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Cook County Recorder 107.00

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Chicago, Illinois 60606



After recording return to:  
Gary Whittington, Esq.  
AEGON USA Realty Advisors, Inc.  
4333 Edgewood Road, N.E.  
Cedar Rapids, Iowa 52499-5223

**MORTGAGE AND SECURITY AGREEMENT**

(with UCC Financing Statement for Fixture Filing)

**GREAT LAKES REIT, L.P.,**  
Mortgagor,

having an office at  
823 Commerce Drive  
Oak Brook, Illinois 60523

to

**AUSA Life Insurance Company, Inc.**  
a New York life insurance company,  
Mortgagee,

having an administrative office  
c/o AEGON USA Realty Advisors, Inc.  
4333 Edgewood Road, N.E.  
Cedar Rapids, Iowa 52499-5443

and a home office in Purchase, New York

**Loan Amount: \$75,000,000.00**

**Premises: Arlington Ridge, Arlington Heights, Cook County, Illinois**

One Hawthorne Plaza, Vernon Hills, Lake County, Illinois  
2 Marriott Drive, Lincolnshire, Lake County, Illinois  
Wood Creek I, Downers Grove, DuPage County, Illinois

Wood Creek II, Downers Grove, DuPage County, Illinois

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**BOX 333-CT1**

## Mortgage and Security Agreement (with UCC Financing Statement for Fixture Filing)

This Mortgage and Security Agreement is made and given as of the 1st day of December, 1998 by Great Lakes REIT, L.P., a limited partnership organized under Delaware law, whose principal place of business is 823 Commerce Drive, Oak Brook, Illinois 60523 (the "Mortgagor"), to AUSA Life Insurance Company, Inc., a New York life insurance company having an administrative office c/o AEGON USA Realty Advisors, Inc., 4333 Edgewood Road, N.E., Cedar Rapids, Iowa 52499-5223 and a home office in Purchase, New York ("Mortgagee"). The definitions of capitalized terms used in this Mortgage may be found either in Section 3 below, or through the cross-references provided in that Section.

### 1. RECITALS

Under the terms of a commercial Mortgage Loan Application and Commitment dated August 14, 1998 (the "Commitment"), AEGON USA Realty Advisors, Inc. ("AEGON"), as agent for Mortgagee, agreed to fund a loan in an original principal amount to be determined in accordance with procedures described in the Commitment (the "Loan").

Mortgagee has funded the Loan in the principal amount of \$75,000,000 in accordance with the Commitment, and to evidence the Loan, Mortgagor has executed and delivered to Mortgagee a certain secured promissory note, of even date, in the amount of \$75,000,000.

The Commitment requires that the Loan be secured by certain real property and by certain tangible and intangible personal property, including, five commercial real properties in Cook, DuPage and Lake Counties, Illinois, commonly known as Arlington Ridge, Arlington Heights; Wood Creek I, Downers Grove; Wood Creek II, Downers Grove; One Hawthorne Plaza, Vernon Hills; and 2 Marriott Drive, Lincolnshire.

### 2. GRANTING CLAUSE

To secure the repayment of the Indebtedness, any renewals or extensions of the Indebtedness, and performance of Mortgagor's other Obligations, and in consideration of the sum of ten dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged, Mortgagor mortgages, grants, bargains, sells, warrants, conveys, alienates, releases, assigns, sets over and confirms to Mortgagee, and to its successors and assigns forever, the Real Property, the Leases, the Rents, the Assigned Accounts, the Assigned Rights, the Condemnation Proceeds, and the Insurance Proceeds, and grants to Mortgagee a security interest in the Personal Property.

### 3. DEFINED TERMS

"Absolute Assignment of Leases and Rents" means the Loan Document bearing this heading.

"Appurtenant Easements" means the declarations, easements, covenants, restrictions and agreements, if any, currently appurtenant to the Real Property.

"Assigned Accounts" means all rights to the present or future payment of money, if the amounts to be paid relate to the use or operation of the Real Property, from any construction on the Real Property, or from the deposit of any such amounts with banks, savings and loan institutions, brokerage firms or other financial institutions, title insurance companies or agencies, or courts, including property management accounts (whether held in the name of Mortgagor or of a property manager), accounts receivable, reserves, deferred payments, escrow funds, disputed Rents, refunds (including tax, insurance and utility rebates, credits or refunds), earnest money or sales contract deposits, chattel paper, securities entitlements, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Mortgagee) but excluding Mortgagor's property cash management accounts.

"Assigned Rights" means all of Mortgagor's rights (whether presently existing or arising in the future) under all contracts, claims and licenses that relate to the Real Property and may benefit its owner, including air rights, mineral rights, water rights, claims against third parties for damages to the Property, franchises, construction, roof and equipment guarantees and warranties, building licenses and permits, development permits, licenses and applications (whether or not yet approved or issued) management contracts, service contracts, leases of Fixtures or of Personal Property, and all of Mortgagor's right, title and interest (whether presently existing or arising in the future) in and to unearned insurance premiums, any greater estate in the Real Property, trade names, property management files, trademarks, trade styles, service marks, copyrights, accounting books and records, site plans, surveys, blueprints, and construction drawings, plans and specifications, and the work product of architects, environmental consultants, property tax consultants, engineers, and any other third party contractors whose services benefit the Real Property.

"Business Day" means any day when state and federal banks are open for business in Cedar Rapids, Iowa.

"Carveout Obligations" means those obligations of the Mortgagor that are exceptions to the exculpation from personal liability for the repayment of the Indebtedness described in Section 21, and for which the Carveout Obligor are responsible.

"Carveout Obligor" means Great Lakes REIT, a Maryland business trust.

"Carveouts" means those matters from which Carveout Obligations may arise, which are described in Section 21.

"Carveout Guaranty and Indemnity" means that certain "Guaranty and Indemnity Agreement" entered into by the Carveout Obligor on the date of this Mortgage.

"Code" means the Uniform Commercial Code, as in effect in Illinois.

"Condemnation Proceeds" means all money or other property that has been, or is in the future, awarded or agreed to be paid or given in connection with any taking by eminent domain of all or any part of the Real Property (including a taking through the vacation of any street dedication or through a change of grade of such a street), either permanent or temporary, or in connection with any purchase in lieu of such a taking, or as a part of any related settlement.

"Default" means any of the acts, omissions, or circumstances specified in Section 10 below.

"Default Rate" means the rate of interest specified as the "Default Rate" in the Note.

"Environmental Indemnity Agreement" means the Loan Document bearing that heading.

"Environmental Laws" means all present and future laws, statutes, ordinances, rules, regulations, orders, guidelines, rulings, decrees, notices and determinations of any Governmental Authority pertaining to: (A) the protection of health against environmental hazards; (B) the protection of the environment from contamination by any substance which may have any adverse health effect on humans, livestock, fish, wildlife, or plant life, or which may disturb an ecosystem; (C) underground storage tank regulation or removal; (D) wildlife conservation; (E) protection or regulation of natural resources; (F) soil conservation; (G) wetlands; (H) management, regulation and disposal of solid and hazardous wastes; (I) radioactive materials; (J) biologically hazardous materials; (K) indoor air quality; (L) the manufacture, possession, presence, use, generation, storage, transportation, treatment, release, emission, discharge, disposal, abatement, cleanup, removal, remediation or handling of any Hazardous Substances. "Environmental Laws" include, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, all regulations promulgated under any of those statutes, and all administrative and judicial actions respecting such legislation, all as amended from time to time.

"ESA" means the written environmental site assessment of the Real Property obtained under the terms of the Commitment.

"Escrow Expenses" means those expenses in respect of Insurance Premiums and Impositions that Mortgagee elects to pay directly from the Escrow Fund using monies accumulated through the collection of Monthly Escrow Payments.

"Escrow Fund" means the accounting entry maintained on the books of Mortgagee as funds available for the payment of Escrow Expenses under the terms of this Mortgage.

"Financing Statements" means the Uniform Commercial Code financing statements filed to perfect the security interests securing the Indebtedness, as amended or extended from time to time.

"Fixtures" means all materials, supplies, equipment, apparatus and other items now or hereafter attached to or installed on the Real Property in a manner that causes them to become fixtures under the law of Illinois, including all built-in or attached furniture or appliances, elevators, escalators, heating, ventilating and air conditioning system components, emergency electrical generators and related fuel storage or delivery systems, septic system components, storm windows, doors, electrical equipment, plumbing, water conditioning, lighting, cleaning, snow removal, lawn, landscaping, irrigation, security, incinerating, firefighting, sprinkler or other fire safety equipment, bridge cranes or other installed materials handling equipment, satellite dishes or other telecommunication equipment, built-in video conferencing equipment, sound systems or other audiovisual equipment, and cable television distribution systems. Fixtures do not include trade fixtures, office furniture and office equipment owned by tenants.

"Governmental Authority" means any political entity with the legal authority to impose any requirement on the Property, including the governments of the United States, the State of Illinois, Cook, DuPage and Lake County, the Villages of Arlington Heights, Downers Grove, Vernon Hills, and Lincolnshire, and any other entity with jurisdiction to decide, regulate, or affect the ownership, construction, use, occupancy, possession, operation, maintenance, alteration, repair, demolition or reconstruction of any portion or element of the Real Property.

"Hazardous Substance" means any substance the release of or the exposure to which is prohibited, limited or regulated by any Environmental Law, or which poses a hazard to human health because of its toxicity, including, without limitation: (A) any "oil," as defined by the Federal Water Pollution Control Act and regulations promulgated thereunder (including crude oil or any fraction of crude oil) and (B) any radioactive substance. However, the term "Hazardous Substance" includes neither (A) a substance used in the cleaning and maintenance of the Real Property, if the quantity and manner of its use are customary, prudent, and do not violate applicable law, nor (B) automotive motor oil in immaterial quantities, if leaked from vehicles in the ordinary course of the operation of the Real Property and cleaned up in accordance with reasonable property management procedures and in a manner that violates no applicable law.

"Impositions" means all real and personal property taxes; general or special assessments; ground rent; water, gas, sewer, vault, electric or other utility rates and charges; common charges; owners' association dues or fees; fees for any easement, license or agreement maintained for the benefit of the Property; and any and all other taxes, levies, user fees, claims, charges and assessments whatsoever that at any time may be assessed, levied or imposed on the Property or upon its ownership, use, occupancy or enjoyment, and any related costs, interest or penalties. In addition, "Impositions" include all documentary, stamp or intangible personal property taxes that may become due in connection with the

Indebtedness, including Indebtedness in respect of any future advance made by Mortgagee to Mortgagor, or that are imposed on any of the Loan Documents.

"Improvements" means all buildings and improvements of any kind erected or placed on the Land now or in the future, including the Fixtures, together with all appurtenant rights, privileges, easements, tenements, hereditaments, titles, reversions, remainders and other interests.

"Indebtedness" means all sums that are owed or become due pursuant to the terms of the Note, this Mortgage, or any of the other Loan Documents or any other communication or writing by or between the Mortgagor and the Mortgagee relating to the Loan, including scheduled principal payments, scheduled interest payments, default interest, late charges, prepayment premiums, accelerated or matured principal balances, advances, collection costs (including reasonable attorneys' fees), reasonable attorneys' fees and costs in enforcing or protecting the Note, the Mortgage, or any of the other Loan Documents in any bankruptcy proceeding, receivership costs and all other financial obligations of Mortgagor incurred in connection with the Loan transaction.

"Insurance Premiums" means all premiums or other charges required to maintain in force any and all insurance policies that this Mortgage requires that Mortgagor maintain.

"Insurance Proceeds" means all proceeds of all insurance now or hereafter carried by or payable to Mortgagor with respect to the Property, or the interruption of rents or income derived from the Property, all unearned insurance premiums and all related claims or demands.

"Land" means those certain tracts of land located in Cook, DuPage and Lake Counties, Illinois, which is described on the attached Exhibits A-1 through A-6, together with all appurtenances, including all Mortgagor's right, title and interest to and in the air space above the Land and all alley, party wall, drainage, sewer, mineral, water, oil and gas, vault and other rights, estates, titles, interests, privileges, easements, tenements, hereditaments, titles, royalties, reversions, remainders and other interests.

"Leases" means all leases, subleases, licenses, concessions, extensions, renewals and other agreements (whether written or oral, and whether presently effective or made in the future) through which Mortgagor grants any possessory interest in and to, or any right to occupy or use, all or any part of the Real Property, and any related guaranties.

"Legal Requirements" means all laws, statutes, rules, regulations, ordinances, judicial decisions, administrative decisions, building permits, development permits, certificates of occupancy, or other requirements of any Governmental Authority.

"Loan Documents" means all documents evidencing the Loan or delivered in connection with the Loan, whether entered into at the closing of the Loan or in the future, but not including the Commitment.

"Monthly Escrow Payment" means the sum of the Monthly Imposition Requirement, the Monthly Insurance Premium Requirement, and the Monthly Reserve Requirement.

"Monthly Imposition Requirement" means one-twelfth of the annual amount that Mortgagee estimates (based on available historical data and, if future Impositions are as yet undetermined, on a 5% annual inflation factor) will be required to permit the timely payment by Mortgagee of those Impositions that Mortgagee elects, from time to time, to pay from the Escrow Fund.

"Monthly Insurance Premium Requirement" means one-twelfth of the annual amount that Mortgagee estimates (based on available historical data and using, if future Insurance Premiums are as yet undetermined, a 5% inflation factor) will be required to permit the timely payment of the Insurance Premiums by Mortgagee.

"Monthly Reserve Requirement" means the monthly payment which Mortgagee estimates will, over the subsequent twelve months, result in the accumulation of a surplus in the Escrow Fund equal to the sum of the Monthly Imposition Requirement and the Monthly Insurance Premium Requirement.

"Note" means the promissory note made by Mortgagor today to evidence the Indebtedness in the original principal amount of \$75,000,000, together with all extensions, renewals and modifications.

"Net Worth Requirement" means the least of (i) the aggregate net worth of the Carveout Obligor at the time of origination of the Loan, (ii) the principal balance of the Loan at the time of determination of the Net Worth Requirement, and (iii) the aggregate net worth of the Carveout Obligor immediately before the occurrence of the Default which is the occasion for the determination of the Net Worth Requirement.

"Notice" means a notice given in accordance with the provisions of Subsection 24.11.

"Obligations" means all of the obligations required to be performed under the terms and conditions of any of the Loan Documents by any Obligor.

"Obligor" means Mortgagor, the Carveout Obligor, or any other natural person, trust or business organization that is liable under the Loan Documents for the payment of any portion of the Indebtedness, or the performance of any other obligation, under any circumstances.

"Permitted Encumbrances" means the encumbrances or other matters listed on Exhibit B or as otherwise approved in writing by Mortgagee.

"Permitted Transfer" means a transfer permitted under Section 7.1 of the Loan Agreement of even date herewith between Mortgagor and Mortgagee.

"Personal Property" means, except for any such items which may be the property of a tenant of the Real Property, (A) all materials, appliances, equipment or items located at the Real Property now or in the future and that may be incorporated in the Real Property

through construction, attachment, or installation, and that are used, or are capable of being used, in the operation of the Real Property as commercial real estate, including (i) appliances, equipment or items required under any lease to be provided by Mortgagor to any tenant, (ii) materials or equipment for use in the maintenance, alteration, landscaping or repair of the Real Property, including snow removal, lawn, landscaping, irrigation, security, incineration, and hazardous waste storage, monitoring, testing, containment or abatement supplies and equipment, (iii) electrical lights and fixtures (whether or not permanently wired), backup generators and related fuel storage and delivery systems, (iv) rugs, carpeting, office furnishings, art work, decorations, window treatments and equipment located in any on-site leasing office, located in any lobby, hall or other common area, or used in connection with any "executive suites" operation, (v) vehicles used to transport prospective tenants or to maintain or operate the Real Property, (vi) components of heating, ventilation and air conditioning systems and air quality testing equipment, (vii) spare or detached parts for elevator, escalators or other mechanical systems, (viii) all site or building plans and specifications, construction records, and architectural or engineering drawings relating to the Real Property, (ix) sewer or septic system components, (x) water wells, whether for purposes of water supply or groundwater testing or sampling, (xi) components of plumbing and water conditioning systems, (xii) firefighting, sprinkler or other fire safety equipment, (xiii) central telephone switches, antennae, satellite dishes or other telecommunication equipment, and (xiv) video conferencing equipment, audio equipment and cable television distribution systems; and (B) the Assigned Rights, the Assigned Accounts, the Condemnation Proceeds, and the Insurance Proceeds, to the extent that they comprise personal property subject to the Code.

"Property" means the Real Property, the Personal Property, the Leases, the Rents, the Assigned Rights, the Assigned Accounts, the Condemnation Proceeds and the Insurance Proceeds.

"Real Property" means the Land, the Improvements, the Fixtures, and all of Mortgagor's right, title and interest to all appurtenant rights, privileges, tenements, hereditaments, easements, or other interests that run with the Land, including any Appurtenant Easements, benefits of railroad sidings, drainage rights, sewer rights and rights of ingress and egress.

"Rents" means all rents, income, receipts, issues and profits and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting minerals from, or otherwise enjoying the Real Property, whether presently existing or arising in the future, to which Mortgagor may now or hereafter become entitled or may demand or claim, including security deposits, amounts drawn under letters of credit securing tenant obligations, minimum rents, additional rents, parking revenues, deficiency rents, termination payments, space contraction payments, liquidated damages following default under a Lease, premiums payable by tenants upon their exercise of cancellation privileges, proceeds from lease guarantees, proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property, all rights and claims of any kind which Mortgagor has or may in the future have against the tenants under the Leases, lease guarantors, or any subtenants or other occupants of the Real Property, all proceeds of any sale of the Real Property in



violation of the Loan Documents, any future award granted Mortgagor in any court proceeding involving any tenant in any bankruptcy, insolvency, or reorganization proceedings in any state or federal court, and any and all payments made by any tenant in lieu of rent.

#### 4. TITLE

Mortgagor represents to and covenants with Mortgagee and with its successors and assigns that, at the point in time of the grant of the lien created by this Mortgage, Mortgagor is well seized of good and indefeasible estate to the Real Property, in fee simple absolute, subject to no lien or encumbrance except the Permitted Encumbrances. Mortgagor has good and merchantable title to the Personal Property, and has the incontestable right to grant a first priority security interest in the Personal Property, free of any rights of lessors or of sellers under conditional sales contracts or other financing arrangements. Mortgagor warrants this estate and title to Mortgagee and to its successors and assigns forever, against all lawful claims and demands of all persons. Mortgagor shall maintain mortgagee title insurance from a solvent carrier covering the Real Property in an amount at least equal to the amount of the Indebtedness. This Mortgage is and shall remain a valid and enforceable first lien on the Real Property, and if the validity or enforceability of this first lien is attacked or called into question, Mortgagor shall diligently and continuously defend it through appropriate proceedings. Should it fail to do so, Mortgagee may at Mortgagor's expense take all necessary and proper action, including the engagement and compensation of legal counsel, the prosecution or defense of litigation, and the compromise or discharge of claims. Mortgagor shall defend, indemnify and hold Mortgagee harmless in any suit or proceeding brought to challenge or attack the validity, enforceability or priority of the lien granted by this Mortgage. If a prior construction, mechanics' or materialmen's lien on the Real Property arises by operation of statute during any construction or repair of the Improvements, Mortgagor shall either cause the lien to be discharged by paying when due any amounts owed to such persons, or shall comply with Section 12 of this Mortgage.

#### 5. REPRESENTATIONS AND WARRANTIES

Mortgagor (i) represents to Mortgagee, and to its successors and assigns, that the following statements are true as of the date of this Mortgage, and (ii) warrants and covenants to Mortgagee, and to its successors and assigns, that the following statements shall remain true during the term of the Loan:

##### 5.1 FORMATION AND EXISTENCE

Mortgagor is a limited partnership duly formed and validly existing under the laws of Delaware, is duly qualified to do business in and is in good standing under, the laws of Illinois, and has obtained all licenses and permits and filed all statements of fictitious name and registrations necessary for the lawful operation of its business.

5.2 POWER AND AUTHORITY

Mortgagor has full power and authority to carry on its business as presently conducted, to own the Property, to execute and deliver the Loan Documents, and to perform its obligations under them.

5.3 DUE AUTHORIZATION

The Loan transaction and the performance of all of Mortgagor's obligations under the Loan Documents have been duly authorized by all requisite partnership action, and each individual executing any Loan Document on behalf of Mortgagor has been duly authorized to do so.

5.4 NO DEFAULT OR VIOLATIONS

The execution and performance of Mortgagor's obligations under the Loan Documents will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Mortgagor is a party or by which Mortgagor may be bound or affected, and do not and will not violate or contravene any law to which Mortgagor is subject; nor do any such other instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents.

5.5 NO FURTHER APPROVALS OR ACTIONS REQUIRED

No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents by Mortgagor.

5.6 DUE EXECUTION AND DELIVERY

Each of the Loan Documents to which Mortgagor is a party has been duly executed and delivered on behalf of Mortgagor.

5.7 LEGAL, BINDING, VALID AND ENFORCEABLE

Each of the Loan Documents to which Mortgagor is a party constitutes the legal, valid and binding obligation of Mortgagor, enforceable against Mortgagor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally, or by equitable principles of general application (whether considered in an action at law or in equity).

5.8 ACCURATE FINANCIAL INFORMATION

All financial information furnished by Mortgagor to Mortgagee in connection with the application for the Loan is true, correct and complete in all material respects and does not omit to state any fact or circumstance necessary to make the statements in them not misleading, and there has been no material adverse change in the financial condition of Mortgagor since the date of such financial information.

5.9 COMPLIANCE WITH LEGAL REQUIREMENTS

All governmental approvals and licenses required for the conduct of Mortgagor's business and for the maintenance and operation of the Real Property in compliance with applicable law which are to be maintained by Mortgagor and which, to the best of Mortgagor's knowledge, are to be maintained by parties other than Mortgagor, are in full force and effect, and the Real Property is currently being operated by Mortgagor and, to the best knowledge of Mortgagor, all other parties, in compliance with the Legal Requirements in all material respects.

5.10 CONTRACTS AND FRANCHISES

All contracts and franchises for the conduct of the Mortgagor's business and for the operation of the Real Property in accordance with good commercial practice are in force.

5.11 NO CONDEMNATION PROCEEDING

The Mortgagor has no knowledge of any present, pending or threatened condemnation proceeding or award affecting the Real Property.

5.12 NO CASUALTY

No damage to the Real Property by any fire or other casualty has occurred and remained unrepaired.

5.13 COMPLETE LOTS AND TAX PARCELS

To the best knowledge of Mortgagor, the Land is comprised exclusively of tax parcels that are entirely included within the Land, and, if the Land is subdivided, of subdivision lots that are entirely included within the Land.

5.14 COMMERCIAL PROPERTY

The Real Property is commercial and is NOT HOMESTEAD PROPERTY of the Mortgagor or of the spouse of any person named as Mortgagor.

5.15 PERFORMANCE OF OBLIGATIONS UNDER DEVELOPMENT AGREEMENTS

Intentionally deleted.

5.16 STATUS OF CERTAIN TITLE MATTERS

Each of the Appurtenant Easements, REA's, operating agreements, declarations, and restrictive covenants currently of record with respect to the Real Property (a) is, to the best knowledge of Mortgagor, valid and in full force and effect, (b) has not been amended or supplemented by Mortgagor or, to the best knowledge of Mortgagor any other party, except by means of recorded instruments, (c) to the best knowledge of Mortgagor, requires no approval of the Improvements that has not been obtained, (d) is free of defaults or alleged defaults on the part of Mortgagor and, to the best knowledge of Mortgagor, any other party, (e) to the best knowledge of Mortgagor, does not give rise to any lien against the Real Property, or any right to assert a valid notice or claim of such a lien or provide for any assessment against the Real Property that has not been paid in full, and (f) has not been violated by Mortgagor or to, the best knowledge of Mortgagor, by any other owner the owner or by any tenant of the Real Property.

## 6. COVENANTS

### 6.1 PAYMENT AND PERFORMANCE

Mortgagor shall pay the Indebtedness and perform all of its other obligations under the Loan Documents, as and when the Loan Documents require such payment and performance.

### 6.2 PAYMENT OF IMPOSITIONS

The Mortgagor shall pay the Impositions on or before the last day on which they may be paid without penalty or interest, and shall, within thirty days, furnish Mortgagee with a paid receipt or a cancelled check as evidence of payment. If Mortgagee does not receive such evidence, Mortgagee may secure it directly. If it does so, Mortgagee will charge Mortgagor an administrative fee of \$250 for securing the evidence of payment. This fee will be a demand obligation under the terms of this Mortgage. The Mortgagor may meet the requirements of this Subsection by remitting the Monthly Escrow Payments when due, by immediately providing Notice to Mortgagee of any new Imposition or increased Imposition unknown to Mortgagee, and by paying to Mortgagee on demand any amount required to increase the Escrow Fund to an amount sufficient to permit Mortgagee to pay all Impositions from the Escrow Fund on time. If Mortgagor wishes to contest the validity or amount of an Imposition, it may do so by complying with Section 12. If any new Legal Requirement (other than a general tax on income or on interest payments) taxes the Mortgage so that the yield on the Indebtedness would be reduced, and Mortgagor may lawfully pay the tax or reimburse Mortgagee for its payment, Mortgagor shall do so.

### 6.3 MAINTENANCE OF THE REAL PROPERTY

Mortgagor shall not commit or permit any waste of the Real Property as a physical or economic asset, and agrees to maintain in good repair the Improvements, including structures, roofs, mechanical systems, parking lots or garages, and other components of the Real Property that are necessary or desirable for the use of the Real Property, or which Mortgagor as landlord under any Lease is required to maintain for the benefit of any tenant. In its performance of this obligation, Mortgagor shall promptly and in a good and workmanlike manner repair or restore, as required under Subsection 6.8, any elements of the Improvements that are damaged or destroyed. The Mortgagor shall also replace roofs, parking lots, mechanical systems, and other elements of the Improvements requiring periodic replacement. The Mortgagor shall carry out such replacements no less frequently than would any commercially reasonable owner intending to maintain the maximum income-generating potential of the Real Property over its reasonable economic life. Mortgagor shall not, without the prior written consent of Mortgagee, demolish, reconfigure, or materially alter the Improvements, but Mortgagee agrees that any request for its consent to such an action shall be deemed given if Mortgagee declines to respond within fifteen (15) Business Days to any written request for such a consent, if the request is accompanied by all materials required to permit Mortgagee to analyze the proposed action.

## 6.4 USE OF THE REAL PROPERTY

The Mortgagor shall cause the Real Property to be used as a commercial office property and for no other purpose.

## 6.5 LEGAL REQUIREMENTS

The Mortgagor shall comply with all Legal Requirements relating to the Real Property at all times.

## 6.6 COVENANTS REGARDING CERTAIN TITLE MATTERS

Mortgagor shall promptly pay, perform and observe all of its obligations under the Appurtenant Easements, REA's, operating agreements, declarations, and restrictive covenants currently of record with respect to the Real Property, shall not modify or consent to the termination of any of them without the prior written consent of the Mortgagee, shall promptly furnish Mortgagee with copies of all notices of default under them, and shall cause all covenants and conditions under them and benefiting the Real Property to be fully performed and observed.

## 6.7 INDEPENDENCE OF THE REAL PROPERTY

The Mortgagor shall maintain the independence of the Real Property from other land and improvements not included within or located on the Land. In fulfilling this covenant, Mortgagor shall neither take any action which would make it necessary to own or control any property other than the Real Property in order to meet the obligations of the landlord under any Lease, or in order to comply with the Legal Requirements, nor take any action which would cause any land or improvements other than the Land and the Improvements to rely upon the Land or the Improvements for those purposes, nor impair the integrity of the Land as one or more complete subdivided lots and tax parcels.

## 6.8 REBUILDING UPON CASUALTY AND REMEDIATION OF EFFECT OF CONDEMNATION

If a casualty occurs, Mortgagor shall repair or rebuild the Improvements. If any portion of the Real Property is taken by power of eminent domain, Mortgagor shall remedy the effects of the taking. Any such repair, reconstruction or remediation shall restore promptly the Real Property's value and potential to generate income in proportion to the amount of the Indebtedness remaining after any application of Insurance Proceeds or Condemnation Proceeds to the Indebtedness.

## 6.9 PERFORMANCE OF LANDLORD OBLIGATIONS

Mortgagor shall perform its obligations as landlord under the Leases, and shall neither take any action, nor fail to take any action, if the action or failure would be inconsistent with the commercially reasonable management of the Real Property for the purpose of enhancing its long-term performance and value. Mortgagor shall not, without Mortgagee's written consent, extend, modify, declare a default under, terminate, or enter into any Lease of the Real Property, except in compliance with the Absolute Assignment of Leases and Rents.

## 6.10 FINANCIAL REPORTS AND OPERATING STATEMENTS

(a) *Maintenance of Books and Records*

During the term of the Loan, Mortgagor shall maintain complete and accurate accounting and operational records, including copies of all Leases and other written contracts relating to the Real Property, copies of all tax statements, and evidence to support the payment of all material property-related expenses.

(b) *Delivery of Financial and Property-Related Information*

Within 120 days of the end of each of its fiscal years, or, if a Default exists, on demand by the Mortgagee, the Mortgagor shall deliver to Mortgagee (A) copies of the financial statements of the Mortgagor and its general partner, including balance sheets and earnings statements, (B) a complete and accurate operating statement for the Real Property, and (C) a complete rent roll, all in form satisfactory to the Mortgagee. The rent roll must be certified by the Mortgagor to be true and correct and must include each tenant's name, premises, square footage, rent (including percentage rent and the basis for its calculation), lease expiration date, renewal options and related rental rates, delinquencies, vacancies, and the existence of any unsatisfied landlord obligations in respect of tenant improvements or other leasing costs. If Mortgagor fails to deliver the items required in this Subsection, the Mortgagee may engage an accounting firm to prepare the required items. In connection with the engagement of this firm and its supervision, Mortgagor shall pay the Mortgagee an administrative fee of \$1000. The Mortgagor shall cooperate fully with any investigative audit required to permit the accounting firm to produce these items, and the fees and expenses incurred in connection with their preparation shall be paid on demand by Mortgagor.

(c) *Effect of Failure to Deliver Financial and Property Reports*

If no Default exists, and the Mortgagor fails to provide the financial and property reports required under this Section within 120 days of the close of any fiscal year, the Mortgagee will provide a Notice of this failure and a thirty-day opportunity to cure. All monthly payments of principal and interest under the Note that become due after this cure period has elapsed but before the reports are received by the Mortgagee must be accompanied by a fee of .000834 times the principal balance of the Loan at the beginning of the previous month, regardless of whether the Notice has asserted that the failure constitutes a Default under this Mortgage. This fee is to compensate the Mortgagee for (A) the increased risk resulting from the Mortgagee's inability to monitor and service the Loan using up-to-date information and (B) the reduced value and liquidity of the Loan as a financial asset.

(d) *Certification of Information*

The financial and operating statements provided under this Subsection shall be certified by an independent certified public accountant as having been prepared in accordance with generally accepted accounting principles,

consistently applied, or, in the case of financial statements prepared on a cash or income tax basis, or of operating statements, as not materially misleading based on an audit conducted in accordance with generally accepted auditing standards. The Mortgagor shall, however certify that such statements are true and correct, and Mortgagee expressly reserves the right to require such a certification by an independent certified public accountant if a Default exists or if it has reason to believe that any previously provided financial or operating statement is misleading in any material respect.

## 6.11 ESTOPPEL STATEMENTS

Upon request by the Mortgagee, Mortgagor shall, within ten Business Days of Notice of the request, furnish to Mortgagee or to whom it may direct, a written statement acknowledging the amount of the Indebtedness and disclosing whether any offsets or defenses exist against the Indebtedness. Thereafter, Mortgagor shall be estopped from asserting any other offsets or defenses alleged to have arisen as of the date of the statement.

## 6.12 PROHIBITION ON CERTAIN DISTRIBUTIONS

If Default exists under Subsection 10.2 or under any of Subparagraphs (b), (c), (d), (e) or (f) of Subsection 10.4, Mortgagor shall not pay any dividend or make any partnership, trust or other distribution, and shall not make any payment or transfer any property in order to purchase, redeem or retire any interest in its beneficial interests or ownership.

## 7. INSURANCE REQUIREMENTS

At all times until the Indebtedness is paid in full, Mortgagor shall maintain insurance coverage and administer insurance claims in compliance with this Section.

### 7.1 REQUIRED COVERAGES

(a) *All Risk/Open Perils Special Form Property*

The Mortgagor shall maintain coverage of 100% of the replacement cost of all insurable elements of the Real Property and of all tangible Personal Property. If a coinsurance clause is in effect, an agreed amount endorsement is required. Blanket policies must include limits by property location. Coverage shall extend to the Real Property and to all tangible Personal Property.

(b) *Broad Form Boiler and Machinery*

If any such item is located on or about the Real Property, Mortgagor shall maintain this coverage, including a form of business income coverage.

(c) *Flood*

If the Real Property is located in a special flood hazard area according to the most current flood insurance rate map issued by the Federal Emergency Management Agency and if flood insurance is available, Mortgagor shall

maintain flood insurance coverage of all insurable elements of Real Property and of all tangible Personal Property.

(d) *Business Interruption*

The Mortgagor shall maintain a form of business income coverage in the amount of 80% of one year's business income from the Property. Blanket policies must include limits by property location.

(e) *Comprehensive/General Liability*

The Mortgagor shall maintain such coverage (which may be in the form of umbrella/excess liability insurance) with a \$1,000,000 combined single limit per occurrence and a minimum aggregate limit of \$2,000,000.

(f) *Liquor Liability*

The Mortgagor shall maintain such coverage, if applicable law may impose liability on those selling, serving, or giving alcoholic beverages to others and if such beverages will be sold, served or given on the Real Property by Mortgagor.

(g) *Elective Coverages*

Mortgagee may require additional coverages appropriate to the property type and site location. Additional coverages may include earthquake, mine subsidence, sinkhole, personal property, supplemental liability, or coverages of other property-specific risks.

7.2 HOW MORTGAGEE SHOULD BE NAMED

On all property policies and coverages (including coverage against loss of business income), Mortgagee must be named as "first mortgagee" under a standard mortgage clause. On all liability policies and coverages, Mortgagee must be named as an "additional insured." Mortgagee should be referred to verbatim as follows: "[Name of Mortgagee] and its successors, assigns, and affiliates; as their interest may appear; c/o AEGON USA Realty Advisors, Inc.; Mortgage Loan Dept.; 4333 Edgewood Rd., NE; Cedar Rapids, Iowa 52499-5443."

7.3 RATING

Each insurance carrier must be rated A, Class X, or better by Best's Rating Service, without regard to its parent's or any reinsurer's rating.

7.4 DEDUCTIBLE

The maximum deductible on all coverages and policies is \$25,000.

7.5 NOTICES, CHANGES AND RENEWALS

All policies must require the insurance carrier to give Mortgagee a minimum of thirty (30) days notice in the event of cancellation or non-renewal. Mortgagor shall report to Mortgagee immediately any vacancy, change of title, tenant occupancy or use, physical damage, additional improvements or other factors affecting any insurance contract. An original or certified copy of each policy is required upon renewal. If no such copy is available, Mortgagee will accept a binder for a period



not to exceed 90 days. All binders, certificates of insurance, and original or certified copies of policies must name Mortgagee as a named insured, or as an additional insured, must include the complete and accurate property address and must bear the original signature of the issuing insurance agent.

## 7.6 UNEARNED PREMIUMS

If this Mortgage is foreclosed, Mortgagee may at its discretion cancel any of the insurance policies required under this Section and apply any unearned premiums to the Indebtedness.

## 7.7 FORCED PLACEMENT

If Mortgagor fails to comply with the requirements of this Section, the Mortgagee may, at its discretion, procure any required insurance. Any premiums paid for such insurance, or the allocable portion of any premium paid by Mortgagee under a blanket policy for such insurance, shall be a demand obligation under this Mortgage, and any unearned premiums under such insurance shall comprise Insurance Proceeds and therefore a portion of the Property.

## 8. INSURANCE AND CONDEMNATION PROCEEDS

### 8.1 ADJUSTMENT OF INSURANCE CLAIMS AND COMPROMISE OF CONDEMNATION AWARDS

The Mortgagor may settle any insurance claim or condemnation proceeding if the effect of the casualty or the condemnation may be remediated for \$50,000 or less. If a greater sum is required, the Mortgagor may not settle any such claim or proceeding without the advance written consent of the Mortgagee. If a Default exists, the Mortgagor may not settle any insurance claim or condemnation proceeding without the advance written consent of the Mortgagee.

### 8.2 DIRECT PAYMENT TO THE MORTGAGEE OF PROCEEDS

If the Insurance Proceeds received in connection with a casualty or the Condemnation Proceeds received in respect of a condemnation exceed \$50,000, or if there is a Default, then such proceeds shall be paid directly to the Mortgagee. The Mortgagee shall have the right to endorse instruments that evidence proceeds which it is entitled to receive directly.

### 8.3 AVAILABILITY TO THE MORTGAGOR OF PROCEEDS

The Mortgagor shall have the right to use the Insurance Proceeds or the Condemnation Proceeds to rebuild the Improvements following a casualty, or to remedy the effect on the Real Property of any condemnation, if the amount received is less than \$2,250,000, provided (a) no condition of Default then exists, (b) no Default with respect to any payment obligation under any of the Loan Documents shall have occurred during the preceding twelve months, (c) no nonmonetary default shall have occurred and, following Notice, remained uncured beyond the applicable cure period and (d) the proceeds received by the Mortgagee, together with any additional funds deposited with the Mortgagee by the Mortgagor, are then sufficient, in the Mortgagee's discretion, to restore the Improvements to their

condition before the casualty, or to remedy the effect on the Real Property of the condemnation. The Mortgagee may condition disbursements on approval of plans and specifications, minimum disbursement requirements, submittal of certificates of occupancy and other appropriate evidence of completion, updating of the Mortgagee's mortgagee title insurance coverage to insure the absence of construction, mechanics' or materialmen's liens, disbursement on a percentage of completion basis with a ten percent holdback on all disbursements pending final completion, and other customary safeguards for construction lenders. All transactional expenses shall be paid by the Mortgagor. If the amount received in respect of a casualty or condemnation equals or exceeds \$2,250,000, then such proceeds may, at the Mortgagor's option, be used to rebuild or to remedy subject to all of the provisions and procedures described above, but only if the Loan-to-Value ratio of the Property on completion will be 70% or less, as determined by Mortgagee based on its review of an independent fee appraisal obtained by the Mortgagee under the appraisal procedure performed at the time of the Loan's origination. If necessary, the Mortgagor shall make a prepayment of the Loan, without premium, sufficient to achieve this Loan-to-Value ratio. The independent fee appraisal shall be at the Mortgagor's expense, and Mortgagor shall pay to the Mortgagee an administrative fee of \$2,500 in connection with its review. The Mortgagee may require that the Mortgagor deposit \$10,000 with the Mortgagee as security for these expenses or may pay the fee appraiser's and administrative fees from the proceeds at its sole discretion.

Unless the Mortgagor has the right to use the Insurance Proceeds or the Condemnation Proceeds under the foregoing paragraph, the Mortgagee may, in its sole and absolute discretion, either apply them to the Loan balance or disburse them for the purposes of repair and reconstruction, or to remedy the effects of the condemnation. No prepayment premium will be charged on amounts applied to reduce the principal balance of the Loan.

## 9. ESCROW FUND

The Mortgagor shall pay the Monthly Escrow Payment on the first day of every month, commencing with the month in which the first regular payment of principal and interest is due. Any Monthly Escrow Payment received after the tenth day of the month in which it is due shall be subject to a late charge of five percent (5%), which shall not be applied to the Escrow Fund. Mortgagee shall hold Monthly Escrow Payments in a non-interest-bearing fund from which Mortgagee will pay on a timely basis those Escrow Expenses that Mortgagee has anticipated will become payable on a regular basis during the Loan's term, and on which Mortgagee has based its determination of the Monthly Imposition Requirement, the Monthly Insurance Premium Requirement and the Monthly Reserve Requirement. The Escrow Fund will be maintained as an accounting entry in Mortgagee's general account, where it may be commingled with Mortgagee's other funds. Mortgagee may reanalyze the projected Escrow Expenses from time to time and shall advise Mortgagor of any change in the amount of the Monthly Escrow Payment. Upon the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure, or the payoff of the Loan, the

Mortgagee shall apply amounts in the Escrow Fund, net of accrued Escrow Expenses, to the Indebtedness. Mortgagee shall remit any amounts in excess of the Indebtedness to Mortgagor.

**10. DEFAULT**

**10.1 EXISTENCE OF DEFAULT**

A Default shall exist immediately upon the occurrence of any of the acts, omissions or circumstances specified in Subsection 10.2 or in Subsection 10.4. Upon the occurrence of any of the acts, omissions or circumstances specified in Subsection 10.3, Mortgagee may deliver written Notice to Mortgagor of the existence of such an act, omission or circumstance, and that such an act, omission or circumstance shall constitute a Default under the Loan Documents unless the Mortgagor promptly initiates an effort to cure the potential Default, pursues the cure diligently and continuously, and succeeds in effecting the cure within 120 days of its receipt of Notice. An additional period of 120 days is afforded in cases where construction or repair is needed to cure the potential default, and the cure cannot be completed within the first 120-day cure period. During the cure period, the Borrower has the obligation to provide on demand satisfactory documentation of its effort to cure, and, upon completion, evidence that the cure has been achieved.

**10.2 MONETARY DEFAULTS**

A monetary default shall exist upon any of the following:

- (a) *Monthly Principal and Interest Payments*  
The Mortgagor's failure to pay, or to cause to be paid, any regular monthly payment of principal and interest under the Note or any required Monthly Escrow Payment on or before the tenth day of the month in which it is due.
- (b) *Matured Indebtedness*  
The Mortgagor's failure to pay, or to cause to be paid, the Indebtedness when the Loan matures by acceleration under Section 15, because of a transfer or encumbrance under Section 13, or by lapse of time.
- (c) *Demand Obligations*  
The Mortgagor's failure to pay, or to cause to be paid, within three Business Days of Mortgagee's demand, any other amount due under this Mortgage or any of the other Loan Documents.

**10.3 CURABLE NONMONETARY DEFAULT**

A curable nonmonetary default shall exist upon any of the following:

- (a) *Entry of a Material Judgment*  
The entry of any judgment against Mortgagor or any other Obligor, if the judgment may materially and adversely affect the value, use or operation of the Real Property.

(b) *Failure of Warranty*

Any representation made in Section 5 or warranted in any other Loan Document shall become untrue or misleading in any material respect.

(c) *Other Defaults*

The Mortgagor's failure to observe any promise or covenant made in this Mortgage, if the failure is not described in Subsection 10.2, in Subsection 10.4, or elsewhere in this Subsection 10.3. Default under other Loan Documents, or the existence of a "Default" as defined in any Loan Document, unless the "Default" is monetary in nature or is expressly described elsewhere in this Mortgage.

10.4 INCURABLE NONMONETARY DEFAULT

An incurable nonmonetary default shall exist upon any of the following:

(a) *Material Untruth or Misrepresentation*

Mortgagee's discovery that any representation made by the Mortgagor or by any other Obligor in any Loan Document in connection with the Loan was untrue or misleading in any material respect at the time it was made.

(b) *Due on Sale or Encumbrance*

The occurrence of any sale, conveyance, transfer or vesting that would result in the Loan becoming immediately due and payable at Mortgagee's option under Section 13.

(c) *Voluntary Bankruptcy Filing*

The filing by Mortgagor of a petition in bankruptcy or for relief from creditors under any present or future law that affords general protection from creditors.

(d) *Involuntary Bankruptcy or Similar Filing*

The Mortgagor or any other Obligor becomes the subject of any petition or action seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief, or that may result in a composition of its debts, provide for the marshaling of its assets for the satisfaction of Mortgagor's or such other Obligor's debts, or result in the judicially ordered sale of the its assets for the purpose of satisfying its obligations to creditors, unless a motion for the dismissal of the petition or other action is filed within ten days and results in its dismissal within sixty days of the filing of the petition or other action.

(e) *Insolvency*

The failure of the Mortgagor or of any other Obligor generally to pay its debts as they become due, its admission in writing to an inability to pay its debts, the making by Mortgagor or of other Obligor of a general

assignment for the benefit of creditors, or a judicial determination that the Mortgagor or any other Obligor is insolvent.

(f) *Receivership*

The appointment of a receiver or trustee to take possession of any of the assets of Mortgagor.

(g) *Levy or Attachment*

The taking or seizure of any material portion of the Property under levy of execution or attachment.

(h) *Lien*

The filing against the Real Property of any lien or claim of lien for the performance of work or the supply of materials, or the filing of any federal, state or local tax lien against Mortgagor or any other Obligor, or against the Real Property, unless the Mortgagor promptly complies with Section 12 of this Mortgage.

(i) *Death, Dissolution or Liquidation*

The dissolution or liquidation of the Mortgagor, or the cessation of its legal existence (unless resulting in a Permitted Transfer).

(j) *Events Affecting Carveout Obligors*

The filing by the Carveout Obligor of a petition in bankruptcy or for relief from creditors under any present or future law that affords general protection from creditors; the filing by any other person of an involuntary petition in bankruptcy against the Carveout Obligor or the filing of any other action that may result in a composition of debts, provide for the marshaling of assets for the satisfaction of such Carveout Obligor's debts, or result in the judicially ordered sale of assets for the purpose of satisfying obligations to creditors (unless a motion for the dismissal of the petition or other action is filed within ten days and results in its dismissal within sixty days of the filing of the petition or other action); the dissolution or liquidation of the Carveout Obligor, if the Carveout Obligor is not a natural person, or the cessation of its legal existence; or the death of the Carveout Obligor, if the Carveout Obligor is a natural person (unless the event described in this Paragraph (j) results in a Permitted Transfer), and unless, following any such event, any remaining Carveout Obligor or Obligors have the direct or indirect power to exercise management control over the Real Property and have an aggregate net worth at least equal to the Net Worth Requirement, or unless any remaining Carveout Obligor (or the executor of the estate of any deceased Carveout Obligor) diligently and continuously pursues the replacement of the subject Carveout Obligor, and succeeds, within 180 days of such an event, in causing another person to assume the obligations of the subject Carveout Obligor under the Carveout Guaranty and Indemnity, and the Environmental Indemnity Agreement, so that the Carveout Obligors

collectively meet the Net Worth Requirement and have the direct or indirect power to exercise management control over the Real Property. 08109146

**11. RIGHT TO CURE**

Upon Default or upon the failure of Mortgagor, following a Notice given under Subsection 10.3, to diligently pursue the cure of any act, omission or circumstance that may cause Default, Mortgagee shall have the right to cure the Default or the act, omission or circumstance. The expenses of doing so shall be part of the Indebtedness, and Mortgagor shall pay them to Mortgagee on demand.

**12. CONTEST RIGHTS**

Mortgagor may secure the right to contest Impositions and construction, mechanics' or materialmen's liens, through appropriate proceedings conducted in good faith, by either (A) depositing with Mortgagee an amount equal to 125% of the amount of the Imposition or the lien, or (B) obtaining and maintaining in effect a bond issued by a surety acceptable to Mortgagee, in an amount equal to the greater of (i) the amount of a required deposit under clause (A) above and (ii) the amount required by the surety or by the court in order to obtain a court order staying the foreclosure of the lien pending resolution of the dispute, and releasing the lien of record. The proceeds of such a bond must be payable directly to Mortgagee. The surety issuing such a bond shall be acceptable to Mortgagee in its sole discretion. After such a deposit is made or bond issued, the Mortgagor shall promptly commence the contest of the lien and continuously pursue that contest in good faith and with reasonable diligence. If the contest of the related Imposition or lien is unsuccessful, any deposits or bond proceeds shall be used to pay the Imposition or to satisfy the obligation from which the lien has arisen. Any surplus shall be refunded to Mortgagor.

**13. DUE ON TRANSFER OR ENCUMBRANCE**

Upon the sale of any portion of the Real Property or any other conveyance, transfer or vesting of any direct or indirect interest in Mortgagor or the Property, including (i) the direct or indirect transfer of, or the granting of a security interest in, the ownership of Mortgagor, (ii) any encumbrance (other than a Permitted Encumbrance) of the Real Property (unless the Mortgagor contests the encumbrance in compliance with Section 12) and (iii) the granting of any security interest in the Property, the Indebtedness shall, at Mortgagee's option, become immediately due and payable without Notice, unless the sale, conveyance, transfer or vesting is a Permitted Transfer.

**14. NOTICE OF ABSOLUTE ASSIGNMENT OF LEASES AND RENTS**

Under the Absolute Assignment of Leases and Rents, Mortgagor has assigned to Mortgagee, and to its successors and assigns, all of Mortgagor's right and title to, and interest in, the Leases, including all rights under the Leases and all benefits to be derived from them. The rights assigned include all authority of Mortgagor to modify or terminate Leases, or to exercise any remedies, and the benefits assigned include all Rents. This assignment is

present and absolute, but under the terms of the Absolute Assignment of Leases and Rents, Mortgagee has granted the Mortgagor a conditional license to collect and use the Rents, and to exercise the rights assigned, in a manner consistent with the Obligations. Mortgagee may, however, terminate the license by written Notice upon either (i) Default or (ii) the occupancy of more than one-half of the leasable space in the Improvements by a single tenant that is the subject of a petition under the Bankruptcy Code, that has threatened to file such a petition, or whose insolvency is imminent. If the license to collect Rents is terminated under clause (ii) and there is no Default, then Mortgagee collects the Rents directly, applies them to that portion of the Indebtedness then due and payable, and promptly remits any excess amount to Mortgagor. Mortgagor agrees to collect in trust for Mortgagee any Rents remitted to Mortgagor after the expiration or termination of Mortgagor's license to collect the Rents. Mortgagor further agrees to pay any such Rents to Mortgagee promptly after they are received. The parties hereto further acknowledge and agree that upon recordation of this Mortgage in the Offices of the Recorder of Deeds, of Cook, DuPage and Lake Counties, Illinois, the rights of Mortgagee hereunder relative to the perfection and priority of the liens and security interests granted hereunder are as set forth in Chapter 765 of the Illinois Compiled Statutes, Section 5/31.5, as amended.

**15. ACCELERATION**

Under the terms of the Note, if a Default exists, Mortgagee may, at its option, without Notice to Mortgagor except as provided in the Note, declare the Indebtedness to be immediately due and payable.

**16. RIGHTS OF ENTRY AND TO OPERATE****16.1 ENTRY ON REAL PROPERTY**

If a Default exists, Mortgagee may without Notice enter upon the Real Property and take exclusive possession of the Real Property and of all books, records and accounts, all without Notice and without being guilty of trespass. If Mortgagor remains in possession of all or any part of the Property after Default and without Mortgagee's prior written consent, Mortgagee may, without Notice to Mortgagor, invoke any and all legal remedies to dispossess Mortgagor.

**16.2 OPERATION OF REAL PROPERTY**

Following Default, Mortgagee may hold, lease, manage, operate or otherwise use or permit the use of the Real Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Mortgagee may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in accordance with the provisions of the Absolute Assignment of Leases and Rents.

## 17. RECEIVERSHIP

Following Default, Mortgagee may apply to a court of competent jurisdiction for the appointment of a receiver of the Property, without Notice to Mortgagor, whether or not the value of the Property exceeds the Indebtedness, whether or not waste or deterioration of the Real Property has occurred, and whether or not other arguments based on equity would justify the appointment. Mortgagor irrevocably, with knowledge and for valuable consideration, consents to such an appointment. Any such receiver shall have all the rights and powers customarily given to receivers in Illinois, including the rights and powers granted to Mortgagee by this Mortgage, the power to maintain, lease and operate the Real Property on terms approved by the court, and the power to collect the Rents and apply them to the Indebtedness or otherwise as the court may direct. Once appointed, a receiver may at Mortgagee's option remain in place until the Indebtedness has been paid in full.

## 18. FORECLOSURE: POWER OF SALE

Upon the occurrence of a Default, Mortgagee may immediately proceed to foreclose the lien of this Mortgage, against all or part of the Real Property, or to sell the Real Property, by judicial or nonjudicial foreclosure in accordance with the laws of Illinois and may pursue any other remedy available to commercial mortgage lenders under the laws of Illinois.

## 19. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.

19.1 In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called 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.

19.2 If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

19.3 Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

## 20. WAIVERS

To the maximum extent permitted by law, Mortgagor irrevocably and unconditionally WAIVES and RELEASES any present or future rights (a) of reinstatement or redemption (b)



that may exempt the Property from any civil process, (c) to appraisal or valuation of the Property, (d) to extension of time for payment, (e) that may subject Mortgagee's exercise of its remedies to the administration of any decedent's estate or to any partition or liquidation action, (f) to any homestead exemption, (g) to notice of acceleration or notice of intent to accelerate, and (h) that in any way would delay or defeat the right of Mortgagee to cause the sale of the Real Property for the purpose of satisfying the Indebtedness. Mortgagor agrees that the price paid at a lawful foreclosure sale, whether by Mortgagee or by a third party, and whether paid through cancellation of all or a portion of the Indebtedness or in cash, shall conclusively establish the value of the Real Property.

## 21. EXCULPATION CLAUSE AND CARVEOUT OBLIGATIONS

Mortgagee agrees that it shall not seek to enforce any monetary judgment with respect to the indebtedness evidenced by this Note against Mortgagor except through recourse to the Property (as defined in the Mortgage), unless the obligation from which the judgment arises is a Carveout Obligation. The Carveout Obligations include (i) the obligation to repay any portion of the Indebtedness that arises from a Carveout, (ii) the obligation to repay the entire Indebtedness, if Mortgagee's exculpation of the Mortgagor from personal liability under this Section has become void, (iii) the obligation to indemnify the Mortgagee in respect of its actual damages suffered in connection with a Carveout, and (iv) the obligation to hold the Mortgagee harmless from and against any claims, judgments, causes of action or proceedings arising from the Carveouts. The Carveouts include:

- (i) fraud or material written misrepresentation;
- (ii) waste of the Property (which shall be defined to include damage, destruction or disrepair of the Real Property caused by a willful act or grossly negligent omission of the Mortgagor, but to exclude ordinary wear and tear in the absence of gross negligence);
- (iii) misapplication of tenant security deposits, Insurance Proceeds or Condemnation Proceeds;
- (iv) failure to pay property taxes, assessments or other lienable impositions;
- (v) failure to pay to Mortgagee all Rents, income and profits, net of reasonable and customary operating expenses, received in respect of a period when the Loan is in Default;
- (vi) removal from the Real Property of fixtures or Personal Property (as defined in the Mortgage), unless replaced in a commercially reasonable manner;
- (vii) the out-of-pocket expenses of enforcing the Loan Documents following Default, not including expenses incurred after the Mortgagor has agreed in writing to transfer the Real Property to the Mortgagee by the Mortgagee's choice of either an uncontested foreclosure or delivery of a deed in lieu of foreclosure;
- (viii) terminating or amending a Lease in violation of the Loan Documents; and
- (ix) any presence or release of hazardous substances.

The Mortgagee's exculpation of the Mortgagor from personal liability for the repayment of the Indebtedness shall be void without Notice if Mortgagor voluntarily transfers or encumbers the Property in violation of this Mortgage.

The Mortgagor may also assume recourse liability under Loan Documents or other agreements that expressly provide for such personal liability, and such Loan Documents or agreements, if any, shall not be subject to exculpation from personal liability.

## 22. SECURITY AGREEMENT AND FIXTURE FILING

### 22.1 SECURITY AGREEMENT

This Mortgage shall be self-operative and shall constitute a Security Agreement pursuant to the provisions of the Code with respect to those items comprising Property that may be subject to a security interest under the Code. Mortgagor, as debtor, hereby grants Mortgagee, as secured party, a security interest in those items and in all related additions, replacements, substitutions and proceeds, for the purpose of securing the Indebtedness. Mortgagor hereby agrees to execute and deliver on demand, and irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office, such security agreements, financing statements or other instruments as Mortgagee may require in order to create, perfect, or continue this security interest. Mortgagor shall pay all related filing fees and costs, all reasonable costs and expenses of any record searches (or their continuations), as Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer the creation of any other lien on or security interest in any of the Property subject to the security interest. Upon Default, Mortgagee shall have the rights and remedies of a secured party under the Code as well as all other rights and remedies available at law or in equity, and, at Mortgagee's option, Mortgagee may also invoke the remedies provided elsewhere in this Mortgage as to such property. Mortgagor and Mortgagee agree that the rights granted to Mortgagee as secured party under this Section 22 are in addition to rather than a limitation on any of Mortgagee's other rights under this Mortgage with respect to the Personal Property. No failure to mention any item in a financing statement shall limit the scope of Mortgagor's assignment of any Property, impair the priority of Mortgagee's lien on any Personal Property, or alter Mortgagee's rights to Insurance Proceeds and Condemnation Proceeds.

### 22.2 FIXTURE FILING

This Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of Lake County, Illinois with respect to any and all fixtures comprising Property. The "debtor" is Great Lakes REIT, L.P., a limited partnership organized under Delaware law, , the "secured party" is AUSA Life Insurance Company, Inc., a New York life insurance company, the collateral is as described in Section 22.1 above and the granting clause of this Mortgage, and the

addresses of the debtor and secured party are the addresses stated in Subsection 24.11 of this Mortgage for Notices to such parties.

## 23. ENVIRONMENTAL MATTERS

### 23.1 REPRESENTATIONS

The Mortgagor represents as follows:

(a) *No Hazardous Substances*

To the best of Mortgagor's knowledge as a duly diligent property owner, and except as disclosed in the ESA, no release of any Hazardous Substance has occurred on or about the Real Property in quantities or at concentration levels that would be expected to give rise to response action.

(b) *Compliance with Environmental Laws*

To the best of Mortgagor's knowledge as a duly diligent property owner, and except as disclosed in the ESA, the Real Property and its current use and presently anticipated uses comply with all Environmental Laws, including those requiring permits, licenses, authorizations, and other consents and approvals.

(c) *No Actions or Proceedings*

No governmental authority or agency has commenced any action, proceeding or investigation based on any suspected or actual violation of any Environmental Law on or about the Real Property. To the best of Mortgagor's knowledge as a duly diligent property owner, no such authority or agency has threatened to commence any such action, proceeding, or investigation.

### 23.2 COVENANTS

Mortgagor covenants as follows:

(a) *Compliance with Environmental Laws*

Mortgagor shall, and Mortgagor shall cause all employees, agents, contractors, and tenants of Mortgagor and any other persons present on or occupying the Real Property, to keep and maintain the Real Property in compliance with all Environmental Laws.

(b) *Notices, Actions and Claims*

The Mortgagor shall immediately advise Mortgagee in writing of (i) any notices from any governmental or quasi-governmental agency or authority of violation or potential violation of any Environmental Law received by Mortgagor, (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Law, (iii) all claims made or threatened by any third party against Mortgagor or the Real Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any

Hazardous Substances; and (iv) discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Real Property that could cause the Real Property to become contaminated by or with Hazardous Substances.

### 23.3 MORTGAGEE'S RIGHT TO CONTROL CLAIMS

Mortgagee shall have the right (but not the obligation) to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Substances and to have its related and reasonable attorneys' and consultants' fees paid by Mortgagor upon demand.

### 23.4 INDEMNIFICATION

Mortgagor shall be solely responsible for, and shall indemnify, defend, and hold harmless Mortgagee and its directors, officers, employees, agents, successors and assigns from and against, any claim, judgment, loss, damage, demand, cost, expense or liability of whatever kind or nature, known or unknown, contingent or otherwise, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or after the date of this Mortgage) of Hazardous Substances on, in, under or about the Real Property (whether by Mortgagor, a predecessor in title, any tenant, or any employees, agents, contractor or subcontractors of any of the foregoing or any third persons at any time occurring or present on the Real Property), including: (i) personal injury; (ii) death; (iii) damage to property; (iv) all consequential damages; (v) the cost of any required or necessary repair, cleanup or detoxification of the Real Property, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (vi) damage to any natural resources; and (vii) all reasonable costs and expenses incurred by Mortgagee in connection with clauses (i) through (vi), including reasonable attorneys' and consultants' fees; provided, however, that nothing contained in this Section shall be deemed to preclude Mortgagor from seeking indemnification from, or otherwise proceeding against, any third party including any tenant or predecessor in title to the Real Property. The covenants, agreements, and indemnities set forth in this Section shall be binding upon Mortgagor and its heirs, personal representatives, successors and assigns, and shall survive repayment of the Indebtedness, foreclosure of the Real Property, and Mortgagor's granting of a deed to the Real Property in lieu of foreclosure. Payment shall not be a condition precedent to this indemnity. Any costs or expenses incurred by Mortgagee for which Mortgagor is responsible or for which Mortgagor has indemnified Mortgagee shall be paid to Mortgagee on demand, with interest at the Default Rate from the date incurred by Mortgagee until paid in full, and shall be secured by this Mortgage. Without the prior written consent of Mortgagee, Mortgagor shall not enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to Hazardous Substances.

### 23.5 ENVIRONMENTAL AUDITS

If a Default exists, or at any time Mortgagee has reason to believe that a release of Hazardous Substances may have occurred or may be likely to occur, Mortgagee

may require that Mortgagor retain, or Mortgagee may retain directly, at the sole cost and expense of Mortgagor, a licensed geologist, industrial hygienist or an environmental consultant acceptable to Mortgagee to conduct an environmental assessment or audit of the Real Property. In the event that Mortgagee makes a reasonable determination of the need for an environmental assessment or audit, Mortgagee shall inform Mortgagor (either orally or in writing) that such a determination has been made and, if requested to do so by Mortgagor, give Mortgagor a written explanation of that determination before the assessment or audit is conducted. Mortgagor shall afford any person conducting an environmental assessment or audit access to the Real Property and all materials reasonably requested. Mortgagor shall pay on demand the cost and expenses of any environmental assessment or audit obtained by Mortgagee. Mortgagor shall, at Mortgagee's request and at Mortgagor's sole cost and expense, take such investigative and remedial measures determined by the geologist, hygienist or consultant to be necessary to address any condition discovered by the assessment or audit so that (i) the Real Property shall be in compliance with all Environmental Laws, (ii) the condition of the Real Property shall not constitute any identifiable risk to human health or to the environment, and (iii) the value of the Real Property shall not be affected by the presence of Hazardous Substances.

## 24. MISCELLANEOUS

### 24.1 SUCCESSORS AND ASSIGNS

All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the Obligors, or to the holder of the Note, as the case may be.

### 24.2 SURVIVAL OF OBLIGATIONS

Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and will continue in full force and effect until the latest of (a) the date the Indebtedness has been paid in full and the Obligations have been performed and satisfied in full, (b) the last date permitted by law for bringing any claim or action with respect to which Mortgagee may seek payment or indemnification in connection with the Loan Documents, and (c) the date on which any claim or action for which Mortgagee seeks payment or indemnification is fully and finally resolved and, if applicable, any compromise thereof of judgment or award thereon is paid in full.

### 24.3 FURTHER ASSURANCES

Mortgagor, upon the request of Mortgagee, shall complete, execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage, to subject any property intended to be covered by this Mortgage to the liens and security interests it creates, to place third parties on notice of those liens and security interests, or to correct any defects which may be found in any Loan Document.

## 24.4 EXPENSES

Mortgagor shall pay all filing and recording fees, documentary stamps, intangible taxes, and all expenses incident to the execution and acknowledgment of this Mortgage, the Note or any of the other Loan Documents, any supplements, amendments, renewals or extensions of any of them, or any instrument entered into under Subsection 24.3. Mortgagor shall pay or reimburse Mortgagee, upon demand, for all costs and expenses, including appraisal and reappraisal costs of the Property and reasonable attorneys' and legal assistants' fees, which Mortgagee may incur in connection with enforcement proceedings under the Note, this Mortgage, or any of the other Loan Documents (including all fees and costs incurred in enforcing or protecting the Note, this Mortgage, or any of the other Loan Documents in any bankruptcy proceeding), and reasonable attorneys' and legal assistants' fees incurred by Mortgagee in any other suit, action, legal proceeding or dispute of any kind in which Mortgagee is made a party or appears as party plaintiff or defendant, affecting the indebtedness, the Note, this Mortgage, any of the other Loan Documents, or the Property, or required to protect or sustain the lien of this Mortgage. Mortgagor shall be obligated to pay (or to reimburse Mortgagee) for such fees, costs and expenses and shall indemnify and hold Mortgagee harmless from and against any and all loss, cost, expense, liability, damage and claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of Mortgagor's failure to promptly repay any such fees, costs and expenses. If any suit or action is brought to enforce or interpret any of the terms of this Mortgage (including any effort to modify or vacate any automatic stay or injunction, any trial, any appeal, any petition for review or any bankruptcy proceeding), the Mortgagee shall be entitled to recover all expenses reasonably incurred in preparation for or during the suit or action or in connection with any appeal of the related decision, whether or not taxable as costs. Such expenses include attorneys' fees, witness fees (expert or otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including the costs of searching records, obtaining title reports, appraisals, environmental assessments, surveying costs, title insurance premiums, and attorneys' fees, incurred by Mortgagee that are necessary at any time in Mortgagee's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note.

## 24.5 RECORDING AND FILING

Mortgagor shall cause this Mortgage and all amendments, supplements, and substitutions to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee may reasonably request. Mortgagor will pay all recording filing, re-recording and refiling taxes, fees and other charges.

## 24.6 NO WAIVER

No deliberate or unintentional failure by Mortgagee to require strict performance by Mortgagor of any Obligation shall be deemed a waiver, and Mortgagee shall have the right at any time to require strict performance by Mortgagor of any Obligation.

24.7 COVENANTS RUNNING WITH THE LAND

All Obligations are intended by the parties to be and shall be construed as covenants running with the Land.

24.8 SEVERABILITY

The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. Any provision of the Loan Documents that is prohibited or unenforceable in any jurisdiction shall nevertheless be construed and given effect to the extent possible. The invalidity or unenforceability of any provision in a particular jurisdiction shall neither invalidate nor render unenforceable any other provision of the Loan Documents in that jurisdiction, and shall not affect the validity or enforceability of that provision in any other jurisdiction. If a provision is held to be invalid or unenforceable as to a particular person or under a particular circumstance, it shall nevertheless be presumed valid and enforceable as to others, or under other circumstances.

24.9 USURY

The parties intend that no provision of the Note or the Loan Documents be interpreted, construed, applied, or enforced so as to permit or require the payment or collection of interest in excess of the highest rate of interest (the "Maximum Permitted Rate") permitted to be paid or collected by applicable law with respect to this transaction. In this regard, Mortgagor and Mortgagee each stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. Accordingly, none of the terms of this Mortgage, the Note or any of the other Loan Documents shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Permitted Rate, and Mortgagor shall never be liable for interest in excess of the Maximum Permitted Rate. Therefore, (a) in the event that the Indebtedness and Obligations are prepaid or the maturity of the Indebtedness and Obligations is accelerated by reason of an election by Mortgagee, unearned interest shall be canceled and, if theretofore paid, shall either be refunded to Mortgagor or credited on the Indebtedness, as Mortgagee may elect; (b) the aggregate of all interest and other charges constituting interest under applicable laws and contracted for, chargeable or receivable under the Note and the other Loan Documents or otherwise in connection with the transaction contemplated thereby shall never exceed the maximum amount of interest, nor produce a rate in excess of the Maximum Permitted Rate; and (c) if any excess interest is provided for or received, it shall be deemed a mistake, and the same shall, at the option of Mortgagee, either be refunded to Mortgagor or credited on the unpaid principal amount (if any), and the Indebtedness shall be automatically reformed so as to permit only the collection of the interest at the Maximum Permitted Rate. Furthermore, if any provision of the Note or any of the other Loan Documents is interpreted, construed, applied, or enforced, in such a manner as to provide for interest in excess of the Maximum Permitted Rate, then the parties intend that such provision automatically shall be deemed reformed retroactively so as to require payment only of interest at the Maximum Permitted Rate. If, for any reason

whatsoever, interest paid or received during the full term of the applicable Indebtedness produces a rate which exceeds the Maximum Permitted Rate, then the amount of such excess shall be deemed credited retroactively in reduction of the then outstanding principal amount of the Indebtedness, together with interest at such Maximum Permitted Rate. Mortgagee shall credit against the principal of such Indebtedness (or, if such Indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the Maximum Permitted Rate. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of money shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the applicable Indebtedness, so that the interest rate is uniform throughout the full term of such Indebtedness. In connection with all calculations to determine the Maximum Permitted Rate, the parties intend that all charges be excluded to the extent they are properly excludable under applicable usury laws, as they from time to time are determined to apply to this transaction. The provisions of this Section shall control all agreements, whether now or hereafter existing and whether written or oral, between Mortgagor and Mortgagee.

#### 24.10 ENTIRE AGREEMENT

The Loan Documents contain the entire agreements between the parties relating to the financing of the Real Property, and all prior agreements which are not contained in the Loan Documents are terminated. The Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. The Loan Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against whom enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination that is not so documented shall be null and void.

#### 24.11 NOTICES

In order for any demand, consent, approval or other communication to be effective under the terms of this Mortgage, "Notice" must be provided under the terms of this Subsection. All Notices must be in writing. Notices may be (a) delivered by hand, (b) transmitted by telecopy (with a duplicate copy sent by first class mail, postage prepaid), (c) sent by certified or registered mail, postage prepaid, return receipt requested, or (d) sent by reputable overnight courier service, delivery charges prepaid. Notices shall be addressed as set forth below:

If to Mortgagee:

AUSA Life Insurance Company, Inc.  
Administrative Office AEGON USA Realty Advisors, Inc.  
4333 Edgewood Road, N.E.



# UNOFFICIAL COPY

08109146

Cedar Rapids, Iowa 52499-5443  
Attn: Mortgage Loan Department  
Telecopy Number: (319) 369-2277  
Reference: Loan #87786

If to Mortgagor:

Great Lakes REIT, L.P.  
823 Commerce Drive  
Oak Brook, Illinois 60523  
Attn: Chief Financial Officer  
Telecopy Number: (630) 368-2929

Notices delivered by hand or by overnight courier shall be deemed given when actually received or when refused by their intended recipient. Telecopied Notices will be deemed delivered when a legible copy has been received (provided receipt has been verified by telephone confirmation or one of the other permitted means of giving Notices under this Subsection). Mailed Notices shall be deemed received three days after mailing. Either Mortgagee or Mortgagor may change its address for Notice by giving at least fifteen Business Days' prior Notice of such change to the other party.

#### 24.12 COUNTERPARTS

This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

#### 24.13 APPLICABLE LAW

This Mortgage shall be interpreted, construed, applied, and enforced according to, and will be governed by, the laws of the State of Illinois, without regard to any choice of law principles which, but for this provision, would require the application of the law of another jurisdiction and regardless of where executed or delivered, where payable or paid, where any cause of action accrues in connection with this transaction, where any action or other proceeding involving this Mortgage is instituted or pending, or whether the laws of the State of Illinois otherwise would apply the laws of another jurisdiction. Mortgagor agrees that the sole and exclusive forum for the determination of any action relating to the validity and enforceability of the Note, this Mortgage and the other Loan Documents, and any other instruments securing the Note shall be either in an appropriate court of the State of Illinois or the applicable United States District Court.

#### 24.14 SOLE BENEFIT

This Mortgage and the other Loan Documents have been executed for the sole benefit of Mortgagor and Mortgagee and the successors and assigns of Mortgagee. No other party shall have rights thereunder or be entitled to assume that the parties thereto will insist upon strict performance of their mutual obligations hereunder, any

of which may be waived from time to time. Mortgagor shall have no right to assign any of its rights under the Loan Documents to any party whatsoever.

#### 24.15 RELEASE OF CLAIMS

Mortgagor hereby RELEASES, DISCHARGES and ACQUITS forever Mortgagee and its officers, directors, trustees, agents, employees and counsel (in each case, past, present or future) from any and all Claims existing as of the date hereof (or the date of actual execution hereof by Mortgagor, if later). As used herein, the term "Claim" shall mean any and all liabilities, claims, defenses, demands, actions, causes of action, judgments, deficiencies, interest, liens, costs or expenses (including court costs, penalties, attorneys' fees and disbursements, and amounts paid in settlement) of any kind and character whatsoever, including claims for usury, breach of contract, breach of commitment, negligent misrepresentation or failure to act in good faith, in each case whether now known or unknown, suspected or unsuspected, asserted or unasserted or primary or contingent, and whether arising out of written documents, unwritten undertakings, course of conduct, tort, violations of laws or regulations or otherwise.

#### 24.16 NO PARTNERSHIP

Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Mortgagor and Mortgagee, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Property.

#### 24.17 PAYOFF PROCEDURES

If Mortgagor pays or causes to be paid to Mortgagee all of the Indebtedness, then Mortgagee's interest in the Real Property shall cease, and upon receipt by Mortgagee of such payment, Mortgagee shall either (a) release this Mortgage or (b) assign the Loan Documents and endorse the Note (in either case without recourse or warranty of any kind) to a takeout lender, upon payment (in the latter case) of an administrative fee of \$750.

#### 24.18 SURVIVAL OF COMMITMENT TERMS

The Commitment shall survive the execution of this Mortgage and the other Loan Documents. Any term of the Commitment that has been inadvertently omitted from the Loan Documents is hereby incorporated in this Mortgage by reference. If any term of the Commitment conflicts with a provision of this Mortgage that addresses the same subject, the terms of this Mortgage shall prevail.

#### 24.19 FUTURE ADVANCES

Under this Mortgage, "Indebtedness" is defined to include amounts advanced by the Mortgagee in the future. Such advances include any additional disbursements to Mortgagor (unless in connection with another, independent mortgage financing), as well as any amounts advanced to pay Impositions, to cure Defaults, or to pay the costs of collection and receivership. Accordingly, any such sums shall be equally secured with, and have the same priority as, the Indebtedness, and shall be subject to all of the terms and provisions of this Mortgage. However, the Indebtedness secured by this Mortgage shall not exceed an amount equal to a maximum principal

balance of \$75,000,000, plus accrued interest and advances by Mortgagee in respect of Impositions, or to cure any Default. Mortgagor shall pay any taxes that may be due in connection with any such future advance.

## 24.20 INTERPRETATION

### (a) *Headings and General Application*

The section, subsection, paragraph and subparagraph headings of this Mortgage are provided for convenience of reference only and shall in no way affect, modify or define, or be used in construing, the text of the sections, subsections, paragraphs or subparagraphs. If the text requires, words used in the singular shall be read as including the plural, and pronouns of any gender shall include all genders.

### (b) *Sole Discretion*

Mortgagee may take any action or decide any matter under the terms of this Mortgage or of any other Loan Document (including any consent, approval, acceptance, option, election or authorization) in its sole and absolute discretion, for any reason or for no reason, unless the related Loan Document contains specific language to the contrary. Any approval or consent which the Mortgagee might withhold may be conditioned in any way.

### (c) *Result of Negotiations*

This Mortgage results from negotiations between Mortgagor and Mortgagee and from their mutual efforts. Therefore, it shall be so construed, and not as though it had been prepared solely by Mortgagee.

### (d) *Reference to Particulars*

The scope of a general statement made in this Mortgage or in any other Loan Document shall not be construed as having been reduced through the inclusion of references to particular items that would be included within the statement's scope. Therefore, unless the relevant provision of a Loan Document contains specific language to the contrary, the term "include" shall mean "include, but shall not be limited to" and the term "including" shall mean "including, without limitation."

## 24.21 JOINT AND SEVERAL LIABILITY

If there is more than one individual or entity executing this Mortgage as Mortgagor, liability of such individuals and entities under this Mortgage shall be joint and several.

## 24.22 TIME OF ESSENCE

Time is of the essence of each and every covenant, condition and provision of this Mortgage to be performed by Mortgagor.

24.23 JURY WAIVER

MORTGAGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (I) UNDER THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR (II) ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, AND MORTGAGOR AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

24.24 RENEWAL, EXTENSION, MODIFICATION AND WAIVER

Mortgagee, at its option, may at any time renew or extend this Mortgage, the Note or any other Loan Document. Mortgagee may enter into a modification of any Loan Document without the consent of any person not a party to the document being modified. Mortgagee may waive any covenant or condition of any Loan Document, in whole or in part, at the request of any person then having an interest in the Property or in any way liable for any part of the Indebtedness. Mortgagee may take, release, or resort to any security for the Note and the Obligations and may release any party primarily or secondarily liable on any Loan Document, all without affecting any liability not expressly released in writing by Mortgagee.

24.25 CUMULATIVE REMEDIES

Every right and remedy provided in this Mortgage shall be cumulative of every other right or remedy of Mortgagee, whether conferred by law or by grant or contract, and may be enforced concurrently with any such right or remedy. The acceptance of the performance of any obligation to cure any Default shall not be construed as a waiver of any rights with respect to any other past, present or future Default. No waiver in a particular instance of the requirement that any Obligation be performed shall be construed as a waiver with respect to any other Obligation or instance.

24.26 TRANSFER OF OWNERSHIP

Mortgagee may, without notice to Mortgagor, deal with any person in whom ownership of any part of the Real Property has vested, without in any way vitiating or discharging Mortgagor from liability for any of the Obligations.

24.27 NO MERGER

Even though title to the Real Property may be held in the future by Mortgagee, the interest of the owner of the Real Property and the interest of the holder of the title or lien granted by this Mortgage shall at all times be separate, distinct and apart, and shall in no event be merged by operation of law or otherwise, unless and until all persons at the time having an interest in the Real Property and this Mortgage shall join in the execution of a written instrument effecting such merger of estates (it being understood that this provision shall survive the payment in full of the Indebtedness).

# UNOFFICIAL COPY

**08109146**

IN WITNESS WHEREOF, Mortgagor has made and delivered this Mortgage as of this 1st day of December, 1998.

GREAT LAKES REIT, L.P.,  
a Delaware limited partnership

By Great Lakes REIT,  
a Maryland business trust,  
its General Partner

By *James Hicks* [SEAL]  
James Hicks  
Treasurer

204514v5

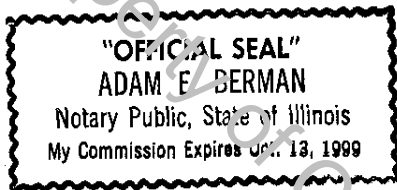
# UNOFFICIAL COPY

08109146

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

I, Adam E. Berman a Notary Public in and for said County, in the State aforesaid, do hereby certify that James Hicks, the Treasurer of Great Lakes REIT the "General Partner", who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Treasurer appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and as the act and deed of the General Partner, for and on behalf of Great Lakes REIT, L.P., a Delaware limited partnership, and for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 1<sup>st</sup> day of December, 1998.



Adam E. Berman  
NOTARY PUBLIC  
(SEAL)

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

08109146

EXHIBIT A -1

ILLINOIS

PROPERTY #1

ARLINGTON RIDGE

Lot One in E. A. VETO'S SUBDIVISION of part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 7, Township 42 North, Range 11 East of the 3<sup>rd</sup> Principal Meridian, in Cook County, Illinois.

Property of Cook County Clerk's Office

PIV: 03-07-200-050

Commonly Known as:

601 A-C Campus Drive

Arlington Heights, IL

60004

# UNOFFICIAL COPY

08109146

EXHIBIT A -5

ILLINOIS

PROPERTY #5

3400 DUNDEE

PARCEL 1:

The North 1 acre of the West 2 acres of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

The West 16 feet of the South 1 acre of the West 2 acres (except the South 50 feet of the west 16 feet) of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 3:

The West 4 acres (except therefrom the following: the North 1 acre of the West 2 acres thereof; the West 16 feet of the South 1 acre of the West 2 acres thereof, and the South 50 feet thereof) of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 4:

Easement for the benefit of Parcels 1, 2 and 3, as created by Non-exclusive Easement Agreement between the Village of Northbrook, La Salle National Bank, as Trustee under Trust Agreement dated February 16, 1978 and known as Trust Number 10-33602-09 and American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated November 8, 1983 and known as Trust Number 60300, dated July 9, 1984 and recorded July 13, 1984 as Document 27171232, and by Non-exclusive Easement Agreement between the above-mentioned parties, dated September 11, 1985 and recorded December 12, 1985 as Document 85320712 for ingress, egress, driveway and off-street parking over portions of the following legal descriptions:

PARCEL "A":

The West 2 acres (except the South 50 feet thereof) of the East 4 acres of the West 10 acres of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

AND

PARCEL "B":

The East 2 acres of the West 6 acres of the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 5, Township 42 North, Range 12, East of the Third Principal Meridian (except the South 50 feet thereof taken in Case No. 70L1934, by the County of Cook), in Cook County, Illinois.

PLANS: 04-05-304-019-0000  
04-05-304-020-0000  
04-05-304-014-0000

Commonly known as:  
3400 Dundee Road, Northbrook, IL



# UNOFFICIAL COPY

EXHIBIT A -2

08109146

ILLINOIS

PROPERTY #2

ONE HAWTHORNE PLACE

Lot 1 in New Century Town Unit One, being a subdivision of parts of Sections 32 and 33, Township 44 North, Range 11, East of the Third Principal Meridian according to the plat thereof recorded November 2, 1973, as Document No. 1641342, in Book 53 of Plats, Page 26, 27 and 28, in Lake County, Illinois.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

08109146

WOODCREEK I  
ILLINOIS

Exhibit A -3

PARCEL ONE: LOT 2 IN WOODCREEK BUSINESS PARK RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1 THROUGH 14 AND VACATED EDGE BROOK PLACE IN WOODCREEK BUSINESS PARK, BEING A SUBDIVISION OF PARTS OF SECTIONS 25 AND 36, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 28, 1981 AS DOCUMENT R81-40687, SAID WOODCREEK BUSINESS PARK RESUBDIVISION RECORDED SEPTEMBER 22, 1983 AS DOCUMENT R83-68220 IN DUPAGE COUNTY, ILLINOIS.

PARCEL TWO: EASEMENT FOR USE OF THE "WATER DETENTION AREA" AS SET FORTH ON THE PLAT OF WOODCREEK BUSINESS PARK RESUBDIVISION AFORESAID, ALLOWING FOR THE FLOW AND DIFFUSION OF SURFACE WATER RUN-OFF AND DRAINAGE, AS ESTABLISHED IN THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS RECORDED FEBRUARY 14, 1983 AS DOCUMENT NO. R83-08112, AS AMENDED BY FIRST AMENDMENT RECORDED AS DOCUMENT NO. R83-74680, AND ALSO AS AMENDED BY INSTRUMENT RECORDED NOVEMBER 6, 1996 AS DOCUMENT R96-181998.

PIN NUMBER: 05-25-414-007

From Cook County Clerk's Office

WOODCREEK II  
ILLINOIS

Exhibit A -4

PARCEL ONE: LOT 3 IN WOODCREEK BUSINESS PARK RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1 THROUGH 14 AND VACATED EDGE BROOK PLACE IN WOODCREEK BUSINESS PARK, BEING A SUBDIVISION OF PARTS OF SECTIONS 25 AND 36, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 28, 1981 AS DOCUMENT R81-40687, SAID WOODCREEK BUSINESS PARK RESUBDIVISION RECORDED SEPTEMBER 22, 1983 AS DOCUMENT R83-68220 IN DUPAGE COUNTY, ILLINOIS.

PARCEL TWO: EASEMENT FOR USE OF THE "WATER DETENTION AREA" AS SET FORTH ON THE PLAT OF WOODCREEK BUSINESS PARK RESUBDIVISION AFORESAID, ALLOWING FOR THE FLOW AND DIFFUSION OF SURFACE WATER RUN-OFF AND DRAINAGE, AS ESTABLISHED IN THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS RECORDED FEBRUARY 14, 1983 AS DOCUMENT NO. R83-08112, AS AMENDED BY FIRST AMENDMENT RECORDED AS DOCUMENT NO. R83-74680, AND ALSO AS AMENDED BY INSTRUMENT RECORDED NOVEMBER 6, 1996 AS DOCUMENT R96-181998.

PIN NUMBER: 05-36-201-012

Dupage County Clerk's Office

# UNOFFICIAL COPY

EXHIBIT A - 6

08109146

ILLINOIS

PROPERTY #6

2 MARRIOTT DRIVE

That part of the Northeast ¼ of Section 22, Township 43 North, Range 11, East of the Third Principal Meridian, described as follows, to-wit: Commencing at a point in the center line of Milwaukee Avenue, as of August 26, 1948, which is S 15° 06' 15" E, (Old Deeds) 813.60 feet from the point of intersection of said center line with the North line of the Northeast ¼ of said Section 22 for a POINT OF BEGINNING; thence N 89° 25' 30" E (Old Deeds), toward a point on the East line of said Northeast ¼ 764.05 feet South of the Northeast corner thereof, said course hereinafter referred to as the "First Course", a distance of 516.67 feet, more or less, to a point on a line drawn parallel with the center line of Milwaukee Avenue and 500.00 feet Northeasterly therefrom, measured at right angles thereto; thence Northwesterly along said line drawn parallel to the center line of Milwaukee Avenue, a distance of 300 feet; thence West along a line parallel to the First Course, a distance of 516.67 feet, more or less, to a point on the center line of Milwaukee Avenue which point is 513.60 feet Southeasterly of its intersection with the with the North line of said Section 22; thence Southeasterly along the center line of Milwaukee Avenue, a distance of 300 feet to the POINT OF BEGINNING, in Lake County, Illinois.

Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B

### PERMITTED ENCUMBRANCES

Schedule of Permitted Encumbrances attached in the form of Pro-Forma Loan Policy to Memorandum of Closing Instructions of even date herewith among Mortgagor and Mortgagee.

Property of Cook County Clerk's Office

08109146