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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



0823333023

Doc#: 0823333023 Fee: \$82.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/20/2008 08:48 AM Pg: 1 of 24

8442874028

Property of Cook County Clerk's Office

The property identified as: **PIN:** 14-30-304-004-0000

Address:

Street: 2700 NORTH ELSTON AVENUE

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60647

Lender: WESTDEUTSCHE IMMOBILIENBANK AG

Borrower: AFIAA ELSTON LOGAN LLC

Loan / Mortgage Amount: \$12,660,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 17/70 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: B719DEF8-7D3D-4B91-A3F6-A68DE32E0DA7

Execution date: 08/15/2008

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PREPARED BY, RECORDING
REQUESTED BY, AND WHEN
RECORDED MAIL TO:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022-6069
Attention: Karen D. Geymann
File #: 301/124

This space reserved for Recorder's use only.

**MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS
AND LEASES AND FIXTURE FILING (ILLINOIS)**

by and from

AFIAA ELSTON LOGAN, LLC, "Mortgagor"

to

WESTDEUTSCHE IMMOBILIENBANK AG, "Mortgagee"

Dated as of ^{August 15,} ~~July~~, 2008

Location: 2700 North Elston Avenue

Municipality: Chicago

County: Cook County

State: Illinois

P.I.N. No.: 14-30-304-004-0000

14-30-304-012-0000

14-30-304-014-0000

14-30-304-016-0000

14-30-304-018-0000

**THE SECURED PARTY (MORTGAGEE) DESIRES THIS FIXTURE FILING
TO BE INDEXED AGAINST THE RECORD OWNER OF THE REAL ESTATE
DESCRIBED HEREIN.**

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MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (ILLINOIS)

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (ILLINOIS) (this "*Mortgage*") is dated as of ^{August} July 15, 2008 by and from AFIAA ELSTON LOGAN, LLC, a Delaware limited liability company ("*Mortgagor*"), whose address is 119 West 23rd Street, Suite 1003, New York, New York 10011, to WESTDEUTSCHE IMMOBILIENBANK AG, a foreign banking corporation incorporated under the laws of Germany, as Lender ("*Lender*"), having an address at Grosse Bleiche 46, D-55116 Mainz, Federal Republic of Germany (Lender, together with its successors and assigns, "*Mortgagee*").

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. All capitalized terms used herein without definition shall have the respective meanings ascribed to them in that certain Loan Agreement dated as of even date herewith, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time (the "*Loan Agreement*"), between Mortgagor and Lender. As used herein, the following terms shall have the following meanings:

(a) "*Event of Default*": The occurrence of any default under the Loan Agreement, this Mortgage or that certain Letter Agreement, dated as of the date hereof, between Mortgagor and Mortgagee continuing beyond any applicable cure periods.

(b) "*Governmental Authority*": The United States of America, the State of New York, the State of Illinois, Germany, and any political subdivision or regional division thereof, and any agency, department, court, regulatory body, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over the Mortgagor or the Mortgaged Property.

(c) "*Indebtedness*": (1) All indebtedness of Mortgagor to Mortgagee under the Loan Agreement or any other document executed in connection with the Loan Agreement (the "*Loan Documents*"), including, without limitation, the sum of all (a) the principal sum of \$12,660,000 and interest and other amounts owing under or evidenced or secured by the Loan Documents, (b) principal, interest and other amounts which may hereafter be lent by Mortgagee under or in connection with the Loan Agreement or any of the other Loan Documents, whether evidenced by a promissory note or other instrument which, by its terms, is secured hereby, and (c) other extensions of credit under the Loan Agreement or any of the other Loan Documents and reimbursement obligations in respect thereof, together with interest and other amounts payable with respect thereto, and (2) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Mortgagor to Mortgagee under documents which recite that they are intended to be secured by this Mortgage. The Indebtedness secured hereby includes, without limitation, (i) all interest and expenses accruing after the commencement by or against Mortgagor or any of its affiliates of a proceeding under the Bankruptcy Code (defined below) or any similar law for the relief of debtors, and (ii) a judgment for the payment of money rendered with respect to the indebtedness, obligations and liabilities described in this subparagraph (c), including without limitation any such judgment rendered by a court of the Federal Republic of Germany, which judgment is final, conclusive and enforceable under the provisions of the Illinois Uniform Foreign Money-Judgments Recognition Act, 735 ILCS 5/12-618, *et seq.*, and an authenticated copy of which judgment has been filed with the Circuit Court of Cook County in accordance with 735 ILCS 5/12-652(a) and 735 ILCS 5/12-653.

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(d) **"Mortgaged Property"**: The fee interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Mortgagor (the **"Land"**), and all of Mortgagor's right, title and interest now or hereafter acquired in and to (1) all improvements now owned or hereafter acquired by Mortgagor, now or at any time situated, placed or constructed upon the Land (the **"Improvements"**); the Land and Improvements are collectively referred to as the **"Premises"**), (2) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, telephone, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, and all equipment, inventory and other goods in which Mortgagor now has or hereafter acquires any rights or any power to transfer rights and that are or are to become fixtures (as defined in the UCC, defined below) related to the Land (the **"Fixtures"**), (3) all goods, accounts, inventory, general intangibles, instruments, documents, contract rights and chattel paper, including all such items as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Premises (the **"Personalty"**), (4) all reserves, escrows or impounds required under the Loan Agreement or any of the other Loan Documents and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property (the **"Deposit Accounts"**), (5) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the **"Leases"**), (6) all of the rents, revenues, royalties, income, proceeds, profits, accounts receivable, security and other types of deposits, and other benefits paid or payable by parties to the Leases for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the **"Rents"**), (7) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property (the **"Property Agreements"**), (8) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, (9) all property tax refunds payable with respect to the Mortgaged Property (the **"Tax Refunds"**), (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the **"Proceeds"**), (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor (the **"Insurance"**), and (12) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to any condemnation or other taking (or any purchase in lieu thereof) of all or any portion of the Land, Improvements, Fixtures or Personalty (the **"Condemnation Awards"**). As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

(e) **"Obligations"**: All of the agreements, covenants, conditions, warranties, representations and other obligations of Mortgagor under the Loan Agreement and the other Loan Documents to which it is a party.

(f) **"UCC"**: The Uniform Commercial Code of the State of Illinois or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State of Illinois, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

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ARTICLE 2 GRANT

Section 2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor MORTGAGES, GRANTS, BARGAINS, ASSIGNS, SELLS, CONVEYS and CONFIRMS, to Mortgagee the Mortgaged Property, subject, however, only to the matters that are set forth on Exhibit B attached hereto (the "*Permitted Encumbrances*"), TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

ARTICLE 3 WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property.

Section 3.2 First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than a Permitted Encumbrance is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.3 Payment and Performance. Mortgagor shall pay the Indebtedness when due under the Loan Agreement and the other Loan Documents and shall perform its duties and obligations required under the Loan Documents in full when they are required to be performed.

Section 3.4 Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty owned or leased by Mortgagor to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or is permitted to be removed by the Loan Agreement or in the Mortgagor's normal course of business.

Section 3.5 Inspection. Mortgagor shall permit Mortgagee, and its respective agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and all books and records of Mortgagor located thereon, and to conduct such environmental and engineering studies as Mortgagee may reasonably require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.6 Other Covenants. All of the covenants in the Loan Agreement are incorporated herein by reference to the extent permitted by the applicable law as set forth in Section 9.9 hereof and, together with covenants in this Article 3, shall be covenants running with the Land.

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Section 3.7 Maintenance of Mortgaged Property. (a) Mortgagor shall (i) keep the Mortgaged Property in good condition and repair, and promptly and in a good and workmanlike manner (and with new materials of good quality) complete any Improvements to be constructed on the Land, repair or restore any part of the Mortgaged Property that may be injured, damaged or destroyed, and repair, restore or replace any Goods that may be injured, damaged, destroyed or lost or that may be or become obsolete, defective or worn out (except that Mortgagor shall not be required to repair, restore or replace any such Goods of insignificant value which are not reasonably necessary or appropriate to the efficient operation of the Premises), and in each case pay when due all valid claims for labor, service, equipment and material and any other costs incurred in connection with any such action, (ii) not remove, demolish or materially alter any Improvements except as may be required under Leases, (iii) not construct any Improvements on the Land or undertake any site development work unless contemplated by the Loan Documents or otherwise approved by Mortgagee, (iv) not commit or permit any waste of any part of the Mortgaged Property, (v) not permit or consent to any restriction that would prevent or otherwise impair the use or development of the Mortgaged Property for the purposes contemplated by the Loan Agreement, (vi) comply in all material respects with all legal requirements, including the payment of applicable real estate taxes, and not commit or permit any material violation of any legal requirements which affects any part of the Mortgaged Property or requires any alterations or improvements to be made to any part of the Mortgaged Property, (vii) take such action from time to time as may be reasonably necessary or appropriate, or as Mortgagee may reasonably require, to protect the physical security of the Mortgaged Property, (viii) except as otherwise permitted by the Loan Agreement, not part with possession of or abandon any part of the Mortgaged Property or cause or permit any interest in any part of the Mortgaged Property to be sold, transferred, leased, encumbered, released, relinquished, terminated or otherwise disposed of (whether voluntarily, by operation of law or otherwise), and (ix) take all other action which may be reasonably necessary or appropriate to preserve, maintain and protect the Mortgaged Property, including the enforcement or performance of any rights or obligations of Mortgagor or any conditions with respect to any Rights.

(b) Without limitation on any obligations of Mortgagor under clause (a) above, in the event that (i) all or a substantial or material portion of the Mortgaged Property is injured, damaged or destroyed by fire or other casualty, (ii) any of the Mortgaged Property is damaged, destroyed or lost and any Damage Proceeds (as defined in Section 3.8 hereof) are payable as a result of such occurrence or the cost of the repair, restoration or replacement is reasonably expected to exceed \$500,000 or (iii) any part (but less than all) of the Mortgaged Property is condemned, seized or appropriated by any Governmental Authority (or conveyed, with Mortgagee's consent, in lieu of any such action), the following additional provisions shall apply:

(i) within seventy-five (75) days after the date of such injury, damage, destruction, loss or other event, Mortgagor shall deliver to Mortgagee, in form and substance reasonably satisfactory to Mortgagee: (I) a written plan for the repair, restoration or replacement of the Mortgaged Property (any such repair, restoration or replacement being referred to as a "**Restoration**"), including the estimated cost of the Restoration and time of completion, (II) if requested by Mortgagee, a copy of the plans and specifications for the Restoration when available, and (III) such other Documents and information relating to the Restoration as Mortgagee may reasonably request;

(ii) any contracts entered into by Mortgagor with architects, contractors, subcontractors or suppliers in connection with the Restoration shall be in form and substance reasonably satisfactory to Mortgagee;

(iii) the Restoration shall be conducted in accordance with such procedures and requirements as Mortgagee may reasonably specify and shall be in accordance with

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the applicable plans and specifications (other than deviations therefrom that are immaterial individually and in the aggregate) and the plan referred to in paragraph (i) above and in compliance with all Legal Requirements;

(iv) if Mortgagee reasonably determines at any time that any available Damage Proceeds are insufficient to pay for all of the costs of completing the Restoration, Mortgagee may (I) apply the Damage Proceeds against the Indebtedness in such order as Mortgagee may determine and shall notify Mortgagor of such application of the Damage Proceeds, (II) require Mortgagor to deposit with Mortgagee, and Mortgagor shall so deposit, an amount deemed reasonably necessary by Mortgagee to cover such insufficiency (the "**Shortfall**") and such Shortfall shall be held and disbursed by Mortgagee in accordance with paragraph (v) below; provided, however, that, in the event Mortgagor deposits such Shortfall with Mortgagee, within ten (10) days of receipt of the notice set forth in clause (I) above, the Damage Proceeds shall not be applied in the manner set forth in clause (I) above but shall be disbursed by Mortgagee in accordance with paragraph (v) below; and

(v) any Damage Proceeds that Mortgagee may be required to release for the Restoration pursuant to Section 3.8 hereof, together with any amounts deposited by Mortgagor with Mortgagee pursuant to Section 3.7(b)(iv) hereof, shall be (I) held by Mortgagee, (II) used solely to pay the cost of the Restoration and (III) disbursed in accordance with the terms, conditions and procedures set forth in the Loan Agreement for the making of Advances and/or such other terms, conditions and procedures as Mortgagee may reasonably require (including compliance by Mortgagor with the provisions of paragraphs (i) through (iv) of Section 3.7(b) hereof); provided, however, (x) Mortgagee shall have no obligation to disburse any such amounts if an Event of Default has occurred and is continuing, (y) if the amount of any such Damage Proceeds received by Mortgagee exceeds the cost of completing the Restoration, such excess may be applied by Mortgagee to the Secured Obligations in such order and manner as Mortgagee may determine or, at the option of Mortgagee, may be released to Mortgagor and (z) if no Event of Default shall have occurred and be continuing, any additional amounts deposited by Mortgagor with Mortgagee pursuant to this Section 3.7 that remain unexpended upon the completion of the Restoration shall be released to Mortgagor. Any application or release of Damage Proceeds or additional amounts deposited with Mortgagee pursuant to this Section 3.7 shall not cure or waive any Event of Default or notice of default or invalidate any act done pursuant to such notice.

Section 3.8 Insurance; Condemnation Awards and Insurance Proceeds.

(a) Mortgagor shall maintain fire and other insurance on the Required Insurance (as defined below). All proceeds of any claim, demand, award, settlement or other payment arising or resulting from or otherwise relating to the Required Insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property (a "**Damage Claim**") are hereby assigned and shall be payable and delivered to Mortgagee (any such proceeds of any Damage Claim being referred to in this Section 3.8 as "**Damage Proceeds**"). Mortgagor shall take all action reasonably necessary or required by Mortgagee in order to protect Mortgagor's and Mortgagee's rights and interests with respect to any Damage Claim, including the commencement of, appearance in and prosecution of any appropriate action or other proceeding, and Mortgagee may in its discretion participate in any such action or proceeding at the expense of Mortgagor.

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(b) So long as no Event of Default has occurred and is continuing, Mortgagor may settle, compromise or adjust any Damage Claim with the prior written consent of Mortgagee, such consent not to be unreasonably delayed or withheld. Upon the occurrence and during the continuance of any Event of Default, Mortgagee shall have the sole right to settle, compromise or adjust any Damage Claim in such manner as Mortgagee may reasonably determine, and for this purpose Mortgagee may, in its own name or in the name of Mortgagor, take such action as Mortgagee deems appropriate to realize on any such Damage Claim. In either case, all Damage Proceeds payable in connection with any such Damage Claim shall be delivered directly to Mortgagee.

(c) Any Damage Proceeds received by Mortgagee may be applied by Mortgagee in payment of the Indebtedness in such order and manner as Mortgagee may reasonably determine, provided that so long as no Event of Default has occurred and is continuing, Mortgagee shall release such Damage Proceeds to Mortgagor for the maintenance of the Mortgaged Property as provided herein, except that Mortgagee shall not be required to release such Damage Proceeds (and may apply such Damage Proceeds to the Indebtedness as set forth above) to the extent that such Damage Proceeds relate to any condemnation, seizure or other appropriation by any governmental agency of all or any portion of the Mortgaged Property (including Damage Proceeds payable in lieu of any such action), or if Mortgagee has reasonably determined that the security of this Mortgage has been materially impaired, or will be materially impaired upon release of Damage Proceeds to Mortgagor.

(d) In addition to any insurance required to be maintained by Mortgagor pursuant to the other Loan Documents, Mortgagor shall at its own expense at all times maintain or cause to be maintained on all of the Mortgaged Property the following insurance (the "*Required Insurance*"):

(i) Insurance against loss customarily included under standard "All Risk" policies including flood, earthquake, vandalism, and malicious mischief, boiler and machinery, and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the premises in nature, use, location, height, and type of construction. Such insurance policy shall also insure costs of demolition and increased cost of construction (which insurance for demolition and increased cost of construction may contain a sub limit of \$1,000,000). The amount of such insurance shall be not less than one hundred percent (100%) of the replacement cost value of the improvements. Each such insurance policy shall contain an agreed amount replacement cost endorsement and shall cover, without limitation, all tenant improvements and betterments that Mortgagor is required to insure on a replacement cost basis. If the insurance required under this paragraph is not obtained by blanket insurance policies, the insurance policy shall be endorsed to also provide guaranteed building replacement cost to the building and such tenant improvements in an amount to be subject to the consent of the mortgagee, which consent shall not be unreasonably withheld. Mortgagee shall be named "Loss Payee" on a standard mortgagee endorsement.

(ii) Comprehensive boiler and machinery insurance covering all mechanical and electrical equipment against physical damage, rent loss and improvements loss and covering, without limitation, all tenant improvements and betterments that Mortgagor is required to insure pursuant to the lease on a replacement cost basis and in the minimum amount of \$5,000,000.

(iii) Rent loss and/or business interruption insurance as an extension to coverage required in (1) and (2) above in an amount not less than the amount of rent payable annually. Mortgagee shall be named as "Loss Payee" as respects this coverage.

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(iv) Public Liability insurance, including, without limitation, commercial general liability insurance; owned, hired and non-owned auto liability; and "Umbrella Liability" coverage for personal injury, bodily injury, death, accident and property damage, providing in combination no less than \$50,000,000 per occurrence and in the annual aggregate on per location bases. The policies described in this paragraph shall cover, without limitation: elevators, escalators, independent contractors, contractual liability (covering, to the maximum extent permitted by law, Mortgagor's obligation to indemnify Mortgagee as required under this deed), products and completed operations liability coverage.

(v) Workers compensation and disability insurance as required by law.

(vi) Such other types and amounts of insurance with respect to the premises and the operation thereof that are commonly maintained in the case of other property and buildings similar to the premises in nature, use, location, height, and type of construction, as may from time to time be required by Mortgagee.

The property, boiler and machinery insurance policies shall name Mortgagee under a non-contributing New York standard mortgagee clause or an equivalent endorsement satisfactory to and shall be otherwise reasonably satisfactory to Mortgagee in both their form and content. Additionally, loss of rental income insurance shall name Mortgagee as "Loss Payee".

All property insurance policies also shall include a co-insurance waiver and "agreed amount" endorsement. The amount of any deductible under any Required Insurance policy must be reasonably acceptable to Mortgagee. Without Mortgagee's prior written consent, Mortgagor shall not name any person other than Mortgagee, as "Loss Payee" as respects the Mortgaged Property, nor shall Mortgagor carry separate or additional insurance coverage covering the improvements concurrent in form or contributing in the event of loss with that required by this Mortgage or the Loan Documents; provided that, if blanket policies are obtained, this sentence shall not apply to property covered by such blanket policies other than the improvements and such tenant improvements and betterments that Mortgagor is required to insure pursuant to the Loan.

(e) Mortgagor will duly and punctually comply, or cause compliance with, all of the material terms and conditions of any insurance policy covering or applicable to the Mortgaged Property (whether or not expressly required hereunder), all material requirements of the issuer of any such policy and all orders, rules and other requirements of the National Board of Fire Underwriters (or any body exercising similar functions) binding upon Mortgagor or applicable to or affecting the Property or any use or condition thereof. The types, terms, conditions, coverages and policy limits of insurance maintained pursuant to Section 3.8(d) hereof may be increased, decreased, amended, supplemented or otherwise modified from time to time to the extent available and at a reasonable cost to reflect what prudent owners and/or lessees of buildings or improvements similar in type and locality to the Mortgaged Property would carry, as certified by Mortgagor to Mortgagee.

(f) All Required Insurance shall be evidenced by valid and enforceable policies, in form and substance, and issued by and distributed among insurers of recognized responsibility having an A.M. Best rating of A:X or better or as otherwise acceptable to Mortgagee, or other equivalent rating from another agency acceptable to Mortgagee and in all respects satisfactory to Mortgagee. Notwithstanding the preceding sentence, all syndicate carriers (including, without being limited to, Lloyd's syndicates) must be pre-approved in writing by Mortgagee and must be acceptable to Mortgagee and in all respects satisfactory to Mortgagee. The originals of all such policies, or certified duplicate copies or certificates thereof (accompanied by photostats of the policies as soon as available), shall be delivered to the

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Mortgagee concurrently with the execution and delivery of this Mortgage and, thereafter (i) all quotations, synopses and letters of amendment thereto in respect of proposed coverage, as well as definitive insurance binders relating to the renewal or replacement policies, shall be delivered to the Mortgagee as soon as reasonably practicable prior to the expiration of the policy or policies to be renewed or replaced and (ii) all renewal or replacement policies, or certified duplicate copies or certificates thereof (accompanied by photostats of the policies), shall be delivered to the Mortgagee as soon as reasonably practicable after the expiration date of the policy or policies to be renewed or replaced, in each case accompanied by evidence that all premiums currently payable with respect to such policies have been paid in full.

(g) Except in the case of workers' compensation, personal liability and loss of rents/business interruption insurance, all Required Insurance shall provide that (i) the insureds named therein shall include Mortgagee as an additional insured, mortgagee and "Loss Payee", (ii) all losses payable thereunder in amounts less than or equal to \$25,000 shall be payable directly to Mortgagee, (iii) all losses payable thereunder in excess of \$25,000 shall be payable to Mortgagee and Mortgagee pursuant to a standard mortgagee clause naming Mortgagee with loss payable to Mortgagee without contribution, (iv) such policies may not be canceled or amended without at least thirty (30) days' prior written notice to Mortgagee and each insurance policy shall contain a provision whereby the insurer (A) agrees that such policy shall not be canceled or terminated, unless a 30 day notice of such modification has been sent via certified mail to Mortgagee (B) waives any right to claim any premiums and commissions against Mortgagee, provided that the policy need not waive the requirement that the premium be paid in order for a claim to be paid to the insured and (C) provides that Mortgagee is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payments of premiums. Notwithstanding the foregoing sentence, such policies may be canceled or amended for non-payments of premiums with at least ten (10) days' prior written notice. In the event any insurance policy (except for general public and other liability and Workers Compensation insurance) shall contain breach of warranty provisions, such policy shall provide that with respect to the interest of the Mortgagee, such insurance policy shall not be invalidated by, shall not result in any forfeiture of such insurance or any part thereof, shall not in any way affect the amounts which may be collected under any such insurance with respect to Mortgagee and shall insure Mortgagee regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such policy by any named insured or its agents, servants or employees, (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by the mortgagee pursuant to any provision of this Mortgage. All losses payable to Mortgagee pursuant hereto shall be assigned and paid directly to Mortgagee for deposit into an account with Mortgagee to be held and applied in accordance with the terms hereof. In the case of all third party liability and automobile liability policies, each shall be endorsed to include Mortgagee as an additional insured with respect to the Mortgaged Property.

(h) The Required Insurance may consist of blanket policies insuring the Mortgaged Property and other property of Mortgagee (and its affiliates); provided that such policy or policies shall (i) set forth the amount of insurance in force thereunder applicable to the Mortgaged Property, which amounts shall be not less than the amounts required pursuant to this Section 3.8, (ii) otherwise comply with the provisions of this Section 3.3 and (iii) afford the same protections to Mortgagee as would be provided by policies individually applicable to the Mortgaged Property, provided that if a portion of such policy covers the Required Insurance, the total coverage afforded under such portion shall be on an "occurrence" basis, and provided further that if Mortgagee converts any insurance policy from an "occurrence" to a "claims" basis (or vice versa), Mortgagee shall cause the risk to be covered by such policy to be continuously insured against notwithstanding such change. If, notwithstanding the provisions of Section 3.8(g) hereof, any insurance proceeds in excess of \$25,000 are made payable to Mortgagee, rather than to Mortgagee as required, Mortgagee shall promptly deliver such proceeds, in the form received but with any necessary endorsements, to Mortgagee and Mortgagee hereby irrevocably appoints

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Mortgagee as its attorney-in-fact, coupled with an interest, to endorse and/or transfer any such payment to the name of Mortgagee. All such proceeds shall be held and disbursed in accordance with the terms hereof.

(i) If Mortgagee shall by any manner acquire the title or estate of Mortgagor in or to any portion of the Mortgaged Property, it shall thereupon, to the extent such insurance policies are not blanket insurance policies of Mortgagor, become the sole and absolute owner of all insurance policies held by or required hereunder to be obtained, affecting such portion, with the sole right to collect and retain all unearned premiums thereon, and Mortgagor shall be entitled only to a credit, in reduction of the then outstanding Secured Obligations secured hereby, in the amount of any cancellation refund actually received by Mortgagee. To the extent applicable, Mortgagor agrees, immediately upon demand, to execute and deliver such assignments or other authorizations or instruments as may be necessary or desirable to effectuate the foregoing.

(j) In the event that Mortgagor fails to (i) provide, maintain or keep in force the Required Insurance or (ii) deliver and furnish to Mortgagee the original policies of insurance (or certified duplicate copies or certificates thereof, accompanied by photostats of the policies) or definitive binders relating to renewal or replacement policies pursuant to this Section 3.8 prior to the expiration, cancellation or amendment of existing policies, Mortgagee may at its sole option (but in no event shall Mortgagee be so obligated) obtain such insurance, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, with interest thereon, from the date on which such premiums are paid by Mortgagee until Mortgagor shall reimburse Mortgagee for such amounts, at the interest rate set forth in the Loan Agreement for such amounts and such sums, until paid, shall be secured by this Mortgage. Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the provisions of this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes, or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the obligations. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain itself.

(k) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be obtained and maintained under this Section 3.8. Subject to the foregoing, any insurance effected by Mortgagor on any part of the Mortgaged Property whether or not required under this Mortgage, shall be for the benefit of Mortgagee and Mortgagor and shall be subject to all other provisions of this Mortgage.

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ARTICLE 4 *[Intentionally Omitted]*

ARTICLE 5 DEFAULT AND FORECLOSURE

Section 5.1 Remedies. Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration. Subject to any provisions of the Loan Documents providing for the automatic acceleration of the Indebtedness upon the occurrence of certain Events of Default, declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) Entry on Mortgaged Property. Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Mortgagor remains in possession of the Mortgaged Property following the occurrence and during the continuance of an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

(c) Operation of Mortgaged Property. Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 5.7.

(d) Foreclosure and Sale. Institute proceedings for the complete foreclosure of this Mortgage by judicial action, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. With respect to any notices required or permitted under the UCC, Mortgagor agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale. If Mortgagee is the highest bidder, Mortgagee may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. In the event this Mortgage is foreclosed by judicial action, appraisal of the Mortgaged Property is waived.

(e) Receiver. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent,

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maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7.

(f) Other. Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

Section 5.2 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee in its sole discretion may elect. The right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 5.3 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 5.4 Release of and Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Mortgagee may resort to any other security in such order and manner as Mortgagee may elect.

Section 5.5 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of Mortgagee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

Section 5.6 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 5.7 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the

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Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

(b) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(c) the balance, if any, to the Persons legally entitled thereto.

Section 5.8 Occupancy After Foreclosure. Any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1(d) will divest all right, title and interest of Mortgagor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Mortgagor retains possession of such property or any part thereof subsequent to such sale, Mortgagor will be considered a tenant at sufferance of the purchaser, and will, if Mortgagor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

Section 5.9 Additional Advances and Disbursements; Costs of Enforcement.

(a) Upon the occurrence and during the continuance of any Event of Default Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 5.9, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the highest rate at which interest is then computed on any portion of the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

Section 5.10 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

ARTICLE 6 ASSIGNMENT OF RENTS AND LEASES

Section 6.1 Assignment. In furtherance of and in addition to the assignment made by Mortgagor in Section 2.1 of this Mortgage, Mortgagor hereby absolutely and unconditionally assigns,

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sells, transfers and conveys to Mortgagee all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Mortgagor shall have a revocable license from Mortgagee to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Mortgagor, the license herein granted shall automatically expire and terminate, without notice to Mortgagor by Mortgagee (any such notice being hereby expressly waived by Mortgagor to the extent permitted by applicable law).

Section 6.2 Perfection Upon Recordation. Mortgagor covenants that upon recordation of this Mortgage Mortgagee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Mortgagor acknowledges and agrees that upon recordation of this Mortgage Mortgagee's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Mortgagor and all third parties following recovery of possession of the Mortgaged Property by Mortgagee. For purposes of this, "possession" shall mean any one of the following to the extent permitted by applicable law: (a) actual possession of the Mortgaged Property or (b) taking affirmative actions to gain possession of the Mortgaged Property that would constitute constructive possession of the Mortgaged Property such as court authorization to collect Rents or appointment of a receiver. To the extent permitted by applicable law, Mortgagee shall have the right to collect Rents without taking possession of the Mortgaged Property.

Section 6.3 Bankruptcy Provisions Without limitation of the absolute nature of the assignment of the Rents hereunder, Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "security agreement" for purposes of Section 552(b) of Title 11 of the United States Code (the "*Bankruptcy Code*"), (b) the security interest created by this Mortgage extends to property of Mortgagor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

Section 6.4 No Merger of Estates. So long as part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any tenant or any third party by purchase or otherwise.

ARTICLE 7 SECURITY AGREEMENT

Section 7.1 Security Interest. This Mortgage constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance, Condemnation Awards and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the

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Personalty, Fixtures, Leases, Rents, Deposit Accounts, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards sent to Mortgagor at least twenty (20) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 7.2 Financing Statements. Mortgagor shall prepare and deliver to Mortgagee such financing statements, and shall execute and deliver to Mortgagee such documents, instruments and further assurances, in each case in form and substance satisfactory to Mortgagee, as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder. Mortgagor hereby irrevocably authorizes Mortgagee to cause financing statements (and amendments thereto and continuations thereof) and any such documents, instruments and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor represents and warrants to Mortgagee that Mortgagor's jurisdiction of organization is the State of Delaware. After the date of this Mortgage, Mortgagor shall not change its name, type of organization, organizational identification number (if any), jurisdiction of organization or location (within the meaning of the UCC) without giving at least thirty (30) days' prior written notice to Mortgagee.

Section 7.3 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. The information provided in this Section 7.3 is provided so that this Mortgage shall comply with the requirements of the UCC for a mortgage instrument to be filed as a financing statement. Mortgagor is the "Debtor" and its name and mailing address are set forth in the preamble of this Mortgage immediately preceding Article 1. Mortgagee is the "Secured Party" and its name and mailing address from which information concerning the security interest granted herein may be obtained are also set forth in the preamble of this Mortgage immediately preceding Article 1. A statement describing the portion of the Mortgaged Property comprising the fixtures hereby secured is set forth in Section 1.1(c) of this Mortgage. Mortgagor represents and warrants to Mortgagee that Mortgagor is the record owner of the Mortgaged Property, and the organizational identification number of Mortgagor is 4514279.

ARTICLE 8 *[Intentionally Omitted]*

ARTICLE 9 MISCELLANEOUS

Section 9.1 All notices, approvals, consents requests, demands and other communications with, to, from or upon the respective parties hereto shall be in writing and shall be hand delivered or sent by internationally recognized, guaranteed overnight delivery service or by facsimile, addressed as follows:

If to Lender:

Westdeutsche ImmobilienBank AG
Grosse Bleiche 46
55116 Mainz
Federal Republic of Germany
Attention: Michaela Budde
Facsimile: 49 6131 9280-7308

With a required copy to:

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Shearman & Sterling
 599 Lexington Avenue
 New York, New York 10022
 Attention: Robert W. Fagiola, Esq.
 Telephone : 212-848-7606
 Facsimile: 212-848-7300

If to Borrower:

AFIAA Elston Logan, LLC
 119 West 23rd Street, Suite 1003
 New York, NY 10011
 Attention: Christopher Duisberg
 Facsimile: 212-602-8092

With a required copy to:

AFIAA Investment AG
 Stockenstrasse 60
 CH-8002 Zurich
 Switzerland
 Attention: Axel Schuhmacher
 Facsimile: 41 44 245 4949

With a required copy to:

Strook & Strook & Lavan LLP
 180 Maiden Lane
 New York, NY 10038
 Attention: Peter G. Koffler, Esq.
 Facsimile: 212-806-2686

or to such other address as either party may designate from time to time by notice to the other in the manner set forth herein. All such communications shall be deemed to be given on the day received.

Section 9.2 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Land. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property. All persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Agreement and the other Loan Documents; *provided, however*, that no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 9.3 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, with full authority in the place and stead of Mortgagor and in the name of Mortgagor or otherwise (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within twenty (20) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Deposit Accounts, Property

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Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare and file or record financing statements and continuation statements, and to prepare, execute and file or record applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) after the occurrence and during the continuance of any Event of Default, to perform any obligation of Mortgagor hereunder; *provided, however*, that (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the highest rate at which interest is then computed on any portion of the Indebtedness; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3.

Section 9.4 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 9.5 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 9.6 Loan Agreement. If any conflict or inconsistency exists between this Mortgage and the Loan Agreement, the Loan Agreement shall control and govern to the extent of any such conflict or inconsistency.

Section 9.7 Release or Reconveyance. Upon payment in full of the Indebtedness and performance in full of the Obligations or upon a sale or other disposition of the Mortgaged Property permitted by the Loan Agreement, Mortgagee, at Mortgagor's request and expense, shall release the liens and security interests created by this Mortgage.

Section 9.8 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness or Obligations secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 9.9 Applicable Law. The provisions of this Mortgage shall be governed by and construed under the laws of the state in which the Mortgaged Property is located.

Section 9.10 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 9.11 Severability. If any provision of this Mortgage shall be held by any court of competent jurisdiction to be unlawful, void or unenforceable for any reason, such provision shall be deemed severable from and shall in no way affect the enforceability and validity of the remaining provisions of this Mortgage.

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Section 9.12 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor relating to the subject matter hereof and thereof and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents 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.

ARTICLE 10 LOCAL LAW PROVISIONS

Section 10.1. Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Article 10 and the other provisions of this Mortgage, the terms and conditions of this Article 10 shall control and be binding.

Section 10.2. Maximum Principal Sum. Notwithstanding anything herein to the contrary, it is agreed that the maximum amount of Indebtedness secured by this Mortgage, including all advancements, at any one time shall not exceed \$12,660,000.00.

Section 10.3. In Rem Proceedings. Supplementing Section 5.1 hereof, mortgage foreclosures and other *In Rem* proceedings against Mortgagor may be brought in Cook County, Illinois or any federal court of competent jurisdiction in Illinois.

Section 10.4. Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "*Act*"), 735 ILCS 5/15-1101, et seq., and with respect to such Act Mortgagor agrees and covenants that:

(a) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(b) Wherever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale;

(c) All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or the Loan Agreement or by the Act (collectively "*Protective Advances*"), shall have the benefit of all applicable provisions of the Act. All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Agreement. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act;

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(d) In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701, 5/15-1703 and 5/15-1704 of the Act; and

(e) Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

Section 10.5 Variable Rate; Additional Interest. This Mortgage secures the full and timely payment of the Indebtedness, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest as provided in the Loan Agreement.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 1st day of July, 2008, before me, the undersigned, personally appeared Christopher Duisberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument the individual or the person upon behalf of which the individual acted executed the instrument.



Signature and Office of individual taking acknowledgement

PETER G. KOFFLER
Notary Public, State of New York
No. 02K04954205
Qualified in Westchester County
Commission Expires 08/24/20 08

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION

The permanent tax index numbers for the Land are

14-30-304-004-0000

14-30-304-012-0000

14-30-304-014-0000

14-30-304-016-0000

14-30-304-018-0000.

Legal Description of premises located at 2700 North Elston Avenue, Chicago, Illinois:

PARCEL 1:

THE NORTHEASTERLY 1/2 OF VACATED HOLLY AVENUE, LYING SOUTHWESTERLY OF AND ADJOINING LOTS 26, 27 AND 28 IN BLOCK 1 IN JONES' SUBDIVISION OF LOT 6 IN THE SNOW ESTATE SUBDIVISION, RECORDED OCTOBER 25, 1889 AS DOCUMENT NUMBER 1176031, IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; AND LOT 5 IN COLBERT'S SUBDIVISION OF LOTS 29 TO 33, BOTH INCLUSIVE, RECORDED OCTOBER 14, 1896 AS DOCUMENT NUMBER 24524489; AND LOTS 38 TO 42, BOTH INCLUSIVE IN BLOCK 1 OF JONES' SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 18, 19, 20 AND 21 (EXCEPT THE NORTHWESTERLY 16.00 FEET OF SAID LOT 21) AND THE 16-FOOT VACATED ALLEY, LYING SOUTHWESTERLY OF AND ADJOINING SAID LOTS 18, 19, 20 AND 21 (EXCEPT THE NORTHWESTERLY 16.00 FEET OF SAID LOT 21) AND LOTS 26, 27 AND 28 ALL IN BLOCK 1 IN JONES' SUBDIVISION OF LOT 6 IN SNOW ESTATE SUBDIVISION RECORDED OCTOBER 25, 1889 AS DOCUMENT NUMBER 1176031 IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 1 TO 5 IN COLBERT'S SUBDIVISION OF LOTS 29 TO 33, BOTH INCLUSIVE, AND LOTS 38 TO 42, BOTH INCLUSIVE, RECORDED OCTOBER 14, 1896 AS DOCUMENT NUMBER 24524489, IN BLOCK 1 IN JONES' SUBDIVISION OF LOT 6 IN SNOW ESTATE SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THAT PARTY WALL AGREEMENT RECORDED SEPTEMBER 7, 2001, AS DOCUMENT 0010834554 FOR THE MAINTENANCE AND USE OF SAID PARTY WALL AS DEPICTED ON EXHIBIT 'C' ATTACHED THERETO.

UNOFFICIAL COPY

EXHIBIT B

PERMITTED ENCUMBRANCES

Those exceptions set forth in Schedule B of that certain policy of title insurance issued to Mortgagee by Chicago Title Insurance Company on or about the date hereof pursuant to commitment number 1401-008442874-D2.

Property of Cook County Clerk's Office