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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 0906222057 Fee: \$104.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/03/2009 11:24 AM Pg: 1 of 35

**Report Mortgage Fraud**  
800-532-8785

The property identified as: **PIN: 12-30-101-011-0000**

**Address:**

**Street:** 635 Northwest Avenue

**Street line 2:**

**City:** Northlake

**State:** IL

**ZIP Code:** 60164

**Lender:** Allianz Life Insurance Company of North America

**Borrower:** Duke Secured Financing 2009-1ALZ, LLC

**Loan / Mortgage Amount:** \$21,650,000.00

This property is located within Cook County and is exempt from the requirements of 765 LCS 77/70 et seq. because it is commercial property.

**Certificate number:** 3D8BEB81-C16F-4E71-9FE9-8F3E30F48A74

**Execution date:** 02/26/2009

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This document prepared by and  
after recording return to:  
Husch Blackwell Sanders LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112  
Attention: Gaylord G. Smith

635 Northwest Ave., Northlake, IL  
PIN 12-30-101-011-0000  
599 Northwest Ave., Northlake, IL  
PIN 12-30-300-013-0000

NCS-347876-010/-011  
MM2

For Recorder's Use Only

10115-C

**MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") is made as of this 26<sup>th</sup> day of February, 2009, by DUKE SECURED FINANCING 2009-1ALZ, LLC, a Delaware limited liability company ("Borrower"), as mortgagor, to and in favor of ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation ("Lender"), as mortgagee, with an address is c/o Allianz of America, Inc., 55 Greens Farms Road, Post Office Box 5160, Westport, Connecticut 06881-5160, Attn: Real Estate Department.

**RECITALS**

A. Lender has agreed to make a loan (the "Loan") to Borrower in the amount of \$21,650,000.00. The Loan is evidenced by that certain Promissory Note of even date herewith in the original principal amount of \$21,650,000.00 (which note, together with all notes issued in substitution or exchange therefor and all amendments thereto, is hereinafter referred to as the "Note"), providing for monthly payments as set forth in the Note.

B. Lender wishes to secure: (i) the prompt payment of the Note, together with all interest, premiums, and other amounts, if any, due in accordance with the terms of the Note, as well as the prompt payment of any additional indebtedness accruing to Lender or account of any future payments, advances or expenditures made by Lender pursuant to the Note or this Mortgage or any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, but excluding the Hazardous Materials Indemnity Agreement of even date herewith given by Borrower and "Principal" (hereinafter defined) to Lender (such documents together with any modifications, renewals, extensions or replacements thereof, are hereinafter collectively referred to as the "Loan Documents"); (ii) the prompt performance of each and every covenant, condition, and agreement contained in the Loan Documents of Borrower; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Borrower, when the document evidencing same recites that it is intended to be secured hereby. All payment obligations of Borrower to Lender are hereinafter

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sometimes collectively referred to as the “Indebtedness”, and all other obligations of Borrower to Lender are hereinafter sometimes collectively referred to as the “Obligations”.

NOW, THEREFORE, TO SECURE the repayment of the Indebtedness and the performance of the Obligations, Borrower has executed this Mortgage and does hereby **GRANT, BARGAIN, CONVEY, WARRANT, ASSIGN, PLEDGE, TRANSFER and MORTGAGE** to Lender, its successors and assigns, forever all of Borrower’s estate, right, title and interest, whether now or hereafter acquired, in and to the following described property, whether now or hereafter acquired, and all proceeds thereof (said property collectively referred to as the “Property”):

- (a) The real estate described on Exhibit A attached hereto (the “Land”);
- (b) All of the following (collectively, the “Improvements”): all buildings, improvements and fixtures of every kind or nature situated on the Land; to the extent not owned by tenants of the Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;
- (c) To the extent assignable, all plans, specifications, architectural renderings, drawings, soil test reports, other reports of examination or analysis of the Land or the Improvements;
- (d) All easements, rights-of-way, water courses, water rights, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto (“Appurtenances”);
- (e) All agreements affecting the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into (individually referred to as a “Lease” and collectively as the “Leases”), and all rents, deposits, prepayments, termination payments, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing under the Leases (the “Rents”);
- (f) All claims, demands, judgments, insurance proceeds, tax refunds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from or relating to (i) the taking of the Land or the Improvements or any part thereof under the power of eminent domain, (ii) or for any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof, or (iii) the ownership or operation of the Property;
- (g) To the extent assignable, all management contracts, permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation and use of the Land, Improvements and/or Leases, including building permits, environmental certificates, licenses, certificates of operation, warranties and guaranties;

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(h) All accounts, contract rights, general intangibles, chattel paper, documents, instruments, inventory, equipment and all books and records relating to the foregoing;

(i) Any monies on deposit with or for the benefit of Lender, including deposits for the payment of real estate taxes;

(j) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or any other property of the types described in the preceding granting clauses or Appurtenances; and

(k) Any and all after-acquired right, title or interest of Borrower in and to any property of the types described in the preceding granting clauses.

TO HAVE AND TO HOLD the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default (as hereinafter defined) hereunder subject only to the "Permitted Encumbrances" (as hereinafter defined); Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Borrower covenants and agrees with Lender as follows:

1. Payment of Indebtedness; Performance of Obligations.

Borrower shall promptly pay when due the Indebtedness and shall promptly perform all Obligations.

2. Taxes and Other Obligations.

(a) Borrower shall pay, when due, and before any interest collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges and obligations, which may become a lien on or charge against the Property (collectively, "Charges"). Borrower shall have the right to contest, in good faith by appropriate proceedings, the amount or validity of any such Charges, so long as: (i) Borrower has given prior written notice to Lender of Borrower's intent to so contest or object to any such Charges; and (ii) such contest stays the enforcement or collection of the Charges or any lien created; the total amount of such Charges is in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), Borrower has bonded over such lien pursuant to a bond, in form and substance satisfactory to Lender, or provided additional security satisfactory to Lender; provided, however, that in the event such contest does not stay the enforcement of collection of such Charges, Borrower may contest such Charges so long as Borrower pays such Charges when due (which may be done "under protest").

(b) Should Borrower fail to make any of such payments or properly bond over or otherwise secure any such liens, Lender may, at its option and at the expense of Borrower, pay the amounts due for the account of Borrower. Upon the request of Lender, Borrower shall immediately furnish to Lender all notices of amounts due and receipts evidencing payment. Borrower shall promptly notify Lender of any lien on all or any part of the Property and shall

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promptly discharge any unpermitted lien or encumbrance (provided Borrower may pay assessments in accordance with the payment schedule for such assessments).

### 3. Reserves for Taxes and Insurance.

At the time of and in addition to the monthly installments due under the Note, Borrower shall pay, to tender a sum equal to one-twelfth (1/12) of the amount estimated by Lender to be sufficient to pay at least thirty (30) days before they become due and payable, all taxes, assessments (in accordance with the payment schedule for such assessments) and other similar charges levied against the Property (collectively, the "Taxes") and all insurance required to be maintained by Borrower under the terms hereof (collectively, the "Insurance"). So long as no Event of Default exists hereunder, Lender shall apply the sums to pay the Taxes and Insurance. These sums may be commingled with the general funds of Lender, and no interest shall be payable thereon to Borrower by Lender. If Lender at any time reasonably determines that such amount on deposit is insufficient to fully pay such Taxes and Insurance, Borrower shall, within ten (10) days following written notice from Lender, deposit such additional sum as may be required by Lender. On the date when the Note is due and payable in full according to its terms, or any earlier date on which the entire unpaid principal amount shall be paid or required to be paid in full, whether by prepayment, acceleration or otherwise (the "Maturity Date"), the moneys then remaining on deposit with Lender or its agent shall, at Lender's option, be applied against the Indebtedness or returned to Borrower. The obligation of Borrower to pay the Taxes and Insurance is not affected or modified by the provisions of this paragraph.

### 4. Use of Property.

Borrower shall not initiate or acquiesce in a change in the zoning classification or permitted use of the Property under applicable zoning or land use laws without Lender's prior written consent.

### 5. Insurance.

(a) Risks to be Insured. Borrower, at its sole cost and expense, will maintain insurance of the following character:

(1) Insurance on the buildings and other improvements now existing or hereafter erected on the Land and on the fixtures and personal property included in the Property against loss by fire, and other hazards covered by the so-called "special form" of policy, and terrorism coverage (for so long as available at a commercially reasonable premium, and if excluded from the coverage of Borrower's property damage policy), without a coinsurance clause (or with a coinsurance clause and an endorsement approved by Lender) in an amount equal to the full replacement cost thereof without deduction for physical depreciation. While any building or other improvement is in the course of being constructed or rebuilt on the Land, Borrower shall provide the aforesaid hazard insurance in a builder's risk completed value policy including coverage available on the so-called "all-risk" non-reporting form of policy for an amount equal to one hundred percent (100%) of the insurable replacement cost of such building or other improvement.

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(2) If the Property includes steam boilers or other equipment for the generation or transmission of steam, insurance against loss or damage by explosion, rupture or bursting of steam boilers, pipes, turbines, engines and other pressure vessels and equipment, in an amount satisfactory to Lender, without a coinsurance clause.

(3) If the Land or any part thereof is located in a designated official flood-hazardous area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Land in an amount equal to the lesser of the insurable replacement cost thereof or the maximum limit of coverage made available with respect to such buildings and improvements under the Federal Flood Disaster Protection Act of 1973, as amended, and the regulations issued thereunder.

(4) Comprehensive general liability insurance protecting against claims arising from any accident or occurrence in or upon the Property in form satisfactory to Lender, in an amount not less than Five Million Dollars (\$5,000,000.00).

(5) While any building or improvement is in the course of being constructed, renovated or rebuilt on the Land, such workers' compensation insurance as is required by statute.

(6) Insurance against interruption of business in respect of the Property on an actual loss sustained basis in an amount equal to at least one (1) year's total income from the Property.

(7) Such other insurance and coverage terms as Lender may from time to time require, provided that such insurance is generally required by institutional lenders for properties similar to the Property.

(b) Policy Provisions. All insurance policies and renewals thereof maintained by Borrower pursuant to Subparagraphs 5(a)(1) through (a)(6) shall (i) be written by an insurance carrier with a rating of A:X or higher in Best's Insurance Reports, and otherwise satisfactory to Lender; (ii) where applicable, contain a standard non-contributory mortgagee clause in favor of and in form acceptable to Lender, (iii) contain an agreement of the insurer that it will not cancel or materially modify the policy except after thirty (30) days' prior written notice to Lender or (10) days' prior written notice for non-payment of premium, (iv) name Lender as an additional insured where applicable, (v) contain a deductible amount of not more than One Hundred Thousand Dollars (\$100,000.00) (except for flood insurance, for which the deductible shall be the lowest amount available), and (vi) be satisfactory to Lender in all other commercially reasonable respects.

(c) Delivery of Policy. Borrower will deliver certificates evidencing the insurance which is required under Subparagraphs 5(a)(1) through (a)(6) on ACORD Forms 25 and 28 (2003/10), and upon request from Lender Borrower shall promptly furnish to Lender copies of all renewal notices and all receipts of paid premiums received by it. At least ten (10) days prior to the expiration date of a required policy, Borrower shall deliver to Lender evidence that the policies have been renewed. If Borrower has a blanket insurance policy in force providing coverage for several properties of Borrower, including the Property, Lender will accept a

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certificate of such insurance on ACORD Forms 25 and 28 (2003/10); provided the certificate sets forth the amounts of insurance and coverage, and such amounts are at least equal to the amounts required hereinabove, the original policy of insurance is written by a carrier or carriers acceptable to Lender, insures against the risks set forth hereinabove, cannot be amended, modified or canceled without thirty (30) days' prior written notice [ten (10) days for non-payment of premium] to any mortgagee of Borrower, is in an amount not less than the unpaid principal balance secured by this Mortgage, and has a full replacement cost endorsement meeting the requirements of Subparagraph 5(a)(1).

(d) Assignment of Policy. If the Property is sold at a foreclosure sale or if Lender shall acquire title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies required under Subparagraphs 5(a)(1) through (a)(3) and (a)(6) hereof and the unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition; provided, however, that if such required coverages are maintained under so-called "blanket" policies insuring properties in addition to the Property, Lender shall not be entitled to such policies, but shall nevertheless be entitled to the proceeds of such policies with respect to the Property.

(e) Lender's Right to Procure Insurance. In the event that Borrower fails to provide evidence of the insurance required herein, and the annual renewal of such insurance, upon five (5) days prior notice to Borrower, Lender shall have the right to procure or renew such insurance and pay any and all premiums in connection therewith, and all sums so paid by Lender shall be paid to Lender within ten (10) days of written demand therefor, shall bear interest from the date of expenditure at the "Default Rate" as defined in the Note, and shall be secured by the lien of this Mortgage.

## 6. Casualty.

(a) Notice of Damage or Destruction; Adjusting Loss. Borrower shall promptly notify Lender of any loss related to the Property in excess of One Million Dollars (\$1,000,000.00), whether covered by insurance or not. In case of loss or damage by fire or other casualty, Lender, or after foreclosure, the purchaser at foreclosure (with respect to fire or casualty occurring prior to foreclosure), is authorized (i) to settle and adjust any claim under insurance policies which insure against such risks (with the duty of Lender to meet and confer with Borrower), or (ii) to allow Borrower to agree with the insurance company or companies on the amount to be paid in regard to such loss; provided, however, so long as no "Event of Default" (as defined in Paragraph 19) then exists, Borrower shall have the right to settle all insurance claims involving amounts up to One Million Dollars (\$1,000,000.00) without Lender's involvement or consent and to receive the proceeds directly for application to the costs of restoration without the requirement for a construction escrow. In either case, Lender is authorized to collect and receipt for insurance proceeds in excess of One Million Dollars (\$1,000,000.00). In connection therewith, Borrower does hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Borrower (which appointment is coupled with an interest and is irrevocable) to do any and all of the foregoing in the name and on behalf of Borrower.

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(b) Application of Proceeds: Subject to the preceding Paragraph 5(e), provided no Event of Default then exists and Borrower certifies as to same, the net insurance proceeds (after deduction of Lender's actual costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Property if, in Lender's judgment, Borrower demonstrates that (i) restoration or repair, and the continued operation of the Property after restoration and repair, is economically feasible; (ii) the value of the Property is not materially reduced; (iii) rental income from the Property (including any insurance proceeds available due to loss of rents) is and will remain in an amount at least equal to one (1) year's total income from the Property, calculated prior to the loss occurring, and Borrower shall provide Lender with written confirmation that leases sufficient to provide such rental income are and shall remain in effect notwithstanding the damage or destruction; (iv) the loss does not occur in the six (6) month period preceding the stated maturity of the Note, and Lender's independent consultant certifies that the restoration of the Property can be completed at least ninety (90) days prior to such maturity date; and (v) the insurance proceeds are sufficient to complete the restoration or repair, or Borrower has deposited with Lender an amount, in cash, which Lender, in its judgment, determines is necessary, in addition to the net insurance proceeds to pay in full the cost of the restoration or repair (Borrower's deposit shall be disbursed prior to any disbursement of insurance proceeds held by Lender). Any excess proceeds remaining after completion of such restoration or repair shall be distributed to Borrower. Notwithstanding the foregoing, it shall be a condition precedent to any disbursement of insurance proceeds held by Lender hereunder that Lender shall have approved (x) all plans and specifications for any proposed repair or restoration, (y) the construction schedule, and (z) the architect's and general contractor's contract for all restoration that exceeds One Million Dollars (\$1,000,000.00) in the aggregate, such approval not to be unreasonably withheld or delayed. Lender may establish other conditions it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof, and in compliance with all applicable laws, rules and regulations. If the net insurance proceeds are greater than One Million Dollars (\$1,000,000.00), such proceeds shall, at Lender's option, be disbursed pursuant to a construction escrow acceptable to Lender. If an Event of Default then exists, or any of the conditions set forth above have not been met or satisfied, the net insurance proceeds shall be applied to the Indebtedness, in such order and manner as Lender may elect, whether or not due and payable, with any excess paid to Borrower; provided that if no Event of Default then exists, the prepayment of the Indebtedness resulting from the application of the insurance proceeds to the Indebtedness shall not be subject to payment of a "Prepayment Premium" (as defined in the Master Loan Agreement referenced in Paragraph 43).

(c) Loss After Foreclosure. In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall, at Lender's discretion, be used to pay the Indebtedness and the balance, if any, shall be paid to the persons entitled thereto.

(d) Loss of Rent/Business Interruption. Notwithstanding the foregoing provisions of this Paragraph 6, Borrower hereby assigns to Lender the proceeds of any and all "loss of rent" or "business interruption" insurance payable with respect to any casualty damage to the Property, and Lender agrees that such proceeds shall be applied by Lender or released to Borrower for payments of (i) principal and/or interest under the Note, (ii) real property taxes and assessments, (iii) insurance premiums, (iv) amounts payable by Borrower under any easements, covenants or



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restrictions of record affecting the Property, and (v) operating expenses of the Property. At such time as the Property has been fully restored and repaired, and no Event of Default then exists, the balance of such proceeds, if any, held by Lender shall be paid over to Borrower.

(e) Reimbursement of Lender's Expenses. Borrower shall promptly reimburse Lender upon demand for all of Lender's expenses actually incurred in connection with the collection of the insurance proceeds, including but not limited to attorneys' fees (including costs of paralegals) actually incurred, and all such expenses, together with interest from the date of disbursement at the rate stated in the Note (unless collection of interest from Borrower at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law) shall be additional amounts secured by this Mortgage.

7. Condemnation. Borrower, promptly upon obtaining knowledge of the institution of any proceeding for the condemnation of the Property or any portion thereof, shall notify Lender of the pendency thereof. Borrower hereby assigns, transfers and sets over unto Lender all compensation, rights of action, the entire proceeds of Borrower's award and any claim of Borrower for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. While any Event of Default is continuing, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent domain or sale in lieu thereof with the duty to meet and confer with Borrower. Such proceeds shall be made available in the manner and under the same conditions that Lender may require in the manner provided under Paragraph 6. If the proceeds are made available by Lender to reimburse Borrower for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Lender, be applied on account of the Indebtedness (without the payment of any Prepayment Premium) or be paid to Borrower. Borrower agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Lender may require.

8. Preservation and Maintenance of Property.

(a) Borrower shall construct, keep and constantly maintain, as the case may be, all curbs, drives, parking areas and the number of parking spaces heretofore approved by Lender or heretofore or hereafter required by any governmental body, agency or authority having jurisdiction over Borrower or the Property, and, except with respect to a condemnation proceeding affecting the Property, shall not alter, erect, build or construct upon any portion of the Property, any building or structure of any kind whatsoever, the erection, building or construction of which has not been previously approved by Lender in writing, which approval shall not be unreasonably withheld or delayed. Nothing contained herein shall, however, be construed to prohibit Borrower from, or require Lender's consent to, construction of (i) any alterations which are within the category of normal building maintenance and upkeep, (ii) any alterations, building or structure required by any applicable law or any governmental body with jurisdiction over the Property, (iii) any non-structural alterations costing less than One Million Dollars (\$1,000,000.00), in the aggregate, for any parcel of the Property during any calendar year, (iv)

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any interior, non-structural tenant improvements, or (v) any other tenant improvement contemplated or permitted under any lease of the Property approved by Lender.

(b) Borrower shall not remove, transfer, sell or lease any Personal Property except that the renewal, replacement or substitution of Personal Property (replacement or substituted items must be of like or better quality than the removed items in their original condition) may be made in the normal course of business.

## 9. Protection of Lender's Security.

If (i) an Event of Default occurs and is continuing, or (ii) any action or proceeding (other than a condemnation proceeding) is commenced which affects or could materially affect the Property or Lender's interest therein, including any loss, damage, cost, expense or liability incurred by Lender with respect to (x) any environmental matters relating to the Property, or (y) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property (other than a condemnation proceeding), then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its discretion, to protect the Property or Lender's interest therein, including entry upon the Property to take such actions Lender determines appropriate to preserve, protect or restore the Property. Any amounts disbursed by Lender pursuant to this Paragraph 9 (including attorneys' fees, costs and expenses), together with interest thereon at the "Default Rate" (as defined in the Note) from the date of written notice to Borrower of the disbursement, shall become additional Indebtedness of Borrower secured by the lien of this Mortgage and the other Loan Documents and shall be due and payable on demand. Nothing contained in this Paragraph 9 shall require Lender to incur any expense or take any action hereunder.

## 10. Inspection.

Lender and its authorized agents may make or cause to be made reasonable entries upon and inspections of the Property at all reasonable times upon at least twenty-four (24) hours advance notice (except following an the Event of Default, in which case no notice shall be required), which notice may be given in writing or orally. Lender shall use reasonable efforts not to interfere with the operations of any tenant of the Property.

## 11. Books and Records.

Borrower shall keep and maintain at all times at Borrower's address stated above, or at another office of Borrower designated by written notice to Lender, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, correspondence, Leases and other documents affecting the Property. Lender and its designated agents shall have the right to inspect Borrower's books, records, contracts, correspondence, Leases and other documents affecting the Property at all reasonable times. In the event of a foreclosure of this Mortgage, or a trustee's sale hereunder, all of Borrower's books, records, contracts, correspondence, Leases and other documents maintained in connection with the Property shall be made available to the successful bidder at

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the foreclosure sale for inspection and copying for a period of not less than one (1) year following said sale.

## 12. Financial Reports; Special Purpose Entity.

(a) Financial Reports. Borrower shall furnish to Lender within ninety (90) days after the end of each fiscal year, and upon the occurrence of any Event of Default hereunder, unaudited financial statements (including balance sheet, income statement and cash flow statement) of Borrower, such financial statements to be prepared in accordance with generally accepted accounting principles, consistently applied, and certified internally as complete and correct in all material respects by Borrower (upon demand by Lender following the occurrence and during the continuance of an Event of Default hereunder, the financial statements provided pursuant to this clause shall be audited statements prepared by an independent certified public accountant acceptable to Lender). Borrower shall furnish to Lender, upon issuance, the "10Q" and "10K" reports of Duke Realty Limited Partnership, the sole member of Borrower ("Principal"). Borrower shall furnish to Lender within ninety (90) days after the end of each fiscal year, and upon the occurrence during the continuance of any Event of Default hereunder: (i) a current rent roll for the Property listing each tenant including tenants' names, square footage, lease inception/expiration dates, base rents and other charges, options and other lease concessions, security deposits, and reflecting delinquent tenants (if any); and (ii) a certified operating statement of income and expenses in detail satisfactory to Lender with respect to the operation of the Property, such operating statements to be prepared in accordance with generally accepted accounting principles, consistently applied, and certified as complete and correct in all material respects by Borrower. All such statements shall be prepared in a form reasonably acceptable to Lender and shall be accompanied by financial statements received by Borrower from tenants to the extent such financial statements are required to be provided by tenants pursuant to the terms of their lease with Borrower (and Borrower agrees to use commercially reasonable efforts to obtain such statements from each tenant but Borrower shall have no obligation to terminate the lease or evict the tenant based on any failure on the part of such tenant to provide such statement). If Borrower fails to furnish such statements and reports, Lender shall have the right to audit the respective books and records of the Property at the expense of Borrower, and if Borrower prevents Lender from conducting such audit, Lender may at the election of Lender declare an Event of Default under this Mortgage.

(b) Special Purpose Entity. Borrower warrants, represents and covenants that it has not and shall not:

- (1) Engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;
- (2) Acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;
- (3) Merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;

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(4) Fail to observe its organizational formalities or preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and qualification to do business in the state where the Property is located, or without the prior written consent of Lender, materially amend, modify, terminate or fail to comply with the provisions of Borrower's Operating Agreement or similar organizational documents in a manner which would adversely affect the Borrower's existence as a single purpose entity;

(5) Own any subsidiary or make any investment in any person or entity without the consent of Lender;

(6) Fail to account separately its assets from the assets of any of its members, principals or affiliates, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity or debt interests in the Borrower permitted hereunder and properly accounted for, and other than for amounts due and owing for trade payables and other expenses arising in the ordinary course of its business of owning, operating and maintaining the Property;

(7) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, except for trade payables and other expenses arising in the ordinary course of its business of owning, operating and maintaining the Property, provided that such debt is not evidenced by a note and is paid within ninety (90) days of date due;

(8) Allow any person or entity to pay its debts and liabilities (except a guarantor or indemnitor) or fail to pay its debts and liabilities solely from its own assets;

(9) Fail to maintain its records, books of account and bank accounts separate and apart from those of the partners, principals and affiliates of Borrower, any member, shareholder, partner, principal or affiliate thereof, and any other person or entity or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by the Borrower;

(10) Enter into any contract or agreement with any member, principal, employee or affiliate of Borrower, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, principal or affiliate of Borrower (other than the current property management agreement, which has been approved by Lender);

(11) Seek the dissolution or winding up, in whole or in part, of Borrower;

(12) Fail to use commercially reasonable efforts to correct any known misunderstandings regarding the separate identity of Borrower;

(13) Guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another entity or person, or pledge its

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assets for the benefit of any other person or entity, other than with respect to the loan evidenced by the Note;

(14) Make any loans or advances to any third party, including any member, principal or affiliate of Borrower, or any member, shareholder, partner, principal or affiliate thereof;

(15) Fail to file its own tax returns, nor file a consolidated federal income tax return with any other entity, except to the extent that Borrower is treated as a "disregarded entity" for federal tax purposes and is not required to file a federal income tax return under applicable law, and pays any taxes required under applicable law;

(16) Fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not to (i) mislead others as to the identity with which such other party is transacting business, or (ii) suggest that Borrower is responsible for the debts of any third party (including any member, principal or affiliate of Borrower, or any member, principal or affiliate thereof);

(17) Fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any guarantor) any overhead for common employees (if any), shared office space or other overhead and administrative expenses;

(18) Allow any person or entity to pay the salaries of its own employees (if any) or fail to maintain a sufficient number of employees for its contemplated business operations; provided that nothing herein shall be deemed to require Borrower to maintain any employees if not required for its contemplated business operations;

(19) Make a distribution to its members which leaves Borrower without adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its then contemplated business operations;

(20) File or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors;

(21) Hold itself out as a department or division of (i) any member, principal, or affiliate of Borrower, (ii) any affiliate of a member, principal or affiliate of Borrower, or (iii) any other person or entity or allow any person or entity to identify the Borrower as a department or division of that person or entity; or

(22) Intentionally conceal assets from any creditor of Borrower or any guarantor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or any guarantor.

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## 13. Environmental Matters.

(a) Except as disclosed in the Phase I Environmental Site Assessments for the Property identified on Exhibit B, attached hereto (the "Reports"), or otherwise disclosed to Lender in writing, Borrower represents and warrants to the best of its knowledge, without inquiry other than the Report (but also without knowledge of any material fact omitted from the Report), and covenants that there are no Hazardous Materials (as defined below) generated, released, stored, buried or deposited over, beneath, in or upon the Property or on or beneath the surface of adjacent property, and Borrower covenants to use reasonable efforts for so long as any Indebtedness remains outstanding to prevent the generation, release, storage, burial or deposit over, beneath, in or upon the Property, or on or beneath the surface of adjacent property of Hazardous Materials except as such Hazardous Materials may be (i) used, stored or transported in connection with the permitted uses of the Property, or (ii) part of the normal cleaning and office supplies of Borrower or any Tenant of the Property, and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(b) Borrower shall not, and shall cause its employees, agents, tenants, contractors, subcontractors, and any other persons occupying or present on the Property not to, use, generate, manufacture, store or dispose of on, under or about the Property or transport to or from the Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Property and then only to the extent permitted by applicable Hazardous Materials Laws after obtaining all necessary permits and licenses therefor.

(c) Borrower shall immediately advise Lender in writing of (i) any notices received by Borrower (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation of any applicable Hazardous Materials Laws occurring on or about the Property, (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws, (iii) all credible claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Hazardous Materials Claims"), and (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be subject to any Hazardous Materials Claims. Lender 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 Materials Claims and

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Borrower shall pay to Lender, upon demand, all attorneys' and consultants' fees actually incurred by Lender in connection therewith.

(d) Except for the gross negligence or intentional misconduct of Lender or its affiliates, representatives or agents, and its and their officers, directors, shareholders, agents, attorneys, representatives and employees, their successors and assigns (individually and collectively "Indemnitee"), Borrower shall indemnify, defend and save harmless each Indemnitee, jointly and severally, from and against any and all claims, demands, causes of action, damages, costs, expenses, lawsuits and liabilities, at law or in equity, of every kind or nature whatsoever (whether made prior to, during or after the term of the Loan), directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Property occurring prior to or during the term of the Loan and prior to the acquisition of ownership of the Property by Lender, or any third party approved by Lender, by foreclosure or deed-in-lieu thereof, and regardless of by whom caused, whether by Borrower or any predecessor in title or any owner of land adjacent to the Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Borrower or any predecessor in title or any such adjacent land owner or any third person, including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property, (ii) claims for response costs, clean up costs, costs and expenses of removal and restoration, including fees of attorneys and experts and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency, (iii) any and all other claims for expenses or obligations, including attorney's fees, costs, and other expenses related to Hazardous Materials and the Property, (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws, and (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Borrower under this Mortgage. Except for Lender, the term "Indemnitee" shall not, however, include any purchaser at any foreclosure sale or transferee by way of a deed-in-lieu of foreclosure.

(e) Borrower, at its sole cost and expense, shall, with due care, in a safe manner and in accordance with all applicable laws, detain the spread of, ameliorate and remove from the Property any Hazardous Materials contamination in violation of Hazardous Materials Laws located on or beneath the Property and monitor or cause to be monitored the levels of Hazardous Materials on, under or about the Property or in the ground water in accordance with the terms and procedures required by any federal, state or local governmental agency having jurisdiction including, without limitation, the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency.

(f) Lender may, in its sole judgment, but based upon a reasonable belief that Hazardous Materials may exist on the Property, require Borrower, at its sole cost and expense, from time to time to perform or cause to be performed, such studies or assessments of the Property, as Lender may deem necessary or appropriate or desirable, to determine the status of environmental conditions on and about the Property, which studies and assessments shall be for the benefit of Lender and be prepared in accordance with the specifications established by Lender. In the event such studies or assessments reveal that there are no Hazardous Materials existing on the Property in violation of this Paragraph 13, Lender shall reimburse Borrower for

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the actual out-of-pocket costs incurred by Borrower in connection with such studies or assessments.

## 14. Covenants.

Borrower covenants with Lender:

(a) To warrant and defend title to the Property against all claims and demands, subject to easements, restrictions and other exceptions set forth in the loan policy of title insurance, in favor of Lender, insuring the lien of this Mortgage (collectively, the "Permitted Encumbrances"); and

(b) To provide Lender with notice of any litigation, arbitration, or other proceeding or governmental investigation pending or, to Borrower's knowledge, threatened against or relating to Borrower or the Property.

## 15. Leases; Subordination.

(a) Borrower has executed and delivered to Lender an Assignment of Leases and Rents of even date herewith, and, to the extent the provisions of this Mortgage are inconsistent with the provisions of said Assignment of Leases and Rents, the provisions of said Assignment of Leases and Rents shall control.

(b) To the extent provided in each Lease, Borrower hereby declares that all such Leases are and will be subject and subordinate to the lien of this Mortgage, as this Mortgage may be amended or modified from time to time, as fully and with the same effect as if this Mortgage had been executed and recorded prior to the date of such Leases.

## 16. Estoppel Certificate.

Borrower shall within fifteen (15) days after Lender's written request, furnish Lender with a written statement, duly acknowledged, setting forth the sums, according to Borrower's books and records, secured by the Loan Documents and any right of set-off, counterclaim or other defense which exists against such sums and the Obligations.

## 17. Transfers of the Property or Interest in Borrower.

(a) Except as expressly permitted in the Master Loan Agreement, Borrower shall not (i) transfer, encumber, mortgage, hypothecate or pledge all or any part of the Property or any interest therein (including any interest in the profits, losses, or cash distributions in any way relating to the Property), or (ii) transfer of any legal or beneficial ownership interest in Borrower.

(b) Lender may, without notice to Borrower, waive any default under this Paragraph 17 and deal with such successor or successors in interest in the Property in the same manner as with Borrower, without in any way releasing, discharging or otherwise affecting the liability of Borrower, the endorsers, guarantors, sureties, accommodation parties hereof and all other persons liable or to become liable for all or any part of this Indebtedness. No sale of the Property, no forbearance on the part of the Lender, no extension of the time for the payment of



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the Indebtedness or any change in the terms of the Note or the Loan Documents consented to by the Lender and Borrower shall in any way whatsoever operate to release, discharge, modify, change or affect the original liability of Borrower and all such persons liable or to become liable for all or any part of the Indebtedness, either in whole or in part.

18. No Additional Liens, Encumbrances or Indebtedness.

Borrower covenants not to execute any deed of trust, mortgage, security agreement, assignment of leases and rents or other agreement granting a lien (except the liens granted to Lender by the Loan Documents) against or encumbrance on the Property or take or fail to take any other action which would result in a lien against the Property or the interest of Borrower in the Property; provided, however, Borrower may in good faith, by appropriate proceeding, contest the validity or amount of any asserted lien and, pending such contest, Borrower shall not be deemed to be in default hereunder if Borrower shall first obtain a bond, in form and substance satisfactory to Lender bonding over such lien, or provide adequate security satisfactory to Lender.

19. Borrower and Lien Not Released.

Without affecting the liability of Borrower or any other person liable for the payment of the Indebtedness, and without affecting the lien, interest or charge of this Mortgage as security for the payment of the Indebtedness, Lender may, from time to time and without notice to any junior lien holder or holder of any right or other interest in and to the Property (i) release any person so liable, (ii) waive or modify any provision of this Mortgage or the other Loan Documents or grant other indulgences, (iii) release all or any part of the Property, (iv) accept additional security for any obligation herein mentioned, (v) subordinate the lien, interest or charge of this Mortgage, (vi) consent to the granting of any easement, or (vii) consent to any map or plat of the Property.

20. Uniform Commercial Code Security Agreement

(a) This Mortgage shall constitute a security agreement pursuant to the Illinois Uniform Commercial Code (the "UCC") for any portion of the Property owned by Borrower, which, under applicable law, may be subject to a security interest pursuant to the UCC (such portion of the Property is hereinafter called the "Personal Property"), and BORROWER HEREBY GRANTS TO LENDER A SECURITY INTEREST IN THE PERSONAL PROPERTY. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Lender may require to perfect a security interest with respect to the Personal Property. Borrower hereby authorizes and empowers Lender and irrevocably appoints Lender its agent and attorney-in-fact to execute and file, on Borrower's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing

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statements Lender may reasonably require. Without limitation, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the UCC.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Borrower. Lender shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Borrower with respect to any portion of the Personal Property nor shall Lender be responsible for any act committed by Borrower, or any breach or failure to perform by Borrower with respect to any portion of the Personal Property.

(c) Except as set forth in the immediately succeeding sentence, Borrower shall not, without the prior written consent of Lender, sell, assign, transfer, remove or permit to be removed from the Property any of the Personal Property. So long as no Event of Default exists, Borrower may sell or otherwise dispose of the Personal Property when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Property, but only upon replacing the same with other Personal Property at least equal in value and utility to the disposed Personal Property. Any replacement or substituted Personal Property shall be subject to the security interest granted herein.

(d) To the extent permitted by law, Borrower and Lender agree that with respect to all items of Personal Property which are or shall become fixtures on the Land, this Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the UCC. For this purpose, the following information is set forth:

Name and Address of Debtor:

Duke Secured Financing 2009-1ALZ, LLC  
 c/o Duke Realty Corporation  
 600 E. 96th Street, Suite 100  
 Indianapolis, Indiana 46240  
 (Delaware Organization Number: 4644404)

Name and Address of Secured Party:

Allianz Life Insurance Company of North America  
 c/o Allianz of America, Inc.  
 55 Greens Farms Road  
 Post Office Box 5160  
 Westport, Connecticut 06881-5160  
 Attn: Real Estate Department

This document covers goods which are or are to become fixtures.

21. Events of Default; Acceleration of Indebtedness; Remedies.

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

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- (1) Borrower shall fail to duly and punctually pay, when and as due, any installment of interest or principal and interest payable under the Note; or
- (2) Borrower shall fail to pay any charge or payment due to Lender under the Loan Documents, other than a payment under Subparagraph 21(a)(1), and such failure shall continue for ten (10) days after notice thereof from Lender to Borrower; or
- (3) Borrower shall fail to duly and punctually pay when and as due any payment for taxes, assessments and insurance premiums required by Paragraph 2 to be paid, and such amount remains unpaid for ten (10) days after notice of such default from Lender, or Borrower shall fail to provide the insurance coverage required by Paragraph 5(a); or
- (4) Borrower shall fail duly to perform or observe any of the covenants or agreements contained in the Loan Documents (other than a covenant or agreement or default, which is elsewhere in this Paragraph 21(a) specifically dealt with), and such failure shall continue for thirty (30) days after notice thereof from Lender to Borrower (or longer if necessary and Borrower is proceeding diligently to cure such failure, but in no event longer than ninety (90) days after such notice); or
- (5) Borrower shall make an assignment for the benefit of its creditors, or Borrower shall generally not be paying its debts as they become due, or a petition shall be filed by Borrower under the United States Bankruptcy Code, or an involuntary petition is filed against Borrower under the United States Bankruptcy Code and is not dismissed within ninety (90) days after such filing, or Borrower shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Property or any part thereof or shall not, within ninety (90) days after the appointment (without its consent or acquiescence) of a trustee, receiver or liquidator of any material part of its properties or of the Property, have such appointment vacated; or
- (6) A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on, issued or levied against, the Property or any part thereof and shall not be released, vacated or fully bonded within sixty (60) days after its entry, issue or levy; or
- (7) The Property, or any part thereof, or any interest in Borrower, shall be sold, conveyed, transferred, or encumbered, or any possessory rights therein transferred (excluding any Taking), whether voluntarily, involuntarily or by operation of law, in breach of the provisions of Paragraph 17; or
- (8) Any representation or warranty made by Borrower or any partner of Borrower to Lender in connection with the loan secured hereby proves to be untrue in any material respect when made; or
- (9) There shall exist an "Event of Default" by Borrower under any other loan from Lender to Borrower, as set forth in the "Master Loan Agreement" defined in Paragraph 43.

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Upon the occurrence of an Event of Default, Lender shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

(b) Acceleration. Upon the occurrence of any Event of Default, at the election of Lender, the entire principal balance then outstanding under the Note, together with all unpaid interest accrued thereon, the Prepayment Premium, and all other Indebtedness due from Borrower thereunder, under this Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the Default Rate.

(c) Foreclosure. Upon the occurrence of any Event of Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the State of Illinois and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

(d) Lender's Continuing Options. The failure of Lender to declare a Event of Default or exercise any one or more of its options to accelerate the maturity of the Indebtedness secured hereby and to foreclose the lien hereof following any Event of Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such Indebtedness, shall neither constitute a waiver of any such Event of Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Event of Default.

(e) Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Property in which Lender is named as a party, there shall be allowed and included, as additional Indebtedness secured hereby in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, attorneys' fees and expenses actually incurred, and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Property as Lender may deem reasonably necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the IMF Law (as such term is hereinafter defined in Paragraph 21(i) hereof) to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Property and the maintenance of the lien of this

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Mortgage thereon, including, without limitation, the fees and expenses actually incurred of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the Default Rate.

(f) Performance by Lender. In the event of an Event of Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Lender's interest in the Property, Lender may, but need not, make any payment or perform any act on Borrower's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof, redeem from any tax sale or forfeiture affecting the Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including, without limitation, attorneys' fees actually incurred and court costs, and any other monies advanced by Lender to protect the Property and the lien of this Mortgage, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender without notice and with interest thereon at the Default Rate from the date an advance is made to and including the date the same is paid. The action or inaction of Lender shall never be construed to be waiver of any right accruing to Lender by reason of any default by Borrower. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the Indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

(g) Right of Possession. In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys, and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts of Borrower or the then owner of the Property relating thereto, and may exclude Borrower, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

(1) Hold, operate, manage and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents of the Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Borrower;

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(2) Cancel or terminate any Lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Borrower to cancel the same;

(3) Elect to disaffirm any Lease or sublease of all or any part of the Property made subsequent to this Mortgage or subordinated to the lien hereof;

(4) Extend or modify any then existing Leases and make new leases of all or any part of the Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(5) Make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Property as may seem judicious to Lender, to insure and reinsure the Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Law. Nothing herein contained shall be construed as constituting Lender as a mortgagee in possession in the absence of the actual taking of possession of the Property.

(h) Priority of Payments. Any Rents of the Property received by Lender after taking possession of all or any part of the Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

(1) Operating expenses of the Property (including, without limitation, compensation to Lender, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(2) Taxes and Charges now due or that may hereafter become due on the Property, or that may become a lien thereon prior to the lien of this Mortgage;

(3) Any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property (including, without limitation, the cost, from time to time, of installing or replacing any personal property therein, and of

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placing the Property in such condition as shall, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);

(4) Any Indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

(5) Any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

(i) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may appoint, upon petition of Lender, and at Lender's sole option, a receiver of the Property pursuant to the Illinois Mortgage Foreclosure Law, as amended (Illinois Compiled Statutes 735 ILCS 5/15-1001, et. seq.) (the "IMF Law"). Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness secured hereby; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Law, including the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Property or any part thereof; which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of Indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

(j) Foreclosure Sale. In the event of any foreclosure sale of the Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Property or any part thereof.

(k) Application of Proceeds. The proceeds of any foreclosure sale of the Property, or any part thereof, shall be distributed and applied in the following order of priority (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 21(e) and (f) hereof, (ii) all other items that, under the terms of this Mortgage, constitute secured Indebtedness additional to that evidenced by the Note, with interest

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thereon at the Default Rate, (iii) all principal and interest remaining unpaid under the Note, together with the Prepayment Premium, in the order of priority specified by Lender in its sole and absolute discretion, and (iv) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

(l) Application of Deposits. In the event of an Event of Default, Lender may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Borrower's obligations under the Note, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the Indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Property. Such deposits are hereby pledged as additional security for the prompt payment of the Indebtedness evidenced by the Note and any other Indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower.

(m) Indemnification. Borrower shall appear in and defend any suit, action or proceeding that might in any way adversely affect the value of the Property, the priority of this Mortgage or the rights and powers of Lender under this Mortgage. Borrower shall, at all times, indemnify, defend, hold harmless and on demand, reimburse Lender for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest if not paid when due at the rate provided in the Note secured hereby and shall be due and payable within ten (10) days following Lender's written demand. Notwithstanding the foregoing, nothing contained herein shall be deemed to require Borrower to indemnify, defend, protect or hold harmless Lender from any claim, loss, liability, damage, cause of action, judgment, court costs, attorneys' fees or other expenses, to the extent resulting from Lender's gross negligence, intentional misconduct or breach of its obligations under any Loan Document. In addition, if Borrower is obligated to indemnify and defend Lender under the foregoing indemnity, Borrower shall be entitled to indemnify and defend Lender with counsel selected by Borrower, but reasonably acceptable to Lender, and Borrower shall be entitled to control the litigation and any settlements thereof. Nothing contained in this indemnity shall prevent Lender from obtaining its own counsel in any proceedings, at Lender's sole expense, provided further, that Lender shall have the right to employ separate counsel at Borrower's expense if there are legal defenses available to Lender that are different from or additional to those available to Borrower and which, in the reasonable opinion of Lender's counsel, are sufficient to make it undesirable for the same counsel to represent both Borrower and Lender, or, in the reasonable opinion of Lender's counsel, a conflict of interest exists between Borrower and Lender that would make such separate representation advisable. Borrower shall pay the cost of suit, cost of evidence of title and attorneys' fees in any proceeding, suit, and foreclosure proceedings through the court brought by the Lender to foreclose this Mortgage.

(n) Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it shall not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "moratorium law" now or at



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any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption and reinstatement under the IMF Law, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption and reinstatement of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it shall not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but shall permit the exercise of every such right, power and remedy as though no such law or laws have been or shall have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Law or residential real estate as defined in Section 5/15-1219 of the IMF Law.

## 22. After-Acquired Property.

To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under the granting clauses of this Mortgage, shall automatically attach, without further act, to all property hereafter acquired by Borrower located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

## 23. Future Advances.

This Mortgage is given to secure not only the existing Indebtedness, but also future advances (whether such advances are obligatory or are made at the option of Lender, or otherwise) made by Lender under the Note or this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage.

## 24. Disclosure of Information.

Borrower agrees that Lender shall have the right (but shall be under no obligation) to make available to any party for the purpose of granting a participation in or selling, transferring, assigning or conveying all or any part of the Loan (including, without limitation, any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property), any and all information which Lender may have with respect to the Property, whether provided by Borrower or any third party or obtained as a result of any environmental

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assessments pursuant to Paragraph 13(f). Borrower agrees that Lender shall have no liability whatsoever as a result of delivering any such information to any such third party, and Borrower, on behalf of itself and its successors and assigns (including, without limitation, any purchaser at a foreclosure sale or trustee's sale), hereby releases and discharges Lender from any and all liability, claims, damages, or causes of action, arising out of, connected with or incidental to the delivery of any such information to any such third party.

## 25. Sale of Loan.

Lender, at any time and without the consent of Borrower, may grant participation in or sell, transfer, assign and convey all or any portion of its right, title and interest in and to the Loan, this Mortgage and the other Loan Documents, any guaranties given in connection with the Loan and any collateral given to secure the Loan. Lender shall give Borrower notice of any sale of the Loan but such notice shall not be a condition precedent to such sale.

## 26. Forbearance by Lender Not a Waiver.

Any forbearance by Lender in exercising any right or remedy under any of the Loan Documents, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Lender's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness, nor shall Lender's receipt of any awards, proceeds or damages under Paragraph 6 or Paragraph 7 hereof operate to cure or waive Borrower's default in payment of sums secured by any of the Loan Documents. With respect to all Loan Documents, only waivers made in writing by Lender shall be effective against Lender.

## 27. Waiver of Statute of Limitations.

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligation secured by any of the Loan Documents.

## 28. Governing Law; Litigation.

The place of the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the substantive and procedural laws of that State, without regard to conflicts of laws principles. To the extent that this Mortgage may operate as a security agreement under the UCC, Lender shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER AND LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MORTGAGE SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR AT THE SOLE OPTION OF LENDER, IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER

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JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NONCONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

29. Severability.

The invalidity, illegality or unenforceability of any provision of this Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mortgage, and to this end the provisions of this Mortgage are declared to be severable.

30. Notices.

Any notice or other communication required or permitted to be given shall be in writing, addressed to the respective party as set forth below, or to such other address as a party may designate in writing to the other party(s), and may be personally served or sent by overnight courier or U.S. Mail and shall be deemed given (i) if served in person, when served, (ii) if by overnight courier, on the first business day after delivery to the courier, or (iii) if by U.S. Mail, on the third day after deposit in the mail, postage prepaid, certified mail, return receipt requested.

If to Borrower:

Duke Secured Financing 2009-1ALZ, LLC  
c/o Duke Realty Corporation  
600 E. 96<sup>th</sup> Street, Suite 100  
Indianapolis, Indiana 46240  
Attn: Treasurer

With a Courtesy Copy to:

Duke Realty Corporation  
3950 Shackleford Road, Suite 300  
Duluth, Georgia 30296-8268  
Attn: Howard L. Feinsand

If to Lender:

Allianz Life Insurance Company of North America  
c/o Allianz of America, Inc.  
55 Greens Farms Road  
P.O. Box 5160  
Westport, Connecticut 06881-5160  
Attn: Real Estate Department

Any time period provided in the giving of any notice hereunder shall commence three (3) business days after the date such notice is deposited in the mail or upon the date following delivery to said overnight delivery service, as the case may be. Lender's failure to deliver a

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courtesy copy of any notice shall not invalidate or adversely affect any such notice otherwise properly given to Borrower.

31. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.

The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17 hereof. In exercising any rights under the Loan Documents or taking any actions provided for therein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

32. Release.

Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage by a Deed of Release, which release shall be without warranty and shall operate to reconvey the estate vested in Lender hereby. The grantee in any Deed of Release executed pursuant to this Mortgage may be described as "the person or persons legally entitled thereto" and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Borrower shall pay Lender's costs actually incurred in releasing this Mortgage and any financing statements related hereto.

33. Loss of Note.

Upon notice from Lender of the loss, theft, or destruction of the Note and upon receipt of indemnity reasonably satisfactory to Borrower from Lender, or in the case of mutilation of the Note, upon surrender of the mutilated Note, Borrower shall make and deliver a new note of like tenor in lieu of the then to be superseded Note.

34. Limited Liability.

This Mortgage and all of Borrower's obligations hereunder are subject to the provisions of Paragraph K of the Note entitled "Limited Recourse; Exceptions," which are incorporated herein by this reference.

35. Time of Essence.

Time is of the essence of this Mortgage and the performance of each of the covenants and agreements contained herein.

36. Maximum Indebtedness.

Under no circumstances shall the total Indebtedness secured by this Mortgage exceed Twenty-One Million Six Hundred Fifty Thousand Dollars (\$21,650,000.00).

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## 37. Conflict with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Law, the provision of the IMF Law 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 IMF Law.

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

(c) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the IMF Law in the absence of said provision, Lender shall be vested with the rights granted in the IMF Law to the full extent permitted by law.

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under any provisions of the IMF Law, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness hereby secured or by the judgment of foreclosure.

## 38. Property Management Agreements.

Borrower (and its affiliates) is currently the manager of the Property. Borrower represents that it has not entered any other property management agreements with any party with respect to the Property. Borrower shall not hereafter enter any other property management agreement for the Property, unless the property manager subordinates to the lien of this Mortgage any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1, which subordination agreement shall be in form satisfactory to Lender.

## 39. Stamp Taxes.

If at any time the United States government or any federal, state or municipal governmental subdivision requires Internal Revenue or other documentary stamps, levies or any tax on this Mortgage or on the Note, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Lender, ninety (90) days after the mailing by Lender of notice of such election to Borrower; provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Borrower may and does lawfully pay for such stamps or tax, including interest and penalties thereon, to or on behalf of Lender within ten days after written notice by Lender to Borrower thereof.

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## 40. Change in Tax Laws.

In the event of the enactment, after the date of this Mortgage, of any law of the State of Illinois deducting from the value of the Property, for the purpose of taxation, the amount of any lien thereon, or imposing upon Lender the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Borrower's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness secured hereby or the holder thereof, then Borrower, upon written demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if, in the opinion of counsel for Lender, it might be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to become due and payable ninety (90) days after the giving of such notice without Prepayment Premium or any other prepayment fee or penalty. Nothing contained in this Paragraph shall be construed as obligating Lender to pay any portion of Borrower's federal income tax.

## 41. Preferences.

To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the Indebtedness hereby secured as of the date such initial payment, reduction or satisfaction occurred.

## 42. Jury Trial Waiver.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AND LENDER BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS MORTGAGE AND THE BUSINESS RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY BORROWER AND LENDER, AND BORROWER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INCLUDE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER AND LENDER FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED (OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

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43. Master Loan Agreement.

Lender and Borrower have entered into that certain Master Loan Agreement of even date herewith (as the same may be amended from time to time, the "Master Loan Agreement"), pursuant to which Lender and Borrower have agreed to certain terms and provisions governing multiple loans from Lender to Borrower. In the event that there shall arise any conflict or inconsistency between the terms and provisions of this Mortgage and the terms and provisions of the Master Loan Agreement, the terms and provisions of the Master Loan Agreement shall supersede and be controlling over the terms and provisions of this Mortgage.

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## EXHIBIT A

### Legal Description

REAL PROPERTY IN THE CITY OF NORTHLAKE, COUNTY OF COOK, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

#### PARCEL 1:

**635 Northwest Avenue, Northlake, IL**

##### TRACT 1:

LOT 1 IN DUKE REALTY NORTHLAKE SUBDIVISION, BEING A SUBDIVISION OF ALL THAT TRACT OF LAND SITUATED IN THE WEST FRACTIONAL HALF OF FRACTIONAL SECTION 30, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 21, 2003 AS DOCUMENT 0314144031 AND RE-RECORDED JUNE 20, 2003 AS DOCUMENT 0317103052, IN COOK COUNTY, ILLINOIS.

##### TRACT 2:

AN EASEMENT THE BENEFIT OF PARCEL 1 FOR STORM SEWER AS CREATED ON THE PLAT OF DUKE REALTY NORTHLAKE SUBDIVISION, AFORESAID, OVER A PORTION OF LOT 2 IN SAID DUKE REALTY NORTHLAKE SUBDIVISION, AFORESAID.

#### PARCEL 2:

**599 Northwest Avenue, Northlake, IL**

##### TRACT 1:

LOT 3 IN DUKE REALTY CORPORATION NORTHLAKE TWO SUBDIVISION, A SUBDIVISION OF PART OF SECTIONS 30 AND 31, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 28, 2004 AS DOCUMENT 0427244049, IN COOK COUNTY, ILLINOIS.

##### TRACT 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR JOINT DRIVEWAY AND STORM DRAINAGE AS CREATED BY PLAT OF DUKE REALTY CORPORATION NORTHLAKE TWO SUBDIVISION RECORDED SEPTEMBER 28, 2004 AS DOCUMENT 0427244049 AND DECLARATION OF EASEMENTS RECORDED OCTOBER 07, 2004 AS DOCUMENT 0428118172 AS MODIFIED BY FIRST MODIFICATION OF DECLARATION OF EASEMENTS RECORDED JANUARY 2, 2007 AS DOCUMENT 0700233238.

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TRACT 3:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR SIGN EASEMENT AND ACCESS THERETO AS CREATED BY DECLARATION OF SIGN EASEMENT RECORDED JANUARY 2, 2007 AS DOCUMENT 0700233235.

TRACT 4:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR VEHICULAR AND PEDESTRIAN TRAFFIC AS CREATED BY PLAT OF EASEMENT GRANT RECORDED NOVEMBER 11, 2007 AS DOCUMENT 0731803061.

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## EXHIBIT B

### Reports

1. 635 Northwest Avenue, Northlake, Illinois - Phase I Environmental Site Assessment dated February 10, 2009, prepared by EBI Consulting, Project No. 11090088, and Property Condition Report dated February 10, 2009, prepared by EBI Consulting, Project No. 11090088.
2. 599 Northwest Avenue, Northlake, Illinois - Phase I Environmental Site Assessment dated February 10, 2009, prepared by EBI Consulting, Project No. 11090089, and Property Condition Report dated February 10, 2009, prepared by EBI Consulting, Project No. 11090089.

Property of Cook County Clerk's Office