases");

TOGETHER with all rents, room rates, income, accounts, receivables, issues, profits, security deposits, including the proceeds from letters of credit, guarantees and other supporting obligations, all other payments and profits from the Leases and the use and occupation of the Premises, including fixed and additional rents, cancellation payments, option payments, all revenues and credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms and recreational facilities and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Premises, or personalty located thereon, or rendering of services by Borrower or any operator or manager of any hotel or commercial space located in the Premises or acquired from others including from the rental of any office space, retail space, commercial space, guest room or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, and other payments and benefits to which Borrower may now or hereafter be entitled from the Premises, the Equipment or the Intangibles or under or in connection with the Leases (collectively, the "Property Income"), including the immediate and continuing right to make claim for, receive, collect and receipt for Property Income, including the right to make claim in a proceeding under the Federal Bankruptcy Code and to apply the same to the payment of the Indebtedness, all whether before or after the filing by or against Borrower of any petition for relief under the Federal Bankruptcy Code;

TOGETHER with all proceeds, judgments, claims, compensation, awards of damages and settlements pertaining to or resulting from or in lieu of any condemnation or taking of the Premises by eminent domain or any casualty loss or damage to any of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, and including also, the right to

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assert, prosecute and settle claims arising out of or pertaining to such condemnation or taking or such casualty loss under insurance policies constituting an Intangible and to apply for and receive payments of proceeds under such insurance policies and in any condemnation or taking, the right to apply for and receive all refunds with respect to the payment of property taxes and assessments and all other proceeds from the conversion, voluntary or involuntary, of the Premises, the Equipment, the Intangibles, the Leases or the Property Income, or any part thereof, into cash or liquidated claims. Collectively, all of the foregoing, are herein referred to as the "Proceeds"; and

TOGETHER with all tenancy in common interests of each Person comprising Borrower and all of their rights in, to and under the Co-Owners' Agreement (as defined below) (collectively, "TIC Interests")

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

TO HAVE AND TO HOLD the Mortgaged Property, with all the privileges and appurtenances to the same belonging, and with the possession and right of possession thereof, unto Lender (on behalf of the Note Holders) and its successors and assigns forever.

## ARTICLE I Definition of Terms

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

"Acceptable Leases" means all Leases in effect on the date of this Mortgage and all other Leases approved or deemed approved by Lender under Section 2.19.

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

"Anti-Money Laundering Laws" means the USA Patriot Act of 2001, as amended, the Bank Secrecy Act, as amended, Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, and other federal laws and regulations and executive orders administered by the United States Department of the Treasury, Office of Foreign Assets Control ("OFAC") which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

"Appurtenances" has the meaning assigned in the Granting Clauses.

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"Assignment" means the Assignment of Leases and Rents from Borrower to Lender of even date herewith.

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

"Borrower" means the party or parties identified and defined as Borrower on the Cover Sheet and in the preamble of this Mortgage, any subsequent owner of the Mortgaged Property, and its or their respective heirs, executors, legal representatives, successors and assigns. Each reference to "Borrower" herein shall mean WMFI and WMLI individually and collectively.

"Borrower's Affidavit" means that certain Borrower's Affidavit of even date herewith from Borrower in favor of Lender.

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

"Code" means the Uniform Commercial Code of the State, as the same may be amended from time to time or any successor statute thereto.

"Collateral" has the meaning assigned in the Granting Clauses.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management of policies of the entity, whether through the ownership of voting securities or by contract or otherwise.

"Co-Owners' Agreement" means that certain Agreement of Co-Tenants dated September 24, 2004 attached as Exhibit J to the Borrower's Affidavit.

"Debt Service Coverage Ratio" means an amount determined by dividing (i) the Net Operating Income for the twelve (12) month period immediately following the date the calculation is made (or if there is less than a 12 month period until the Maturity Date from the date the calculation is made, then the Net Operating Income shall be annualized based on the Net Operating Income for such remaining period) by (ii) the annualized payments of interest that would be due under the Note for a twelve (12) month period.

"Default Rate" has the meaning assigned in the Note.

"Environmental Indemnity Agreement" means that certain Environmental Indemnification Agreement of even date herewith from Borrower in favor of Lender.

"Environmental Law" means any present or future federal, state or local law, statute, regulation or ordinance, and any judicial or administrative order or judgment thereunder, pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Premises, including each of the following as in effect on the date hereof or hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act 1980,



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42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§136 et seq.; the Occupational Safety & Health Act of 1970, as amended, 29 U.S.C. § 651 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. §300f et seq.; the National Environmental Policy Act, as amended, 42 U.S.C. §4321 et seq.; and the Solid Waste Disposal Act, as amended, 42 U.S.C. §6901 et seq.

"Equipment" has the meaning assigned in the Granting Clauses.

"ERISA" means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

"Event of Default" means any one or more of the events described in Section 4.01.

"Federal Bankruptcy Code" means Title 11 of the United States Code, as the same may be amended from time to time or any successor statute thereto.

"Fiscal Year" means each calendar year during the term of this Mortgage, or such other fiscal year of Borrower as Borrower may select from time to time with the prior consent of Lender. During the first year of the term hereof, Borrower's Fiscal Year shall be deemed to have commenced on the date of this Mortgage and shall end on the regular Fiscal Year ending date as indicated in the immediately preceding sentence.

"Fund" means Principal Enhanced Property Fund, L.P, a Delaware limited partnership.

"Hazardous Substance" means any material, waste or substance which is:

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

(ii) listed in the United States Department of Transportation Optional Hazardous Materials Table, 49 C.F.R. §172.101, as to date or hereafter amended, or in the United States Environmental Protection Agency List of Hazardous Substances and Reportable Quantities, 40 C.F.R. Part 302, as to date or hereafter amended; or

(iii) explosive, radioactive, asbestos, asbestos containing material, Microbial Matter, a hydrocarbon, a polychlorinated biphenyl, oil, or a petroleum product.

Notwithstanding anything contained herein to the contrary, the term "Hazardous Substance" shall not include de minimus amounts of substances that are ancillary to the office and retail use of the Mortgaged Property, such as cleaning materials and supplies, provided that they are present, stored, used, handled and disposed of in compliance with all applicable Environmental Laws.

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"Holding" means Principal Real Estate Holding Company, LLC, a Delaware limited liability company.

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

"Indebtedness" has the meaning assigned in the Granting Clauses.

"Intangibles" has the meaning assigned in the Granting Clauses.

"Land" has the meaning assigned in the Granting Clauses.

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

"Leases" has the meaning assigned in the Granting Clauses.

"Lender" means Massachusetts Mutual Life Insurance Company, the lender identified as such on the Cover Sheet and in the preamble of this Mortgage, and its successors and assigns, as payment and servicing agent for itself and the other Note Holders.

"Loan" means the loan made by Lender to Borrower evidenced by the Note.

"Loan Documents" has the meaning assigned in the Granting Clauses.

"Loan Percentage" means, fifty percent (50%) to be applied to the MassMutual Note and fifty percent (50%) to be applied to the New York Life Note.

"Losses" means claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including attorneys' fees, costs and expenses).

"Maturity Date" has the meaning assigned on the Cover Sheet of this Mortgage.

"Microbial Matter" means the presence of fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including mold, mildew and viruses, whether or not such Microbial Matter is living, which poses a threat to the health, safety or welfare of any Person or adversely affects the value of the Mortgaged Property.

"Mortgaged Property" has the meaning assigned in the Granting Clauses.

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"Net Operating Income" means an amount determined by Lender's own analysis and estimate of gross rents, revenues and other income from the operation of the Mortgaged Property for the 12-month period immediately following the date the calculation is made, taking into account both (i) the amount of all current rents, revenues and other income derived from Acceptable Leases which are expected to continue, and (ii) the amount of all rents, revenues and other income to be derived from Acceptable Leases scheduled either to have increases in rent or to commence by their terms during such immediately following 12-month period; and in the case of both (i) and (ii), reduced by the amount of all rents and revenues and other income from all Acceptable Leases expiring or terminating or being modified, or reasonably anticipated to expire, terminate or be modified, during the 12-month period immediately following the date the calculation is made; and then subtracting from such gross rents, revenues and other income the amount of all ordinary and necessary operating expenses applicable to the Mortgaged Property for such period of time, including, but not limited to, expenses for utilities, administration, cleaning, landscaping, security, repairs and maintenance, ground rent payments, if any, management fees, fully assessed (or estimated fully assessed) real estate and other taxes and assessments and insurance premiums, but excluding from any such expenses any deductions for federal, state and other income taxes, debt service, depreciation or amortization of capital expenditures (including leasing commissions, tenant improvements, and other leasing costs) and other similar non-cash items. Borrower shall provide Lender with Borrower's own proposed calculation of Net Operating Income, certified by the chief financial officer, general partner or managing member of Borrower, together with all relevant supporting detail required to determine the same. Lender shall then perform Lender's own independent calculation of Net Operating Income, which shall be the definitive determination of Net Operating Income.

"New Lease" has the meaning assigned in Section 2.19(b).

"Note" has the meaning assigned in the Granting Clauses.

"Note Holders" means Lender, New York Life and their successors and assigns (including any other holders from time to time of the Note).

"OFAC Prohibited Person" means, a country, territory, individual or Person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the Mortgaged Property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in violation of such laws.

"Operating Agreements" means the management agreements and leasing commission agreements for the Premises and the agreements, licenses and leases set forth in Exhibit C.

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"Organizational Chart" means the organizational chart attached as Exhibit D to that certain Borrower's Affidavit of even date herewith from Borrower in favor of Lender.

"Permitted Encumbrances" means the liens and security interests created by this Mortgage and the other Loan Documents and those exceptions to title set forth in Exhibit B.

"Permitted Fund Transfers" means each of the transfers of interests in the Fund, so long as (i) Principal Enhanced Property Fund GP, LLC ("General Partner") continues to Control the Fund, and (ii) Principal Life or its wholly-owned affiliate continues to Control directly or indirectly the General Partner.

"Permitted Principal Transfers" means each of the transfers of interests in WMLI so long as Principal Life shall maintain Control of WMLI.

"Permitted Rollup" means a transfer of WMFI and WMLI's tenant in common interests in the Mortgaged Property to a limited liability company wholly owned by one or both of them, so long as (i) Principal Life or its wholly-owned affiliate shall maintain Control of such limited liability company, and (ii) the limited liability company agreement of the successor "Borrower" governing such limited liability company is acceptable to Lender.

"Permitted TIC Transfers" means each of the transfers of Borrower's interest in the Mortgaged Property between WMLI and WMFI, so long as at all times during the term of the Loan: (i) WMFI and WMLI, together or individually, shall continue to be the "Borrower" and shall own not less than 100% of the Mortgaged Property; and (ii) the transferor and transferee enter into an assignment agreement in form and substance reasonably satisfactory to Lender.

"Permitted Transfer" means, from time to time, Permitted Principal Transfers, Permitted Rollup and/or Permitted Fund Transfers.

"Person" means and includes any individual, corporation, partnership, joint venture, limited liability company, association, bank, joint-stock company, trust, unincorporated organization or government, or an agency or political subdivision thereof.

"Premises" has the meaning assigned in the Granting Clauses.

"Principal Life" means Principal Life Insurance Company, an Iowa corporation.

"Principals" means all general partners, controlling members, managing members, managing agents and/or controlling stockholders of Borrower.

"Proceeds" has the meaning assigned in the Granting Clauses.

"Property Income" has the meaning assigned in the Granting Clauses.

"Redevelopment Agreement" means that certain Redevelopment Agreement between Borrower, as successor to Monroe/Clinton LLC, and the City of Chicago, with a limited joinder

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by The Quaker Oats Company, dated October 30, 2000 and recorded as Document No. 00866230.

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

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

"State" means the State or Commonwealth in which the Land is situated.

"Upstream Owner" means any Person having a direct or indirect legal, beneficial or other ownership interest in Borrower (e.g., if Borrower is a limited liability company, and one of Borrower's members is a limited partnership, whose partner is a corporation, then the shareholder of such corporation would be an Upstream Owner).

"WMFI" has the meaning assigned in the Preamble of this Mortgage.

"WMLI" has the meaning assigned in the Preamble of this Mortgage.

## ARTICLE II

### Covenants, Warranties and Representations of Borrower

Borrower covenants, warrants, represents and agrees as follows:

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

Section 2.02 Title to the Mortgaged Property.

(a) Borrower has fee simple title (or such lesser estate therein as may be specified in Exhibit A) to the Premises and good indefeasible title to the balance of the Mortgaged Property, free and clear of liens and encumbrances except Permitted Encumbrances.

(b) Borrower has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth.

(c) This Mortgage is and will remain a valid and enforceable lien on and security interest in the Mortgaged Property.

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(d) Borrower will preserve such title and will forever warrant and defend the same and the validity and priority of the lien hereof to Lender against all claims whatsoever.

Section 2.03 Maintenance of the Mortgaged Property. Borrower shall maintain the Mortgaged Property in good and safe condition, working order and repair, and comply with all existing and future federal, state and local laws, ordinances, rules and regulations and court orders affecting or which may be interpreted as affecting the Mortgaged Property, including the Americans with Disabilities Act and all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject. Borrower shall permit Lender and its agents to enter upon and inspect: (a) the areas of the Mortgaged Property which are open to the public at all reasonable hours without prior notice and (b) all other areas of the Mortgaged Property at all reasonable hours with reasonable prior notice (provided that Lender shall in no event be required to provide Borrower with more than one (1) Business Day notice, except that no notice shall be required in the event of an emergency. Borrower shall not, without the prior consent of Lender: (a) change the use of the Premises; (b) cause or permit the use or occupancy of any part of the Premises to be discontinued if such discontinuance would violate any zoning or other law, ordinance or regulation; (c) consent to any zoning reclassification, modification or restriction affecting the Premises; (d) threaten, commit or permit any waste, structural or material alteration, demolition or removal of the Mortgaged Property or any portion thereof (provided that the Equipment included within the Collateral may be removed if replaced with similar items of equal or greater value); or (e) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership. No provision of this Section 2.03 shall prohibit Borrower from undertaking and completing tenant improvement work authorized under Leases previously approved by Lender or not requiring Lender's prior approval.

## Section 2.04 Insurance; Restoration.

(a) Borrower shall keep the Improvements and the Equipment insured against damage by fire, acts of terrorism, boiler and machinery, wind storm and other hazards. Borrower shall furnish Lender with such comprehensive "Special Form" or "All Risk", extended coverage property insurance insuring 100% of the insurable replacement value thereof with no coinsurance or similar penalty (which shall mean the full repair and actual replacement value thereof, without reduction for depreciation). Additionally, such insurance shall insure Borrower against rent loss or business interruption (including extra expense) covering at least 12 months' rental income from all Leases. Unless all Improvements comply and continue to comply with all applicable laws, codes, rules and regulations, Borrower shall maintain Ordinance and Law coverage in amounts as follows: Coverage A, 100% of the insurable value; Coverage B, Demolition and Debris removal equal to 10% of the insurable value; and, Coverage C, Increased Cost of Construction equal to 10% of the insurable value. Borrower shall also carry such other insurance, and in such amounts, as Lender may from time to time require depending on the specific characteristics of the Mortgaged Property, including, without limitation, workers' compensation, employer's liability, flood (if property is located in high flood risk areas (Special Flood Hazard Areas (SFHAS)) in the maximum amount of coverage available under the NFIP (National Flood Insurance Act of 1968), earthquake (limit required no greater than the PML less deductibles), builder's risk, demolition insurance, commercial auto and environmental; and such

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additional insurance shall be obtained within 20 days after demand by Lender. All insurance coverages, limits and deductibles must be satisfactory to Lender in Lender's sole and absolute discretion. In the event Borrower obtains an umbrella or a blanket insurance policy or a separate policy or any other insurance policy affecting the Mortgaged Property hereunder, Borrower shall notify Lender of the same and shall cause insurance certificates evidencing each insurance policy to be delivered as required under Section 2.04(c). Any umbrella or blanket insurance policy shall be in amounts as Lender determines to be reasonable from time to time, and shall otherwise provide the same protection as would a separate policy insuring only the Mortgaged Property in compliance with the provisions of Section 2.04(c), giving Lender all of the rights set forth in this Section 2.04. The Proceeds of insurance paid on account of any damage to or destruction of the Premises or any portion thereof shall be paid over to Lender to be applied as hereinafter provided.

(b) Borrower shall also maintain commercial general liability insurance, including contractual liability, with respect to the Mortgaged Property against personal injury, death and property damage, with limits of liability in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with a "Per Location" aggregate endorsement if multiple properties are insured under the same policy. In addition, Borrower shall maintain umbrella or excess liability insurance in an amount Lender determines to be reasonable from time to time. In the event Borrower's commercial general liability does not include a "Per Location" aggregate, the total general liability aggregate shall be no less than \$25,000,000 using any combination of primary and umbrella limits.

(c) All insurance policies and endorsements required pursuant to this Mortgage shall:

- (i) be endorsed to name the Note Holders as a primary additional insured thereunder, as its interest may appear, with loss payable to Lender, without contribution, under a long-form, non-contributory mortgagee clause, or otherwise endorsed as Lender may reasonably require;
- (ii) be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State, with a rating of "A-VIII" or better as established by Best's Rating Guide or A or better as established by Standard & Poors, Inc. or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Lender;
- (iii) without limiting the foregoing, provide that such policy or endorsement may not be canceled or materially changed except upon 30 days prior written notice of intention of non-renewal, cancellation or material change to Lender, and that no act or thing done by Borrower or Note Holders shall invalidate the policy as against Note Holders; and
- (iv) be in form and content satisfactory to Lender. On the date of this Mortgage and thereafter within 7 days of the expiration date of such policies, Borrower shall deliver all certificates of insurance to Lender together with evidence of all endorsements required hereunder, in form and content satisfactory to Lender issued by the approved insurer showing all required coverage to be in full force and effect for the succeeding 12-month period along with evidence satisfactory to Lender of payment in full of all premiums. The aforesaid evidence of insurance shall, as approved by Lender, be (A) an insurance binder (ACORD 75 or equivalent provided by an insurance agent, broker or the insurance carrier) or an ACORD 28 (2003 version, so long as such version is available, or if the 2003 version is not available, the ACORD 28 must include language substantially similar to the following: "this is evidence that insurance as identified herein has been issued, is in force and conveys all the rights and privileges under the policy to the

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additional insured" and the phrase "endeavor to" must be struck from the notice of cancellation provision) "Evidence of Commercial Property Insurance" provided by an authorized insurance agent, broker or insurance carrier or, where ACORD 28 is not available, other evidence of insurance confirming the same rights as are provided by ACORD 28; and (B) an ACORD 25 "Certificate of Liability Insurance" provided by an insurance agent, broker or the insurance carrier. If Borrower fails to maintain insurance in compliance with this Mortgage, Lender may (but shall not be obligated to) obtain such insurance and pay the premium therefor and Borrower shall reimburse Lender on demand for all such Advances. Notwithstanding anything to the contrary contained herein or in any provision of law, the Proceeds of insurance policies coming into the possession of Lender shall not be deemed trust funds and Lender shall be entitled to dispose of such Proceeds as hereinafter provided.

(d) In the event of any damage to or destruction of the Premises and/or Equipment, Borrower shall give prompt written notice to Lender and shall promptly commence and diligently continue to completion the repair, restoration and rebuilding of the Premises and/or Equipment so damaged or destroyed in full compliance with all legal requirements and with the provisions of Sections 2.04(h) and (j), and free and clear from any and all liens and claims. Such repair, restoration and rebuilding of the Premises are sometimes hereinafter collectively referred to as the "Work". Borrower shall not adjust, compromise or settle any claim for insurance proceeds without the prior consent of Lender. Lender shall have the option in its sole discretion to apply any insurance Proceeds it may receive pursuant to this Mortgage (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees, costs and expenses) to the payment of the Indebtedness or to allow all or a portion of such Proceeds to be used for the Work. If any insurance Proceeds are applied to reduce the Indebtedness, provided no Event of Default shall have occurred and be continuing, Lender shall apply the same, without any prepayment fee, in accordance with the provisions of Section 5.19 below. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, Lender, at its option, may apply any insurance Proceeds to the Indebtedness in such order and priority as Lender deems appropriate in its sole discretion (and any prepayment fee required to be paid under the Note shall be due and owing).

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

(f) Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, to apply and make claims for insurance Proceeds under all insurance policies, to prosecute and settle such claims and to endorse any checks, drafts or other instruments representing any insurance Proceeds whether payable by reason of loss thereunder or otherwise. Additionally, Lender may notify any and all insurers under casualty and liability insurance policies that Lender has a security interest pursuant to the provisions of this Mortgage in and to such insurance policies and any proceeds thereof, and that any payments under those insurance policies are to be made directly to Lender. Lender's rights under this Section 2.04(f) may be



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exercised by Lender or a court appointed receiver appointed upon the request of Lender and irrespective of whether or not an Event of Default (or any matter which, after notice or passage of time or both, would constitute an Event of Default) shall have occurred under this Mortgage.

(g) Notwithstanding the provisions of Section 2.04(d), if in Lender's reasonable judgment the cost of the Work shall not exceed 50% of the then outstanding principal balance of the Note, then Lender shall, upon request by Borrower, permit Borrower to use the Proceeds for the Work (subject to the provisions of, and less Lender's costs described in, Section 2.04(h)), so long as:

- (i) no Event of Default shall then exist nor any matter(s) exist which, after notice of default or passage of time or both, would constitute an Event of Default;
- (ii) the Work can be completed, as determined by Lender in its reasonable discretion, by the date which is the earlier to occur of (a) 12 months from the date of the damage to or destruction of the Premises and (b) 12 months prior to the Maturity Date;
- (iii) none of the Leases in effect immediately prior to the damage or destruction shall have been canceled or terminated nor shall any such Leases contain any still exercisable right to cancel or terminate as a result of such damage or destruction;
- (iv) all sums necessary to effect the Work over and above any available Proceeds, as estimated by Lender in its reasonable discretion (the "Deficiency Amount"), shall be at the sole cost and expense of Borrower and, at Lender's request, deposited with Lender prior to commencing any Work and at all times thereafter;
- (v) at all times during any such Work, Borrower shall maintain, at its sole cost and expense, workers' compensation, builders risk and public liability insurance in amounts satisfactory to Lender and in accordance with the provisions of this Section 2.04; and
- (vi) at all times during any such Work, business income and extra expense including rental value insurance shall be in full force and effect and available to cover any loss of business income and rents resulting from the damage to or destruction of the Premises and/or Equipment.

(h) If any insurance Proceeds are used for the Work, then such Proceeds together with any Deficiency Amount shall be held by Lender and shall be paid out from time to time to Borrower as the Work progresses (less any cost to Lender of recovering and paying out such Proceeds and/or Deficiency Amount, including reasonable attorneys' fees, costs and expenses and costs allocable to inspecting the Work and the plans and specifications therefor), subject to each of the following conditions:

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- (i) the Work shall be conducted under the supervision of a certified and registered architect or engineer reasonably satisfactory to Lender. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Lender shall have approved the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Premises shall be at least equal in value and general utility to the Premises immediately prior to the damage or destruction.
- (ii) each request for payment shall be made on not less than seven Business Days prior notice to Lender and shall be accompanied by a certificate of the architect or engineer in (i) above stating: (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if required under (i) above; (B) that the sum requested is justly required to reimburse Borrower for payments by Borrower, or is justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by Lender does not exceed the value of the Work done to the date of such certificate; (C) if the sum requested is to cover payment relating to repair and restoration of Equipment required or relating to the Premises, that title to the items of Equipment covered by the request for payment is vested in Borrower; and (D) that the amount of such Proceeds together with any Deficiency Amount remaining in the hands of Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion). Additionally, each request for payment shall contain a statement signed by Borrower approving both the Work done to date and the Work covered by the request for payment in question.
- (iii) each request for payment shall be accompanied by waivers of lien satisfactory to Lender covering that part of the Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company or licensed abstractor, or by other evidence satisfactory to Lender that there has not been filed with respect to the Premises any mechanics' or other lien relating to any part of the Work not discharged of record. Additionally, as to any Equipment covered by the request for payment, Lender shall be furnished with evidence of payment therefor and such further evidence satisfactory to assure Lender of its valid first lien on the Equipment.
- (iv) Lender shall have the right to inspect the Work at all reasonable times and may condition any disbursement of Proceeds upon the satisfactory

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completion, as determined in Lender's sole discretion, of any portion of the Work for which payment or reimbursement is being requested. Neither the approval by Lender of the plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement.

- (v) Proceeds shall not be disbursed more frequently than every 30 days.
- (vi) any request for payment made after the Work has been completed shall be accompanied by a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Premises legal.
- (vii) upon completion of the Work and payment in full therefor, any unexpended Proceeds, at the sole option of Lender, shall either be paid over to Borrower or shall be applied to the reduction of the Indebtedness.

(i) Upon any failure on the part of Borrower to promptly commence the Work or to proceed diligently and continuously to completion of the Work or upon any Event of Default, Lender, at its sole option, shall be entitled to apply at any time all or any portion of insurance Proceeds it then holds to the Indebtedness or to curing any Event of Default under the Note, this Mortgage or any other Loan Document.

(j) Notwithstanding any other provision of this Section 2.04, if no Event of Default shall exist and be continuing (nor any matter has occurred which, after notice or passage of time or both, would constitute an Event of Default) and in Lender's reasonable judgment the cost of the Work is less than 1% of the outstanding principal balance of the Note as of the date of loss or damage to the Premises and/or Equipment and the Work can be completed in less than 60 days, then Lender shall, upon request by Borrower, permit Borrower to apply for and receive the insurance Proceeds directly from the insurer (and Lender shall advise the insurer to pay over such Proceeds directly to Borrower), provided that Borrower shall apply such insurance Proceeds solely to the prompt and diligent commencement and completion of such Work.

Section 2.05 Condemnation. Borrower shall notify Lender immediately of the actual or threatened commencement of any proceedings for the condemnation or taking of the Premises or any portion thereof and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in such proceedings and Borrower shall deliver to Lender all instruments requested by Lender to permit such participation. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain the Proceeds of any such condemnation and to make any compromise or settlement in connection with such proceedings, subject to the provisions of this Mortgage. Borrower shall not adjust, compromise, settle or enter into any agreement with respect to such proceedings without the prior consent of Lender. All Proceeds of any condemnation, or purchase in lieu thereof, of the Premises or any portion thereof are hereby assigned to and shall be paid to Lender. Borrower hereby authorizes Lender to collect and

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receive such Proceeds, to give proper receipts and acquittances therefor and, in Lender's sole discretion, to apply such Proceeds (less any cost to Lender of recovering and paying out such Proceeds, including reasonable attorneys' fees, costs and expenses allocable to inspecting any repair, restoration or rebuilding work and the plans and specifications therefor) toward the payment of the Indebtedness or to the repair, restoration or rebuilding of the Premises in the manner and subject to the conditions set forth in Section 2.04(h). If the Proceeds are used to reduce the Indebtedness, they shall be applied in the order provided in Section 2.04(d), without any prepayment fee. Borrower shall promptly execute and deliver all instruments requested by Lender for the purpose of confirming the assignment of the condemnation Proceeds to Lender.

## Section 2.06 Impositions.

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

(b) Borrower shall not be required to pay, discharge or remove any Imposition so long as Borrower contests in good faith such Imposition or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Property or any portion thereof; provided, however, that such contest will not result in a tax certificate or other sale of the tax lien and prior to the date on which such Imposition would otherwise have become delinquent Borrower shall have: (i) given Lender prior notice of such contest; and (ii) deposited with Lender, and shall deposit such additional amounts as are necessary to keep on deposit at all times, an amount equal to at least 110% of the total of: (A) the balance of such Imposition then remaining unpaid; and (B) all interest, penalties, costs and charges accrued or accumulated thereon. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition as finally determined, together with all interest, penalties, costs and charges payable in connection therewith. Lender shall have full power and authority to apply any amount deposited with Lender under this Section 2.06(b) to the payment of any unpaid Imposition to prevent the sale of any tax lien or the sale or forfeiture of the Mortgaged Property for non-payment thereof. Lender shall have no liability, however, for failure to so apply any amount deposited unless Borrower requests the application of such amount to the payment of the particular Imposition for which such amount was deposited. Any surplus retained by Lender after payment of the Imposition for which a deposit was made shall be repaid to Borrower unless an Event of Default shall have occurred under the provisions of this Mortgage, in which case said surplus may be retained by Lender to be applied to the Indebtedness. Notwithstanding any provision of this Section 2.06(b) to the contrary, Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the reasonable opinion of Lender, failure to pay will result in a tax certificate or other sale of the tax lien or the Mortgaged Property is in jeopardy or in danger of

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being forfeited or foreclosed. If Borrower refuses to pay any such Imposition, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such Advances. Additionally, in such event, if Lender is prevented by law or judicial or administrative order from paying such Imposition, then Lender, at its option, may declare the entire Indebtedness immediately due and payable.

## Section 2.07 Deposits.

(a) Borrower shall deposit with Lender, monthly, on the due date of each monthly installment under the Note, 1/12th of the annual charges (as estimated by Lender) for Impositions, and, if required by Lender, 1/12th of the annual charges for rent (if Borrower is lessee of an interest in the Mortgaged Property) with respect to the Mortgaged Property. If required by Lender, Borrower shall also deposit with Lender, simultaneously with such monthly deposits and/or the execution of this Mortgage, a sum of money which together with such monthly deposits will be sufficient to make the payment of each such charge at least 30 days prior to the date initially due. Should such charges not be ascertainable at the time any deposit is required to be made, the deposit shall be made on the basis of the charges for the prior year or payment period, as reasonably estimated by Lender. When the charges are fixed for the then current year or period, Borrower shall deposit any deficiency on demand. All funds deposited with Lender may be commingled with Lender's other funds, and shall be applied in payment of the foregoing charges when and as payable provided that no Event of Default shall have occurred. Except as otherwise required by applicable law, any interest or earnings on any reserves shall accrue for the benefit of Lender. Should an Event of Default occur, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as Lender in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided. Borrower shall furnish Lender with bills and all other documents necessary for the payment of the foregoing charges within 5 days of Borrower's receipt of the same, but in any event at least 15 days prior to the date on which each payment thereof shall first become due.

(b) Lender agrees that Borrower shall not be required to make the deposits required under subsection (a) above to pay Impositions as long as each of the following terms and conditions continue to be satisfied, as determined by Lender in its sole and absolute discretion:

- (i) Borrower timely and fully pays all real property taxes and assessments on or affecting the Mortgaged Property on or prior to the last date when real estate taxes and/or assessments may be paid without payment of any interest, late fee or penalty.
- (ii) Borrower provides Lender with either receipted tax bills or other evidence reasonably satisfactory to Lender of timely payment of all real estate taxes and assessments within 30 days of the last date when any real estate tax or assessment may be paid without payment of any or interest, late fee or penalty.

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- (iii) No uncured monetary default exists under the Loan Documents.
- (iv) No uncured Event of Default exists under the Loan Documents.
- (v) The original Borrower named on page one of this Mortgage or any other Person in connection with a one time right to transfer under Section 2.17(B) or a Permitted Transfer under Section 2.17(C) holds sole title to the Mortgaged Property and except as permitted under Sections 2.17(A), 2.17(B) or 2.17(C), there has occurred no direct or indirect transfer of ownership interest in Borrower, or in any Upstream Owners of Borrower whether or not any such transfers are approved by Lender.
- (vi) The Debt Service Coverage Ratio must not be less than 1.35:1.

In the event that any one or more of the above requirements are not satisfied, Borrower shall immediately commence making the deposits for real estate taxes and assessments and insurance premiums pursuant to the terms of subsection (a) above and shall continue to make such deposits for the remainder of the Loan term notwithstanding the cure or satisfaction of any or all of said requirements. The terms of this subsection (b) shall be only for the benefit of the original Borrower named on page one of this Mortgage and a subsequent Borrower under Section 2.17(B) and 2.17(C) and shall not be applicable to any other subsequent Borrower. In the event of a transfer of the Mortgaged Property, other than in accordance with Section 2.17(B) and 2.17(C), this subsection (b) shall immediately become null and void and an immediate initial escrow deposit (sufficient to meet upcoming obligations in Lender's judgment) and subsequent monthly impounds for property taxes and insurance premiums shall be required pursuant to subsection (a) above.

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

**Section 2.09 Organization and Authority.**

(a) The execution and delivery of the Note, this Mortgage and the other Loan Documents have been duly authorized and there is no provision in Borrower's organizational documents, as amended, requiring further consent for such action by any other Person.

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(b) Borrower is duly organized, validly existing and in good standing under the laws of the state of its formation.

(c) Borrower has all necessary franchises, licenses, authorizations, registrations, permits and approvals and full power and authority to own and operate its properties, including the Mortgaged Property, and carry on its business as now conducted in each jurisdiction where Borrower conducts its business.

(d) The execution and delivery of and performance of its obligations under the Loan Documents: (i) will not result in Borrower being in default under any provision of its organizational documents, as amended, any court order, or any mortgage, deed of trust or other agreement to which it is a party; and (ii) do not require the consent of or any filing with any governmental authority.

(e) All necessary and required actions have been duly taken by and on behalf of Borrower to make and constitute the Loan Documents, and the Loan Documents constitute, legal, valid and binding obligations enforceable in accordance with their respective terms, subject only to the application of bankruptcy and other laws affecting the rights of creditors generally.

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

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

Section 2.12 Costs of Defending and Upholding the Lien. Lender may, after notice to Borrower: (a) appear in and defend any action or proceeding, in the name and on behalf of either Lender or Borrower, in which Lender is named or which Lender in its sole discretion determines may adversely affect the Mortgaged Property, this Mortgage, the lien hereof or any other Loan Document; and (b) institute any action or proceeding which Lender in its sole discretion determines should be instituted to protect its interest in the Mortgaged Property or its rights under this Mortgage or any other Loan Document, including foreclosure proceedings. Borrower agrees

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to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding. The rights of Lender to reimbursement under this Section 2.12 shall be limited to any one of the following circumstances: (i) an Event of Default occurs under the Loan Documents; (ii) Borrower fails to retain counsel reasonably acceptable to Lender; or (iii) Lender believes, in its reasonable discretion, that Lender's interests are substantially at odds with those of Borrower, or Lender elects to consult with counsel concerning any consent or approval required to be delivered by Lender hereunder or under any of the Loan Documents.

Section 2.13 Costs of Enforcement. Borrower agrees to bear and shall pay or reimburse the Note Holders on demand for all Advances and expenses (including reasonable attorneys' and appraisers' fees, costs and expenses and the expenses and reasonable fees of any receiver or similar official) of or incidental to the collection of the Indebtedness, any foreclosure of this Mortgage or any other Loan Document, any enforcement, compromise or settlement of this Mortgage, any other Loan Document or the Indebtedness, or any defense or assertion of the rights or claims of the Note Holders in respect of any thereof, by litigation or otherwise.

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

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

Section 2.16 Financial Statements; Records. Borrower shall keep adequate books and records of account in accordance with generally accepted accounting principles related to real estate, or in accordance with other methods acceptable to Lender in its sole discretion, consistently applied, and shall furnish to Lender in either hard copy or electronic format via e-mail to addresses specified by Lender, within the time periods set forth:

(a) A current certified rent roll, signed and dated by Borrower, detailing for each of the Leases, the names of all tenants of the Premises, the portion of the Premises occupied by each tenant, the annual rental, including base rent, additional rent and percentage rent, and any other charges payable, the amount of any security deposits or letter of credit held under the Leases, and



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the term of each of the Leases, including the expiration date, and any other information as is reasonably required by Lender, within 120 days after the end of each Fiscal Year of Borrower. Borrower may provide the amount of any security deposits or letter of credit in a separate list acceptable to Lender.

(b) An annual operating statement of the Premises detailing the total revenues received, total expenses incurred, total cost of all capital improvements, total debt service and total cash flow, to be prepared and certified by Borrower in the form approved by Lender, or if required by Lender, an audited annual operating statement prepared and certified by an independent certified public accountant acceptable to Lender, within 120 days after the close of each Fiscal Year of Borrower.

(c) An annual balance sheet and profit and loss statement of Borrower, the Fund and of any guarantor or indemnitor of the Loan, in a form approved by Lender, prepared and certified by Borrower, the Fund and any such guarantor or indemnitor as to the applicable statement, and, such statements, if required by Lender, shall be audited financial statements prepared and certified by an independent certified public accountant acceptable to Lender, within 120 days after the close of each Fiscal Year of Borrower.

(d) An annual operating and capital budget presented on a monthly basis consistent with the annual operating statement described above for the Premises, including cash flow projections for the upcoming year, and all proposed capital replacements and improvements at least 30 days after the start of each Fiscal Year.

(e) An annual statement from Borrower and all Principals, in a form approved by Lender, certifying: (i) that no change has occurred in the organizational chart attached as Exhibit D to the Borrower's Affidavit; and (ii) that neither Borrower nor Upstream Owners (up to the Fund on the Organizational Chart relative to WMFI and up to Holding on the Organizational Chart relative to WMLI) have obtained any financing prohibited by this Mortgage and the other Loan Documents, signed and dated by Borrower, within 120 days after the close of each Fiscal Year of Borrower.

(f) Upon request from Lender, the following:

- (i) quarterly operating statements of the Premises, prepared and certified by Borrower in a form approved by Lender, detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements for that quarter and containing appropriate year to date information, within 30 days after the end of each fiscal quarter;
- (ii) an accounting of all security deposits held in connection with any of the Leases, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institutions in which such security deposits are held and the name of the person to contact at such financial institution, along with any

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authority or release from Borrower to obtain information regarding such accounts directly from such financial institutions;

- (iii) not more often than once each quarter, such other financial or management information from Borrower, the Principals and of any guarantor or indemnitor of the Loan (including monthly or quarterly certified rent rolls meeting the requirements of paragraph 2.16(a) above) as may, from time to time, be reasonably required by Lender and in form and substance reasonably satisfactory to Lender;
- (iv) Borrower's books and records regarding the Premises for examination, review, copying and audit by Lender or its auditors during normal business hours and convenient facilities for such examination review, copying and audit of Borrower's books and records of account; and
- (v) to the extent Borrower has such information or has the ability to obtain such information, financial statements (audited if available), including balance sheets and profit and loss statements, for any tenants under Leases either: (A) leasing more than 25% of the rentable portions of the Mortgaged Property; or (B) providing more than 25% of the gross income from the Mortgaged Property, and any guarantors of those Leases.

(g) Intentionally deleted.

## Section 2.17 Prohibition Against Conveyances, Encumbrances and Borrowing.

(A) Except with the prior consent of Lender, neither Borrower nor any Person shall convey, assign, sell, mortgage, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) all or any portion of any legal or beneficial interest in: (a) all or any portion of the Mortgaged Property including the Leases; or (b) all or any ownership interest in (i) Borrower or (ii) any Upstream Owner except for interests in Principal Life, interests in the "Limited Partners" interest in the Fund and interest in the "Limited Partners" as shown on the Organizational Chart. In furtherance of the foregoing, subordinate liens (voluntary or involuntary) secured by any portion of the Mortgaged Property, or any beneficial interest in the Mortgaged Property, and any mezzanine or any other financing, whether unsecured or secured by any ownership interest in Borrower or in any Upstream Owner except for interests in Principal Life, interests in the "Limited Partners" interest in the Fund and interest in the "Limited Partners" as shown on the Organizational Chart, shall not be permitted except with the prior consent of Lender. Without limiting Lender's right to withhold its consent to any transfer or encumbrance not otherwise permitted below, any transfer or encumbrance (even those permitted below) must be to or with a United States citizen or an entity owned or controlled by United States citizens which is not an OFAC Prohibited Person. All requests for Lender's consent under this Section 2.17 shall be on a form previously approved by Lender and shall be accompanied by the payment of Lender's standard processing fee for such transactions then in effect. Lender's consent to any of the

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foregoing actions, if given (in Lender's sole discretion), may be conditioned upon a change in the interest rate, maturity date, amortization period or other terms under the Note, the payment of a transfer fee and/or any other requirements of Lender. In addition to the standard processing fee and the transfer fee referred to in this Section 2.17, Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable expenses (including reasonable attorneys' fees, costs and expenses, title search costs, and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and documentation of any such transaction. The foregoing prohibitions are not intended to prevent the Principals or Upstream Owners from obtaining personal loans unrelated to Borrower and the Mortgaged Property and are also not intended to prevent Borrower from incurring reasonable and customary trade payables and unsecured operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Mortgaged Property in such amounts as are normal and reasonable under the circumstances that will be satisfied within 60 days of incurrence, provided that such debt is not evidenced by a note and is paid when due.

(B) Notwithstanding the prohibitions of Section 2.17(A), Lender will permit a one-time transfer of title to the Mortgaged Property without modification of the terms of the Loan, which shall be personal to the Borrower named on page one of this Mortgage and any Person obtaining title to the Mortgaged Property pursuant to a Permitted Transfer and shall not apply to any other successor, assignee or transferee of Borrower and, except with respect to a Permitted Transfer, shall be null and void upon any transfer of the Mortgaged Property, or portion thereof, or upon any direct transfer of any ownership interests in Borrower, provided that all of the following terms and conditions have been fully satisfied in the sole and absolute discretion of Lender:

1. At least thirty (30) days prior to such transfer, Borrower shall have provided Lender with written notice of the proposed transfer together with an administrative processing fee in the amount of \$10,000 (the "Processing Fee") along with the name(s), address(es) and organizational documents of the proposed transferee and principals, affiliates and parents or other majority owners, as applicable, of the proposed transferee. Upon receipt, the Processing Fee shall be deemed earned, whether or not Borrower completes the proposed transfer and whether or not the proposed transfer is actually approved by Lender. A separate Processing Fee shall be required for each transfer requested. Additionally, Borrower shall furnish to Lender along with such notice the following: (i) detailed and complete financial statements of the proposed transferee and principals, affiliates and parents or other majority owners, as applicable, of the proposed transferee, (ii) information with respect to the business and business experience of the proposed transferee and its principals, affiliates and parents or other majority owners, as applicable, and their experience in the ownership and operation of properties similar to the Mortgaged Property and other commercial real estate, (iii) evidence that the Mortgaged Property as of the proposed date of transfer of title and thereafter will be managed by a management company and under a management agreement meeting the requirements of subparagraph 5 below, (iv) the terms and conditions of the proposed sale and a copy of the executed purchase and sales agreement, (v) a description, including a chart, if

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appropriate, of the ownership structure of the proposed transferee and each of its principals, affiliates and parent or other majority owners, as applicable, (vi) the management plan for the Mortgaged Property, (vii) the status of the proposed transferee, and if the proposed transferee is a special purpose entity, of its principals, parent or other majority owners, as a "Qualified Real Estate Investor" as defined below and (viii) such other information as Lender may request to permit it to determine the creditworthiness and management abilities of the proposed transferee and its principals, affiliates and parent or other majority owners, as applicable.

2. The Loan must be current in all respects and there may not be an Event of Default, or an event with which the giving of notice or the passage of time or both would constitute an Event of Default, either as of the date of the notice given Lender under subparagraph 1 above or thereafter through the date of transfer of title to the Mortgaged Property.
3. The proposed transferee, or, if the proposed transferee is a special purpose entity, each of its principals, parent or other majority owners, as applicable, shall be a "Qualified Real Estate Investor" as defined below.
4. The proposed transferee shall in no event be a tenant in common or syndication and Borrower and each and every subsequent transferee Borrower shall covenant and agree that in no event will any of the Mortgaged Property be transferred to or held by any tenant in common or syndication while the Loan is still outstanding.
5. The Mortgaged Property as of the date of transfer and thereafter must be managed by a management company approved by Lender under a written management agreement satisfactory to Lender in form and substance, both as of the date of transfer and thereafter for the balance of the Loan term. The terms and provisions of any management agreement affecting the Mortgaged Property, including without limitation the right to receive any fees and payments thereunder, shall be expressly and unconditionally subordinate and inferior to the lien and the terms and provisions of the Loan Documents.
6. The proposed transferee shall expressly assume Borrower's obligations under the Loan and the Loan Documents in a written agreement in form and substance satisfactory to Lender, subject to the non-recourse provisions of the Loan Documents existing as of the date of the closing of the sale of the Mortgaged Property. Additionally, at the time of the assumption of the Loan, the proposed transferee shall furnish to Lender an environmental indemnity in form and substance satisfactory to Lender (which form may be different from any form executed by Borrower (and/or other indemnitors) as a result of Lender's updating its standard form of environmental indemnity or as a result of specific environmental conditions at the Mortgaged Property) and a non-recourse carveout guaranty in form and substance satisfactory to Lender, each from financially responsible persons or entities approved by Lender. Borrower and the proposed

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transferee and such other entities or persons as Lender shall require shall also deliver and, if applicable, execute (i) evidence of authority and entity existence, (ii) Uniform Commercial Code searches, (iii) Uniform Commercial Code financing statements, (iv) an endorsement to Lender's title policy updating the effective date to the date of transfer, showing the transferee as the owner of the Mortgaged Property, showing no additional title exceptions, except as shall be approved by Lender in its sole and absolute discretion and otherwise in form and substance acceptable to Lender, (v) opinions of counsel acceptable to Lender on such matters as Lender shall require, (vi) evidence of fire and extended coverage insurance and such other insurance, including, without limitation, terrorism insurance, as shall be required by the Loan Documents and Lender and (vii) such other documents as Lender shall require in order to effectuate the transaction as contemplated by this Section 2.17(B). At the closing of any approved transfer, the proposed transferee shall deposit with Lender, upon Lender's request, sufficient funds to pay when due all real estate taxes, assessments and municipal charges, and to pay any ground rents. In addition, the Lender may require the proposed transferee to establish with Lender at the time of closing of any approved transfer a reserve for future tenant improvements, leasing commissions and/or capital improvements. To the extent the Loan Documents require any other reserves or deposits the same shall be established by the proposed transferee prior to the date of closing of the proposed transfer. The foregoing requirement for deposits and reserves shall be required notwithstanding that any of the foregoing shall have been waived by Lender with respect to Borrower either in this Mortgage, the Loan Documents or in any side letter or agreement executed by Lender.

7. At the closing of any approved transfer, Borrower shall pay to Lender a fee in the amount of three quarters percent (3/4%) of the then outstanding balance of the Loan in cash or certified funds (the "Transfer Fee"). The Transfer Fee is being paid in order to induce Lender to allow the proposed transferee to assume the obligations of the Borrower under the Loan Documents and to release Borrower from liability thereunder for Borrower's obligations, acts and omissions from and after the date of transfer in accordance with these provisions, provided, however, in no event shall the Borrower be released from any liability for acts or omissions prior to the date of the transfer, including without limitation, acts or omissions leading to environmental contamination, whether known or unknown.
8. The Net Operating Income from the Mortgaged Property for the twelve (12) month period immediately following the date the calculation is made shall be not less than 1.50 times the required payments of principal and interest on the Loan for the same twelve (12) month period as determined by Lender in its sole discretion from financial statements for the Mortgaged Property in form and substance satisfactory to Lender and submitted to Lender.
9. On the date of the closing of the proposed transfer, the new Borrower shall provide evidence acceptable to Lender that it has made, and shall maintain, a minimum 40% cash equity investment in the Mortgaged Property.

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10. The proposed transfer shall not cause a violation of any federal, state or local law, statute, rule, regulation or order governing the Mortgaged Property, Borrower or the proposed transferee or any of its principals, parent, or other owners.
11. The proposed transferee shall not cause any breach or violation of any of the terms or provisions of Section 2.25 of this Mortgage.
12. Borrower shall pay all of Lender's costs and expenses incurred in connection with the proposed transfer of the Mortgaged Property whether or not the transfer actually occurs including, without limitation, attorneys' fees, recording and filing charges, title charges and any endorsement to Lender's title policy.

Lender will not review or process Borrower's request for approval of a proposed transfer of the Mortgaged Property pursuant to this Section 2.17(B) until such time as Lender has received all of the items, including the Processing Fee, required to be delivered to Lender pursuant to this Section 2.17(B).

For purposes of this Section 2.17(B), "Qualified Real Estate Investor" shall mean any reputable entity which is domiciled in the U.S. with principals who are U.S. citizens and which is reasonably determined by Lender to have satisfied all of the following conditions: (1) the proposed transferee or its sponsor has the qualifications, experience and creditworthiness at least equal to that of Borrower and its sponsor on the date of closing of the Loan; (2) the proposed transferee has (a) real estate assets with a current market value of not less than \$625,000,000, (b) net worth of not less than \$250,000,000, and (c) liquid assets of not less than \$25,000,000, and (3) neither the proposed transferee nor any principal, affiliate, parent or other majority owner of the proposed transferee, as of the date for the closing of the transfer of title to the Mortgaged Property or at any time prior thereto, is or has been (i) in default on any indebtedness or loan from Lender or any affiliate of Lender, (ii) involved as a debtor or as the principal of a debtor in any bankruptcy, reorganization or insolvency proceeding, (iii) the subject of any criminal charges or proceedings, (iv) involved in litigation which is deemed significant by Lender, or (v) listed on, included within or associated with any of the persons or entities referred to in Executive Order 13324 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended by the United States Department of the Treasury, Office of Foreign Assets Control through the date the determination of Qualified Real Estate Investor is made or otherwise not in compliance with the Anti-Money Laundering Laws. All of the foregoing conditions must be satisfied as of the date of the request for approval of transfer of title to the Mortgaged Property and on the date of the proposed closing of the transfer.

(C) Notwithstanding the prohibitions of Section 2.17(A), Lender, without requiring the payment of a fee or other payment except as set forth below, or without modification of the terms of the Loan, but subject nevertheless to the conditions set forth below, will permit a

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Permitted Transfer. The foregoing permission to each Permitted Transfer outlined above is conditioned upon satisfaction of each of the following:

- (i) At the time of such transfer, there shall not be an Event of Default nor shall there be an event but for the giving of notice or the passage of time, or both, would be an Event of Default.
- (ii) Neither the acquiring entity nor any principal of the acquiring entity, whether on the date for the closing of the transfer of title to the Mortgaged Property or at any time prior thereto, is (a) in default on any indebtedness or loan from Lender, or (b) involved in any bankruptcy, reorganization or insolvency proceeding.
- (iii) As to a Permitted TIC Transfer, a Permitted Principal Transfer and a Permitted Rollup, at least 15 days prior to such transfer, Borrower shall have provided Lender with written notice of the proposed transfer. Borrower shall furnish to Lender along with such notice (a) a description, including a chart, of the ownership structures of the Borrower after such Permitted Transfer, (b) any organizational documents requested by Lender concerning the Persons on such organizational chart and (c) if there is a change in management as part of the transfer, evidence that the Mortgaged Property as of the proposed date of transfer of title and thereafter will be managed by a management company and under a management agreement reasonably satisfactory to Lender and otherwise in compliance with Section 2.23.
- (iv) In connection with any Permitted Transfer that involves the transfer of title to the Mortgaged Property, Borrower shall have provided Lender prior to said transfer with all of the documentation required under Section 2.17(B)(6)(i) through (vi).

Borrower shall pay, promptly upon demand (and in any event prior to, and as a condition of, a transfer under this Section) all of Lender's reasonable costs and expenses incurred in connection with the proposed transfer, whether or not the proposed transfer actually occurs, including, without limitations, attorneys fees, recording charges, title charges and any endorsement to Lender's title policy that Lender's counsel may require. In the event of a Permitted TIC Transfer, if WMFI has transferred 100% of its interest in the Mortgaged Property to WMLI or WMLI has transferred 100% of its interest in the Mortgaged Property to WMFI, then the transferor shall be released from any and all obligations of Borrower under the Loan Documents with respect to matters arising after the date of said Permitted TIC Transfer.

Section 2.18 Estoppel Certificates. Within 10 Business Days of a request by Lender, Borrower shall furnish to Lender a duly acknowledged written statement confirming: (a) the original principal amount of the Note; (b) the unpaid principal amount of the Note; (c) the rate of interest of the Note; (d) the terms of payment and maturity date of the Note; (e) the date installments of interest and/or principal were last paid; (f) that, except as provided in detail in

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such statement, there are no offsets or defenses against the Indebtedness or defaults or events which with the passage of time or the giving of notice, or both, would constitute an Event of Default under the Note, this Mortgage or the other Loan Documents; and (g) such other information that Lender shall reasonably request. Borrower shall also furnish to Lender within 30 days of its request therefor tenant estoppel letters from such tenants of the Premises as Lender may require, but such requests as to any one tenant shall not be made more often than once in a calendar year period.

## Section 2.19 Assignment of Leases and Property Income.

(a) Borrower hereby absolutely, presently, unconditionally and irrevocably assigns, transfers and sets over to Lender (on behalf of the Note Holders) all of the right, title and interest of Borrower in and to the Leases and the Property Income. Borrower shall not otherwise assign, transfer or encumber in any manner the Leases or the Property Income or any portion thereof. Borrower shall have a license, revocable by Lender, to collect and use the Property Income as the same becomes due and payable so long as no Event of Default has occurred, but may not collect any Property Income more than 30 days in advance of the date the same becomes due. The assignment in this Section 2.19 shall constitute an absolute, irrevocable and present assignment of the Leases and the Property Income, and not an additional assignment for security, and the existence or exercise of Borrower's revocable license to collect Property Income shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Lender of any of its rights or remedies under this Section 2.19 shall not be deemed or construed to make Lender: (i) a mortgagee-in-possession; (ii) responsible for the payment of any taxes or assessments with respect to the Premises; (iii) liable to perform any obligation of the lessor under any Lease(s) or under applicable law; (iv) liable to any person for any dangerous or defective condition in the Premises or for any negligence in the management, upkeep, repair, or control of the Premises resulting in loss or injury or death to any Person; or (v) be liable in any manner for the remediation of any environmental impairment.

(b) Except as permitted by Section 2.19(d), all Leases and all lease amendments, modifications, termination, assignments, extensions and renewals of existing Leases entered into after the date of this Mortgage (each, a "New Lease"), shall be subject to the prior review and approval of Lender and its counsel, at Borrower's expense. Except as otherwise consented to by Lender, all Leases shall be written on the standard form of lease, which shall have been approved by Lender. No material changes may be made to the Lender-approved standard lease form without the prior consent of Lender. All Leases shall be at rental rates and on terms comparable to existing local market rates and terms and shall be arms-length transactions with bona fide, independent third party tenants. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Lender. Borrower shall furnish Lender with executed copies of all New Leases within thirty (30) days after execution thereof. Notwithstanding anything in Section 2.18 to the contrary, with respect to each New Lease, upon Lender's request Borrower shall use reasonable efforts to furnish to Lender, within ten (10) days following a request therefor, a tenant estoppel letter and a subordination, non-disturbance and attornment agreement executed by each such tenant utilizing Lender's then current estoppel certificate form and subordination agreement form, or such other form as Lender shall reasonably approve. If Borrower or a tenant requests that Lender execute a non-disturbance agreement, then Lender agrees to execute a subordination non-



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disturbance and attornment agreement utilizing such form as Lender may then specify or reasonably approve, the cost incurred by Lender in connection therewith, including, without limitation, reasonable legal fees, shall be borne by Borrower and reimbursed to Lender upon demand.

(c) Borrower shall perform all obligations as lessor under all Leases and shall enforce all of the terms, covenants and conditions contained therein upon the part of the lessee thereunder to be performed or observed, short of termination thereof. Additionally, Borrower shall not take any action which would cause any Lease to cease to be in full force and effect. Except with the prior consent of Lender, Borrower shall not: (i) cancel, terminate, surrender, sublet or assign any Lease or consent to any cancellation, termination, surrender, subletting or assignment thereof; (ii) subordinate any Lease to any mortgage, deed of trust or other security interest that is subordinate to this Mortgage; (iii) enter into any new Lease or amend, modify or renew any existing Lease (except as permitted in Section 2.19(d)); (iv) waive any default under or breach of any Lease; (v) consent to or accept any prepayment or discount of rent or advance rent under any Lease; (vi) take any other action in connection with any Lease which may impair or jeopardize the validity of such Lease or Lender's interest therein; or (vii) alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to any of the Leases or cancel or terminate such guaranty, letter of credit or other credit support.

(d) Notwithstanding Section 2.19(b), as long as there is no Event of Default, Lender's prior consent shall not be required for entering into any New Lease provided that each of the following requirements are satisfied: the New Lease (i) covers less than 50,000 net rentable square feet of building area of the Premises, including any square feet provided for in any unexercised expansion options provided for in the New Lease; (ii) has a term of not less than 1-year (excluding extensions and renewals) and not longer than 10-years (including extensions and renewals); (iii) with respect to New Leases covering greater than 10,000 net rentable square feet only, is written on a standard lease form approved by Lender in advance and in writing, and without material changes; (iv) is an arm's length transaction with a bona-fide, independent third party tenant and provides for rental rates and terms comparable to existing local market rates and terms; (v) will not violate any provision of any other Lease, restriction, covenant or private or public agreement affecting the Mortgaged Property or the Borrower, or both; (vi) does not require Lender to execute a non-disturbance agreement; and (vii) contains no early termination right on the part of tenant, nor any right of tenant to acquire any ownership interest in the Mortgaged Property. Borrower shall give Lender notice of any New Lease described in this Section 2.19(d), together with a fully executed and complete copy of such New Lease, not later than 30 days after the execution thereof. In determining under clause (i) above whether a New Lease is for 50,000 square feet of net rentable square feet of building area of the Premises, all space leased to any one tenant (whether pursuant to one or more Leases) shall be aggregated.

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

(f) Upon Lender's request during an Event of Default, Borrower shall deliver to Lender any or all of the tenant security deposits, including any letters of credit, under the Leases, together with: (i) any assignment of the proceeds of such security deposits; (ii) any assignment and transfer of such letters of credit or the proceeds thereof; and (iii) any tenants' consents to

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assignment of such security deposits and assignment and transfer of such letters of credit, as Lender shall reasonably request. All security deposits delivered to Lender shall be held without interest and may be commingled with Lender's other funds (unless the payment of interest thereon and the maintenance of a separate account therefor is required under applicable tenant leases or by law).

(g) Borrower hereby agrees that Lender may authorize and direct the tenants named in the Leases and all Lease guarantors, to pay over to Lender or such other party as Lender may direct, all Property Income upon receipt from Lender of written notice to the effect that an Event of Default exists, and to continue to do so until the tenants and Lease guarantors are otherwise notified by Lender.

(h) Upon the occurrence of an Event of Default, Lender may, with or without exercising any other rights or remedies: (i) give or require Borrower to give notice to any or all tenants under the Leases authorizing and directing them to pay all Property Income under the Leases directly to Lender; and (ii) without regard to any waste, adequacy of the security or solvency of Borrower, apply for the appointment of a receiver of the Mortgaged Property to which appointment Borrower hereby consents, whether or not foreclosure proceedings have been commenced under this Mortgage and whether or not a foreclosure sale has occurred.

(i) If any tenant is required to pay a lease termination fee as a result of such tenant terminating its Lease, upon such Lease termination, the amount so required to be paid by such tenant shall be collaterally assigned to Lender (on behalf of the Note Holders) as additional collateral for the Loan and deposited with Lender in an interest bearing account (the "Lease Termination Escrow Account"), with interest accruing for the benefit of Borrower. Once the space vacated as a result of the Lease termination is occupied and the new tenant is paying rent, the portion of the Lease Termination Escrow Account relating to the Lease termination payment for the applicable space (inclusive of interest attributable thereto) shall be refunded to Borrower. Should an Event of Default occur, the funds so deposited may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the Mortgaged Property, as Lender in its sole discretion may determine, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided.

## Section 2.20 Environmental Matters; Warranties; Notice; Indemnity.

(a) Borrower represents and warrants to the Note Holders regarding the Premises and the Equipment as follows:

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

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- (ii) there are no Hazardous Substances or underground storage tanks in, on, or under or about the Premises, except those that are both: (A) in compliance with Environmental Laws and with permits issued pursuant thereto; and (B) fully disclosed to Lender in writing pursuant to the written reports resulting from environmental assessments of the Mortgaged Property delivered to Lender prior to the date of this Mortgage (the "Environmental Report");
- (iii) there are no past, present or threatened Releases of any Hazardous Substance in, on, under or about the Premises except as described in the Environmental Report;
- (iv) there is no threat of any Release of Hazardous Substances migrating to the Premises except as described in the Environmental Report;
- (v) there is no past or present actual or alleged non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises or the Equipment except as described in the Environmental Report;
- (vi) Borrower does not know of, and has not received, any written or oral notice or other communication from any Person (including a governmental entity) relating to Hazardous Substances or Remediation thereof, of possible liability of any Person pursuant to any Environmental Law, other environmental conditions in connection with the Premises or Equipment, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and
- (vii) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or about the Premises that is known by Borrower and that is contained in Borrower's files and records, including any reports relating to Hazardous Substances in, on, under or about the Premises and/or to the environmental condition of the Premises.
- (b) Borrower shall not install, use, generate, manufacture, produce, store, Release, discharge or dispose of on, under or about the Premises, or transport to or from any portion of the Premises, any Hazardous Substance or allow any other Person to do so, except under conditions permitted by applicable Environmental Laws. Additionally, except with the prior consent of Lender, no portion of the Premises shall be leased, used or occupied for dry cleaning operations or the storage of any chemicals used in the dry cleaning process.
- (c) Borrower shall keep and maintain the Premises in compliance with, and shall not cause or permit the Premises to be in violation of, applicable Environmental Laws.
- (d) Borrower shall promptly provide notice to Lender of:

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- (i) any proceeding, investigation or written inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Premises or the migration of any Hazardous Substance to or from adjoining property;
- (ii) all claims made or threatened by any Person against Borrower, any other party occupying the Premises or any portion thereof, or the Premises, relating to any loss or injury allegedly resulting from any Hazardous Substance; and
- (iii) the discovery of any occurrence or condition on the Premises or on any real property adjoining or in the vicinity of the Premises, of which Borrower becomes aware, which might cause the Premises or any portion thereof to be in violation of any Environmental Law or subject to any restriction on ownership, occupancy, transferability or use under any Environmental Law (collectively, an "Environmental Violation").

(e) Lender may join and participate in, as a party if it so determines, any legal or administrative proceeding or action concerning the Premises or Equipment under any Environmental Law. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with any such action or proceeding; provided however, the rights of Lender to reimbursement under this Section 2.20(e) shall be limited to any one of the following circumstances: (i) an Event of Default occurs under the Loan Documents; (ii) Borrower fails to retain counsel reasonably acceptable to Lender; or (iii) Lender believes, in its reasonable discretion, that Lender's interests are substantially at odds with those of Borrower.

(f) Borrower shall indemnify, defend and hold the Note Holders and the Note Holders' directors, officers, employees, agents, affiliates, participants, co-lenders, successors and assigns harmless from and against any and all claims, demands, liabilities, losses, damages, judgments, fines, penalties, costs and expenses (including reasonable attorneys' fees, costs and expenses) directly or indirectly arising out of or attributable to: (i) a breach of any warranty or representation contained in this Section 2.20, Section 2.21 or Section 2.22 or of any other provision thereof; (ii) an action against Borrower to enforce any of the provisions of this Section 2.20, Section 2.21 or Section 2.22; and (iii) the installation, use, generation, manufacture, production, storage, Release, threatened Release, or presence of a Hazardous Substance on, under, or about the Premises or any portion thereof including: (a) all direct and consequential damages; (b) the costs of any required or necessary Remediation; and (c) the costs of the preparation and implementation of any plans for Remediation, closure or other required plans. Notwithstanding the aforesaid, Borrower shall have no liability under this clause (f) for any violation of any Environmental Laws or any disposal of any Hazardous Materials based on any action first occurring, or condition first existing, after any foreclosure or deed in lieu of foreclosure of this Mortgage, unless caused by or arising from the acts or omissions of Borrower or any of their affiliates or constituent owners. The indemnity provided in this Section 2.20, shall survive and be unaffected by any modification, amendment, extension, repayment, foreclosure, or deed in lieu of foreclosure of the Loan, as well as any transfer of any direct or indirect interest in

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the Borrower or in the Mortgaged Property or the release or extinguishment of the lien of this Mortgage; provided, however, the obligations of Borrower under this clause (f) shall terminate (other than with respect to any outstanding unfulfilled obligations or claims that have been made) on a date which is 12 months after the date when each of the following conditions have been fully-satisfied: (1) the Loan is timely repaid in full in the ordinary course of business with Borrower having satisfied all of its payment and performance obligations under the Loan Documents; (2) there has not occurred any foreclosure, deed in lieu of foreclosure or similar transfer of the Mortgaged Property; (3) Borrower delivers to Lender an environmental site assessment acceptable to Lender from an environmental consultant acceptable to Lender evidencing no contamination by Hazardous Materials and no violation of any Environmental Laws; (4) there is no known or suspected contamination of the Mortgaged Property due to any Hazardous Materials; and (5) there are no outstanding claims, suits or demands existing or threatened with respect to any Hazardous Materials or under any Environmental Laws relating to the Mortgaged Property. In all other events, the indemnification provided in this clause (f) shall survive to the fullest extent and for the maximum time period permitted under applicable law. If Borrower asserts that the indemnity in this clause (f) does not apply, Borrower shall, at Borrower's sole cost and expense, be responsible for proving such assertion.

## Section 2.21 Environmental Matters; Remediation.

(a) If any investigation, site monitoring, containment, cleanup, removal, restoration or other Remediation of any kind or nature is required, reasonably necessary or desirable under any applicable Environmental Law because of or in connection with the current or future presence, suspected presence, Release or suspected Release of a Hazardous Substance into the air, soil, ground water, surface water, or soil vapor on, under or about the Premises or any portion thereof, Borrower shall promptly commence and diligently prosecute to completion all such Remediation. In all events, such Remediation shall be commenced within 45 days after any demand therefor by Lender or such shorter period as may be required under any applicable Environmental Law.

(b) All Remediation shall be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Lender. All costs and expenses of such Remediation and of Lender's monitoring or review of such Remediation (including reasonable attorneys' fees, costs and expenses) shall be paid by Borrower. If Borrower does not timely commence and diligently prosecute to completion the Remediation, Lender may (but shall not be obligated to) cause such Remediation to be performed. Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with monitoring, reviewing or performing any Remediation.

(c) Except with Lender's prior consent, Borrower shall not commence any Remediation or enter into any settlement agreement, consent decree or other compromise relating to any Hazardous Substances or Environmental Laws which might, in Lender's sole judgment, impair the value of Lender's security hereunder. Lender's prior consent shall not be required, however, if the presence or threatened presence of Hazardous Substances on, under or about the Premises poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Lender's

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prior consent. In such event Borrower shall notify Lender as soon as practicable of any action taken.

## Section 2.22 Environmental Matters; Inspection.

(a) Lender and its agents shall have the right to enter upon and inspect all or any portion of the Premises, and to conduct customary environmental tests, assessments, audits and soil borings. Except in an emergency, such entry shall be at reasonable times, with reasonable advance notice, and subject to the rights of tenants of the Premises. Lender may select a consulting engineer to conduct and prepare reports of such inspections, tests, assessments, audits and soil borings. The inspection rights granted to Lender in this Section 2.22 shall be in addition to, and not in limitation of, any other inspection rights granted to Lender in this Mortgage. Lender shall not conduct any invasive tests on the Premises, including, without limitation, soil borings, without a reasonable basis for doing so or upon an Event of Default.

(b) Promptly upon the written request of Lender from time to time, Borrower shall provide Lender with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to Lender, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substance and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substance found on, under, at, or within the Premises. Notwithstanding this Section 2.22(b), Borrower shall only be required to pay or reimburse Lender for environmental site assessments or environmental audit reports as provided below in Section 2.22(c).

(c) Borrower agrees to bear and shall pay or reimburse Lender on demand for all Advances and expenses (including reasonable attorneys' fees, costs and expenses) relating to or incurred by Lender in connection with the inspections, tests, assessments, audits, soil borings and reports described in this Section 2.22 and to provide the environmental site assessment or environmental report described in Section 2.22(b) in the following situations:

- (i) if Lender has reasonable grounds to believe, at the time any such inspection, test, assessment, audit, or soil boring is ordered or environmental assessment or environmental report is requested, that there exists a violation of an Environmental Law or that a Hazardous Substance is present on, under or about the Premises or is migrating to or from adjoining property, except under conditions permitted by applicable Environmental Laws and not prohibited by any Loan Document;
- (ii) if any such inspection reveals a violation of an Environmental Law or that a Hazardous Substance is present on, under or about the Premises or is migrating to or from adjoining property, except under conditions permitted by applicable Environmental Laws and not prohibited by any Loan Document;
- (iii) if Lender has reasonable grounds to believe that a change in the presence of Hazardous Substances on the Premises has occurred;

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- (iv) if Lender has reasonable grounds to believe that a change in the compliance of the Premises with any Environmental Law has occurred;
- (v) if Lender is not reasonably satisfied with the results or quality of an environmental site assessment or an environmental audit report which has been prepared in connection with the Premises, with the exception of the Environmental Report required by Lender in conjunction with the making of the Loan; or
- (vi) if an Event of Default exists at the time such inspection is ordered or at the time the request is made for an environmental site assessment or environmental report.

Section 2.23 Management. At all times prior to the payment in full of the Indebtedness, the Mortgaged Property shall be managed by a management company reasonably satisfactory to Lender, and pursuant to a management agreement reasonably satisfactory to Lender. In addition, any leasing agent and any leasing commissions agreement affecting the Mortgaged Property must be reasonably satisfactory to Lender. Such management agreement and leasing commissions agreement shall be subordinate to this Mortgage. As of the date hereof, Lender approves CB Richard Ellis as manager of the Mortgaged Property, reserving the right, however, to revoke such approval. If at any time after the occurrence of an Event of Default or an event or occurrence that but for the giving of notice or the passage of time, or both, would constitute an Event of Default and the management company, management agreement or leasing commissions agreement is not reasonably satisfactory to Lender, Borrower shall have a reasonable period, not exceeding 90 days after notice to Borrower of Lender's disapproval, to obtain a management company, management agreement and/or leasing commissions agreement approved by and satisfactory to Lender.

Section 2.24 ERISA. As of the date hereof and throughout the term of this Mortgage: (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA; (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; (iii) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA; (iv) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (v) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender or any of the other Note Holders of any of its rights under the Note, this Mortgage or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Borrower further agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section 2.24 as Lender may from time to time request.

#### Section 2.25 Terrorism and Anti-Money Laundering.

- (a) As of the date hereof and throughout the term of this Mortgage: (i) Borrower; (ii) any Person controlling or controlled by Borrower; (iii) any Person having a 5% or more

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ownership interest in Borrower; (iv) if Borrower is a privately held entity, any Person having a beneficial interest in Borrower; or (v) any Person for whom Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.

(b) To comply with applicable U.S. Anti-Money Laundering Laws, all payments by Borrower to the Note Holders or from the Note Holders to Borrower will only be made in Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(c) Borrower agrees to provide Lender at any time and from time to time during the term of the Loan with such information as Lender determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Person controlling or controlled by Borrower or any Person having a beneficial interest in Borrower, from any governmental authority, self-regulatory organization or financial institution in connection with its Anti-Money Laundering Laws and compliance procedures, or to update such information.

(d) The representations and warranties set forth in this Section 2.25 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender and/or the other Note Holders under the Note, this Mortgage and the other Loan Documents or receives any payment from Lender. Borrower agrees promptly to notify Lender in writing should Borrower become aware of any change in the information set forth in these representations.

## Section 2.26 Special Purpose Entity Requirements.

(a) Borrower has not and shall not:

- (i) engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Mortgaged Property, and activities incidental thereto;
- (ii) acquire or own any material asset other than the Mortgaged Property and such incidental personal property as may be necessary for the operation of the Mortgaged Property;
- (iii) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case obtaining the prior consent of Lender;
- (iv) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior consent of Lender, amend,



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modify, terminate or fail to comply with the provisions of Borrower's formation documents;

- (v) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the prior consent of Lender;
- (vi) commingle its assets with the assets of any of its shareholders, partners, members, Principals, affiliates, or any shareholder, partner, member, principal or affiliate thereof, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in Borrower permitted hereunder and properly accounted for;
- (vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, reasonable and customary trade payables and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Mortgaged Property in such amounts as are normal and reasonable under the circumstances that will be satisfied within 60 days of incurrence, provided that such debt is not evidenced by a note and is paid when due;
- (viii) allow any Person to pay its debts and liabilities (except a guarantor or indemnitor of the Loan) or fail to pay its debts and liabilities solely from its own assets;
- (ix) fail to maintain its records, books of account and bank accounts separate and apart from those of its shareholders, partners, members, Principals and affiliates, or any shareholder, partner, member, principal or affiliate thereof, and any other Person or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Mortgaged Property is actually owned by Borrower;
- (x) enter into any contract or agreement with any of its shareholders, partners, members, Principals or affiliates, any guarantor or indemnitor of all or a portion of the Loan or any shareholder, partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties;
- (xi) fail to correct any known misunderstandings regarding the separate identity of Borrower;
- (xii) share any common logo with or hold itself out as or be considered as a department or division of any of its shareholders, partners, members, Principals or affiliates, or any shareholder, partner, member, principal or

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- affiliate thereof, or any other Person or allow any Person to identify Borrower as a department or division of that Person;
- (xiii) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of Borrower (except for a guarantor or indemnitor of the Loan);
  - (xiv) make any loans or advances to any third party, including any of its shareholders, partners, members, Principals or affiliates, or any shareholder, partner, member, principal or affiliate thereof;
  - (xv) fail to use separate contracts, purchase orders, stationery, invoices and checks;
  - (xvi) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not: (A) to mislead others as to the entity with which such other party is transacting business; or (B) to suggest that Borrower is responsible for the debts of any third party (including any of its shareholders, partners, members, Principals or affiliates, or any shareholder, partner, member, principal or affiliate thereof);
  - (xvii) fail to allocate fairly and reasonably among Borrower and any third party (including any guarantor or indemnitor of the Loan) any overhead for common employees, shared office space or other overhead and administrative expenses;
  - (xviii) allow any Person to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;
  - (xix) fail to 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;
  - (xx) seek dissolution or winding up in whole, or in part;
  - (xxi) file a voluntary petition or otherwise initiate proceedings to have Borrower or any Principal adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Borrower or any Principal, or file a petition seeking or consenting to reorganization or relief of Borrower or any Principal as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Borrower or Principal; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Borrower or any

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Principal or of all or any substantial part of the properties and assets of Borrower or any Principal, or make any general assignment for the benefit of creditors of Borrower or any Principal, or admit in writing the inability of Borrower or Principal to pay its debts generally as they become due or declare or effect a moratorium on Borrower or any Principal debt or take any action in furtherance of any such action; or

- (xxii) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Borrower or the creditors of any other Person.

(b) If Borrower is a limited partnership, then any general partner of Borrower must also be a special purpose entity and comply with the provisions of this Section 2.26. If Borrower is a limited liability company, then any managing member of Borrower must also be a special purpose entity and comply with the provisions of this Section 2.26.

(c) Borrower and any other Person required to be a special purpose entity pursuant to the terms of this Section 2.26 shall provide the aforesaid special purpose entity covenants in their organizational documents and shall not amend or modify any of their respective organizational documents without the prior consent of Lender, which consent shall not be unreasonably withheld. Promptly after Lender's written request from time to time, but not more frequently than once in any calendar year, Borrower shall deliver to Lender evidence reasonably satisfactory to Lender that Borrower and any other Person required to be a special purpose entity pursuant to the terms of this Section 2.26 are in compliance with the provisions of this Section.

## Section 2.27 Operating Agreements and Permitted Encumbrances.

(a) No Operating Agreement or Permitted Encumbrance shall be amended, modified, supplemented, restated or otherwise altered by Borrower, nor shall Borrower consent or otherwise acquiesce in any of the foregoing, without in each instance the prior consent of Lender.

(b) No Operating Agreement or Permitted Encumbrance benefiting the Mortgaged Property shall be terminated by Borrower unless such terminated Operating Agreement or such Permitted Encumbrance is replaced with a similar agreement upon terms and conditions, and with such third parties, as are acceptable to Lender.

(c) Borrower will deliver to Lender, at the same time received or sent by Borrower, copies of all notices, demands or requests sent or otherwise made by Borrower or any other Person under or pursuant to any Operating Agreement or Permitted Encumbrance which adversely affects Lender or Borrower's ability to comply with the Loan Documents.

(d) The term of any Operating Agreement or Permitted Encumbrance shall not be extended or otherwise renewed by Borrower (unless pursuant to a right currently afforded Borrower thereunder) without in each instance Lender's prior written approval.

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(e) Borrower agrees to observe, perform and discharge all obligations, covenants and warranties required to be kept and performed by Borrower under the Operating Agreements and Permitted Encumbrances.

(f) Borrower shall use best efforts to enforce or secure the performance of each and every material obligation, term, covenant, condition and agreement to be performed by any other party to any of the Operating Agreements and Permitted Encumbrances.

Section 2.28 Compliance with Laws. The Mortgaged Property is in compliance with all provisions of all zoning, subdivision, land use, environmental, traffic, fire, building, and occupational safety and health rules, regulations, codes, acts and statutes to which it is subject.

## Section 2.29 Tenant In Common Provisions.

(a) Co-Owners' Agreement. Each Person obligated hereunder as "Borrower" is, and shall continue until payment in full of the Loan to be, a party to the Co-Owners' Agreement, which has been delivered to, and approved by, Lender prior to the date hereof. Each Borrower shall cause the Co-Owners' Agreement to, and the Co-Owner's Agreement shall, remain in full force and effect at all times until payment in full of the Loan. Borrower shall comply with, and enforce, its rights under the Co-Owners' Agreement. The Co-Owners' Agreement shall not be amended, cancelled, modified or terminated, or party shall not be admitted thereto, in each case without the prior written consent of Lender. The Co-Owners' Agreement and all of the terms, covenants and conditions thereof are and shall be subject to the terms covenants and conditions of the Loan Documents and in the event of any inconsistencies or conflicts between the terms of the Co-Owners' Agreement and the Loan Documents, the terms of the Loan Documents shall control. Without limiting the aforesaid, the rights, remedies and recourse of a party to the Co-Owners' Agreement are, and at all times shall be, subject and subordinate to the terms hereof and to the terms of the other Loan Documents.

(b) Notice Owner. Each Person constituting Borrower hereby acknowledges that it would be difficult for Lender to administer the Loan if a single party (the "Notice Owner") were not designed to give and receive all notices required to be given to or received from Borrower under the Loan Documents. Therefore, each Borrower agrees that (i) all notices required to be given to Borrower hereunder shall be given as set forth in Section 5.01 of this Mortgage or at such other address of which notice shall have been given to Lender pursuant to Section 5.01 hereof; (ii) except for notice from a Borrower as to a matter personal to such Borrower (*i.e.*, those matters involving such Borrower and not involving either the Mortgaged Property or any other Borrower), all notices to Lender from Borrower shall be given solely by WMFI on behalf of Borrower, and Lender is hereby authorized to act in reliance thereon; (iii) without limiting clause (i) above, Lender shall be authorized to deal exclusively with WMFI with respect to matters involving obligations of, or consents or approvals required from, Borrower under the Loan Documents, without consultation with any other party comprising Borrower; and (iv) Lender shall not be required to accept notice from any Person comprising Borrower other than WMFI, except for a notice from all Borrowers designating another Person comprising Borrower as the Notice Owner; any Notice Owner shall be subject to the approval of Borrower, which approval

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may be conditioned, in part, upon demonstration to Lender's satisfaction that such Notice Owner has experience in owning and operating properties comparable to the Mortgaged Property.

(c) Waiver of Partition. Borrower hereby ratifies and confirms, for the benefit of Lender, Borrower's waiver of the right of partition set forth in the Co-Owners' Agreement and agrees not to file, claim or institute a proceeding or other action for partition (or seek any other kind of division) of, or, unless expressly permitted by the terms of Section 2.17 of the Mortgage, otherwise transfer, its interest in the Mortgaged Property (or any part thereof).

Section 2.30 City Financing Agreements. Borrower shall not enter into any agreements regarding tax increment financing assistance from the City of Chicago which impose any obligations or liabilities upon The Quaker Oats Company or in any other manner adversely affect The Quaker Oats Company's rights or benefits or Borrower's obligations under the Lease between Borrower, as landlord and The Quaker Oats Company, as tenant.

Section 2.31 Recapture. Borrower shall pay any and all amounts required to be paid to the City of Chicago under the Redevelopment Agreement.

## ARTICLE III Security Agreement

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

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

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(b) Except for the security interest granted by this Mortgage, Borrower is and, as to portions of the Collateral to be acquired after the date hereof, will be the sole owner of the Collateral, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except Permitted Encumbrances. Borrower shall notify Lender of, and shall defend the Collateral against, all claims and demands of all Persons at any time claiming the same or any interest therein.

(c) Except as otherwise provided in this Mortgage, Borrower shall not lease, sell, convey or in any manner transfer the Collateral without the prior consent of Lender.

(d) The Collateral is not used or bought for personal, family or household purposes.

(e) The Collateral shall be kept on or at the Premises, and Borrower shall not remove the Collateral from the Premises without the prior consent of Lender, except such portions or items of the Collateral as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower with items of equal or greater value.

(f) Borrower shall provide Lender upon Lender's request from time to time with an inventory of the Collateral and a list by model number, as appropriate.

(g) Borrower shall not change its place of formation or its entity name without providing Lender with 60 days prior notice. In the event of any change in name, identity or structure of Borrower, Borrower shall notify Lender thereof and promptly after request shall execute, file and record such Code forms as are necessary to maintain the priority of Lender's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall require the filing or recording of additional Code forms or continuation statements, Borrower shall, promptly after request, execute, file and record such Code forms or continuation statements as Lender shall deem necessary (subject to Lender's right to sign such statements on behalf of Borrower as provided in Section 3.01(h)), and shall pay all expenses and fees in connection with the filing and recording thereof. If Lender shall initially pay such expenses, Borrower shall promptly reimburse Lender for the expenses.

(h) Borrower hereby authorizes Lender to file with the appropriate public office at Borrower's expense, any initial financing statements, amendments or continuations thereof, evidencing Borrower, as debtor, and Lender, as secured party, in connection with the Collateral covered by this Mortgage.

(i) Borrower represents that its exact legal name is as set forth on the Cover Sheet of this Mortgage.

(j) WMFI's Organizational Number is 3845122. WMLI's Organizational Number is 3827197.

(k) Borrower shall not file any termination statements concerning the Mortgaged Property without Lender's prior consent unless the Indebtedness has been repaid and this Mortgage has been released.

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(l) Where Collateral is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender.

(m) Borrower will cooperate with Lender in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper.

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

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

Section 3.04 Fixture Filing. This Mortgage shall constitute a fixture filing under the Code as to any goods and other personal property included in the Mortgaged Property in which Borrower has granted to Lender (on behalf of the Note Holders) a security interest as provided in this Article III which are or may become fixtures under applicable law. This fixture filing is to be recorded in Cook County, Illinois.

## ARTICLE IV Default and Remedies

Section 4.01 Events of Default. Each of the following shall constitute an Event of Default under the Note, this Mortgage and the other Loan Documents.

(a) Failure to pay any principal, interest, deposit or other amount due under the Note, this Mortgage or any other Loan Document within 5 days after the date such amount is due.

(b) Except as provided in Section 4.01(a) and Sections 4.01(c) to 4.01(x), inclusive, failure to perform or comply with any term, obligation, covenant or condition contained in the Note, this Mortgage or any other Loan Documents, within thirty (30) days after the delivery of written notice from Lender of such failure; provided that if such default is not reasonably capable of being cured (without taking into account financial capability) within such thirty (30) day period, such failure shall not constitute an Event of Default so long as Borrower commences the cure of such default within such thirty (30) day period, diligently prosecutes such cure to completion and completes the cure within ninety (90) days after delivery of such written notice from Lender.

(c) The occurrence of an Event of Default, or default after passage of any applicable grace or cure period, under any of the other Loan Documents.

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(d) The occurrence of an Event of Default, or default after passage of any applicable grace or cure period, under any guaranty, indemnity or other instrument delivered to Lender in connection with the Loan.

(e) If any representation, warranty, certification or other statement made herein, in any other Loan Document, in any application for the Loan or in any statement or certificate at any time given to Lender in connection with the Loan shall prove to be untrue or misleading in any material respect; provided however, any misrepresentation under Section 2.28 of the Mortgage and Paragraphs 23 and 27 of the Borrower's Affidavit shall not constitute an Event of Default unless and until Borrower has received notice of the same and the violation remains uncured thirty (30) days after such notice, or such shorter period if required by law.

(f) If Lender fails to have a legal, valid, binding and enforceable first priority lien on the Mortgaged Property or any portion thereof or on any material portion of the personal property or other Collateral.

(g) Failure to permit Lender or its agents to enter to the Mortgaged Property or to access Borrower's books and records in accordance with the terms of this Mortgage and the other Loan Documents.

(h) Failure to pay any Imposition as and when due, or to maintain insurance or apply insurance proceeds as required by this Mortgage.

(i) Except as permitted in this Mortgage, adjusting, compromising, settling or entering into any agreement with respect to insurance settlements and condemnation proceedings, without the prior consent of Lender.

(j) Damage to any of the Mortgaged Property in any manner which is not covered by insurance as a result of Borrower's failure to maintain insurance required in accordance with this Mortgage.

(k) Except as permitted in this Mortgage: (i) a change in the use of the Premises or causing or permitting the use or occupancy of any part of the Premises to be discontinued if such change of use or discontinuance would violate any zoning or other law, ordinance or regulation; (ii) consent to any zoning reclassification, modification or restriction affecting the Premises; (iii) taking any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of ownership; or (iv) the actual or threatened alteration, demolition or removal of any of the Improvements, without the prior consent of Lender.

(l) Failure to deliver copies of any notices from governmental or regulatory authorities which materially affect the Mortgaged Property in accordance with the terms of this Mortgage and the other Loan Documents.

(m) Failure to deliver financial statements required by Section 2.16 within twenty (20) days after the delivery of written notice from Lender.



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(n) Failure to deliver the estoppel certificates required by Section 2.18 in the time periods provided for in Section 2.18.

(o) Violation of any of the terms, obligations, covenants or conditions set forth in Section 2.17, Section 2.19(a) through Section 2.19(c), Section 2.26, Section 2.27, Section 2.29, Section 2.30 or Section 2.31.

(p) If a default or event of default shall occur under any permitted mortgage, encumbrance, lien or security agreement encumbering all or any portion of the Mortgaged Property which is subordinate or superior to the lien of this Mortgage or if any party under any such instrument shall commence a foreclosure or other collection or enforcement action in connection therewith.

(q) Failure to obtain a management company, management agreement and/or leasing commissions agreement satisfactory to Lender within the 90-day period set forth in Section 2.23.

(r) Failure of Borrower, any Principal or any guarantor or indemnitor of the Loan to preserve and keep in full force and effect its existence, franchises, licenses, authorizations, registrations, permits and approvals required under the laws of the state of its formation and the State and any franchises, licenses, authorizations, registrations, permits and approvals required or necessary to operate its business.

(s) If Borrower, any Principal or any guarantor or indemnitor of the Loan consents to the filing of, or commences or consents to the commencement of, any Bankruptcy Proceeding with respect to Borrower or such Principal, guarantor or indemnitor.

(t) If any Bankruptcy Proceeding shall have been filed against Borrower, any Principal or any guarantor or indemnitor of the Loan and the same is not withdrawn, dismissed, canceled or terminated within 120 days of such filing.

(u) If Borrower, any Principal or any guarantor or indemnitor of the Loan is adjudicated bankrupt or insolvent or a petition for reorganization of Borrower or any such Principal, guarantor or indemnitor is granted.

(v) If a receiver, liquidator or trustee of Borrower, any Principal or any guarantor or indemnitor of the Loan or of any of the properties of Borrower or any such Principal, guarantor or indemnitor shall be appointed.

(w) If Borrower, any Principal or any guarantor or indemnitor of the Loan shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due.

(x) Except as otherwise permitted herein, if Borrower, any Principal or any guarantor or indemnitor of the Loan shall die or shall institute or cause to be instituted any proceeding for the termination or dissolution of Borrower or any such Principal, guarantor or indemnitor.

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

(a) Lender may declare (on behalf of the Note Holders) the entire principal balance under the Note then unpaid, together with all accrued and unpaid interest thereon, prepayment fees thereunder, and all other unpaid Indebtedness, to be immediately due and payable.

(b) Lender may enter into or upon the Mortgaged Property, personally or by its agents, nominees or attorneys, and may dispossess Borrower and its agents and servants therefrom, and thereupon Lender at its sole discretion may: (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every portion of the Mortgaged Property and conduct business thereon, in any case either in the name of Lender or in such other name as Lender shall deem best; (ii) complete any construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Borrower with respect to the Mortgaged Property, whether in the name of Borrower or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Property Income; and (v) apply the receipts of Property Income to the payment of the Indebtedness (including any prepayment fee payable under the Note) in such order as Lender shall determine in its sole discretion, after deducting therefrom all expenses (including reasonable attorneys' fees, costs and expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its agents, nominees and attorneys.

(c) With or without entry, personally or by its agents, nominees or attorneys, Lender may sell all or any portion of the Mortgaged Property and all or any portion of Borrower's estate, right, title, interest, claim and demand therein and right of redemption thereof at one or more private or public sales in the manner and to the extent permitted by law, as an entirety or in parcels or portions, and Lender shall have any statutory power of sale as may be provided by law in the State.

(d) Lender may institute proceedings for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit, as an entirety or in parcels or portions.

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(e) Lender may institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due.

(f) Lender may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained in the Note, this Mortgage or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(g) Lender shall have the rights and may take such actions as are set forth, described or referred to in any rider entitled "Rider - Applicable State Law Provisions" attached hereto and made a part hereof, or as are permitted by the laws of the State.

(h) Lender (on behalf of the Note Holders) may recover judgment on the Note, either before, during or after any proceedings for the foreclosure or enforcement of this Mortgage, subject to Section 4.03(m) of this Mortgage.

(i) Lender may secure the appointment of a receiver, trustee, liquidator or similar official of the Mortgaged Property or any portion thereof, and Borrower hereby consents and agrees to such appointment, without notice to Borrower and without regard to the adequacy of the security for the Indebtedness and without regard to the solvency of Borrower or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Property Income pursuant to this Mortgage or the Assignment.

(j) Lender may exercise any or all of the remedies available to a secured party under the Code.

(k) Lender may pursue any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents.

(l) Lender may apply any funds then on deposit with Lender for payment of Impositions, ground rent or insurance premiums in the manner provided for in Section 2.07.

(m) Lender in its sole discretion may surrender any insurance policies and collect the unearned premiums and apply such sums against the Indebtedness.

(n) To the extent permitted by law, exercise any power of sale.

## Section 4.03 General Provisions Regarding Remedies.

(a) Proceeds of Sale. The proceeds of any sale of the Mortgaged Property received by Lender, or part thereof, shall be distributed and applied to the amounts due under the Loan Documents in such order and priority as set forth in Section 5.19 below.

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(b) Effect of Judgment. No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any portion thereof, or any rights, powers or remedies of Lender hereunder. Such lien, rights, powers and remedies of Lender shall continue unimpaired as before.

(c) Continuing Power of Sale. To the extent permitted by law, the power of sale conferred upon Lender in this Mortgage shall not be exhausted by any one or more sales as to any portion of the Mortgaged Property remaining unsold, but shall continue unimpaired until all of the Mortgaged Property is sold or all of the Indebtedness is paid.

(d) Right to Purchase. At any sale of the Mortgaged Property or any portion thereof pursuant to the provisions of this Mortgage, Lender shall have the right to purchase the Mortgaged Property being sold, and in such case shall have the right to credit against the amount of the bid made therefor (to the extent necessary) all or any portion of the Indebtedness then due.

(e) Right to Terminate Proceedings. Lender may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in Section 4.02 at any time before the conclusion thereof, as determined in Lender's sole discretion and without prejudice to Lender.

(f) No Waiver or Release. Lender may resort to any remedies and the security given by the Loan Documents, in whole or in part, and in such portions and in such order as determined in Lender's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Loan Documents. The failure of Lender or any of the other Note Holders to exercise any right, remedy or option provided in the Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Loan Documents. No acceptance by Lender or any of the other Note Holders of any payment after the occurrence of an Event of Default and no payment by Lender of any Advance or obligation for which Borrower is liable hereunder shall be deemed to waive or cure such Event of Default or Borrower's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the Indebtedness or any other indulgence given by Lender to Borrower or any other Person, shall operate to release or in any manner affect Lender's interest in the Mortgaged Property or the liability of Borrower to pay the Indebtedness, except to the extent that such liability shall be reduced by Proceeds of the sale of all or any portion of the Mortgaged Property received by Lender. No waiver by Lender or any of the other Note Holders shall be effective unless it is in writing and then only to the extent specifically stated.

(g) No Impairment; No Release. The interests and rights of Lender or any of the other Note Holders under the Loan Documents shall not be impaired by any indulgence, including: (i) any renewal, extension or modification which Lender may grant with respect to any of the Indebtedness; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Lender may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of

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any of the Indebtedness. If the Mortgaged Property is sold and Lender enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof or of any other Loan Document, Borrower shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Lender.

(h) Waivers and Agreements Regarding Remedies. To the fullest extent that Borrower may legally do so, Borrower:

- (i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole of the Indebtedness;
- (ii) waives all rights to a marshalling of the assets of Borrower, Borrower's partners, if any, and others with interests in Borrower, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Mortgaged Property for the collection of the Indebtedness without any prior or different resort for collection, or the right of the Note Holders to the payment of the Indebtedness out of the Proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever;
- (iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith, (1) which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or (2) which is based on the Note Holders' wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is raised by Borrower in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damage (unless such claim is required by law or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender), but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying any such foreclosure action;

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- (iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any laws pertaining to the rights and remedies of sureties;
- (v) waives the defense of laches and any applicable statutes of limitation; and
- (vi) waives any right to have any trial, action or proceeding tried by a jury.

(i) Lender's Discretion. Except as otherwise expressly provided in this Mortgage, Lender may exercise its rights, options and remedies and may make all decisions, judgments and determinations under this Mortgage and the other Loan Documents in its sole unfettered discretion.

(j) Recitals of Facts. In the event of a sale or other disposition of the Mortgaged Property pursuant to Section 4.02 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all Persons as to such facts recited therein.

(k) Lender's Right to Waive, Consent or Release. Lender may at any time, in writing: (i) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (ii) consent to Borrower's doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (iii) release any portion of the Mortgaged Property, or any interest therein, from this Mortgage and the lien of the other Loan Documents. No such act shall in any way impair the rights of Lender hereunder except to the extent specified by Lender in such writing.

(l) Possession of the Mortgaged Property. Upon the occurrence of any Event of Default hereunder and demand by Lender at its option, Borrower shall immediately surrender or cause the surrender of possession of the Premises to Lender. If Borrower or any other occupant is permitted to remain in possession, such possession shall be as tenant of Lender and such occupant: (i) shall on demand pay to Lender monthly, in advance, reasonable use and occupancy charges for the space so occupied; and (ii) in default thereof, may be dispossessed by the usual summary proceedings. Upon the occurrence of any Event of Default and demand by Lender, Borrower shall assemble the Collateral and make it available at any place Lender may designate to allow Lender to take possession and/or dispose of the Collateral. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any portion thereof. Nothing in this Section 4.03(l) shall be deemed a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Mortgaged Property without the prior consent of Lender.

(m) Limitations on Liability. Subject to the provisions of Section 10 of the Note, in any action or proceedings brought on the Note, this Mortgage or any other Loan Documents in

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which a money judgment is sought, Lender will look solely to the Mortgaged Property and other property described in the Loan Documents (including the Property Income and any other rents and profits from such property) for payment of the Indebtedness and, specifically and without limitation, the Note Holders agree to waive any right to seek or obtain a deficiency judgment against Borrower.

(n) Subrogation. If all or any portion of the proceeds of the Note or any Advance shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any portion thereof, then Lender shall be subrogated to, and shall have the benefit of the priority of, such other lien or encumbrance and any additional security held by the holder thereof.

(o) Cure. If Borrower cures an Event of Default and Lender accepts in writing such cure, then for purposes of this Mortgage and the other Loan Documents such Event of Default shall no longer be an Event of Default hereunder or thereunder. After such cure and written acceptance thereof, the right of Lender to take an action under the Loan Documents that is conditioned upon the "occurrence of an Event of Default" or "after an Event of Default" or a provision of similar import shall be suspended until such time, if any, that an additional Event of Default shall occur.

## ARTICLE V Miscellaneous

### Section 5.01 Notices.

(a) All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by: (i) certified or registered United States mail, postage prepaid; (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery; or (iii) facsimile provided a confirming copy is sent the same day in the manner set forth in (ii) above, addressed in either case as follows.

If to Lender, at the following address:

Massachusetts Mutual Life Insurance Company  
c/o Babson Capital Management LLC  
1500 Main Street, Suite 2100  
Springfield, Massachusetts 01115-5189  
Attention: Managing Director, Real Estate Finance Group  
Facsimile: 413-226-1498

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With a copy to:

Massachusetts Mutual Life Insurance Company  
 c/o Babson Capital Management LLC  
 1500 Main Street, Suite 2800  
 Springfield, Massachusetts 01115-5189  
 Attention: Vice President, Real Estate Law  
 Facsimile: 413-226-1079

If to Borrower, at the following address:

West Monroe Fund Investors, LLC  
 West Monroe Life Investors, LLC  
 c/o Principal Real Estate Investors, LLC  
 801 Grand Avenue  
 Des Moines, Iowa 50392  
 Attention: Kristine Soliday  
 Facsimile: 866-850-4022

With a copy to

Principal Real Estate Investors, LLC  
 801 Grand Avenue  
 Des Moines, Iowa 50392  
 Attention: Mari Larson  
 Facsimile: 866-850-4022

or to such other address and person as shall be designated from time to time by Lender or Borrower, as the case may be, in a written notice to the other party in the manner provided for in this Section 5.01. A notice shall be deemed to have been given: in the case of hand delivery or by facsimile, at the time of delivery; in the case of registered or certified mail, three Business Days after deposit in the United States mail; or in the case of expedited prepaid delivery, upon the first attempted delivery on a Business Day. A party receiving a notice which does not comply with the technical requirements for notice under this Section 5.01 may elect to waive any deficiencies and treat the notice as having been properly given.

(b) Borrower acknowledges that Lender may elect to correspond or transmit information concerning the Loan or Borrower to Borrower, the Principals, guarantors, indemnitors, investors and other third parties via email or the internet. Such transmissions shall be for the convenience of the parties hereto and shall not replace or supplement the required methods of delivering notices provided for above. In addition, Borrower acknowledges that that such information may be transmitted via the internet or by email and with or without any algorithm enhanced security software and Borrower waives any right to privacy in connection therewith.



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(c) Borrower shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to and materially affecting the Mortgaged Property; (ii) any material change in the occupancy of the Mortgaged Property; (iii) receipt of any notice from the holder of any other lien or security interest in the Mortgaged Property; or (iv) commencement of any judicial or administrative proceedings by, against or otherwise affecting Borrower or any guarantor, the Mortgaged Property, or any Person controlling, controlled by or under common control with Borrower or any guarantor, or any other action by any creditor thereof as a result of any default under the terms of any loan.

Section 5.02 Binding Obligations; Joint and Several. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender and the other Note Holders and their successors and assigns. If there is more than one Borrower, all their obligations and undertakings hereunder are and shall be joint and several.

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

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

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

Section 5.06 Borrower's Obligations Absolute. All sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Borrower hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any portion thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any portion thereof; (c) any title defect or encumbrance or any eviction from the Premises or any portion thereof by title paramount or otherwise; (d) any Bankruptcy Proceeding relating to Borrower, any general partner of Borrower, or any guarantor or indemnitor, or any action taken with respect to this Mortgage or any other Loan Document by any trustee or receiver of Borrower or any such general partner, guarantor or indemnitor, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against the Note Holders; (f) any default or failure on the part of the Note Holders to perform or comply with any of the terms hereof or of any other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the

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foregoing, whether or not Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Borrower.

Section 5.07 Amendments; Consents. This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless in writing and signed by the party against which enforcement is sought. No consent or approval required hereunder or under any other Loan Document shall be binding unless in writing and signed by the party sought to be bound.

Section 5.08 Other Loan Documents and Exhibits. All of the agreements, conditions, covenants, provisions and stipulations contained in the Note and the other Loan Documents, and each of them, which are to be kept and performed by Borrower are hereby made a part of this Mortgage to the same extent and with the same force and effect as if they were fully set forth in this Mortgage, and Borrower shall keep and perform the same, or cause them to be kept and performed, strictly in accordance with their respective terms. The Cover Sheet and each exhibit, schedule and rider attached to this Mortgage are integral parts of this Mortgage and are incorporated herein by this reference. In the event of any conflict between the provisions of any such exhibit, schedule or rider and the remainder of this Mortgage, the provisions of such exhibit, schedule or rider shall prevail.

Section 5.09 Legal Construction.

(a) The enforcement of this Mortgage shall be governed by, and construed and interpreted in accordance with, the laws of the State.

(b) All terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

(c) The terms "include" and "including" as used in this Mortgage shall be construed as if followed by the phrase "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Mortgage shall refer to this Mortgage as a whole and not to any particular provision of this Mortgage, and Article, Section and Exhibit references contained in this Mortgage are references to Articles, Sections and Exhibits in or to this Mortgage unless otherwise specified.

(d) Any provision of this Mortgage or in the other Loan Documents permitting the recovery of "attorneys' fees", "attorneys' fees and expenses", "attorneys' fees and costs" or "attorneys' fees, costs and expenses" or any similar term shall be deemed: (i) to include such attorneys' fees, costs and expenses; (ii) to include such fees, costs and expenses incurred in all probate, appellate and bankruptcy proceedings, as well as any post-judgment proceedings to collect or enforce any judgment or order relating to the Indebtedness or any of the Loan Documents; and (iii) shall be deemed to be separate and several, and shall survive merger into judgment.

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

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

Section 5.12 Defeasance. If all of the Indebtedness is paid in full in accordance with the Note, this Mortgage and the other Loan Documents and all of the covenants, warranties, conditions, undertakings and agreements made in the Note, this Mortgage and the other Loan Documents are fully kept and performed, then in that event only all rights of Lender under this Mortgage and the other Loan Documents shall terminate and the Mortgaged Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby and thereby, and Lender shall release or cause to be released such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost (to the extent permitted by the law of the State), and this Mortgage shall be void; provided, however, that no provision of this Mortgage or any other Loan Document which, by its own terms, is intended to survive such payment, performance, and release (nor the rights of Lender under any such provision) shall be affected in any manner thereby and such provision shall, in fact, survive. Recitals of any matters or facts in any release instrument executed by Lender under this Section 5.12 shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee or releasee as "the person or persons legally entitled thereto" and Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees or releases of any of the Mortgaged Property. When this Mortgage has been fully released or discharged by Lender, the release or discharge hereof shall operate as a release and discharge of the Assignment and as a reassignment of all future Leases and Property Income with respect to the Mortgaged Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

Section 5.13 Business Purpose of Loan. Borrower stipulates and warrants that the purpose of the Loan is for the sole purpose of carrying on or acquiring a business, professional or commercial enterprise. Borrower further stipulates and warrants that all proceeds will be used for said business, professional or commercial enterprise.

Section 5.14 Transfer of Loan. Lender and the other Note Holders may, at any time, sell, transfer or assign the Note, this Mortgage and the other Loan Documents or any portion thereof, and any or all servicing rights with respect thereto (collectively, a "Transfer"), or grant participations therein (a "Participation") or issue mortgage pass-through certificates or other securities (the "Securities") evidencing a beneficial interest in a rated or unrated public offering or private placement (a "Securitization"). In the case of a Transfer, the transferee shall have, to the extent of such Transfer, the rights, benefits and obligations of "Lender" and/or the "Note Holders" hereunder and the other Loan Documents. The Note Holders may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Transfer, Participation or Securitization or any Rating Agency (as hereinafter defined) rating such Securitization (collectively, the "Investor") and each prospective Investor or any agency maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and

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information which Lender now has or may hereafter acquire relating to the Loan, the Mortgaged Property, Borrower, any principal of Borrower, and any guarantor and indemnitor of the Loan, whether furnished by Borrower, any guarantor, indemnitor or otherwise, as the Note Holders determine necessary or desirable. Borrower irrevocably waives any and all rights it may have under applicable state or federal law to prohibit disclosure, including any right of privacy. Further Borrower acknowledges that such information may be transmitted via the internet or by email. Lender will notify Borrower in writing of any Transfer of the Loan that results in Lender or its affiliates not retaining any ownership or servicing interest in the Loan. The term "Rating Agency" shall mean each statistical rating agency that has assigned a rating to the Securities. Although Lender has no such obligation hereunder, Lender shall use commercially reasonable efforts to avoid the unnecessary disclosure of Borrower's proprietary information (as so reasonably determined by Lender) to transferees and to notify Borrower of all Transfers of the Loan.

Section 5.15 Cooperation. Borrower, any principal of Borrower, and any guarantor and indemnitor of the Loan shall cooperate with the Note Holders in connection with servicing the Loan and any Transfer, Participation, Securitization or any other financing created or obtained in connection with the loan, including:

(a) Estoppel Certificates. After request by Lender, Borrower, within 10 days, shall furnish Lender or any proposed assignee with an estoppel certificate containing the information set forth in Section 2.18 and such other information that Lender shall reasonably request, duly acknowledged and certified.

(b) Bifurcation of Note. The Note and this Mortgage shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Mortgaged Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by any guarantor or indemnitor of the Loan or the then owner of the Mortgaged Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of Indebtedness, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by the Note Holders, which have no material adverse effect on Borrower. Borrower shall not be required to incur any out of pocket costs in connection with any such bifurcation.

(c) Transfer of Funds. In the event of a Securitization, all funds held by Lender in connection with the Loan may be deposited in eligible accounts at eligible institutions as then defined and required by any nationally recognized Rating Agency. Borrower may be required to execute additional documents in connection with any such Transfer, Participation, Securitization or financing, including a new note or notes, which have no material adverse effect on Borrower. Borrower shall not be required to incur any out of pocket costs in connection with any such cooperation.

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Section 5.16 Register. Lender shall cause to be kept a register (the "Register") for the registration of ownership and transfer or assignment of the Note or any substitute note or notes secured by this Mortgage. The names and addresses of the registered owners of such notes, the transfers or assignment of such notes and the names and addresses of the transferees of such notes will be registered in the Register under such reasonable regulations as Lender may prescribe. Borrower and Lender shall deem and treat the registered owner of any note as shown in the Register as the absolute owner thereof for all purposes, and neither Borrower nor Lender shall be affected by any notice to the contrary and payment of the principal of, interest on, and Prepayment Fee, if any, due on or with respect to the related note shall be made only to or upon the order of such registered owner. All such payments so made shall be valid and effective to satisfy and discharge the liability of any Borrower upon such notes to the extent of the sums so paid. Upon reasonable request from time to time, Lender shall permit any Borrower to examine the Register.

Section 5.17 Rider. The Rider attached hereto is incorporated by this reference into this Mortgage. If any conflict or inconsistency exists between the Rider and the remainder of this Mortgage, the Rider shall govern.

Section 5.18 Promotional Material. Borrower authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender's own promotional and marketing activities, and describing the Loan in general terms or in detail and Lender's participation in the Loan. All references to Lender contained in any press release, advertisement or promotional material issued by Borrower must be approved in writing by Lender in advance of issuance.

Section 5.19 Application of Payments. Each payment received by Lender or the other Note Holders under the Note, hereunder or the other Loan Documents shall be applied as follows:

- (a) First, to the interest due on any Advances made by Lender under any instrument which is a Loan Document;
- (b) Next, to the principal amount of any Advances made by Lender under any instrument which is a Loan Document;
- (c) Next, to Late Charges, attorneys' fees or any other amount due hereunder or under any other Loan Document save for the amounts described in (d), (e) and (f) immediately below;
- (d) Next, to any Prepayment Fee (as defined in the Note) then due and payable under the Note;
- (e) Next, to accrued interest due under the Note; and
- (f) Finally, to the principal balance under the Note as Lender so elects.

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All amounts to be applied to the Note (whether towards interest or principal) shall be applied *pari passu* among each note that comprises the Note in accordance with the Loan Percentages.

NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF ANY EVENT OF DEFAULT HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS, LENDER AT ITS OPTION SHALL APPLY ANY PAYMENTS IT OR ANY OTHER NOTE HOLDER THEN RECEIVES IN SUCH ORDER AS LENDER DEEMS APPROPRIATE IN ITS SOLE DISCRETION.

Section 5.20 Payment and Servicing Agent. The Note Holders have appointed, designated and authorized Lender, as their payment and servicing agent to take such action on behalf of the Note Holders under this Mortgage and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to "Lender" by the terms of this Mortgage and the other Loan Documents, together with such powers as are reasonably incidental thereto. Therefore, without limiting the generality of the foregoing, (1) Borrower (a) is entitled to rely on Lender for any waiver, amendment, approval or consent given by "Lender" hereunder or under any of the other Loan Documents and (b) shall adhere only to waivers, amendments, approvals or consents given by Lender hereunder and under the other Loan Documents and (2) Lender is entitled, on behalf of the Note Holders, to take all actions, including exercising all remedies, permitted to be taken by "Lender" under this Mortgage or under any of the other Loan Documents (either by law or pursuant to the terms of this Mortgage or the other Loan Documents). Until Borrower is otherwise notified by the Note Holders, the "Lender" is Massachusetts Mutual Life Insurance Company. Appointment of a successor payment and servicing agent shall also constitute appointment of a successor "Lender" under this Mortgage and under the other Loan Documents and such appointed successor payment and servicing agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring "Lender" hereunder and under the other Loan Documents. The use of the term "agent" in this Mortgage and the other Loan Documents with reference to Lender is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. All warranties, certifications, indemnities, waivers, rights under insurance policies and other terms, covenants and conditions inuring to the benefit Lender under the Loan Documents shall also inure to the benefit and may be enforced by the Note Holders.

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

**WEST MONROE FUND INVESTORS, LLC**, a Delaware limited liability company

By: West Monroe Fund Member, LLC, a Delaware limited liability company, its sole member

By: West Monroe REIT, LLC, a Delaware limited liability company, its sole member

By: Principal Enhanced Property Fund, L.P., a Delaware limited partnership, its managing member

By: Principal Enhanced Property Fund GP, LLC, a Delaware limited liability company, its general partner

By: Principal Real Estate Investors, LLC, a Delaware limited liability company, its sole member

By: *Stacia L. VanCleave*  
Name: Stacia L. VanCleave  
Its: Cook County Clerk's Office

By: *Cara A. Stone*  
Name: Cara A. Stone  
Its: Investment Director  
Asset Management

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**WEST MONROE LIFE INVESTORS, LLC**, a Delaware limited liability company

By: West Monroe Life Member, LLC, a Delaware limited liability company, its sole member

By: Principal Real Estate Holding Company, LLC, a Delaware limited liability company, its sole member

By: Principal Real Estate Investors, LLC, a Delaware limited liability company, its authorized signatory

By: Stacia L. VanCleave  
Name: Stacia L. VanCleave  
Its: Commercial Mortgage Servicer

By: Cara A. Stone  
Name: Cara A. Stone  
Its: Investment Director  
Asset Management

Property of COOK County Clerk's Office



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STATE OF IOWA    )  
                                   )  
 COUNTY OF POLK    )

On this 7<sup>th</sup> day of November, 2007, before me, the undersigned, a Notary Public in and for the said State, personally appeared Stacia L. VanCleave and Cara A. Stowe, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, who being by me duly sworn, did say that they are the Commercial Mortgage Servicer and Investment Director - Asset Management, respectively, of PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, the sole member of PRINCIPAL ENHANCED PROPERTY FUND GP, LLC, a Delaware limited liability company, the general partner of PRINCIPAL ENHANCED PROPERTY FUND, L.P., a Delaware limited partnership, the sole member of WEST MONROE REIT, LLC, a Delaware limited liability company, the sole member of WEST MONROE FUND MEMBER, LLC, a Delaware limited liability company, the sole member of WEST MONROE FUND INVESTORS, LLC, a Delaware limited liability company, and that the seal affixed to the instrument is the seal of PRINCIPAL REAL ESTATE INVESTORS, LLC; that the instrument was signed and sealed on behalf of the limited liability company by PRINCIPAL REAL ESTATE INVESTORS, LLC, as sole member of WEST MONROE FUND INVESTORS, LLC, by authority of the member of WEST MONROE FUND INVESTORS, LLC; and that the aforesaid individuals each acknowledged the execution of the foregoing instrument to be the voluntary act and deed of PRINCIPAL REAL ESTATE INVESTORS, LLC, as sole members of said entity, by it and by them voluntarily executed.

*Dotty Tysseling*

Notary Public in and for said State

My Commission Expires:

[Affix Notarial Stamp or Seal]



STATE OF IOWA    )  
                                   )  
 COUNTY OF POLK    )

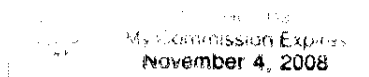
On this 7<sup>th</sup> day of November, 2007, before me, the undersigned, a Notary Public in and for the said State, personally appeared Stacia L. VanCleave and Cara A. Stowe, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, who being by me duly sworn, did say that they are the Commercial Mortgage Servicer and Investment Director - Asset Management, respectively, of PRINCIPAL REAL ESTATE INVESTORS, LLC, a Delaware limited liability company, the authorized signatory of PRINCIPAL REAL ESTATE HOLDING COMPANY, LLC, a Delaware limited liability company, the sole member of WEST MONROE LIFE MEMBER, LLC, a Delaware limited liability company, the sole member of WEST MONROE LIFE INVESTORS, LLC, a Delaware limited liability company, and that the seal affixed to the instrument is the seal of PRINCIPAL REAL ESTATE INVESTORS, LLC; that the instrument was signed and sealed on behalf of the limited liability company by PRINCIPAL REAL ESTATE INVESTORS, LLC; and that the aforesaid individuals each acknowledged the execution of the foregoing instrument to be the voluntary act and deed of PRINCIPAL REAL ESTATE INVESTORS, LLC, as authorized signatory of said entity, by it and by them voluntarily executed.

*Dotty Tysseling*

Notary Public in and for said State

My Commission Expires:

[Affix Notarial Stamp or Seal]



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## EXHIBIT A

### DESCRIPTION OF LAND

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

PARCEL 1:

(A) LOTS 2 AND 3, EXCEPT THE SOUTH 14.08 FEET OF SAID LOT 3, IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16 TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

(B) ALL OF LOTS 1 THROUGH 6, BOTH INCLUSIVE, IN WARD'S SUBDIVISION OF LOT 1 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16 TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

(C) ALL THOSE PARTS OF LOT 7 IN WARD'S SUBDIVISION OF LOT 1 IN BLOCK 47 AND OF LOT 2 IN BLOCK 47 IN SCHOOL SECTION ADDITION TO CHICAGO, AND OF LOT 1 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO LYING NORTH OF A LINE 124.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET, IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

(D) THE VACATED NORTH-SOUTH 10 FOOT PUBLIC ALLEY LYING EAST OF AND ADJOINING LOT 1 AND WEST OF AND ADJOINING LOTS 2 AND 3 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO LYING NORTH OF A LINE 124.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET, IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

(G) EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1 (A), 1 (B), 1 (C) AND 1 (D) RECORDED NOVEMBER 2, 2000 AS DOCUMENT NUMBER 00366229 AND RE-RECORDED DECEMBER 13, 2000 AS DOCUMENT NUMBER 00977331 AND AMENDMENT RECORDED DECEMBER 3, 2001 AS DOCUMENT NUMBER 0011134341 AND A SECOND AMENDMENT RECORDED SEPTEMBER 11, 2002 AS DOCUMENT NUMBER 002096691 OVER THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE: THAT PART OF LOT 2 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16 TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE 124.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET AND NORTH OF A LINE 136.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET, IN COOK COUNTY, ILLINOIS AND ALL THAT PART OF LOT 1 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, LYING SOUTH OF A LINE 124.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET AND NORTH OF A LINE 136.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF MONROE STREET, IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,

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ALL IN COOK COUNTY, ILLINOIS AND ALL THAT PART OF LOT 7 IN WARD'S SUBDIVISION OF LOT 1 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE 124.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET AND NORTH OF A LINE 136.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET AND EAST OF A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF SOUTH JEFFERSON STREET.

(H) EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCELS 1A, 1B, 1C AND 1D RECORDED NOVEMBER 2, 2000 AS DOCUMENT NUMBER 00866228 AND RE-RECORDED DECEMBER 13, 2000 AS DOCUMENT NUMBER 00977332 AND AMENDMENT RECORDED OCTOBER 9, 2002 AS DOCUMENT NUMBER 0021110223 OVER THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE: THE EAST 28 FEET OF LOTS 1 AND 9 IN CHARLES WESENCRAFT'S SUBDIVISION OF LOTS 3, 4, 5 AND 6 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO LYING SOUTH OF A LINE 124.86 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF WEST MONROE STREET AND NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF THE SOUTH 8 FEET OF LOT 3 IN W.B. EGAN'S SUBDIVISION OF LOTS 7 AND 8 IN BLOCK 47 OF SCHOOL SECTION ADDITION TO CHICAGO, IN SECTION 16, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

555 West Monroe  
Chicago, IL

pin 17-16-107-024

17-16-107-026

17-16-107-029


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## EXHIBIT B

### PERMITTED ENCUMBRANCES

Exceptions 1 through 14 on Schedule B of Pro Forma Loan Policy issued by First American Title Insurance Company as File Number NCS-309663-CHI2.

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## EXHIBIT C

### OPERATING AGREEMENTS

1. Co-Owners' Agreement
2. Management/Leasing Agreement between CB Richard Ellis Inc. and Borrower dated October 1, 2004.
3. Redevelopment Agreement.
4. Grant of Access Easement between Jefferson/Clinton LLC, Monroe Clinton LLC and LaSalle Bank National Association, as successor to American National Bank and Trust Company of Chicago, as trustee under Trust 121787-03 dated October 7, 2000, recorded with the Cook County Recorder as Document No. 00866228 (as thereafter re-recorded and amended).
5. Access Easement Agreement between Jefferson/Clinton LLC and Monroe Clinton LLC dated October 31, 2000, recorded with the Cook County Recorder as Document No. 00866229 (as thereafter re-recorded and amended).
6. Declaration of Covenants, Conditions and Restrictions between Jefferson/Clinton LLC, Monroe/Clinton LLC and Adams/Clinton LLC, dated October 30, 2000 and recorded with the Cook County Recorder as Document No. 00866231.

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## RIDER

### APPLICABLE STATE LAW PROVISIONS

#### ILLINOIS

The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Rider and the remainder of the attached Mortgage, this Rider shall govern.

(a) **Protective Advances.** Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Lender before and during a foreclosure of this Mortgage, and before and after a judgment of foreclosure, and at any time prior to sale of the Mortgaged Property, and, where applicable, after sale of the Mortgaged Property and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.* (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances by Lender in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5-1302 of the Act;

(ii) payments by Lender of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part hereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

(iii) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any prior liens;

(iv) reasonable attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

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(v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(vii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or deemed by Lender to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Lender for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

All Protective Advances shall be so much additional Indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to subsection (b) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of Indebtedness secured by this Mortgage at any time; (B) the amount of the Indebtedness found due and owing to Lender in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional Indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Mortgage, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Lender in possession; and (F) computation of any deficiency judgment pursuant to subsections (b) (2) and (e) of Sections 15-1508 and 15-1511 of the Act.

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(b) **Waiver of Right of Redemption and Reinstatement.** Without limiting the generality of Section 4.03(h)(i) of this Mortgage, the waiver by Borrower of its rights of redemption and reinstatement in such Section, include the waiver of such rights as provided under Sections 15-1601 and 15-1602 of the Act.

(c) **Business Loan Recital/Statutory Exemption.** (i) Borrower acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01, et seq., including Section 4(1) thereof); (B) the Indebtedness secured hereby has been incurred by Borrower solely for business purposes of Borrower and for Borrower's investment or profit, as contemplated by said Section 4(1); (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4(1); and (D) the secured Indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 *et. seq.* and has been entered into solely for business purposes of Borrower and Borrower's investment or profit, as contemplated by said section.

(ii) Without limiting the generality of anything contained herein, Borrower acknowledges and agrees that the transaction of which this Mortgage is part is a transaction which does not include either agricultural real estate (as defined in 15-1201 of the Act) or residential real estate (as defined in 15-1219 of the Act).

(d) **Maximum Principal Amount/Future Advances.** This Mortgage shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Mortgage also secures any and all future obligations and Indebtedness arising under or in connection with this Mortgage, which future obligations and Indebtedness shall have the same priority as if all such future obligations and Indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Mortgage shall be deemed an obligation on the part of Lender to make any future advances of any sort. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage shall secure (in addition to any Loan proceeds disbursed from time to time) the payment of any and all expenses and advances due to or incurred by Lender in connection with the Indebtedness to be secured hereby and which are to be reimbursed by Borrower under the terms of this Mortgage; provided, however, that in no event shall the total amount of Loan proceeds disbursed plus such additional amounts exceed \$164,000,000.

(e) **Lender in Possession.** In addition to any provision of the Mortgage authorizing the Lender to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

(f) **Illinois Mortgage Foreclosure Act.** It is the express intention of Lender and Borrower that the rights, remedies, powers and authorities conferred upon Lender pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer



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upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provisions, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

(g) **Collateral Protection Act**. Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless the Borrower provides Lender with evidence of the insurance coverage required by this Mortgage or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Mortgaged Property or any other collateral for the Indebtedness. 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 Mortgaged Property or any other collateral for the Indebtedness. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by this Mortgage or any of the other Loan Documents. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Borrower may be able to obtain on its own and may be added to the Indebtedness and future obligations secured hereunder.