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## Illinois Anti-Predatory Lending Database Program



Doc#: 1035722097 Fee: \$130.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/23/2010 02:29 PM Pg: 1 of 48

### Certificate of Exemption

9 of 11

Report Mortgage Fraud  
800-532-8785

The property identified as: **PIN:** 17-15-304-057-0000

**Address:**

**Street:** 8 East 9th Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60605

**Lender:** CitiBank NA

**Borrower:** 8 East Ninth LLC

**Loan / Mortgage Amount:** \$33,553,950.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

**Certificate number:** 5342ACFF-22AA-4230-8B35-568CFDAF98CB **Execution date:** 12/22/2010

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Prepared by and return to:  
Rafael Aguilar, Esq.  
Akerman Senterfitt  
One S.E. Third Ave., 25<sup>th</sup> Fl.  
Miami, Florida 33131

## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

Dated December 22nd, 2010

8 EAST NINTH, LLC,  
a Delaware limited liability company,  
Mortgagor

to

CITIBANK, N.A.,  
a national banking association,  
Mortgagee

Relating to Mortgage Property Located at:

8 East 9th Street  
City of Chicago, Cook County, Illinois

Parcel IDs: 17-15-304-057  
[As to Air Rights: 17-15-304-058,17-15-304-059]

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## MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (this "**Mortgage**") is made as of December 22, 2010 by 8 EAST NINTH, LLC, a Delaware limited liability company (the "**Mortgagor**"), whose address is c/o Crescent Heights Group, 2200 Biscayne Boulevard, Miami, Florida 33137, Attention: Sharon Christenbury, in favor of CITIBANK, N.A., a national banking association (the "**Mortgagee**"), whose address is 153 East 53rd Street, New York, New York 10043.

### WITNESSETH:

**WHEREAS**, this Mortgage is given to secure a loan (the "**Loan**") in the principal sum of up to THIRTY-THREE MILLION FIVE HUNDRED FIFTY-THREE THOUSAND NINE HUNDRED FIFTY AND NO/100 DOLLARS (\$33,553,950.00) pursuant to that certain Credit Agreement, dated as of the date hereof, between Mortgagor and Mortgagee (as the same may be amended, restated, replaced supplemented or otherwise modified from time to time, the "**Credit Agreement**");

**WHEREAS**, the Loan is evidenced by that certain Promissory Note in the principal amount of the Loan, dated the date hereof and made by Mortgagor to Mortgagee (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof being hereinafter collectively referred to as the "**Note**"); which provides for monthly payments as set forth in the Note, with the balance thereof due and payable on December 15, 2013, said date, or any later date to which the maturity date may be extended upon the agreement of Mortgagee 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, is hereinafter called the "**Maturity Date**"); and

**WHEREAS**, Mortgagor desires to secure the payment and performance of the obligations of the Loan Parties under the Credit Agreement, the Note, this Mortgage, and the other Loan Documents. The principal amount of the Note outstanding from time to time, together with accrued interest and all other sums, obligations and indebtedness evidenced by the Note, or described or referred to in this Mortgage or in any of the other Loan Documents are herein collectively referred to herein as the "**Indebtedness**." This Mortgage secures the Indebtedness and the Obligations of the Loan Parties under the Loan Documents and any and all additional advances made by the Mortgagee in its discretion to protect or preserve the Mortgaged Property or the lien or security interest created hereby in the Mortgaged Property, or for any other purpose provided herein or in the Loan Documents (whether or not the original Mortgagor remains the owner of the Mortgaged Property) (collectively the "**Secured Obligations**"). Capitalized terms used but not otherwise defined in this Mortgage shall have the meaning given to such terms in the Credit Agreement.

**NOW, THEREFORE**, in consideration of the Mortgaged Property (as hereinafter defined) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the punctual payment by Mortgagor when due, of the Secured Obligations and the performance and observance of all other covenants, obligations and liabilities of Mortgagor under this Mortgage, as the same may be extended, modified or renewed or repledged, Mortgagor does hereby irrevocably grant, bargain, sell, pledge, mortgage, warrant, convey, alien, remise, release, assign, transfer, set over, deliver, confirm and convey unto Mortgagee, its successors and assigns, upon the terms and conditions of this Mortgage, with power of sale and right of entry as provided hereinbelow (to the fullest extent permitted by applicable law), and creates a security interest in, each and all of the properties described in the Granting Clauses herein (which, together with all other property located therein or described in the Granting Clauses herein, is hereinafter collectively called the "**Mortgaged Property**").

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## GRANTING CLAUSES

All of Mortgagor's right, title and interest (whether now owned or hereafter acquired) in and to that certain real property located in the County of Cook in the State of Illinois and as more particularly described in **Exhibit A** attached hereto and made a part hereof, together with all easements, rights-of-way, gaps, strips and gores of land, streets, ways, alleys, sewers, sewer rights, waters, water courses, water rights, privileges, licenses, tenements, hereditaments and appurtenances whatsoever, in any way appertaining to said real property, whether now owned or hereafter acquired by Mortgagor, and the (reversions, remainders, possessions, claims and demands in and to the same, and the rights of Mortgagor in and to the benefits of any conditions, covenants and restrictions now or hereafter affecting said real property) (collectively, the "**Land**"), together with:

(a) (1) all things now or hereafter affixed to the Land, including all buildings, structures and improvements of every kind and description now or hereafter erected or placed thereon whether now owned or hereafter acquired by Mortgagor (collectively, the "**Buildings**") and (2) all right, title and interest of Mortgagor, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now or hereafter acquired), in and to all building materials, supplies and other property now or hereafter stored at or delivered to the Land or any other location for installation in the Buildings, and any fixtures, fittings, machinery, appurtenances, appliances, furniture, furnishings equipment, apparatus, and personal property of every nature whatsoever now or hereafter located in or on, or attached to and used or intended to be used in connection with the Land or any of the Buildings, or in connection with the operation thereof or any construction or other work now or hereafter conducted thereon (all now or hereafter placed, attached, fixed or installed in such buildings, structures, or improvements and all replacements, repairs, additions, accessions or substitutions or proceeds thereto or therefor including, without limitation, any of the following: partitions and screens; generators, boilers, compressors and engines; fuel, water and other pumps and tanks; irrigation equipment; refrigeration equipment; pipes and plumbing; elevators and escalators; sprinkler systems and other fire extinguishing machinery and equipment; heating, ventilating, air conditioning and air cooling ducts, machinery and equipment; gas and electric machinery and equipment; facilities used to provide utility services; laundry, drying, dishwashing and garbage disposal machinery or equipment; communication apparatus, including television, radio, music, and cable antennae and systems; attached floor coverings, rugs, carpets, window coverings, blinds, awnings, shades, curtains, drapes and rods; screens, storm doors and windows; stoves, refrigerators, dishwashers and other installed appliances; attached cabinets; trees, plants and other items of landscaping; and visual and electronic surveillance systems, now or hereafter located on the Land and all of such things whether now or hereafter placed thereon being hereby declared to be real property (the "**Equipment**") (the Buildings and the Equipment being hereinafter collectively referred to as the "**Improvements**"); without limiting the foregoing, Mortgagor hereby grants to Mortgagee a security interest in all of its present and future "equipment", "personal property", "inventory", "general intangibles", "proceeds" and "accounts" (as said quoted terms are defined in the UCC) located at or on the Land and/or the Improvements and Mortgagee will have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by Mortgagor to Mortgagee, all of the rights and remedies of a "secured party" under the UCC. To the extent permitted under applicable law, this Mortgage will be deemed to be a "security agreement" (as defined in the UCC);

(b) all right, title and interest of Mortgagor, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now owned or hereafter acquired), any and all plans, specifications, drawings, books, records, software,

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documents, chattel paper and similar items relating to the Land or the Improvements, the operation thereof, any rights thereto or any interest therein;

(c) all Rents (as hereinafter defined) including, but not limited to, all payments arising from the operation of the Mortgaged Property, including, without limiting the generality of the foregoing, (A) all accounts arising from the operation of the Mortgaged Property and (B) all proceeds (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom. "**Rents**" shall mean all (w) rents, additional rents, accounts (as defined in the U.C.C.), accounts receivable, increases in rents, security deposits, advance rents, income, proceeds, earnings, royalties, revenues, issues, profits, rights, deposits, benefits and other payments due or to become due under, or otherwise derived from or relating to, the use or occupancy of the Mortgaged Property (including any claims (1) based on holdover by any lessee, (2) for damages sustained by Mortgagor, (3) in settlement for any claims of Mortgagor under or relating to any lease, (4) any fees or other amounts paid for the cancellation, surrender or early termination of any lease, or (5) arising under any Federal, state or other law as a result of or in connection with the bankruptcy or insolvency of any lessee and the rights to collect and receive all of the foregoing and to enforce, whether at law or in equity or by any other means, all provisions thereof or thereunder and all rights of Mortgagor relating thereto, (x) all rights, dividends and/or claims of any kind whatsoever relating to any leases (including damage, secured, unsecured, lien, priority and administration claims), including, without limitation, any and all (1) tax refunds, abatement and claims in tax certiorari proceedings, (2) utility deposits, credits or refunds, (3) lease surrender, termination, take-back or take-over fees, charges or payments, however characterized and (4) rights to recoupment of (I) allowances, non-accountable contributions, payments or other consideration paid, or the value of construction or work performed, (II) free rent conceded or allowed, (III) take-over, take-back or other assumption obligations paid, (IV) the cost of any other payments or inducements to or for the benefit of any tenant and (V) brokerage commissions paid or incurred, by Mortgagor from any tenant or other party under any lease, and all proceeds resulting therefrom, and together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect or enforce such rights or claims, including the filing of any proof of claim in any insolvency proceeding under any state, Federal or other laws and any rights, claims or awards accruing to or to be paid to Mortgagor in its capacity as landlord under any lease, (y) income, royalties, revenues, issues, profits, proceeds, accounts receivable and other benefits now or hereinafter arising from the Mortgaged Property, or any part thereof, and (z) the proceeds of the sale of any property of Mortgagor in the ordinary course of business or otherwise, and proceeds of any business interruption or rent loss insurance;

(d) all damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive, either before or after any Event of Default, from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land, with the right in Mortgagee to receive and apply the same to the Secured Obligations;

(e) all proceeds and claims arising on account of any damage to, or Condemnation (hereinafter defined) of, the Land and/or Improvements or any other Mortgaged Property or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land, Improvements and/or any of the other Mortgaged Property;

(f) all right, title and interest of Mortgagor in and to all leases, subleases, lettings and, to the extent permitted by law, licenses affecting the Mortgaged Property, including, without

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limitation, any assignments thereof (including, without limitation, all guarantees of any such leases, assignments of leases and subleases and any claims (A) based on holdover by any lessee, (B) for damages sustained by Mortgagor, (C) in settlement for any claims of Mortgagor under or relating to any such leases, subleases, lettings and/or licenses, or (D) arising under any federal, state or other law as a result of or in connection with the bankruptcy or insolvency of any lessee) and, to the extent assignable, other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property heretofore or hereafter entered into, and all amendments, modifications, supplements, additions, extensions and renewals thereof (the "Leases");

(g) all reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, including, without limitation, all accounts established by Mortgagor pursuant to the Credit Agreement, together with all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(h) all deposits made with respect to the Land and/or Improvements, including, but not limited to, any security given to utility companies by Mortgagor, and all advance payments of insurance premiums made by Mortgagor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance; and

(i) all proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any of the foregoing (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with proceeds of any of the foregoing or proceeds thereof.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors and assigns forever, and Mortgagor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property, subject only to the Permitted Encumbrances (as hereinafter defined), to Mortgagee against every person whomsoever may lawfully claim the same or any part thereof;

PROVIDED, HOWEVER, that if the Secured Obligations shall have been unconditionally and indefeasibly paid and performed in full, then, in such case, the liens, security interests, estates and rights granted by this Mortgage shall be satisfied and the estate, right, title and interest of Mortgagee in the Mortgaged Property shall cease, and upon payment to Mortgagee of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Mortgagee shall promptly satisfy and release this Mortgage of record and the lien hereof by proper instrument.

## **ARTICLE I** **PERFORMANCE BY MORTGAGOR**

**Section 1.1. Performance by Mortgagor.** Mortgagor shall pay or cause to be paid the applicable Secured Obligations of Mortgagor to Mortgagee and shall keep and fully perform each and every other obligation, covenant and agreement of it under the Loan Documents.

## **ARTICLE II** **TAXES, UTILITIES AND INSURANCE**

**Section 2.1. Payment of Taxes.** Mortgagor shall pay or cause to be paid all real estate and other taxes and assessments, license or permit fees, levies, fines, impositions, and any other similar



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claims, general and special, public and private, which are or may become a lien on any portion of, or interest in, the Mortgaged Property or which are assessed against or imposed upon any portion of, or interest in the Mortgaged Property or any part thereof (all of the foregoing being hereafter collectively called the "**Impounds**"). Mortgagor shall furnish Mortgagee with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Mortgagor may, in good faith, by appropriate proceedings and upon notice to Mortgagee, contest the validity, applicability or amount of any asserted tax or assessment in accordance with **Section 10.6**.

**Section 2.2. Payment of Utilities, Assessments, Charges, Etc.** Mortgagor shall pay or cause to be paid, within thirty (30) days after notice of delinquency, all utility charges which may become a charge or lien against any portion of the Mortgaged Property for gas, electricity, water and sewer services furnished to the Mortgaged Property, all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such assessments or charges are or may become liens thereon and all ground rents, maintenance charges or other impositions or charges.

**Section 2.3. Additional Taxes.** In the event of the enactment after the date hereof of any law imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of trust deeds, mortgages or security agreements or the interest of the Mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Mortgage or the Secured Obligations or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay or cause to be paid such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Secured Obligations to be and become due and payable in full ninety (90) days from the giving of such notice, and, in connection with such payment of the Secured Obligations, no prepayment premium or fee shall be due.

**Section 2.4. No Credits on Account of the Secured Obligations.** Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Secured Obligations for any part of the Impounds assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Secured Obligations.

**Section 2.5. Documentary Stamp and Intangible Taxes.** Mortgagor represents and warrants to Mortgagee that Mortgagor and/or the other Loan Parties have paid (or have caused to be paid) in full all State of Illinois and local intangible personal property taxes and documentary stamp taxes (if any) required with respect to this Mortgage, the Note, the Credit Agreement and any of the other Loan Documents to which such taxes may apply, if any. If at any time the State of Illinois or any applicable local jurisdiction shall determine that insufficient intangible personal property tax or documentary stamp tax was paid in connection with this Mortgage or said other instruments or documents, or any amendment or modification hereof or thereof, or that additional intangible tax or documentary stamp tax is due with respect to the execution, delivery, recordation or enforcement hereof or thereof, then Mortgagor shall pay the same, together with any interest or penalties or attorneys' fees incurred or imposed in connection with such taxes, and Mortgagor hereby agrees to indemnify and hold Mortgagee harmless against any such taxes, interest, penalties and attorneys' fees, whensoever the same may be incurred or imposed. If any

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such sums shall be advanced or paid by Mortgagee, they shall be included within the Secured Obligations, shall be paid to Mortgagee on demand, and shall bear interest at the default interest rate set forth in the Credit Agreement from the date advanced until the date repaid to Mortgagee. The indemnity set forth in this Section shall survive the full payment and performance of the Secured Obligations and the satisfaction of this Mortgage.

**Section 2.6. Insurance.** Mortgagor shall maintain or cause to be maintained, at Mortgagor's expense, in force and effect on the Mortgaged Property at all times while this Mortgage continues in effect the following insurance:

(a) Insurance against loss or damage to the Mortgaged Property by fire, windstorm, earthquake, lightning, tornado and hail and against loss and damage by such other, additional risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the replacement cost (insurable value) of the Improvements (as established by a MAI appraisal or update of an existing MAI appraisal), without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Mortgagee's election, by reference to such indices, appraisals or information as Mortgagee determines in its reasonable discretion in order to reflect increased value due to inflation. "**Replacement cost**," as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor. Mortgagor shall also maintain insurance against loss or damage to furniture, furnishings, fixtures, equipment and other items (whether personal or fixtures) included in the Mortgaged Property and owned by Mortgagor from time to time.

(b) Commercial General Liability Insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Mortgaged Property in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate plus umbrella coverage in an amount not less than \$50,000,000.00, which insurance shall among other risks include coverage against liability arising out of the operation of any owned, non-owned or hired motor vehicles. Mortgagee hereby retains the right to periodically review the amount of said liability insurance and to require an increase in the amount of said liability insurance should Mortgagee deem an increase to be reasonably prudent under then existing circumstances.

(c) If the Improvements or any part thereof is situated in an area designated by the Federal Emergency Management Agency ("**FEMA** ") as a special flood hazard area (Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Secured Obligations if replacement cost coverage is not available for the type of building insured), or (b) the maximum insurance available under the appropriate National Flood Insurance Administration program. The maximum deductible for flood insurance shall be \$10,000.00 per building or a higher minimum amount as required by FEMA or other applicable law.

(d) Worker's Compensation and Employer's Liability Insurance covering all appropriate persons as required by applicable law.

(e) Rent loss insurance in amounts adequate to cover continuing expenses during any period of repairs or restoration which amount shall at least be equal to the greater of (i) twelve (12) month's gross rental income which would have been anticipated from the Mortgaged Property absent such rent interruption and (ii) twelve (12) month's anticipated debt service on the Loan.



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(f) Such other insurance on the Mortgaged Property or on any replacements or substitutions thereof or additions thereto as may from time to time be reasonably required by Mortgagee to protect its interests in the Mortgaged Property.

All such insurance shall (i) be with insurers fully licensed and authorized to do business in the state within which the Mortgaged Property is located and which have and maintain a rating of at least (1) AA from Standard & Poors, or (2) A and the financial class X or above from A.M. Best Company, (ii) contain the complete address of the Mortgaged Property (or a complete legal description), (iii) be for terms of at least one year, with premium prepaid, (iv) be subject to the approval of Mortgagee as to insurance companies, amounts, content, forms of policies and expiration dates, and (v) include a standard, non-contributory, mortgagee clause naming EXACTLY:

Citibank, N.A.  
 c/o Credit Services and Control  
 1 Court Square  
 Long Island City, 29<sup>th</sup> Floor  
 New York, New York 11120  
 Attention: Caroline Marmo

(1) as an additional insured under all liability insurance policies, (2) as the first mortgagee and loss payee on all property insurance policies and (3) as the loss payee on all loss of rents or loss of business income insurance policies.

Mortgagor shall deliver to Mortgagee certificates or policies evidencing the insurance required to be maintained hereunder at least twenty (20) days before any such insurance shall expire. Mortgagor further agrees that each such insurance policy: (i) shall provide for at least thirty (30) days' prior written notice to Mortgagee prior to any policy reduction or cancellation for any reason other than non-payment of premium and at least ten (10) days' prior written notice to Mortgagee prior to any cancellation due to non-payment of premium; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor or any other person which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of subrogation against Mortgagee; (iv) unless otherwise specified above, shall have a maximum deductible of \$10,000.00; (v) shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Mortgagee's approval; and (vi) may be in the form of a blanket policy, provided that Mortgagor hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Mortgaged Property or any other action not relating to the Mortgaged Property which would otherwise permit the issuer thereof to cancel the coverage thereof would require the Mortgaged Property to be insured by a separate, single-property policy and the blanket policy must properly identify and fully protect the Mortgaged Property as if a separate policy were issued for 100% of replacement cost at the time of loss and otherwise meet all of Mortgagee's applicable insurance requirements set forth in this **Section 2.6**. Mortgagor shall pay the premiums for such Policies (the "**Insurance Premiums**") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee. The delivery to Mortgagee of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Mortgaged Property by Mortgagor to Mortgagee as further security for the Secured Obligations. In the event of the foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Secured Obligations, all right, title and interest of Mortgagor in and to all proceeds payable under such policies then in force concerning the Mortgaged Property shall thereupon vest in the purchaser at such

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foreclosure, or in Mortgagee or other transferee in the event of such other transfer of title. Approval of any insurance by Mortgagee shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage or evidence of their replacement or renewal as required herein, Mortgagee may, but shall not be obligated to, procure such insurance and Mortgagor shall pay all amounts advanced by Mortgagee therefor, together with interest thereon at the interest rate set forth in the Credit Agreement from and after the date advanced by Mortgagee until actually repaid by Mortgagor, promptly upon demand by Mortgagee. Mortgagee shall not be responsible for nor incur any liability for the failure of the insurer to perform, even though Mortgagee has caused the insurance to be placed with the insurer after failure of Mortgagor to furnish such insurance. Mortgagor shall not obtain insurance for the Mortgaged Property in addition to that required by Mortgagee without the prior written consent of Mortgagee, which consent will not be unreasonably withheld provided that (i) Mortgagee is a named insured on such insurance, (ii) Mortgagee receives complete copies of all policies or original certificates evidencing such insurance and (iii) such insurance complies with all of the applicable requirements set forth herein.

## ARTICLE III CASUALTY AND CONDEMNATION

**Section 3.1. Proceeds and Restoration.** (a) Mortgagor shall give Mortgagee prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Mortgaged Property or any portion thereof. Subject to **Sections 3.2 and 3.3**, Mortgagor shall promptly commence and diligently prosecute the completion of the repair and restoration of the Mortgaged Property as nearly as reasonably possible to the condition the Mortgaged Property was in immediately prior to such fire or other casualty with such alterations as may be approved by Mortgagee (the "**Restoration**") and otherwise in accordance with **Section 3.2**. All Insurance Proceeds and Condemnation Proceeds (as hereinafter defined) on the Mortgaged Property are hereby assigned to and shall be paid to Mortgagee and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagor shall obtain Mortgagee's approval (not to be unreasonably withheld) prior to any settlement, adjustment or compromise of any claims for loss, damage or destruction under any policy or policies of insurance or claims for Condemnation Proceeds. Mortgagee may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries, and following an Event of Default, Mortgagee is hereby authorized, in its own name or in Mortgagor's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Mortgagor shall from time to time deliver to Mortgagee any instruments required to permit such participation.

**Section 3.2. Damage and Destruction.** The following provisions shall apply in connection with the Restoration of the Mortgaged Property:

(a) If the Net Proceeds shall be less than or equal to \$100,000.00 (the "**Threshold Amount**") and the costs of completing the Restoration shall be less than or equal to the Threshold Amount, the Net Proceeds will be disbursed by Mortgagee to Mortgagor upon receipt, provided that all of the conditions (except items (G) and (H)) set forth in **Subsection 3.2(c)(i)** are met and Mortgagor delivers to Mortgagee a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of this Mortgage.

(b) If the Net Proceeds are greater than the Threshold Amount or the costs of completing the Restoration are greater than the Threshold Amount, the Net Proceeds shall be paid over to Mortgagee and, except as set forth in subparagraph (c) below, shall be applied in the sole and absolute

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discretion of Mortgagee, without regard to the adequacy of Mortgagee's security hereunder, to the payment or prepayment of the Secured Obligations in such order as Mortgagee may determine, and any amounts so applied shall reduce the Secured Obligations *pro tanto*. The term "**Net Proceeds**" for purposes of this **Section 3.2** shall mean: (y) the net amount of all insurance proceeds received by Mortgagee pursuant to **Article II** as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"); or (z) the net amount of all awards and payments received by Mortgagee with respect to a taking referenced in **Section 3.3**, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.

(c) (i) Notwithstanding the foregoing, the Net Proceeds shall be made available to Mortgagor in accordance with the provisions of this **Subsection 3.2(c)** for Restoration provided that each of the following conditions are met:

(A) no monetary default or Event of Default shall have occurred and be continuing;

(B) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the Land constituting the Mortgaged Property is taken;

(C) Mortgagor shall promptly commence the Restoration and diligently pursue the same to satisfactory completion;

(D) the Mortgaged Property and the use thereof after the Restoration will be in compliance with and permitted under applicable laws;

(E) in the event the Net Proceeds are Insurance Proceeds (including rent loss Insurance Proceeds), the insurance carrier has not denied liability or otherwise reserved any rights or defenses with respect to the payment of such Insurance Proceeds;

(F) the quality and character of the Mortgaged Property after the Restoration shall be at least equivalent to the quality and character of the Mortgaged Property immediately prior to such casualty or condemnation;

(G) the estimated time to complete the Restoration as estimated by the Independent Architect (as hereinafter defined) if such Independent Architect is required in the reasonable discretion of Mortgagee, or as otherwise estimated in a manner acceptable to Mortgagee, does not (1) exceed the effective period of rent loss insurance available to Mortgagee on account of such casualty or condemnation (unless Mortgagor deposits the deficiency with Mortgagee) or (2) extend beyond the Maturity Date;

(H) in the event the Net Proceeds are Insurance Proceeds, less than ten percent (10%) of the Improvements, calculated on the basis of the value of the Improvements immediately prior to the occurrence of such fire or other casualty were damaged or destroyed by fire or other casualty, in Mortgagee's reasonable judgment; and

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(I) the taking, fire or casualty did not occur during the last six (6) months prior to the maturity of the Note.

(ii) The Net Proceeds shall be paid out from time to time as such Restoration progresses upon the written request of Mortgagor if the work for which payment is requested has been done in a good and workmanlike manner and substantially in accordance with the plans and specifications described below and satisfaction of the other conditions set forth in this **Section 3.2**, upon receipt of evidence (including partial lien waivers) satisfactory to Mortgagee that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same (other than notices of lien or other inchoate liens with respect to amounts not yet due and payable), or any other liens or encumbrances of any nature whatsoever on the Mortgaged Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Mortgagee and discharged of record or in the alternative fully insured to the satisfaction of Mortgagee by the title company insuring the lien of this Mortgage.

(iii) All plans and specifications required in connection with a Restoration shall be reviewed by and be subject to the approval of an Independent Architect (if such Independent Architect is required for the preparation and processing of the plans for such Restoration in accordance with applicable building codes and regulations). Mortgagee shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in such Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance (such acceptance not to be unreasonably withheld) by the Independent Architect (if required) and by Mortgagee upon request. All costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Independent Architect's fees, shall be paid by Mortgagor.

(iv) In no event shall Mortgagee be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Independent Architect, if required, and if not, as certified by the contractor and Mortgagor, minus the Casualty Retainage. The term "**Casualty Retainage**" shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Independent Architect and if no such Independent Architect is required, as certified by the contractor and Mortgagor, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this **Subsection 3.2(c)**, be less than the amount actually held back by Mortgagor from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until (A) thirty (30) days after the Independent Architect certifies and, if no such Independent Architect is required, after the contractor and Mortgagor certify to Mortgagee that the Restoration has been completed in accordance with the provisions of this **Subsection 3.2(c)** and that all approvals necessary for the re-occupancy and use of the Mortgaged Property have been obtained from all appropriate governmental and quasi-governmental authorities, (B) Mortgagee receives evidence satisfactory to Mortgagee that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage and (C) an endorsement to the title insurance policy insuring the lien of this Mortgage has been obtained (if obtainable) which insures that the priority of the lien of this Mortgage has not changed; provided, however, that Mortgagee will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Independent Architect certifies to Mortgagee (or if there is no Independent Architect, as of the date upon which the contractor and Mortgagor certify) that the contractor, subcontractor or materialman has



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satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Mortgagee or by the title company insuring the lien of this Mortgage and such title company issues its endorsement insuring that the priority of the lien of this Mortgage has not changed. If required by Mortgagee, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Mortgagee shall make disbursements of the Net Proceeds reasonably promptly after request by Mortgagor and satisfaction of the conditions set forth above.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not be sufficient to pay the balance of the total costs which are estimated by the Independent Architect to be incurred in connection with the completion of the Restoration, Mortgagor shall deposit with Mortgagee cash or Cash Equivalents in an amount equal to the deficiency (the "**Net Proceeds Deficiency**") before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Mortgagee shall be held by Mortgagee and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this **Subsection 3.2(c)** shall constitute additional security for the Secured Obligations.

(vii) The excess, if any, of the Net Proceeds (together with all earnings thereon, if any) and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Mortgagee (together with all earnings thereon, if any) shall be remitted by Mortgagee to Mortgagor, provided no Event of Default shall have occurred and be continuing under any of the Loan Documents, after the Independent Architect, if required, certifies to Mortgagee or if no such Independent Architect is required, after the contractor and Mortgagor certify, that the Restoration has been completed in accordance with the provisions of this **Subsection 3.2(c)**, and the receipt by Mortgagee of evidence satisfactory to Mortgagee that all costs incurred in connection with the Restoration have been paid in full or are being contested pursuant to **Section 10.6**.

(d) All Net Proceeds (together with all earnings thereon) not required (i) to be made available for the Restoration or (ii) to be returned to Mortgagor as excess Net Proceeds pursuant to **Subsection 3.2(c)(vii)** may be retained and applied by Mortgagee after such funds are received toward the payment of the outstanding principal amount of the Note whether or not then due and payable or, at the discretion of Mortgagee, the same may be paid, either in whole or in part, to Mortgagor. If Mortgagee shall receive and retain Net Proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied reasonably by Mortgagee in reduction of the outstanding principal amount of the Note.

(e) The term "**Independent Architect**" shall mean an independent, nonaffiliated, licensed architect or engineer, as appropriate for the project to be undertaken or evaluated, selected by Mortgagor and reasonably approved by Mortgagee, licensed to practice in the state in which the Mortgaged Property is located and having at least five (5) years of relevant experience.

(f) Nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in **Section 3.1** hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any



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insurance proceeds shall not cure or waive any Event of Default or notice of default under this Mortgage or invalidate any other act done by Mortgagee to exercise its remedies hereunder.

**Section 3.3. Condemnation.** Mortgagor shall promptly give Mortgagee notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Mortgagor shall, at its expense, diligently prosecute any such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to be responsible for the Secured Obligations and the Secured Obligations shall not be reduced until any award or payment therefor shall have been actually received and applied by Mortgagee, after the deduction of reasonable expenses of collection, to the reduction or discharge of the Secured Obligations. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive interest at the rate or rates provided in the Note. If the Mortgaged Property or any portion thereof is taken by a condemning authority, all Condemnation Proceeds shall be paid to Mortgagee for application in accordance with **Section 3.2** and Mortgagor shall promptly commence and diligently prosecute the Restoration of the Mortgaged Property and otherwise comply with the provisions of **Section 3.2**. If the Mortgaged Property is sold, through foreclosure or otherwise; prior to the receipt by Mortgagee of the award or payment, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Secured Obligations.

## ARTICLE IV SECURITY AGREEMENT

**Section 4.1. Security Agreement.** Mortgagor (as debtor) hereby grants to Mortgagee (as creditor and secured party) a security interest in and lien on all Equipment, Improvements, fixtures and any other personal property and fixtures described in the Granting Clauses hereof and in any and all other assets of Mortgagor wherever located now or hereafter arising which is of a nature that a security interest therein can be created and perfected under the UCC, any and all renewals or replacements of or additions and substitutions to any of the foregoing items (including all proceeds of the mentioned items). This Mortgage is a self-operative security agreement and fixture filing for the purpose of creating and perfecting a security interest in all such personal property and fixtures. These security interests and liens shall secure all of the Secured Obligations. In addition to all rights and remedies specified in this Mortgage, Mortgagee shall have all the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of Illinois, as amended (the "UCC"), and other applicable law.

**Section 4.2. After-Acquired Property.** The lien of this Mortgage shall automatically attach, without further act, to all right, title and interest of Mortgagor in and to any and all after acquired property of the character or type described in the Granting Clauses set forth hereinabove relating solely and specifically to the Mortgaged Property.

## ARTICLE V ASSIGNMENT OF LEASES AND RENTS

**Section 5.1. Assignment.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all Mortgagor's right, title and interest in and to the Leases and the Rents, and not as an assignment for additional security only. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be reasonably requested

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by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph and in accordance with the terms of the Credit Agreement, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents to the fullest extent permitted by applicable law. Mortgagor shall hold and apply the Rents in accordance with the terms of the Credit Agreement and the Assignment of Leases and Rents. To the fullest extent permitted by applicable law, upon and during the continuance of an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Secured Obligations in such priority and proportions as Mortgagee in its sole discretion shall deem proper to the fullest extent permitted by applicable law.

(b) All Leases entered into after the date of this Mortgage shall (i) provide that they are subordinate to this Mortgage to the fullest extent permitted under applicable law, (ii) provide that the applicable tenant agrees to attorn to Mortgagee, at Mortgagee's option, (iii) be executed on the Mortgagor's standard form of lease approved by Mortgagee prior to the date hereof or such other form as may be approved in writing by Mortgagee. None of the Leases shall contain any option to purchase, any right of first refusal to lease or purchase, any non-disturbance or similar recognition agreement or any other similar provisions which adversely affect the Mortgaged Property or which might adversely affect the rights of any holder of the Loan without the prior written consent of Mortgagee. Mortgagor shall furnish Mortgagee with executed copies of all Leases now or hereafter existing within ten (10) days of Mortgagor's request therefor.

(c) Notwithstanding anything contained herein to the contrary, with respect to any commercial Lease (i.e. any lease located within the 9,247 rentable square feet of the Building which has been designated as retail or commercial space) having annual base rents in excess of \$95,000.00, Mortgagor shall not, without Mortgagee's prior consent, enter into any such commercial Lease, modify the material economic terms thereof, agree to release any tenant or guarantor liable thereunder, or consent to the termination thereof prior to the stated expiration date.

(d) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Secured Obligations; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall use commercially reasonable efforts to enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iv) shall not collect any of the Rents more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the Rents; and (vi) shall deliver to Mortgagee, upon request, with respect to any commercial Lease having annual base rents in excess of \$95,000.00, tenant estoppel certificates and subordination and attornment agreements in form and substance reasonably satisfactory to Mortgagee.

## ARTICLE VI TRANSFERS, ALIENATION AND FURTHER ENCUMBRANCES

**Section 6.1. Transfers, Alienation and Further Encumbrances.** Mortgagor acknowledges that Mortgagee has relied upon the experience of Mortgagor in owning and operating the Mortgaged Property and properties similar to the Mortgaged Property in connection with the closing of the Loan evidenced by the Note. Accordingly, except as specifically permitted in the Credit Agreement and notwithstanding anything to the contrary contained in **Section 13.4**, in the event that the Mortgaged

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Property or any part thereof or interest therein shall be sold, conveyed, disposed of, alienated, hypothecated, leased, assigned, pledged, mortgaged, further encumbered or otherwise transferred or Mortgagor shall be divested of its title to the Mortgaged Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Mortgagee being first obtained, which consent may be withheld in Mortgagee's sole discretion, then the same shall constitute an Event of Default and Mortgagee shall have the right, at its option, to declare any or all of the Secured Obligations, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in **Article XIII**.

**Section 6.2. Change of Ownership; Conversion.** Mortgagor shall not sell, assign, convey, hypothecate or otherwise transfer or permit the transfer of any legal or beneficial title or ownership interest (direct or indirect) in or to (i) all or any portion of the Mortgaged Property (other than by an approved Lease), or (ii) Mortgagor, in each case except as expressly permitted in the Credit Agreement. In the event Mortgagor shall violate any of the restrictions contained in this Section 6.2, without the prior written consent of Mortgagee, then, at Mortgagee's option, Mortgagee may declare the Indebtedness to be due and payable immediately, and upon such declaration the Indebtedness shall immediately become and be due and payable without demand or notice. Mortgagee's consent hereunder shall be within its sole and absolute discretion. Mortgagor covenants and agrees that it shall not take any of the actions, or suffer any of the events, that would be a cause for acceleration of the Indebtedness pursuant to this Section, without the prior written consent of Mortgagee. If Mortgagor shall make or permit any prohibited transfer, assignment or disposition of any interest in the Mortgaged Property, then Mortgagee shall have the right to deliver notices to, receive payments from, give waivers or consents to, and otherwise deal with, the assignee or transferee as though the assignee or transferee were obligated hereunder, but without discharging Mortgagor from any liability under this Mortgage or under the Note, and Mortgagor shall remain primarily liable, as a principal and not as a surety, for the payment of the Note and the performance of its obligations under this Mortgage. Mortgagor hereby waives all suretyship or similar defenses which might otherwise be available to it. Mortgagee's dealing with an assignee or transferee shall not be deemed a waiver of Mortgagor's covenants under this Section 6.2.

## ARTICLE VII PROPERTY MAINTENANCE

**Section 7.1. Operations.** Mortgagor shall operate and maintain the Mortgaged Property in the same manner or in a superior manner to the manner the Mortgaged Property is operated and maintained on the date hereof.

**Section 7.2. Management of Mortgaged Property.** Mortgagor agrees that, upon the termination for any reason of the current management company, if any, or the entrance of an agreement with any new management company, Mortgagee shall have the right to approve any new professional, leasing or property management company which approval shall not be unreasonably withheld. The foregoing management company shall be reasonably acceptable to Mortgagee, and Mortgagee shall approve (such approval not to be unreasonably withheld) the terms and conditions of the management agreement prior to Mortgagor's execution thereof.

## ARTICLE VIII REPORTING

**Section 8.1. Access Privileges and Inspections.** Mortgagee and the agents, representatives and employees of Mortgagee shall, subject to the rights of tenants, have full and free access to the Mortgaged Property and any other location where books and records concerning the Mortgaged Property are kept at all reasonable times and, except in the event of an emergency, upon reasonable (not less than

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twenty-four (24) hours) prior notice (which notice may be telephonic) for the purposes of inspecting and recording the condition and state of repair of the Mortgaged Property and of examining, copying and making extracts from the books and records of Mortgagor relating to the Mortgaged Property. Mortgagor shall lend assistance to all such agents, representatives and employees of Mortgagee.

## **ARTICLE IX** **WARRANTIES AND COVENANTS**

**Section 9.1. Warranty of Title.** Mortgagor warrants that (i) it has good and marketable title to the Mortgaged Property free and clear of all liens, charges and encumbrances of every kind and character, subject only to the permitted encumbrances as shown on the Mortgagee Title Insurance Policy with respect to the Mortgaged Property (the "**Permitted Encumbrances**"), (ii) this Mortgage is and will continue to remain a valid and enforceable first Mortgage lien on and security interest in the Mortgaged Property, subject only to Permitted Encumbrances, (iii) it has and will continue to have full power and lawful authority to encumber and convey the Mortgaged Property as provided herein and (iv) the Permitted Encumbrances do not and will not materially and adversely affect the use or operation of the Mortgaged Property as presently conducted or the value of the Mortgaged Property on the date hereof. Mortgagor further covenants that it will preserve such title and will forever warrant and defend the title to the Mortgaged Property unto Mortgagee against all claims whatsoever and will forever warrant and defend the validity, enforceability and priority of the lien of this Mortgage against the claims of all Persons and parties whomsoever. The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by Mortgagee in the event Mortgagee acquires title to the Mortgaged Property by foreclosure or otherwise.

**Section 9.2. Waste; Alteration of Improvements.** Mortgagor shall not commit, suffer or permit any waste on the Mortgaged Property nor take or fail to take any actions that might invalidate any insurance carried on the Mortgaged Property. Mortgagor shall maintain the Mortgaged Property in good condition and repair, ordinary wear and tear excepted. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Mortgagee, which consent will not be unreasonably withheld (except that subject to the provisions contained in this Mortgage, Mortgagor shall have the right to replace Equipment with new equipment of substantially similar or superior quality in the ordinary course of business upon expiration of the useful life of such Equipment).

**Section 9.3. Zoning.** Without the prior written consent of Mortgagee, Mortgagor shall not initiate, suffer, consent to, or acquiesce in any change in any private restrictive covenant, the zoning laws, conditions of use, or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. Mortgagor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property. Mortgagor shall keep all licenses, permits, franchises and other approvals necessary for the operation of the Mortgaged Property in full force and effect. If, under applicable zoning provisions, the use of all or any part of the Mortgaged Property is or becomes a nonconforming use, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Mortgagee. Further, without Mortgagee's prior written consent (except as provided in the Credit Agreement), Mortgagor shall not file or subject any part of the Mortgaged Property to any declaration of condominium or co-operative or convert any part of the Mortgaged Property to a condominium, co-operative or other form of multiple ownership and governance.

**Section 9.4. Easements and Rights-of-Way.** Mortgagor shall not grant any easement or right-of-way with respect to all or any portion of the Mortgaged Property without the prior written consent of Mortgagee not to be unreasonably withheld. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions



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of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement or right-of-way. If Mortgagee consents to the grant of an easement or right-of-way, Mortgagee agrees to grant such consent without charge to Mortgagor other than expenses, including, without limitation, reasonable attorneys' fees, incurred by Mortgagee in the review of Mortgagor's request and in the preparation of documents effecting the subordination.

**Section 9.5. Maintenance.** The Improvements shall not be removed, demolished or materially altered without the consent of Mortgagee. Notwithstanding the foregoing, Mortgagor shall have the right to make non-material alterations to portions of the Mortgaged Property in connection with the completion of work necessary to prepare apartment and condominium units for lease and sale.

**Section 9.6. INTENTIONALLY RESERVED.**

**Section 9.7. Liens and Liabilities.**

(a) Discharge of Liens. Mortgagor will pay, bond or otherwise discharge, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property.

(b) Creation of Liens. Except as permitted pursuant to the Credit Agreement, Mortgagor will not, create, place or permit to be created or placed or allow to remain, any deed of trust, mortgage, trust deed, voluntary or involuntary lien, security interest or other encumbrance against or covering the Mortgaged Property, whether or not subordinate hereto other the Permitted Exceptions. If any such lien is not granted or consented to by Mortgagor, then no Event of Default shall be occur if Mortgagor causes any such lien to be released, insured over pursuant to a title company endorsement, or removed to bond in accordance with applicable law within twenty (20) days after the earlier to occur of (x) written notice from Mortgagee or (y) the date of service on Mortgagor of an action to enforce any such involuntary encumbrance (the foregoing twenty (20) day cure period to run concurrently with (and not in addition to) any other cure or grace period otherwise applicable to such Default).

(c) No Consent. Nothing in this Mortgage shall be deemed or construed in any way as constituting the consent or request by Mortgagee, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Mortgaged Property. Mortgagor further agrees that Mortgagee does not stand in any fiduciary relationship to Mortgagor.

**Section 9.8. Intentionally Deleted.**

**Section 9.9. Payments by Mortgagee.**

(a) Mortgagor shall pay when due all payments and charges on all liens (subject to Section 9.7(b), encumbrances, ground and other leases (including, without limitation, security interests which affect or may affect or attach to or may attach to the Mortgaged Property, or any part thereof), and if Mortgagor is in default thereof, then Mortgagee shall have the right, upon ten (10) days' prior notice to Mortgagor, but shall not be obligated, to pay such payments and charges and Mortgagor shall, on demand, reimburse Mortgagee for amounts so paid. In addition, upon default of Mortgagor beyond any applicable notice and grace period in the performance of any other terms, covenants, conditions or Secured Obligations by it to be performed hereunder or under any Lease or any such lien, encumbrance, lease or security interest, Mortgagee shall have the right upon ten (10) days' prior notice to Mortgagor, but shall not be obligated, to cure such default in the name and on behalf of Mortgagor. All sums advanced and all expenses incurred by Mortgagee after a default by Mortgagor as described in the first sentence of



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this Section or as otherwise provided under applicable law shall be secured by the lien of this Mortgage and shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate set forth in the Credit Agreement. All interest payable hereunder shall be computed on the basis of a 360-day year over the actual number of days elapsed. Any such amounts advanced or incurred by Mortgagee, together with the interest thereon, shall be payable on demand.

(b) Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and disbursements for legal services of every kind) of or incidental to the enforcement (by foreclosure or otherwise) of any provision hereof, or the enforcement, compromise or settlement of this Mortgage or the Secured Obligations, and for curing any Event of Default as provided herein or under applicable law or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

## **Section 9.10. Occupation of the Mortgaged Property.**

### (a) Permits.

(i) Mortgagor represents and warrants to Mortgagee that it has all material permits necessary for the operation and occupancy of the Mortgaged Property or any part thereof, including, but not limited to, a certificate of occupancy for the entire Improvements, which is valid and in full force and effect, a Board of Fire Underwriters Certificate, if any, for the entire Improvements and all required environmental permits, if any, all of which as of the date of the signing hereof are in full force and effect and not subject to any revocation, amendment, release, suspension, forfeiture or the like,

(ii) To the best of Mortgagor's knowledge, the present and/or contemplated use and/or occupancy of the Mortgaged Property does not conflict with or violate any Permit, and

(iii) Mortgagor has delivered to Mortgagee, prior to the signing hereof, a photocopy of such certificate of occupancy certified by Mortgagor as valid and in full force and effect. Mortgagor will obtain in a timely manner all further permits which may be required in connection with the operation and occupancy of the Mortgaged Property.

**Section 9.11. Required Notices.** Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

(a) a fire or other casualty causing damage or destruction to the Mortgaged Property;

(b) receipt of notice of eminent domain proceedings or condemnation of all or any part of the Mortgaged Property;

(c) any material change in the use or operation of the Mortgaged Property or any material part thereof;

(d) receipt of notice from the United States of America, the State of Illinois or any political subdivision, municipality, agency, authority, department, commission, board, bureau or instrumentality of the above relating to the structure, use or occupancy of the Mortgaged Property or any real property adjacent to the Mortgaged Property, or any construction relating to the Mortgaged Property other than in the ordinary course of business;

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(e) with respect to any commercial Lease having annual rents in excess of \$75,000.00, receipt of any default notice from the tenant thereunder;

(f) receipt of any notice of default from the holder of any lien/or security interest in the Mortgaged Property or any agent thereof; and

(g) commencement of any material litigation or the threatening of any material litigation affecting the Mortgaged Property, or any other demand or claim which, if enforced, could impair or threaten to impair Mortgagee's security hereunder. For purposes of this subsection, "material litigation" shall mean litigation where the amount in controversy is greater than \$250,000.

**Section 9.12. Anti-Forfeiture.** Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording the Federal government or any state or local government the right of forfeiture under any Federal or state RICO or similar law as against the Mortgaged Property or any part thereof or interest therein or any monies paid in performance of Mortgagor's Secured Obligations under this Mortgage, the Note or any of the other Loan Documents. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements set forth in this Section. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or against the Mortgaged Property or any part thereof or interest therein under any Federal or State law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's Secured Obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

## **ARTICLE X FURTHER ASSURANCES**

**Section 10.1. Defense of Title.** If the title to the Mortgaged Property or the interest of Mortgagee therein shall be directly or indirectly endangered, clouded or adversely affected in any manner, Mortgagor, at Mortgagor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Mortgagee, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Mortgagee determines that Mortgagor is not adequately performing its obligations under this Section, Mortgagee may, without limiting or waiving any other rights or remedies of Mortgagee hereunder, take such steps with respect thereto as Mortgagee shall deem necessary or proper and any and all costs and expenses incurred by Mortgagee in connection therewith, together with interest thereon at the default rate set forth in the Credit Agreement (the "**Default Interest Rate**"), from the date incurred by Mortgagee until actually paid by Mortgagor, shall be immediately paid by Mortgagor on demand and shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Secured Obligations.

**Section 10.2. Performance of Secured Obligations.** Mortgagor shall pay when due the principal of and the interest on the Secured Obligations in accordance with the terms of the Credit Agreement, the Note, and this Mortgage. Mortgagor shall also pay all charges, fees and other sums required to be paid by Mortgagor as provided in the Loan Documents, in accordance with the terms of the Loan Documents, and shall observe, perform and discharge all Secured Obligations, covenants and agreements to be observed, performed or discharged by Mortgagor set forth in the Loan Documents in accordance with their terms. Further, Mortgagor shall perform and comply in all material respects with all covenants, conditions, obligations and prohibitions required of Mortgagor in connection with any other

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document or instrument affecting title to the Mortgaged Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Mortgage.

**Section 10.3. Further Documentation.** Mortgagor shall, on the request of Mortgagee and at the expense of Mortgagor:

(a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; and

(b) promptly execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements and assignments of rents or leases) and promptly do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Mortgaged Property.

**Section 10.4. Payment of Costs; Mortgagee's Right to Cure.** Mortgagor shall pay, or cause to be paid, all costs and expenses of every character reasonably incurred in connection with the closing of the Loan evidenced by the Note and secured hereby or otherwise attributable or chargeable to Mortgagor as the owner of the Mortgaged Property, including, without limitation, appraisal or survey fees, recording and filing fees, taxes, brokerage fees and commissions, title policy premiums and title search fees, insurance costs, uniform commercial code/tax lien/litigation search fees, escrow fees and other title company charges, environmental engineer and consulting fees, and fees of other engineers and consultants, if any, and reasonable attorneys' fees and disbursements. If Mortgagor defaults in any such payment, which default is not cured within any applicable grace or cure period, Mortgagee may, at its option pay the same and Mortgagor shall reimburse Mortgagee on demand for all such costs and expenses incurred or paid by Mortgagee, together with such interest thereon at the Default Interest Rate from and after the date of Mortgagee's making such payment until reimbursement thereof by Mortgagor. Any such sums disbursed by Mortgagee, together with such interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Secured Obligations. Without limiting or waiving any other rights and remedies of Mortgagee hereunder, if Mortgagor fails to perform any of its covenants or agreements contained in this Mortgage or in any of the other Loan Documents and such failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Mortgagee's interest in the Mortgaged Property or Mortgagee's right to enforce its security, then Mortgagee may, at its option, with or without notice to Mortgagor, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Mortgagor to perform its covenants and agreements (without, however, waiving any default of Mortgagor). Mortgagor agrees to pay on demand all expenses of Mortgagee incurred with respect to the foregoing (including, but not limited to, reasonable fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Mortgagee incurs such expenses until reimbursement thereof by Mortgagor. Any such expenses so incurred by Mortgagee, together with interest thereon as provided above, shall be (additional indebtedness of Mortgagor secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Secured Obligations. The necessity for any such actions and of the amounts to be paid shall be determined by Mortgagee in its sole discretion. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to

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Mortgagor or any person in possession holding under Mortgagor. Mortgagor hereby acknowledges and agrees that the remedies set forth in this Section shall be exercisable by Mortgagee, and any and all payments made or costs or expenses incurred by Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor with interest thereon at the Default Interest Rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Mortgagee after the filing by Mortgagor of a voluntary case or the filing against Mortgagor of an involuntary case pursuant to or within the meaning of Title 11 of the United States Code, as amended, or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Mortgagor, Mortgagee, the Secured Obligations, any of the Loan Documents or any indemnitor under any of the Loan Documents.

**Section 10.5. Compliance with Laws.** Mortgagor shall at all times comply with all laws (including without limitation the Americans with Disabilities Act of 1990 as amended), statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Mortgaged Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Mortgaged Property; provided, however, that, Mortgagor may, upon providing Mortgagee with security satisfactory to Mortgagee, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement pursuant to **Section 10.6**. Mortgagor shall not use or occupy, or allow the use or occupancy of, the Mortgaged Property in any manner which violates any Lease of or any other agreement applicable to the Mortgaged Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

**Section 10.6. Contest.** Notwithstanding anything to the contrary contained in this Mortgage, Mortgagor shall have the right to contest in good faith and at its own expense and provided the same are conducted expeditiously and continuously the validity or applicability of any duty or obligation described in **Section 9.3**, the validity of any lien, encumbrance, charge or security referred to in **Section 9.7**, the applicability of any law described in **Section 10.5** and any Impounds imposed upon the Mortgaged Property or any part thereof (a "**Contest**") by an appropriate legal proceeding, provided that and so long as (a) such Contest is conducted by Mortgagor after prior written notice to Mortgagee, at Mortgagor's sole cost and expense and with due diligence and continuity so as to resolve as promptly as possible the contested matter (the "**Contested Matter**"); (b) the Premises are not at any time during the Contest listed for an in rem action based on the Contested Matter or otherwise in danger of being forfeited, sold or lost by reason of the Contest or the Contested Matter; (c) the Contest shall not subject Mortgagee or the holders of the Secured Obligations to prosecution for a criminal offense or a claim for civil liability; (d) Mortgagor shall deposit funds with Mortgagee or provide Mortgagee with other security (such as proof of the posting of a bond or a title insurance endorsement as acceptable to Mortgagee in its sole discretion, with respect to such Contested Matter) in an amount and in form and substance satisfactory to Mortgagee for application towards the cost of performing, complying with, discharging or paying, as the case may be, the Contested Matter and to secure Mortgagee against any loss or damage arising out of the Contest or the deferral of Mortgagor's performance, compliance, discharge or payment of the Contested Matter; (e) Mortgagor agrees in writing that the indemnification of Mortgagee pursuant to this Mortgage extends to the Contest and the Contested Matter; and (f) Mortgagor is not in default under any provision of the Loan Documents; provided, further, that with respect to the Contest if at any time payment or other non-monetary action shall become necessary to prevent (i) the delivery of a tax deed conveying the Mortgaged Property or (ii) the imposition of any civil or criminal penalty or liability on Mortgagee or the holders of the Secured Obligations, Mortgagee shall have the right to pay the same or take the required action in



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sufficient time to avoid the delivery of such tax deed or the imposition of any such penalty or liability, such amount, or the costs and expenses of taking such action, to be reimbursed to Mortgagee by Mortgagor immediately upon demand therefor.

**Section 10.7. Appraisals.** In the event that Mortgagee shall obtain a new or updated Appraisal of the Mortgaged Property in accordance with Section 5.1(m) of the Credit Agreement, Mortgagor shall pay to Mortgagee, within ten (10) days of demand, all costs associated with such new or updated Appraisal. The cost of such Appraisal shall be added to the Indebtedness and shall be secured by this Mortgage in accordance with the provisions of the Granting Clauses hereof.

## **ARTICLE XI INDEMNIFICATION**

### **Section 1.1. Indemnification; Subrogation.**

(a) Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Mortgaged Property or the Loan and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including Mortgagee's reasonable attorneys' fees and expenses) of whatever kind or nature which may be asserted against, imposed on or incurred by Mortgagee in connection with the Loan, this Mortgage and any other Loan Document, the Mortgaged Property, or any part thereof, or the exercise by Mortgagee of any rights or remedies granted to it under this Mortgage; provided, however, that nothing herein shall be construed to obligate Mortgagor to indemnify, defend and hold harmless Mortgagee from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses to the extent enacted against, imposed on or incurred by Mortgagee solely by reason of Mortgagee's willful misconduct or gross negligence as finally determined by a court of competent jurisdiction.

(b) Mortgagor hereby indemnifies and holds Mortgagee harmless from and against all loss, cost and expenses with respect to any Event of Default, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Mortgaged Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Mortgaged Property or any nuisance made or suffered thereon, except to the extent due solely to Mortgagee's willful misconduct or gross negligence as finally determined by a court of competent jurisdiction, and such indemnity shall survive payment in full of the Loan. This Section shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

(c) If Mortgagee is made a party defendant to any litigation or any claim is threatened or brought against Mortgagee concerning the Loans, this Mortgage, the Mortgaged Property, or any part thereof, or any interest therein, or the construction, maintenance, operation or occupancy or use thereof, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against all liability by reason of said litigation or claims, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or to prosecute any breach by Mortgagor of any of the terms hereof or to recover any sum secured hereby, Mortgagor shall pay to Mortgagee the reasonable attorneys' fees and expenses incurred by Mortgagee in connection therewith. The right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage or any other Loan Document, Mortgagee may engage the services of an attorney or attorneys to protect its rights hereunder, and in the event of such



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engagement following any breach by Mortgagor, Mortgagor shall reimburse Mortgagee for its reasonable attorneys' fees and expenses, whether or not an action is actually commenced against Mortgagor by reason of such breach. All references to "attorneys" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any attorney or law firm engaged by Mortgagee, and all references to "fees and expenses" in this Subsection and elsewhere in this Mortgage shall include, without limitation, any fees of such attorney or law firm, and any appellate counsel fees, if applicable.

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

## ARTICLE XII REMEDIES

**Section 12.1. Remedies Available.** If there shall occur an Event of Default, then this Mortgage is subject to foreclosure as provided by law and Mortgagee may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

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

(b) Entry on the Mortgaged Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law, unless such notice and process is waivable, in which case Mortgagor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Mortgagee's judgment to complete any unfinished construction on the Mortgaged Property, to preserve the value, marketability or rentability of the Mortgaged Property, to increase the income therefrom, to manage and operate the Mortgaged Property or to protect the security hereof, and all sums expended by Mortgagee therefor, together with interest thereon at the Default Interest Rate, shall be immediately due and payable to Mortgagee by Mortgagor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Secured Obligations.

(c) Collect Rents. With or without taking possession of the Mortgaged Property, sue or otherwise collect the Rents, including those past due and unpaid.

(d) Power of Sale. To the fullest extent permitted by applicable law, sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law.

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(e) Appointment of Receiver. To the fullest extent permitted by applicable law, upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver or all or any part of the Mortgaged Property, as a matter of strict right and without notice to Mortgagor and without regard to the adequacy of the Mortgaged Property for the repayment of the Secured Obligations or the solvency of Mortgagor or any person or persons liable for the payment of the Secured Obligations, and Mortgagor does hereby irrevocably consent to such appointment, waive any and all notices of and defenses to such appointment and agree not to oppose any application therefor by Mortgagee, but nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege Mortgagee may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of the Rents pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Mortgaged Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in **Section 12.3** below. Such receivership shall, at the option of Mortgagee, continue until full payment of all of the Secured Obligations or until title to the Mortgaged Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(f) Foreclosure. Immediately commence an action to foreclose this Mortgage or to specifically enforce its provisions with respect to any of the Secured Obligations, pursuant to the statutes in such case made and provided, and to the fullest extent permitted by applicable law, sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property. In the event foreclosure proceedings are instituted by Mortgagee, all expenses incident to such proceedings, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Secured Obligations. The Secured Obligations, including, without limitation, interest at the Default Interest Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Mortgagee under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Mortgaged Property or any part thereof.

(g) Real Property Transfer Taxes. If any real property transfer taxes or transfer gains taxes (state, county and/or local) shall be due and payable upon the conveyance or assignment of the Mortgaged Property pursuant to a judicial sale or power of sale in any foreclosure action or by assignment in lieu of foreclosure, Mortgagor shall pay or cause such taxes to be paid, together with any interest and penalties thereon, which may be due and payable by reason of such conveyance or assignment. The Secured Obligations and liabilities of Mortgagor under this **Section 12.1(g)** shall survive the satisfaction or assignment of this Mortgage or any entry of a judgment of foreclosure or delivery of an assignment in lieu of foreclosure of this Mortgage or other exercise of any right or remedy.

(h) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by or on behalf of Mortgagee, to enforce the payment of the Secured Obligations to foreclose the liens and security interests of this Mortgage as against all or any part of the Mortgaged Property, and to have all or

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any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Mortgagee with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Mortgagee.

(i) UCC. Exercise any and all rights and remedies available to a secured party under the UCC with respect to all or any portion of the Mortgaged Property that is subject to the UCC.

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

**Section 12.2. Application of Proceeds.** To the fullest extent permitted by law, the proceeds that Mortgagee shall receive with respect to the exercise of any of its remedies shall be applied, to the extent funds are so available, to the following items in such order as Mortgagee in its discretion may determine:

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

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

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

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

**Section 12.3. Right and Authority of Receiver or Mortgagee in the Event of Default; Power of Attorney.** Upon the occurrence of an Event of Default, and entry upon the Mortgaged Property pursuant to **Section 12.1(b)** or appointment of a receiver pursuant to **Section 12.1(e)** and under such terms and conditions, as may be prudent and reasonable under the circumstances in Mortgagee's or the receiver's sole discretion, all at Mortgagor's expense, Mortgagee or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently to the fullest extent permitted by applicable law: (a) enter upon and take possession and control of any and all of the Mortgaged Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Mortgaged Property; (c) exclude Mortgagor and its agents, servants and employees wholly from the Mortgaged Property; (d) manage and operate the Mortgaged Property; (e) preserve and maintain the Mortgaged Property; (f) make repairs and alterations to the Mortgaged Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Mortgagee may in its sole discretion deem appropriate or desirable to place the Mortgaged Property in such condition as will, in Mortgagee's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Mortgaged Property, or employ a marketing or leasing agent or agents to do so, directed to

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the leasing or sale of the Mortgaged Property under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Mortgagee may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers granted herein and in the other Loan Documents; (j) execute and deliver, in the name of Mortgagee as attorney-in-fact and agent of Mortgagor or in its own name as Mortgagee, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents from the Mortgaged Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents, payments, income or proceeds in the name of Mortgagor or Mortgagee; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Mortgagee by this Mortgage; and (r) do any acts which Mortgagee or the receiver in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Mortgagee or the receiver may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any tenant, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Mortgagor or Mortgagee, at the request of Mortgagee, to pay all amounts owing under any lease, contract, concession, license or other agreement to Mortgagee without proof of the Event of Default relied upon. Any such tenant or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Mortgagor in so doing) any request, notice or demand by Mortgagee for the payment to Mortgagee of any Rents or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any Event of Default under this Mortgage or under any of the other Loan Documents has actually occurred or is then existing. Mortgagor hereby irrevocably constitutes and appoints Mortgagee, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution in the Mortgaged Property, in Mortgagor's name, place and stead, to do or permit anyone or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently. Any money advanced by Mortgagee in connection with any action taken under this Section, together with interest thereon at the Default Interest Rate from the date of making such advancement by Mortgagee until actually paid by Mortgagor, shall be a demand obligation owing by Mortgagor to Mortgagee and shall be secured by this Mortgage and by every other instrument securing all or any portion of the Secured Obligations. In the event that Mortgagee shall exercise any of the rights or remedies set forth in this Section, Mortgagee shall not be deemed to have entered upon or taken possession of the Mortgaged Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a Mortgagee or Mortgagee in possession by reason of such entry or taking possession. Mortgagee shall not be liable to account for any action taken pursuant to any such exercise other than for Rents actually received by Mortgagee, nor liable for any loss sustained by Mortgagor resulting from any failure to let the Mortgaged Property, or from any other act or omission of Mortgagee except to the extent such loss is caused by the willful misconduct or gross negligence of Mortgagee.

**Section 12.4. Rights Pertaining to Sales.** Subject to the provisions or other requirements of law (to the fullest extent permitted by applicable law) and except as otherwise provided herein, the following provisions shall apply to any sale or sales of all or any portion of the Mortgaged Property under or by virtue of this **Article XII**, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:



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(a) Mortgagee may conduct any number of sales from time to time. The power of sale set forth in **Section 12.1** hereof shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property which shall not have been sold, nor by any sale which is not completed or is defective in Mortgagee's opinion, until the Secured Obligations shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale without further notice. Without limiting the foregoing, in case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings have been discontinued or abandoned for any such reason or shall have been determined adversely to Mortgagee, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

(c) After each sale, Mortgagee or an officer of any court empowered to do so shall execute and deliver to the purchaser or purchasers at such sale a good and sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Mortgagor in and to the property and rights sold and shall receive the proceeds of said sale or sales and apply the same as herein provided. Mortgagee is hereby appointed the true and lawful attorney-in-fact of Mortgagor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Mortgagor, if requested by Mortgagee, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or such purchaser or purchasers all such instruments as may be advisable, in Mortgagee's judgment, for the purposes as may be designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (c) of this Section given by Mortgagee as to nonpayment of the Secured Obligations, or as to the occurrence of any Event of Default, or as to Mortgagee having declared all or any of the Secured Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagor, or by Mortgagee, shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited. Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale, but in the name and on behalf of Mortgagee.

(e) The receipt of Mortgagee for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives, grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Mortgage or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and any and all



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persons claiming or who may claim the same, or any part thereof or any interest therein, by, through or under Mortgagor to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Mortgagee may bid for and acquire the Mortgaged Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Secured Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder, and any other sums which Mortgagee is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(h) In the event that Mortgagor, or any person claiming by, through or under Mortgagor, shall transfer or refuse or fail to surrender possession of the Mortgaged Property after any sale thereof, then Mortgagor, or such person, shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have present or constructively in its possession any of the Mortgaged Property.

(j) In the event a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale of the Mortgaged Property abandon the sale, and may institute suit for the collection of the Secured Obligations and for the foreclosure of this Mortgage, or in the event that Mortgagee should institute a suit for collection of the Secured Obligations, and for the foreclosure of this Mortgage, Mortgagee may at any time before the entry of final judgment in said suit dismiss the same and require Mortgagee to sell the Mortgaged Property in accordance with the provisions of this Mortgage.

**Section 12.5. Occupancy After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's representatives, successors or assigns, or any other persons claiming any interest in the Mortgaged Property by, through or under Mortgagor are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Mortgagee or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the higher of either (i) any rate provided in a lease then in effect with Mortgagor or, if none exists, then (ii) the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Mortgaged Property is located.

**Section 12.6. Notice to Account Debtors.** Mortgagee may, at any time after an Event of Default, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Mortgagor included in the Mortgaged Property to pay Mortgagee directly. Mortgagee shall at any time or from time to time upon the request of Mortgagee provide to Mortgagee a current list of all such account debtors and obligors and their addresses.

**Section 12.7. Cumulative Remedies.** All remedies contained in this Mortgage are cumulative and Mortgagee shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Mortgagee and may be exercised in any order and as often as occasion therefor shall arise.

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**Section 12.8. Payment of Expenses.** After an Event of Default by Mortgagor under the Credit Agreement or any other Loan Document which Event of Default is continuing, Mortgagor shall pay on demand all of Mortgagee's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Mortgagee until actually paid by Mortgagor at the Default Interest Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Secured Obligations.

**Section 12.9. Mortgagor's Waivers.** To the full extent permitted by law, Mortgagor agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Secured Obligations prior to any sale of the Mortgaged Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Mortgaged Property so sold. Mortgagor, for Mortgagor and Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Secured Obligations (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshaling of the assets of Mortgagor, including the Mortgaged Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Mortgaged Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Mortgaged Property sold as an entirety; and (c) to the extent permitted under applicable law, waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under applicable law. To the full extent permitted by law, Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Mortgaged Property, for the collection of the Secured Obligations without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the Secured Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever. Furthermore, Mortgagor hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the Secured Obligations to the fullest extent permitted by law. Mortgagor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding <sup>or</sup> against Mortgagor, Mortgagor shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of Title 11 of the United States Code, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Mortgagee to enforce any rights of Mortgagee against any guarantor or indemnitor of the Secured Obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

**Section 12.10. Submission to Jurisdiction; Waiver of Jury Trial.**

(a) MORTGAGOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF

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COMPETENT COUNSEL, (I) SUBMITS TO PERSONAL JURISDICTION IN THE STATE IN WHICH THE SUBJECT PROPERTY IS LOCATED OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, (II) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN THE COUNTY IN WHICH THE SUBJECT PROPERTY IS LOCATED, (III) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (IV) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING AGAINST MORTGAGEE IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF MORTGAGEE TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM).

(b) MORTGAGOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE SECURED OBLIGATIONS OR ANY CONDUCT, ACT OR OMISSION OF MORTGAGEE OR MORTGAGOR, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH MORTGAGEE OR MORTGAGOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR HEREBY CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID TO MORTGAGOR AT THE ADDRESS FOR NOTICES DESCRIBED HEREIN ABOVE.

## ARTICLE XIII MISCELLANEOUS TERMS AND CONDITIONS

**Section 13.1. Time of Essence.** Time is of the essence with respect to all provisions of this Mortgage.

**Section 13.2. Release or Assignment of Mortgage.** If all of the Secured Obligations are paid, then and in that event only, all rights under this Mortgage, except for those provisions hereof which by their terms survive, shall terminate and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be promptly released of record by Mortgagee in due form at Mortgagor's cost. To the extent requested by Mortgagor, Mortgagee agrees to assign the Note and this Mortgage to such party as may be designated by Mortgagor upon the repayment in full of the Secured Obligations, provided (i) any such assignment shall be without representation or warranty by Mortgagee and without recourse to Mortgagee, (ii) such assignment shall not be precluded or prohibited by then applicable law and (iii) Mortgagee shall have no liability whatsoever to Mortgagor or Mortgagor's designee if the original of the Note or this Mortgage cannot be found. Mortgagee will cooperate in the preparation of the necessary documentation to effectuate an assignment of this Mortgage, at Mortgagor's cost, including reasonable attorneys' fees and expenses.

**Section 13.3. Notices.** All notices, demands, requests or other communications required or permitted hereunder shall be made in accordance with the terms of the Credit Agreement.

**Section 13.4. Successors and Assigns: Joint and Several Liability.** The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Mortgagor and the successors and

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assigns of Mortgagor, including all successors in interest of Mortgagor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Mortgagee, its directors, officers, shareholders, employees and agents and their respective successors and assigns and shall constitute covenants running with the land. The term "Mortgagee" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the Secured Obligations. If more than one person or entity is the "Mortgagor" hereunder, each is jointly and severally liable to perform the Secured Obligations of Mortgagor hereunder and all representations, warranties, covenants and agreements made by Mortgagor hereunder are joint and several.

**Section 13.5. Severability.** A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

**Section 13.6. Gender.** Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

**Section 13.7. Waiver; Discontinuance of Proceedings.** Mortgagee may waive any single Event of Default by Mortgagor hereunder without waiving any other prior or subsequent Event of Default. No waiver of an Event of Default shall be valid for any purpose hereunder unless given in writing by Mortgagee. Mortgagee may cure any Event of Default by Mortgagor hereunder without waiving the Event of Default remedied. Neither the failure by Mortgagee to exercise, nor the delay by Mortgagee in exercising, any right, power or remedy upon any Event of Default by Mortgagor hereunder shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any of the Secured Obligations shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Secured Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the same had never been invoked.

**Section 13.8. Section Headings.** The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

**Section 13.9. Governing Law.** THIS MORTGAGE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO ITS CONFLICTS OF LAWS RULES.



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**Section 13.10. Counting of Days.** The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Mortgaged Property is located, the period shall be deemed to end on the next succeeding business day. The term "business day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

**Section 13.11. Relationship of the Parties.** The relationship between Mortgagor and Mortgagee is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

**Section 13.12. Unsecured Portion of Indebtedness.** If any part of the Secured Obligations cannot be lawfully secured by this Mortgage or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Mortgage.

**Section 13.13. Inconsistency With Other Loan Documents.** In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of the Note shall control over the provisions of the Credit Agreement, and the provisions of the Credit Agreement shall control over the provisions of the other Loan Documents.

**Section 13.14. No Merger.** It is the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property.

**Section 13.15. Rights With Respect to Junior Encumbrances.** Without implying that any person or entity has the right to do so, any person or entity purporting to have or to take a junior Mortgage or other lien upon the Mortgaged Property or any interest therein shall be subject to the rights of Mortgagee to amend, modify, increase, vary, alter or supplement this Mortgage, the Note, or any of the other Loan Documents, and to extend the maturity date of the Secured Obligations, and to increase the amount of the Secured Obligations, and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Secured Obligations, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

**Section 13.16. Mortgagee May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor or the principals, general partners or managing members in Mortgagor, or their respective creditors or property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Mortgagee allowed in such proceedings for the entire Secured Obligations at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

**Section 13.17. Recording and Filing.** Mortgagor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Mortgagor shall reimburse Mortgagee, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Mortgaged Property.

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**Section 13.18. Entire Agreement and Modifications.** This Mortgage and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Mortgage and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

**Section 13.19. Maximum Interest.** The provisions of this Mortgage and of all agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("**Interest**") to Mortgagee for the use, forbearance or retention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Mortgagor and Mortgagee shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then, the *ipso facto* obligation to be performed or fulfilled shall be reduced to such limit, and if, from any circumstance whatsoever, Mortgagee shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or, at the option of Mortgagee, be paid over to Mortgagor, and not to the payment of Interest. All Interest (including any amounts or payments deemed to be Interest) paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of the Note so that the Interest thereon for such full period will not exceed the maximum amount permitted by applicable law. This Section will control all agreements between Mortgagor and Mortgagee.

**Section 13.20. Sole Discretion of Mortgagee.** Whenever Mortgagee's judgment, consent or approval is required hereunder for any matter, or Mortgagee shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Mortgagee, except as otherwise expressly provided herein.

**Section 13.21. Specific Performance.** Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable law, in the event that Mortgagee fails or refuses to grant consent or approval when required hereunder or under any other Loan Document for any matter, the parties agree that the damages which might arise as a result of any such actions are incapable of accurate determination and, accordingly, agree that the remedy of specific performance is and should be the sole remedy of Mortgagor with respect to such actions against Mortgagee, and Mortgagor hereby waives all claims for damages (except for damages awarded by a court of competent jurisdiction for acts taken by the Mortgagee in bad faith) with respect thereto.

**Section 13.22. Right to Deal.** In the event that ownership of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or the Secured Obligations in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the Secured Obligations or being deemed a consent to such vesting.

**Section 13.23. Splitting of Lien.** This Mortgage and the Note may, at any time until the same are fully paid and satisfied, at the sole election of Mortgagee, be split or divided into two or more note

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and two or more mortgages constituting liens on the Mortgaged Property or portions thereof in such principal amounts as may be agreed upon, but in no event to exceed the aggregate principal amount evidenced by the Note and secured, or which under any contingency may be secured, by this Mortgage. Mortgagor, upon request of Mortgagee, shall execute, acknowledge and deliver to Mortgagee and/or its designee or designees such documents as may be necessary to effectuate the foregoing, including, without limitation, such supplemental or substitute mortgages, assignments of rents and leases and security agreements and supplemental or substitute notes as Mortgagee may require. If the splitting of the lien is at Mortgagor's request, Mortgagor shall pay all expenses in connection with the making and recording of such documents, including recording fees, Mortgage recording taxes, if any, and the reasonable fees and disbursements of Mortgagee's attorneys, costs and expenses relating to examination of title and title insurance premiums, if any. If the splitting of the lien is at Mortgagee's request, Mortgagee shall pay for all expenses in connection with the making and recording of such documents, including recording fees, Mortgage recording taxes, if any, and the reasonable fees and disbursements of Mortgagor's attorneys, costs and expenses relating to examination of title and title insurance premiums, if any.

**Section 13.24. Estoppel Certificates and No Default Affidavits.** After request by Mortgagee, Mortgagor shall, within ten (10) days furnish Mortgagee with a statement, duly acknowledged and certified, in form and substance supplied by or otherwise acceptable to Mortgagee, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Secured Obligations, if any, (vi) whether any Default or Event of Default has occurred, and (vii) that this Mortgage is a valid, legal and binding Secured Obligations and have not been modified or, if modified, giving the particulars of such modification.

**Section 13.25. Future Advances.** This Mortgage shall secure such future advances as may be made by Mortgagee, at its option and for any purpose, within twenty (20) years from the date of this Mortgage. All such future advances shall be included within the "**Secured Obligations**," shall be secured to the same extent as if made on the date of the execution of this Mortgage, and shall take priority as to third persons without actual notice to the maximum extent provided by applicable law. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of \$75,000,000.00, plus interest and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on those disbursements, plus any increase in the principal balance as the result of negative amortization or deferred interest. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the maximum principal amount set forth in this section.

**Section 13.26. Construction of Provisions.** The following rules of construction shall be applicable for all purposes of this Mortgage and all documents or instruments supplemental hereto, unless the context otherwise requires:

(a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Mortgage, unless expressly otherwise designated in context. All Article, Section and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

(b) The terms "**include**," "**including**" and similar terms shall be construed as if followed by the phrase "without being limited to."

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(c) The terms "Land," "Improvements," "Furnishings and Equipment," and "Mortgaged Property" shall be construed as if followed by the phrase "or any part thereof."

(d) The term "Secured Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof."

(e) The term "provisions," when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, conditions and/or."

(f) The cover page of, all recitals set forth in and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage.

(g) All obligations of Mortgagor hereunder shall be performed and satisfied by or on behalf of Mortgagor at Mortgagor's sole cost and expense.

(h) The term "lease" or "leases" as used herein shall include any "tenancy, subtenancy, lease or sublease," the term "lessor" shall mean and include "landlord, sublandlord, lessor and sublessor" and the term "lessee" shall mean and include "tenant, subtenant, lessee and sublessee."

(i) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

(j) In the computation of periods of time from a specified date to a later specified date in this Mortgage, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

**Section 13.27. Partial Release Provision.** Mortgagee shall permit the closing on the sales of Units and Parking Spaces by Mortgagor pursuant to the terms and conditions of the Credit Agreement, and shall deliver a Partial Release in connection with such approved sale of a Unit or Parking Space, so long as Mortgagor shall make a Partial Release Payment to Mortgagee and comply with the other conditions set forth in Section 5.2(c) of the Credit Agreement.

## ARTICLE XIV STATE SPECIFIC PROVISIONS

**Section 14.1. Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this **Article XIV** and the terms and conditions of this Mortgage, the terms and conditions of this **Article XIV** shall control and be binding.

**Section 14.2. State Specific Provisions.** The following provisions are incorporated by reference into this Mortgage. If any conflict or inconsistency exists between this Rider and the remainder of the attached Mortgage, this Rider shall govern.

(a) **Protective Advances.** Without limitation on anything contained in this Mortgage, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure of this Mortgage, and before and after a judgment of foreclosure, and at any time prior to sale of the Mortgaged Property, and, where applicable, after sale of the Mortgaged Property and during the pendency of any related proceedings, for the purposes set forth in Article X and Section 13.25 of this Mortgage, in addition to those otherwise authorized by this Mortgage



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or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 *et seq.*(the "Act"), shall have the benefit of all applicable provisions of the Act (collectively, "**Protective Advances**").

(b) **Waiver of Right of Redemption and Reinstatement.** Without limiting the generality of Article 12 of this Mortgage, the waiver by Mortgagor of its rights of redemption and reinstatement in such Section, include the waiver of such rights as provided under Sections 15-1601 and 15-1602 of the Act.

(c) **Business Loan Recital/Statutory Exemption.**

(A) Mortgagor acknowledges and agrees that (A) the proceeds of the Loan will be used in conformance with subparagraph (1) of Section 4 of the Illinois Interest Act (815 ILCS 205/0.01, *et seq.*, including Section 4(1) thereof); (B) the Indebtedness secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4(1); and (C) the Indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4(1).

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

(d) **Illinois Mortgage Foreclosure Act.** It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Mortgage shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provisions in this Mortgage are deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

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

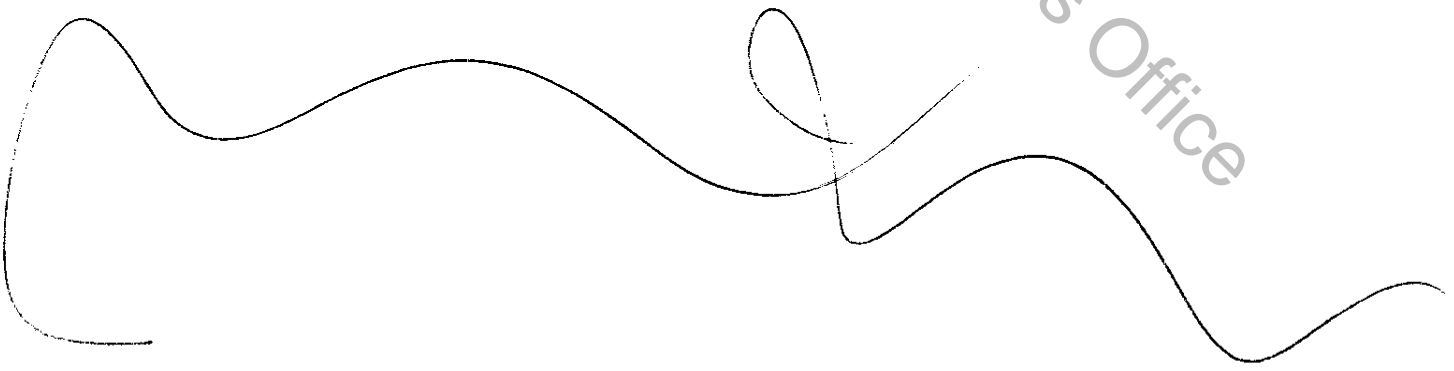
Unless the Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for the Indebtedness. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the Indebtedness, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be more than the cost of insurance that Mortgagor may

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be able to obtain on its own and may be added to the Indebtedness and future obligations secured hereunder.

**[SIGNATURES ON NEXT PAGE]**

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage on the day and year first written above.

8 EAST NINTH, LLC, a Delaware limited liability company

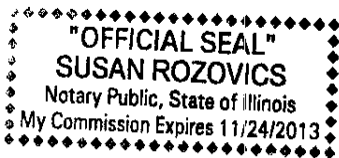
BY: 8 East Ninth Holdings, LLC, a Delaware limited liability company, its sole manager and member

By: [Signature]  
Name: Roman G. Speron  
Title: President

STATE OF ILLINOIS  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me on December 17, 2010, by Roman G. Speron, as President of 8 EAST NINTH HOLDINGS, LLC, a Delaware limited liability company, the sole manager and member of 8 EAST NINTH, LLC, a Delaware limited liability company, on behalf of such company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public  
Print Name: SUSAN ROZOVICS  
My Commission Expires: 11/24/13



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## LEGAL DESCRIPTION

### PARCEL 1: CONDOMINIUM UNITS:

UNITS 203, 204, 304, 401, 404, 405, 501, 504, 601, 603, 701, 703, 704, 801, 802, 804, 902, 903, 1002, 1101, 1103, 1105, 1106, 1107, 1108, 1109, 1110, 1201, 1202, 1203, 1206, 1207, 1208, 1209, 1210, 1211, 1301, 1302, 1306, 1310, 1311, 1401, 1402, 1403, 1405, 1406, 1407, 1409, 1410, 1501, 1503, 1505, 1506, 1507, 1508, 1509, 1511, 1603, 1606, 1607, 1608, 1610, 1611, 1807, 1808, 1809, 1811, 1902, 1905, 1907, 1908, 1911, 2001, 2002, 2004, 2005, 2006, 2007, 2008, 2009, 2108, 2207, 2305, 2307, 2308, 2311, 2402, 2404, 2411, 2511, 2604, AND 2611, AND PARKING UNITS P-201, P-206, P-207, P-209, P-216, P-218, P-219, P-221, P-222, P-227, P-229, P-423, P-601, P-606, P-610, P-618, P-619, P-620, P-622, P-624, P-625, P-627, P-628, P-711, P-713, P-714, P-715, P-716, P-717, P-718, P-719, P-720, P-723, P-724, P-801, P-802, P-803, P-807, P-809, P-810, P-812, P-813, P-816, P-818, P-819, P-821, P-822, P-823, P-824, P-825, P-827, P-828, P-904, P-905, P-906, P-907, P-911, P-914, P-916, P-918, P-920, P-921, P-922, P-926, P-927, AND P-929, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN ASTORIA TOWER CONDOMINIUM, AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 0913918053, AS AMENDED FROM TIME TO TIME, IN THE FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 2: NON-CONDOMINIUM RESIDENTIAL PROPERTY:

THE FOLLOWING TRACTS OF LAND:

(TRACT A) LOTS 1 TO 6 IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 IN BLOCK 18 IN ADDITION TO CHICAGO (EXCEPT THE WEST 27 FEET THEREOF CONDEMNED BY THE CITY OF CHICAGO FOR WIDENING STATE STREET) IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS;

ALSO

(TRACT B) LOTS 7 AND 8 IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 IN BLOCK 18 IN ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

ALSO

(TRACT C) TOGETHER WITH ALL THE VACATED ALLEY IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 ALL IN BLOCK 18 IN ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

EXCEPT THAT PART OF THE ABOVE TRACTS A, B AND C OF LAND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +119.00 FEET CHICAGO CITY DATUM AND LYING NORTH OF A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF SAID TRACT THROUGH A POINT THEREIN 140.48 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT;

ALSO

(TRACT D) (AIR RIGHTS PARCEL): ALL THE PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE LOCATED 119 FEET ABOVE THE CITY OF CHICAGO DATUM, CONTAINED WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF SUBLOTS 1 AND 2 OF LOT 2 SUBLOTS 1 AND 2 OF LOT 3 SUBLOTS 1 AND 2 OF LOT 6 AND SUBLOT 1 OF THE NORTH 1/4 OF LOT 7 (EXCEPTING FROM SAID LOTS THE WEST 27 FEET THEREOF CONDEMNED BY THE CITY OF CHICAGO FOR THE WIDENING OF STATE STREET) IN BLOCK 18 IN CANAL TRUSTEES ADDITION TO CHICAGO IN FRACTIONAL SECTION 15 TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THOSE PARTS OF TRACTS A, B, C AND D DESCRIBED AS FOLLOWS:



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EXCEPTING FROM TRACTS A, B, C AND D: THE FOLLOWING UNITS :

UNITS 201, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 405, 501, 502, 503, 504, 505, 601, 602, 603, 604, 605, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 901, 902, 903, 904, 1001, 1002, 1101, 1103, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1201, 1202, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1310, 1311, 1401, 1402, 1403, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1602, 1603, 1605, 1606, 1607, 1608, 1610, 1611, 1704, 1705, 1807, 1808, 1809, 1811, 1902, 1904, 1905, 1907, 1908, 1911, 2001, 2002, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2108, 2207, 2208, 2301, 2305, 2307, 2308, 2309, 2311, 2402, 2404, 2407, 2409, 2411, 2511, 2604, 2610, 2611, AND 2907, AND PARKING UNITS P-201, P-202, P-205, P-206, P-207, P-209, P-210, P-213, P-216, P-218, P-219, P-221, P-222, P-223, HP-226, P-227, P-229, P-423, P-424, P-427, P-527, P-601, P-606, P-607, P-610, P-612, P-618, P-619, P-620, P-621, P-622, P-624, P-625, P-627, P-628, P-629, P-702, P-703, P-704, P-710, P-711, P-712, P-713, P-714, P-715, P-716, P-717, P-718, P-719, P-720, P-723, P-724, P-801, P-802, P-803, P-805, P-807, P-809, P-810, P-812, P-813, P-814, P-815, P-816, P-818, P-819, P-820, P-821, P-822, P-823, P-824, P-825, P-826, P-827, P-828, P-830, P-901, P-903, P-904, P-905, P-906, P-907, P-909, P-911, P-913, P-914, P-916, P-918, P-920, P-921, P-922, P-925, P-926, P-927, P-928, P-929 AND P-930 TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN ASTORIA TOWER CONDOMINIUM, AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 0913918053, AS AMENDED FROM TIME TO TIME IN THE FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COUNTY, ILLINOIS.

ALSO EXCEPTING ALL COMMON ELEMENTS AS DELINEATED AND DEFINED IN THE DECLARATION RECORDED AS DOCUMENT NUMBER 0913918053, AS AMENDED FROM TIME TO TIME.

ALSO EXCEPTING THE COMMERCIAL SPACE DESCRIBED BELOW AS PARCEL 4.

### PARCEL 3: EASEMENT

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN SECTION 2.04 OF THE DECLARATION RECORDED AS DOCUMENT NUMBER 0913918053, AS AMENDED FROM TIME TO TIME, FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2, INCLUDING EASEMENTS IN AND TO ALL STRUCTURAL MEMBERS, FOOTINGS, CAISSONS, FOUNDATIONS, COLUMNS AND BEAMS WHICH ARE PART OF THE BUILDING AS DESCRIBED IN SECTION 2.04(D)(III) OF THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR ASTORIA TOWER CONDOMINIUM AND PROVISIONS RELATING TO CERTAIN NON-CONDOMINIUM PROPERTY RECORDED AS DOCUMENT NO. 0913918053, AS AMENDED FROM TIME TO TIME.

### PARCEL 4: COMMERCIAL PROPERTY

THAT PORTION OF THE FOLLOWING TRACT OF LAND DESCRIBED BELOW AS RETAIL SPACES 1A, 1B, 2A, 2B AND 3:

(TRACT A) LOTS 1 TO 6 IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 IN BLOCK 18 IN ADDITION TO CHICAGO (EXCEPT THE WEST 27 FEET THEREOF CONDEMNED BY THE CITY OF CHICAGO FOR WIDENING STATE STREET) IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS;

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EXHIBIT A

LEGAL DESCRIPTION

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A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long, wavy tail extending to the right. The signature is positioned over the diagonal watermark text.

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ALSO

(TRACT B) LOTS 7 AND 8 IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 IN BLOCK 18 IN ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

ALSO

(TRACT C) TOGETHER WITH ALL THE VACATED ALLEY IN E. SMITH'S SUBDIVISION OF LOT 10 AND THE SOUTH THREE-QUARTERS OF LOT 7 ALL IN BLOCK 18 IN ADDITION TO CHICAGO IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

EXCEPT THAT PART OF THE ABOVE TRACTS A, B AND C OF LAND WHICH LIES BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +119.00 FEET CHICAGO CITY DATUM AND LYING NORTH OF A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF SAID TRACT THROUGH A POINT THEREIN 140.48 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT;

RETAIL SPACE 1A

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 14.17 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 32.57 FEET ABOVE CHICAGO CITY DATUM, LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF A TRACT: COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 5.30 FEET; THENCE EAST ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 01 MINUTES 19 SECONDS MEASURED CLOCKWISE, NORTH TO EAST FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 1.70 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A 32 STORY BRICK AND CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 8 EAST 9th STREET IN CHICAGO, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE NORTH, A DISTANCE OF 2.95 FEET; EAST, A DISTANCE OF 1.35 FEET; NORTH, A DISTANCE OF 2.50 FEET; WEST, A DISTANCE OF 1.35 FEET; NORTH, A DISTANCE OF 15.20 FEET; EAST, A DISTANCE OF 1.00 FEET; NORTH, A DISTANCE OF 2.65 FEET; WEST, A DISTANCE OF 1.32 FEET; NORTH, A DISTANCE OF 8.10 FEET; EAST, A DISTANCE OF 1.30 FEET; NORTH, A DISTANCE OF 2.50 FEET; EAST, A DISTANCE OF 1.73 FEET; NORTH, A DISTANCE OF 1.15 FEET; WEST, A DISTANCE OF 0.20 FEET; NORTH, A DISTANCE OF 5.38 FEET; WEST, A DISTANCE OF 2.60 FEET; NORTH, A DISTANCE OF 4.40 FEET; EAST, A DISTANCE OF 2.65 FEET; NORTH, A DISTANCE OF 5.33 FEET; EAST, A DISTANCE OF 0.18 FEET; NORTH, A DISTANCE OF 1.15 FEET; WEST, A DISTANCE OF 3.08 FEET; NORTH, A DISTANCE OF 0.37 FEET; EAST, A DISTANCE OF 1.35 FEET; NORTH, A DISTANCE OF 2.65 FEET; WEST, A DISTANCE OF 1.35 FEET; NORTH, A DISTANCE OF 16.80 FEET; EAST, A DISTANCE OF 1.35 FEET; NORTH, A DISTANCE OF 2.57 FEET; EAST, A DISTANCE OF 1.85 FEET; NORTH, A DISTANCE OF 1.15 FEET; WEST, A DISTANCE OF 0.40 FEET; NORTH, A DISTANCE OF 535 FEET; WEST, A DISTANCE OF 2.62 FEET; NORTH, A DISTANCE OF 4.60 FEET; EAST, A DISTANCE OF 24.30 FEET; SOUTH, A DISTANCE OF 0.95 FEET; WEST, A DISTANCE OF 1.00 FEET; SOUTH, A DISTANCE OF 2.50 FEET; EAST, A DISTANCE OF 1.00 FEET; SOUTH, A DISTANCE OF 9.65 FEET; WEST, A DISTANCE OF 1.00 FEET; SOUTH, A DISTANCE OF 2.30 FEET; EAST, A DISTANCE OF 1.00 FEET; SOUTH, A DISTANCE OF 12.65 FEET; WEST, A DISTANCE OF 1.00 FEET; EAST, A DISTANCE OF 2.50 FEET; EAST, A DISTANCE OF 2.00 FEET; NORTH, A DISTANCE OF 2.92 FEET; EAST, A DISTANCE OF 24.24 FEET; SOUTH, A DISTANCE OF 54.47 FEET; EAST, A DISTANCE OF 1.53 FEET; SOUTH, A DISTANCE OF 4.42 FEET; WEST, A DISTANCE OF 9.30 FEET; NORTH, A DISTANCE OF 0.20 FEET; WEST, A DISTANCE OF 12.35 FEET; NORTH, A DISTANCE OF 0.80 FEET; WEST, A DISTANCE OF 1.95 FEET; NORTH, A DISTANCE OF 1.65 FEET; WEST, A DISTANCE OF 6.28 FEET; SOUTH, A DISTANCE OF 2.55 FEET; WEST, A DISTANCE OF 6.10 FEET; NORTH, A DISTANCE OF 2.25 FEET; WEST, A DISTANCE OF 2.00 FEET; SOUTH, A DISTANCE OF 1.90 FEET; WEST, A DISTANCE OF 11.65 FEET; NORTH, A DISTANCE OF 1.92 FEET; WEST, A DISTANCE OF 1.4 FEET TO THE POINT OF BEGINNING

AND

RETAIL SPACE 1B

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 17.17 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 28.02 FEET ABOVE CHICAGO CITY DATUM, LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF A TRACT.

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT; THENCE EAST ALONG THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 52.57 FEET; THENCE NORTH ALONG A LINE MAKING AN ANGLE OF 89 DEGREES 17 MINUTES 19 SECONDS MEASURED COUNTER-CLOCKWISE, EAST TO NORTH FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 2.28 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A 32 STORY BRICK AND CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 8 EAST 9th STREET IN CHICAGO, THENCE CONTINUING NORTH ALONG THE LAST DESCRIBED COURSE EXTENDED, BEING ALONG THE INTERIOR FACE OF A WALL OF SAID BUILDING, A DISTANCE OF 4.42 FEET TO A CORNER OF THE WALL; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 1.53 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF A WALL OF SAID BUILDING, A DISTANCE OF 54.47 FEET TO A CORNER OF THE WALL; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF A WALL OF SAID BUILDING, A DISTANCE OF 4.24 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUING WEST ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 20.00 FEET TO A POINT ON THE INTERIOR FACE OF A WALL OF SAID BUILDING; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE NORTH, A DISTANCE OF 37.01 FEET; EAST, A DISTANCE OF 20.00 FEET; SOUTH, A DISTANCE OF 37.01 FEET TO THE POINT OF

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BEGINNING.

AND

RETAIL SPACE 2A

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 14.17 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 27.97 FEET ABOVE CHICAGO CITY DATUM, LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF A TRACT:

EXCEPTING THEREFROM ALL THAT PART LYING BELOW A HORIZONTAL PLANE AN ELEVATION OF +119.00 FEET CHICAGO CITY DATUM (C.C.D.) AND LYING NORTH OF A LINE DRAWN AT RIGHT ANGLES TO THE WEST LINE OF SAID TRACT THROUGH A POINT THEREIN 140.48 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT, ALL IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT; THENCE EAST ALONG THE NORTH LINE OF SAID TRACT, A DISTANCE OF 26.74 FEET; THENCE SOUTH ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 43 MINUTES 12 SECONDS MEASURED CLOCKWISE, EAST TO SOUTH FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 2.67 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A 32 STORY BRICK AND CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 8 EAST 9th STREET IN CHICAGO, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE EAST, A DISTANCE OF 24.13 FEET; SOUTH, A DISTANCE OF 2.37 FEET; EAST, A DISTANCE OF 2.15 FEET; NORTH, A DISTANCE OF 2.36 FEET; EAST, A DISTANCE OF 14.14 FEET; SOUTH, A DISTANCE OF 15.60 FEET; WEST, A DISTANCE OF 3.60 FEET; SOUTH, A DISTANCE OF 17.36 FEET; WEST, A DISTANCE OF 10.60 FEET; SOUTH, A DISTANCE OF 7.00 FEET; WEST, A DISTANCE OF 27.42 FEET; SOUTH, A DISTANCE OF 0.50 FEET; WEST, A DISTANCE OF 1.00 FOOT TO A CORNER IN THE WALL; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 31.14 FEET TO A POINT ON THE INTERIOR FACE OF A WALL OF SAID BUILDING; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 0.85 FEET TO A CORNER OF THE WALL; THENCE THE FOLLOWING THREE COURSES, ALL AT RIGHT ANGLES TO EACH OTHER, ALONG THE INTERIOR FACES OF SAID BUILDING WALLS: NORTH, A DISTANCE OF 7.00 FEET; EAST, A DISTANCE OF 1.30 FEET AND NORTH, A DISTANCE OF 2.33 FEET TO THE POINT OF BEGINNING.

AND

RETAIL SPACE 2B

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 14.17 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 32.54 FEET ABOVE CHICAGO CITY DATUM, LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF A TRACT:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT; THENCE EAST ALONG THE NORTH LINE OF SAID TRACT, A DISTANCE OF 26.74 FEET; THENCE SOUTH ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 43 MINUTES 12 SECONDS MEASURED CLOCKWISE, EAST TO SOUTH FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 2.67 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A 32 STORY BRICK AND CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 8 EAST 9th STREET IN CHICAGO, THENCE CONTINUING SOUTH ALONG THE LAST DESCRIBED COURSE EXTENDED, BEING ALONG THE INTERIOR FACE OF A WALL OF SAID BUILDING, A DISTANCE OF 2.33 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 1.30 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF A WALL OF SAID BUILDING, A DISTANCE OF 7.00 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF A WALL OF SAID BUILDING, A DISTANCE OF 0.88 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 31.14 FEET TO A CORNER IN THE INTERIOR FACE OF A WALL OF SAID BUILDING; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE CONTINUING SOUTH ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 2.50 FEET; EAST, A DISTANCE OF 1.00 FOOT; SOUTH, A DISTANCE OF 6.07 FEET; WEST, A DISTANCE OF 21.76 FEET; NORTH, A DISTANCE OF 5.09 FEET; EAST, A DISTANCE OF 0.40 FEET; NORTH, A DISTANCE OF 1.15 FEET; WEST, A DISTANCE OF 1.82 FEET; NORTH, A DISTANCE OF 2.50 FEET; WEST, A DISTANCE OF 1.37 FEET; NORTH, A DISTANCE OF 8.00 FEET; EAST, A DISTANCE OF 1.35 FEET; NORTH, A DISTANCE OF 2.60 FEET; WEST, A DISTANCE OF 1.00 FOOT; NORTH, A DISTANCE OF 14.10 FEET; EAST, A DISTANCE OF 13.93 FEET; NORTH, A DISTANCE OF 6.27 FEET; EAST, A DISTANCE OF 9.27 FEET TO THE POINT OF BEGINNING.

AND

RETAIL SPACE 3

THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 14.18 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 32.48 FEET ABOVE CHICAGO CITY DATUM, LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF A TRACT:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT; THENCE WEST ALONG THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 30.00 FEET; THENCE NORTH ALONG A LINE MAKING AN ANGLE OF 90 DEGREES 42 MINUTES 41 SECONDS MEASURED CLOCKWISE, WEST TO NORTH FROM THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 1.90 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF A 32 STORY BRICK AND CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 8 EAST 9th STREET IN CHICAGO, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE INTERIOR FACES OF THE WALLS OF THE ENCLOSED SPACE DESCRIBED HEREIN, THE FOLLOWING COURSES AND DISTANCES; ALL AT RIGHT ANGLES TO EACH OTHER UNLESS NOTED OTHERWISE WEST, A DISTANCE OF 3.33 FEET; NORTH, A DISTANCE OF 0.85 FEET; WEST, A DISTANCE OF 2.00 FEET; NORTH, A DISTANCE OF 1.67 FEET; WEST, A DISTANCE OF 8.00 FEET; NORTH, A DISTANCE OF 7.00 FEET; WEST, A DISTANCE OF 6.75 FEET; NORTH, A DISTANCE OF 8.55 FEET; EAST, A DISTANCE OF 1.55 FEET; NORTH, A DISTANCE OF 3.00 FEET; WEST, A DISTANCE OF 1.65 FEET; NORTH, A DISTANCE OF 12.60 FEET; EAST, A DISTANCE OF 1.56 FEET; NORTH, A DISTANCE OF 3.00 FEET; WEST, A DISTANCE OF 11.00 FEET; NORTH, A DISTANCE OF 22.01 FEET; EAST, A DISTANCE OF 3.45 FEET; NORTH, A DISTANCE OF 18.37 FEET; EAST, A DISTANCE OF 26.00 FEET; SOUTH, A DISTANCE OF 6.93 FEET; WEST, A DISTANCE OF 1.60 FEET; SOUTH, A DISTANCE OF 1.85 FEET; EAST, A DISTANCE OF 1.60 FEET; SOUTH, A DISTANCE OF 7.70 FEET; WEST, A DISTANCE OF 1.60 FEET; SOUTH, A DISTANCE OF 1.85 FEET; EAST, A DISTANCE OF 1.75 FEET; SOUTH, A DISTANCE OF 22.05 FEET; WEST, A



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DISTANCE OF 2.35 FEET; SOUTH, A DISTANCE OF 3.00 FEET; EAST, A DISTANCE OF 2.37 FEET; SOUTH, A DISTANCE OF 12.57 FEET; WEST, A DISTANCE OF 2.35 FEET; SOUTH, A DISTANCE OF 3.00 FEET; EAST, A DISTANCE OF 2.35 FEET; SOUTH, A DISTANCE OF 18.10 FEET TO THE POINT OF BEGINNING.

## PARCEL 5: EASEMENT

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN ARTICLE 1, SECTION 1.1 OF THE RECIPROCAL EASEMENT AND OPERATING AGREEMENT RECORDED AUGUST 29, 2006 AS DOCUMENT NUMBER 0624118065 , AS AMENDED FROM TIME TO TIME, FOR THE BENEFIT OF PARCEL 1 AND PARCEL 2 FOR PUBLIC AND PRIVATE UTILITIES AND INCIDENTAL PURPOSES.

Address commonly known as:  
8 East 9th Street  
Chicago, IL 60605

PIN#:

Property of Cook County Clerk's Office

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Mortgagee reserves the right from time to time to change its conditions for acceptance of the Association's insurance policy and for the continuance of its agreement to waive all or any portion of the requirements set forth in Section 2 of the Mortgage as a result of any adverse changes to the insurer's rating and/or changes to the terms of the Association's policy and coverages.

The provisions of the Mortgage regarding the application of Insurance Proceeds shall be subject to the provisions of the Declaration to the extent required by applicable law. For any period of time during which the required insurance is not maintained by the Association, the foregoing waiver and provisions regarding property insurance coverage shall have no force or effect and Mortgagor shall be obligated to obtain the requisite property insurance coverage independently of the Association in accordance with Section 2.6(a) of the Mortgage and any other insurance as may be required of Mortgagor pursuant to the Declaration. Mortgagor shall give Mortgagee prompt notice of any pending lapse in required property insurance coverage provided by the Association's master or blanket policy.

In the event of any distribution of Insurance Proceeds under the Association's policy in lieu of Restoration following a casualty to the Mortgaged Property, whether or not such Insurance Proceeds pertain to loss or damage affecting any portion of the Mortgaged Property constituting condominium property or non-condominium property or common elements within the Project, any and all such Insurance Proceeds payable to Mortgagor are hereby assigned and shall be paid to Mortgagee for application to the sums secured by the Mortgage, whether or not then due, with the excess, if any, paid to Mortgagor as set forth in the Mortgage at Article III.

(l) **Commercial General Liability Insurance.** Mortgagor shall take such actions as may be reasonable to insure that the Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Mortgagee. Notwithstanding the foregoing, Mortgagor shall be required to obtain commercial general liability insurance in amounts not less than as set forth in Section 2.6(b) of the Mortgage.

**Condemnation.** Any Condemnation Proceeds payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Mortgaged Property, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee. Such proceeds shall be applied by Mortgagee to the sums secured by the Mortgage shall be paid to Mortgagee for application to the sums secured by the Mortgage, whether or not then due, with the excess, if any, paid to Mortgagor as set forth in the Mortgage at Article III.

(m) **Mortgagee's Prior Consent.** Mortgagor shall not, except after notice to Mortgagee and with Mortgagee's prior written consent, agree to any partition or subdivision of the Mortgaged Property or consent to: (i) the abandonment or termination of the condominium regime established under the Declaration, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Declaration if the provision is for the express benefit of Mortgagee as a first mortgage holder; (iii) the termination of professional management and assumption of self-management of the Association; or (iv) any action which would have the effect of rendering any of the insurance coverage maintained by the Association unacceptable to Mortgagee.

F. **Remedies.** If Mortgagor does not pay condominium assessments or charges when due in accordance with the Declaration, then Mortgagee may, at Mortgagee's option, pay such assessments and charges. Any amounts disbursed by Mortgagee under this paragraph F. shall become additional debt of Mortgagor secured by the Mortgage and shall bear interest from the date of disbursement at the default interest rate provided under the Loan Documents and shall be due, with interest, upon notice from Mortgagee to Mortgagor requesting payment. Notwithstanding anything contained in the Mortgage or in

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<b>CITIBANK, N.A.</b>	<b>RIDER</b>
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Date of Loan: December 22, 2010

Mortgagor Name: 8 EAST NINTH, LLC, a Delaware limited liability company

**THIS RIDER** is made as of December 22, 2010 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Assignment of Rents and Leases and Security Agreement (the "**Mortgage**") of the same date given by the undersigned (the "**Mortgagor**") to secure Mortgagor's Promissory Note to CITIBANK, N.A., its successors and/or assigns (the "**Mortgagee**") of the same date and covering the Mortgaged Property.

The Mortgaged Property includes certain residential condominium property, condominium parking units, residential non-condominium property, non-condominium parking units, and commercial property, together with certain undivided interests in the common elements and certain limited common elements within a project known as Astoria Tower (the "**Project**") as such Project is further described in that certain Declaration of Condominium Ownership for Astoria Tower Condominium and Provisions Relating to Certain Non-Condinium Property recorded on May 19, 2009 as document number 0913918053 in the Cook County Recorder of Deeds, State of Illinois which sets forth certain terms, conditions, restrictions, rights, and understandings regarding the operation of the Project. If the owners' association or other entity which acts for the Project (the "**Association**") holds title to property for the benefit or use of its members or owners, the Mortgaged Property also includes Mortgagor's interest in the Association and the uses, proceeds and benefits of Mortgagor's interest. Capitalized terms used but not otherwise defined in this Rider shall have the meaning given to such terms in the Mortgage.

**I. COVENANTS.** In addition to the covenants and agreements made in the Mortgage, Mortgagor and Mortgagee further covenant and agree as follows:

(j) **Declaration Obligations.** Mortgagor shall perform all of Mortgagor's obligations under the Declaration. The term, "Declaration" includes the Declaration of Condominium Ownership for Astoria Tower Condominium and Provisions Relating to Certain Non-Condinium Property dated May 19, 2009 more particularly described above (as the same may be hereafter amended in accordance with the Credit Agreement) and any and all exhibits or schedules attached thereto, including the Association by-laws, any rules and regulations adopted pursuant to the Declaration in connection with the Project; and any other equivalent documents. Mortgagor shall (i) pay, when due, all dues and assessments imposed pursuant to the Declaration and (ii) perform, as required, all maintenance obligations, undertakings, actions, liabilities and responsibilities required of Mortgagor pursuant to the Declaration.

(k) **Property Insurance.** To the extent the Association maintains, with an insurance carrier approved by Mortgagee, a "master" or "blanket" policy insuring portions of the Mortgaged Property which names Mortgagee as a loss payee, provides coverage in the amounts (including deductible levels), for the periods, and for losses from fire and other hazards, including, but not limited to, windstorm, earthquake, terrorism and flood hazards, from which Mortgagee requires insurance, then Mortgagor's obligation under the Mortgage at Section 2.6(a) to maintain property insurance coverage on the Mortgaged Property, shall be deemed satisfied to the extent that coverage required under Section 2 of the Mortgage is provided by the Association policy (or the Association jointly with Mortgagor with regard to the non-condominium property) but only with respect to those portions of the Mortgaged Property that are satisfactorily insured thereunder.

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IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed on the date set forth above.

8 EAST NINTH, LLC, a Delaware limited liability company

BY: 8 East Ninth Holdings, LLC, a Delaware limited liability company, its sole manager and member

By: [Signature]  
Name: Roman G. Speron  
Title: President

STATE OF ILLINOIS  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me on December 17, 2010, by Roman G. Speron, as President of 8 EAST NINTH HOLDINGS, LLC, a Delaware limited liability company, the sole manager and member of 8 EAST NINTH, LLC, a Delaware limited liability company, on behalf of such company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public  
Print Name: SUSAN ROZOVICS  
My Commission Expires: 11/24/13

