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## Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1036322060 Fee: \$120.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/29/2010 02:18 PM Pg: 1 of 43

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 17-16-247-066-0000

**Address:**

Street: 530 S. STATE STREET

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60605

BOX 15

Lender: A10 CAPITAL, LLC

Borrower: STATE & HARRISON L.L.C.

FIDELITY NATIONAL TITLE

Loan / Mortgage Amount: \$4,500,000.00

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: 94C5FA4B-C910-47CF-93D1-19E766FD250A

Execution date: 12/16/2010

Property of Cook County Clerk's Office

4815

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Prepared by, recording requested by,  
and when recorded mail to:  
A10 Capital, LLC  
Attn: Jackie Cox  
950 W. Bannock Street, Suite 950  
Boise, Idaho 83702

Address of Property: 530 S. State Street  
Chicago, IL

Permanent Parcel Number: 17-16-247-066

Loan # AC-IL-GC-10-018-001

**MORTGAGE WITH ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**FUTURE ADVANCES ARE SECURED HEREBY PURSUANT TO 735 ILCS 5/15-1302 TO THE MAXIMUM AMOUNT OF \$4,500,000.00, THIS LIMITATION DOES NOT INCLUDE INTEREST, ATTORNEYS' FEES, DISBURSEMENTS OR OTHER COSTS AND EXPENSES WHICH MORTGAGEE MAY COLLECT PURSUANT TO THIS MORTGAGE, THE LOAN AGREEMENT, THE GUARANTY OR THE OTHER LOAN DOCUMENTS (ALL AS HEREINAFTER DEFINED) OR APPLICABLE LAW.**

**THIS MORTGAGE WITH ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Mortgage*") is executed as of December 16, 2010, by State & Harrison L.L.C., an Illinois limited liability company (the "*Mortgagor*"), for the benefit of A10 Capital, LLC, a Delaware limited liability company ("*Mortgagee*").**

**WITNESSETH:**

WHEREAS, Mortgagor has requested that Mortgagee make a loan (the "*Loan*") to Mortgagor, NAAOC, L.L.C., an Illinois limited liability company ("*NAAOC*"), and 10 Huntington L.L.C., an Illinois limited liability company ("*10 Huntington*") and together with Mortgagor and NAAOC, collectively referred to herein as the "*Borrower*"), in the aggregate principal amount of up to FOUR MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,500,000.00) (the "*Loan Amount*");

WHEREAS, the Loan is evidenced by that certain Promissory Note dated of even date herewith, given by Borrower to Mortgagee (the "*Note*"), with interest from the date hereof at the rates set forth in the Note, such interest and the principal amount thereof to be payable in accordance with the terms and conditions provided in the Note; and

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WHEREAS, Mortgagor desires to secure the payment of the Indebtedness (as hereinafter defined) and the performance of its obligations under the Loan Documents.

NOW, THEREFORE, in consideration of the making of the Loan and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Mortgagor hereby agrees, covenants, represents and warrants with and to Mortgagee as follows:

## ARTICLE 1 DEFINITIONS

**Section 1.1 Definitions.** As used herein, the following terms shall have the following meanings:

**"Affiliate"** means, as to any Person, (a) any corporation in which such Person or any partner, shareholder, director, officer, member, or manager of such Person, at any level, directly or indirectly owns or controls more than twenty percent (20%) of the beneficial interest, (b) any partnership, joint venture or limited liability company in which such Person or any partner, shareholder, director, officer, member, or manager of such Person, at any level, is a partner, joint venturer or member, (c) any trust in which such Person or any partner, shareholder, director, officer, member or manager of such Person, at any level, or any individual related by birth, adoption or marriage to such Person, is a trustee or beneficiary, (d) any entity of any type which is directly or indirectly owned or controlled by (or is under common control with) such Person or any partner, shareholder, director, officer, member or manager of such Person, at any level, (e) any partner, shareholder, director, officer, member, manager or employee of such Person, or (f) any individual related by birth, adoption or marriage to any partner, shareholder, director, officer, member, manager or employee of such Person. Each Mortgagor Party shall be deemed to be an Affiliate of Mortgagor.

**"Business Day"** means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the state of Idaho are not open for general banking business.

**"Closing Date"** means the date hereof.

**"Debt"** means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or any of its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person or any of its assets would be liable or subject, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person or any of its assets is liable or subject, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars, and other interest hedge agreements, in each case whether such Person or any of its assets is liable or subject, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

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**"Debt Service"** means the annual aggregate interest and principal due under the Loan.

**"Environmental Laws"** as defined in the Indemnity.

**"Guaranty"** means that certain Conditional Springing Guaranty dated of even date herewith, executed by Ronald J. Benach, in favor of Mortgagee, as the same may hereafter be amended or restated.

**"Hazardous Materials"** as defined in the Indemnity.

**"Indebtedness"** means the sum of all (1) principal, interest and other amounts due under or secured by the Loan Documents, (2) principal, interest and other amounts which may hereafter be loaned by Mortgagee, its successors or assigns, to or for the benefit of the owner of the Mortgaged Property, when evidenced by a promissory note or other instrument which, by its terms, is secured hereby, (3) all other indebtedness, obligations and liabilities now or hereafter existing of any kind of Borrower to Mortgagee, including, without limitation, any amounts advanced by Mortgagee under the terms of this Mortgage, and (4) any and all renewals, increases, extensions, modifications, rearrangements or restatements of the Loan Documents, together with all costs, expenses and attorneys' fees incurred in connection with the enforcement or collection thereof.

**"Indemnity"** means that certain Environmental Indemnity Agreement dated of even date herewith, executed by Mortgagor and Ronald J. Benach, in favor of Mortgagee, as the same may hereafter be amended or restated.

**"Lien"** means any interest, or claim thereof, in the Mortgaged Property securing an obligation owed to, or a claim by, any Person other than the owner of the Mortgaged Property, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale, judgment or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Mortgaged Property.

**"Loan Agreement"** means that certain Loan Agreement dated of even date herewith, by and between Borrower, as borrower, and Mortgagee, as lender, as the same may hereafter be amended or restated.

**"Loan Documents"** means, collectively, (1) the Note, (2) this Mortgage, (3) that certain Mortgage With Assignment of Leases and Rents, Security Agreement and Fixture Filing dated of even date herewith, from NAAOC, as mortgagor, to Mortgagee, as mortgagee, (4) that certain Mortgage With Assignment of Leases and Rents, Security Agreement and Fixture Filing dated of even date herewith, from 10 Huntington, as mortgagor, to Mortgagee, as mortgagee, (5) the Loan Agreement, (6) UCC financing statements, (7) the Guaranty, (8) such assignments of management agreements, contracts and other rights as may be required by Mortgagee, (9) all other documents now or hereafter executed by Borrower, or any other person or entity, to

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evidence or secure the payment of the Indebtedness or the performance of the Obligations, and (10) all modifications, restatements, extensions, renewals and replacements of the foregoing; provided, however, the Indemnity shall not be deemed a Loan Document for purposes of this Mortgage.

**“Mortgaged Property”** means, collectively, (1) the real property located in Cook County, Illinois, as further described in Exhibit A annexed hereto, together with any greater estate therein which hereafter may be acquired by Mortgagor (the **“Land”**), (2) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the **“Improvements”**), (3) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in, or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities, and all other utilities whether or not situated in easements (the **“Fixtures”**), (4) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper, choses in action, and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property including, without limitation, account receivables, payment intangibles, letters of credit, deposit accounts, investment property, commercial tort claims, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of fixtures or other personal property or equipment, general intangibles, inventory, all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees, and development costs (the **“Personalty”**), (5) all plans, specifications, shop drawings, and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the **“Plans”**), (6) all leases, other rental agreements, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or hereafter made at any time while this Mortgage is in effect), together with any extensions or renewals thereof, which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the **“Leases”**), (7) rents, revenues, income, proceeds, profits, security and other types of deposits, termination fees, and other benefits paid or payable by parties to the Leases other than Mortgagor, for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the **“Rents”**), (8) all other agreements, such as construction contracts, architects agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the **“Property Agreements”**), (9) all rights, privileges, tenements, hereditaments, rights of way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land



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adjoining the Land or any part thereof, (10) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the aforesaid property now or hereafter acquired by Mortgagor, (12) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty, (13) all mineral, water, oil and gas rights now or hereafter acquired relating to all or any part of the Land, and (14) all proceeds of the foregoing, both cash and non-cash. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion of the aforesaid property or any interest therein.

**"Mortgagor Party"** means Ronald J. Benach.

**"Obligations"** means all of the agreements, promises, covenants, conditions, warranties, representations and other obligations made or undertaken by Borrower or any other person or entity to Mortgagee or others as set forth in the Loan Documents.

**"Permitted Encumbrances"** means the outstanding easements, restrictions and other matters approved by Mortgagee, as more particularly set forth in Exhibit B annexed hereto.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

**"Potential Default"** means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

**"Site Assessment"** as defined in the Indemnity.

**"Transfer"** means any direct or indirect sale, transfer, conveyance, installment sale, master lease, mortgage, pledge, encumbrance, grant of Lien or other interest, alienation or assignment, whether voluntary or involuntary, of all or any portion of the legal or beneficial ownership of, or any interest in (a) the Mortgaged Property, or any part thereof, or (b) Mortgagor, including any agreement to transfer or cede to another Person any voting, management or approval rights, or any other rights, appurtenant to any such legal or beneficial ownership or other interest. "Transfer" is specifically intended to include any pledge or assignment, directly or indirectly, of a controlling interest in Mortgagor, any general partner, member, controlling limited partner or controlling shareholder for purposes of securing so-called "mezzanine" indebtedness.

**"UCC"** means the Uniform Commercial Code as enacted and in effect in the state where the Mortgaged Property is located (as it may from time to time be amended); provided, however, that to the extent that the UCC is used to define any term in this Mortgage or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment,

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perfection or priority of, or remedies with respect to, Mortgagee's Lien on any Mortgaged Property is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Mortgaged Property is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

## ARTICLE 2 GRANT AND FUTURE ADVANCES

**Section 2.1 Grant.** To secure the payment of the Indebtedness in accordance with the terms and conditions hereof and of the Note and of the Loan Documents, and all extensions, modifications and renewals thereof, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest as provided in the Note, and the performance of the covenants and agreements contained therein, and also to secure the payment of any and all other Indebtedness, direct or contingent, that may now or hereafter become owing from Borrower to Mortgagee in connection with the Loan Documents, all present and future advances, indebtedness, obligations and liabilities of Mortgagor or any other Mortgagor Party, arising and accruing under the Loan Agreement from time to time, to the same extent as though advanced on the date hereof, and in consideration of the Loan Amount in hand paid, receipt of which is hereby acknowledged, Mortgagor hereby irrevocably mortgages, grants, bargains, pledges, sells, warrants, conveys, alienates, remises, releases, assigns, sets over, transfers and confirms to Mortgagee, and conveys to Mortgagee a lien and security interest in all right, title and interest of Mortgagor now owned or hereafter acquired in and to the Mortgaged Property.

**Section 2.2 Future Advances.** Mortgagee is obligated under the terms of the Loan Agreement to make future advances as provided therein, and Mortgagor acknowledges and intends that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Illinois Mortgage Foreclosure Law (the "*Act*"), 735 ILCS 5/15-1101, *et seq.* Mortgagor covenants and agrees that this Mortgage shall secure the payment of all loans and advances made pursuant to the terms and provisions of the Loan Agreement, whether such loans and advances are made as of the date hereof or at any time in the future, and whether such future advances are obligatory or are to be made at the option of Mortgagee or otherwise (but not advances or loans made more than 20 years after the date hereof), to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no advances made at the time of the execution of this Mortgage and although there may be no other Indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness, including future advances, from the time of its filing of record in the office of the Recorder of Deeds of the county in which the Mortgaged Property is located. The total amount of the Indebtedness may increase or decrease from time to time, but the total unpaid principal balance of the Indebtedness (including disbursements which Mortgagee may make under this Mortgage or any other document or instrument evidencing or securing the Indebtedness) at any time outstanding may be substantially less but shall not exceed \$6,750,000.00. This Mortgage shall be valid and shall have priority over all subsequent liens

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and encumbrances, including statutory liens, except taxes and assessments levied on the Mortgaged Property, to the extent of the maximum amount secured hereby.

## ARTICLE 3 CONDITIONS TO CLOSING

**Section 3.1 Conditions to Loan.** The advance of the Loan shall be subject to Mortgagee's receipt, review, approval and/or confirmation of the following, at Borrower's cost and expense except as set forth below, each in form and content satisfactory to Mortgagee in its sole discretion:

- (1) All Loan Documents, executed by Borrower and, as applicable, each Mortgagor Party and each other party thereto;
- (2) Indemnity executed by Mortgagor and Ronald J. Benach;
- (3) Payment by Borrower to Mortgagee of Mortgagee's loan fee charged in connection with the closing of the Loan;
- (4) Payment by Borrower to Mortgagee for reimbursement of Mortgagee for all costs and fees incurred in connection with processing the Loan, including, without limitation, UCC searches, Mortgagee's attorneys' fees, appraisal fees, and any other costs and fees incurred by Mortgagee in connection with the Loan;
- (5) Payment by Borrower of all escrow fees and recording fees incurred by Mortgagee, any title company, any escrow company, or any other party in connection with the closing of the Loan, the recording of the Mortgage, and the filing of any other documents to perfect the security interest granted to Mortgagee pursuant to the Loan Documents;
- (6) Complete and signed copies of each lease agreement affecting the Mortgaged Property, if any, and, if required by Mortgagee, estoppel certificates and/or subordination and attornment agreements in favor of Mortgagee executed by all tenants in a form acceptable to Mortgagee in its sole discretion;
- (7) An ALTA extended coverage loan policy of title insurance in the amount of the Loan Amount, in form satisfactory to Mortgagee (with all endorsements requested by Mortgagee), insuring Mortgagee that the Mortgage is a valid first priority lien on the Mortgaged Property, free and clear of all liens, encumbrances and exemptions, excepting only those items which Mortgagee has previously approved in writing;
- (8) Evidence of insurance as required by this Mortgage and conforming in all respects to the requirements of Mortgagee;
- (9) Copies of the organizational documents of Borrower and each Mortgagor Party, including certified copies of the certificate of formation and operating agreement (or bylaws, as applicable), as well as resolutions authorizing the execution, delivery



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and performance of the Loan, the Mortgage, and all other Loan Documents, in form and substance satisfactory to Mortgagee in its sole discretion;

(10) Good standing certificate for Borrower and each Mortgagor Party, issued by the state in which each such entity was formed;

(11) Survey of the Mortgaged Property, environmental report(s), and appraisal by an independent appraiser, as may be required by Mortgagee, in its discretion; and

(12) Such other instruments, documents and opinions as Mortgagee shall require to evidence and secure the Loan or otherwise, in Mortgagee's sole discretion.

## ARTICLE 4

### WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

#### Section 4.1 Title to Mortgaged Property and Lien of this Instrument.

Mortgagor owns the Mortgaged Property free and clear of any and all Liens, except the Permitted Encumbrances. This Mortgage creates valid, enforceable liens and security interests against the Mortgaged Property subject only to the Permitted Encumbrances. Mortgagor shall, without liability, cost or expense to Mortgagee, protect, preserve and defend title to the Mortgaged Property. Mortgagor shall give Mortgagee written notice immediately upon knowledge of any challenge to title to the Mortgaged Property.

#### Section 4.2 Use of Proceeds.

Mortgagor hereby represents and warrants to Mortgagee that the Loan provided for herein is made exclusively for commercial, investment or business purposes, and no portion thereof shall be used for any consumer, personal family or household purpose.

#### Section 4.3 Lien Status.

(a) This Mortgage is a valid first mortgage and is a valid first lien against the Mortgaged Property.

(b) Mortgagor shall preserve and protect the security interest status of this Mortgage and the other Loan Documents. If any other Lien or security interest other than the Permitted Encumbrances is asserted against any of the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such Lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause the Lien or security interest to be released within sixty (60) days.

#### Section 4.4 Payment and Performance.

Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

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**Section 4.5 Replacement of Fixtures and Personalty.** Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete or is replaced by an article of equal or better suitability and value, owned by Mortgagor, subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other Lien or security interest except such as may be first approved in writing by Mortgagee.

**Section 4.6 Maintenance of Rights of Way, Easements and Licenses.** Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

**Section 4.7 Inspection.** Mortgagor shall permit Mortgagee, and Mortgagee's agents, representatives and employees, upon prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental, engineering and valuation studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property. Mortgagor acknowledges Mortgagee's right to order an appraisal on or about each anniversary of the Closing Date at Mortgagor's cost; provided, however, Mortgagee agrees that an annual appraisal will not be required at such time as Mortgagee's capital sources no longer require delivery of an annual appraisal and so long as no Event of Default has occurred under the Loan.

**Section 4.8 Material Changes.** Mortgagor shall promptly notify Mortgagee of the occurrence of any of the following: (a) fire or other casualty in excess of \$50,000.00; (b) receipt of notice of condemnation; (c) receipt of notice of any violation of law; (d) commencement of any litigation involving a claim not fully covered by insurance and defended by the carrier in excess of \$50,000.00; (e) a change in tax assessment or proposed assessment; (f) receipt of a claim from the holder of any lien or security interest; (g) Mortgagor's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Mortgaged Property; or (h) other material facts affecting the Mortgaged Property.

**Section 4.9 Environmental Compliance.** The Mortgaged Property is in compliance, and Mortgagor will continue to maintain the Mortgaged Property in compliance, with all applicable federal, state, local and all other environmental laws, rules and regulations.

**Section 4.10 Other Covenants.** All of the covenants in all Loan Documents are incorporated herein by reference and, together with the covenants in this Article 4, shall be covenants running with the land. These covenants include, among other provisions: (a) the prohibition against the further sale, transfer or encumbering of any of the Mortgaged Property, (b) the obligation to pay when due all taxes on the Mortgaged Property or assessed against Mortgagee with respect to the Loan, (c) the right of Mortgagee to inspect the Mortgaged Property, (d) the obligation to keep the Mortgaged Property insured as Mortgagee may require,

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(e) the obligation to comply with all legal requirements (including environmental laws), maintain the Mortgaged Property in good condition and promptly repair any damage or casualty, (f) Mortgagee's right to receive all casualty and condemnation proceeds in excess of \$50,000 and all condemnation proceeds applicable to the Mortgaged Property as Mortgagee elects, and (g) except as otherwise permitted under the Loan Documents, the obligation of Mortgagor to obtain Mortgagee's consent prior to entering into, modifying, or taking of other actions with respect to Leases of the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities that may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Note and the other Loan Documents; provided, however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

## Section 4.11 Eminent Domain, Condemnation Awards and Insurance Proceeds.

(a) **Eminent Domain.** As to any taking of the Mortgaged Property by the exercise of power of eminent domain or purchase under threat thereof:

(1) Mortgagor shall notify Mortgagee promptly of all action taken and, to Mortgagor's knowledge, proposed to be taken with respect thereto;

(2) Mortgagor shall not exercise or waive any right with respect thereto, without the prior consent of Mortgagee; and

(3) Mortgagee shall be entitled to receive the award of proceeds and, at its sole option, to apply the same on account of the Note (remitting the balance, if any, to Mortgagor) and/or to reimburse Mortgagor for the cost of the repair of the Mortgaged Property pursuant to this Section.

(b) **Condemnation Awards.** Mortgagor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee, and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Loan Documents.

Mortgagor hereby expressly agrees that Mortgagee shall not be limited to the interest paid on the proceeds of any such awards or compensation, and further agrees to pay to Mortgagee the difference, if any, between (i) the interest received by Mortgagee on such awards or compensation, and (ii) the Interest Rate provided in the Note from the date of the appropriation, condemnation or other taking of the Mortgaged Property or any portion thereof to the Maturity Date. The obligations and agreements of Mortgagor contained in this paragraph shall survive the payment to Mortgagee of any awards or compensation for an appropriation, condemnation or other taking, and shall terminate only upon payment in full by Mortgagor to Mortgagee of the sums referred to herein.

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**Section 4.12 Insurance Proceeds.** Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property in excess of \$50,000. Mortgagor authorizes Mortgagee to collect and receive such proceeds, and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee as the sole loss payee, instead of to Mortgagor and Mortgagee jointly.

**Section 4.13 Commercial Loan Transaction; Use of Loan Proceeds.** This Mortgage is delivered in connection with a business or commercial loan transaction, and Mortgagor further warrants that the Loan proceeds shall be utilized for the purpose of working capital to Mortgagor, acquisition, refinance and/or rehabilitation of the Mortgaged Property, closing fees, closing costs, and pre-paid interest. The advance of the Loan shall be made upon Mortgagor's satisfaction of the conditions set forth in this Mortgage and any other conditions required by Mortgagee.

**Section 4.14 Reimbursement of Expenses.** Mortgagor shall pay all costs and expenses incurred by Mortgagee in connection with the negotiation, documentation, closing, disbursement and administration of the Loan and Loan Documents, including fees and expenses of Mortgagee's attorneys, and Mortgagee's environmental, engineering, valuation (including fees and costs associated with obtaining a new appraisal on or about each anniversary of the Closing Date subject to the terms of Section 4.7 hereof), accounting and other consultants, fees, charges and taxes for the recording or filing of Loan Documents; financial investigation, audit and inspection fees and costs, settlement of condemnation and casualty awards, title search costs, premiums for title insurance and endorsements in rem; and fees and costs for UCC and litigation searches and background checks. Borrower shall, upon request, promptly reimburse Mortgagee for all amounts expended, advanced or incurred by Mortgagee to collect the Note, or to enforce the rights of Mortgagee under this Mortgage or any other Loan Document, or to defend or assert the rights and claims of Mortgagee under the Loan Documents or with respect to the Mortgaged Property (by litigation, in any bankruptcy proceeding, or other proceedings), which amounts will include all court costs, attorneys' fees and expenses (including attorneys' fees and expenses in connection with any bankruptcy proceedings), fees of auditors and accountants, and investigation expenses as may be incurred by Mortgagee in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Mortgagee, all of which shall constitute part of the Loan and shall be secured by the Loan Documents.

**Section 4.15 Insurance.** Mortgagor shall maintain insurance as follows:

(a) **Casualty.** Mortgagor shall keep the Mortgaged Property insured against damage by fire and the other hazards and casualties covered by a standard extended coverage property insurance policy with causes of loss – special form coverage (or the then industry equivalent) for the full insurable value thereof, but not less than the Loan Amount, on a replacement cost claim recovery basis (without reduction for depreciation or co-insurance and without any exclusions or reduction of policy limits for acts of terrorism or other specified action/inaction), and shall maintain such other casualty insurance as is reasonably required by Mortgagee from time to time, including, without limitation, earthquake and windstorm.



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(b) **Liability.** Mortgagor shall maintain commercial general liability insurance, including coverage for claims of bodily injury and property damage, with a minimum combined single limit of not less than \$1,000,000 per occurrence (to include personal injury coverage), with an aggregate limit of \$1,000,000, and shall maintain such other liability insurance as is reasonably required by Mortgagee from time to time.

(c) **Business Interruption and/or Loss of Rents.** Mortgagor shall maintain rental loss and/or business interruption insurance for a period of 6 months in an amount equal to the greater of (A) estimated gross revenues from the operations of the Mortgaged Property over 6 months or (B) the projected operating expenses (including stabilized management fees, applicable reserve deposits, and debt service) for the maintenance and operation of the Mortgaged Property over 6 months. The amount of such rental loss insurance shall be increased from time to time during the term of this Mortgage as and when new Leases and renewal Leases are entered into in accordance with the terms of this Mortgage, to reflect all increased rent and increased additional rent payable by all of the tenants under such Leases.

(d) **Flood.** Mortgagor shall keep the Mortgaged Property insured against loss by flood if the Mortgaged Property is located currently or at any time in the future in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994 (as such acts may from time to time be amended) in an amount not less than the lesser of (a) the Loan Amount or (b) the maximum limit of coverage available under said acts. Any such flood insurance policy shall be issued in accordance with the requirements and current guidelines of the Federal Insurance Administration.

(e) **Form and Quality of Insurance.** All insurance policies shall be endorsed in form and substance acceptable to Mortgagee to name Mortgagee as an additional insured, Mortgagee's loss payable and mortgagee thereunder, as its interest may appear, with loss payable to Mortgagee, without contribution, under a standard New York (or local equivalent) mortgagee clause. All such insurance policies and endorsements shall be fully paid for, shall be issued by appropriately licensed insurance companies acceptable to Mortgagee with a rating of "A-:IX" or better as established by A.M. Best's Rating Guide, and shall be in such form, and shall contain such provisions, deductibles (with no increased deductible for acts of terrorism or other specified action/inaction) and expiration dates, as are acceptable to Mortgagee. Each policy shall provide that such policy may not be canceled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to Mortgagee, and that no act or thing done by Mortgagor shall invalidate any policy as against Mortgagee. Blanket policies shall be permitted only if Mortgagee receives appropriate endorsements and/or duplicate policies containing Mortgagee's right to continue coverage on a pro rata pass-through basis, and that coverage will not be affected by any loss on other properties covered by the policies. If Mortgagor fails to maintain insurance in compliance with this Section 4.15, Mortgagee may obtain such insurance and pay the premium therefor, and Mortgagor shall, on demand, reimburse Mortgagee for all expenses incurred in connection therewith.

(f) **Assignment of Insurance.** Mortgagor shall assign the policies or proofs of insurance to Mortgagee, in such manner and form that Mortgagee and its successors and

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assigns shall at all times have and hold the same as security for the payment of the Loan. Mortgagor shall deliver copies of all original policies certified to Mortgagee by the insurance company or authorized agent as being true copies, together with the endorsements required hereunder. If Mortgagor elects to obtain any insurance which is not required under this Mortgage (including earthquake insurance), all related insurance policies shall be endorsed in compliance with Section 4.15(e), and such additional insurance shall not be canceled without prior notice to Mortgagee. From time to time upon Mortgagee's request, Mortgagor shall identify to Mortgagee all insurance maintained by Mortgagor with respect to the Mortgaged Property. The proceeds of insurance policies coming into the possession of Mortgagee shall not be deemed trust funds, and Mortgagee shall be entitled to apply such proceeds as herein provided.

(g) **Insurance Adjustment.** Mortgagor shall give immediate written notice of any loss to the insurance carrier and to Mortgagee. Mortgagor hereby irrevocably authorizes and empowers Mortgagee, as attorney-in-fact for Mortgagor coupled with an interest, to notify any of Mortgagor's insurance carriers to add Mortgagee as a Mortgagee's loss payable, mortgagee and additional insured, as the case may be, to any policy maintained by Mortgagor (regardless of whether such policy is required under this Mortgage), and, with regard to any loss in excess of \$50,000.00, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided, however, nothing contained in this Section 4.15(g) shall require Mortgagee to incur any expense or take any action hereunder.

(h) **Additional Insurance.** Mortgagor shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Mortgagee in all respects. The proceeds of insurance paid on account of any damage or destruction to the Mortgaged Property shall be paid to Mortgagee to be applied as provided in Section 4.15(i).

(i) **Use and Application of Insurance Proceeds.** Mortgagee shall apply all or a portion of the insurance proceeds (i) to the cost of restoration of the Mortgaged Property or (ii) to the repayment of the Loan if the cost of restoration exceeds \$50,000, as Mortgagee shall determine in its sole discretion. Insurance proceeds applied to restoration will be disbursed on receipt of satisfactory plans and specifications, contracts and subcontracts, schedules, budgets, lien waivers and architects' certificates, and otherwise in accordance with prudent commercial construction lending practices for construction loan advances. Any insurance proceeds remaining after payment of all restoration costs shall be applied by Mortgagee to the Loan balance or, at Mortgagee's sole option, remitted to Mortgagor.

**Section 4.16 Condemnation Awards.** Mortgagor shall immediately notify Mortgagee of the institution of any proceeding for the condemnation or other taking of the Mortgaged Property or any portion thereof. Mortgagee may participate in any such proceeding, and Mortgagor will deliver to Mortgagee all instruments necessary or required by Mortgagee to permit such participation. Without Mortgagee's prior consent, Mortgagor (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or

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purchase in lieu of condemnation are hereby assigned to and shall be paid to Mortgagee. Mortgagor authorizes Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and, in Mortgagee's sole discretion, to apply the same toward the payment of the Loan. Mortgagor, upon request by Mortgagee, shall execute all instruments requested to confirm the assignment of the awards and compensation to Mortgagee, free and clear of all liens, charges or encumbrances.

**Section 4.17 Environmental Matters.** All representations, warranties, covenants and indemnities relating to environmental matters set forth in the Indemnity are incorporated into this Mortgage by reference thereto as if set forth in full herein.

(a) **Allocation of Risks and Indemnity.** As between Mortgagor and Mortgagee, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Materials at, upon, within, contiguous to or otherwise affecting the Mortgaged Property, shall lie solely with Mortgagor and each Mortgagor Party, as applicable, and not with Mortgagee. Accordingly, Mortgagor shall bear all risks and costs associated with any loss (including any loss in value attributable to Hazardous Materials), damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation required by Mortgagee or by law. Mortgagor shall at all times indemnify, defend and hold Mortgagee harmless from and against any and all claims, suits, actions, debts, damages, losses, liabilities, litigation, judgments, charges, costs and expenses (including reasonable costs of defense and consultant fees, investigation and laboratory fees, court costs, and other litigation expenses), of any nature whatsoever proffered or incurred by Mortgagee (hereinafter collectively referred to as "**Liabilities**"), whether as mortgagee or beneficiary under the Mortgage, as mortgagee in possession, or as successor-in-interest to Mortgagor by foreclosure deed or deed in lieu of foreclosure, and whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including those Liabilities arising from the joint, concurrent or comparative negligence of Mortgagee, under or on account of the Environmental Laws, including the assertion of any lien thereunder, with respect to: (1) a breach of any representation, warranty or covenant of Mortgagor contained in this Section 4.17; (2) any acts performed by Mortgagee pursuant to the provisions of this Section 4.17; (3) the past, present, or future presence of any discharge or release of Hazardous Materials, the threat of discharge or release of any Hazardous Materials or the storage or presence of any Hazardous Materials affecting the Mortgaged Property whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate, including any loss of value of the Mortgaged Property as a result of the foregoing; (4) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other Person or damages from injury to, destruction of, or loss of natural resources including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Environmental Laws; (5) liability for any personal injury (including wrongful death) or property damage (real or personal) arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at, upon, under or within the Mortgaged Property; and/or (6) any other environmental matter affecting the Mortgaged Property within the jurisdiction of the Environmental Protection Agency, any other federal agency or any state or local environmental agency. The foregoing notwithstanding, Mortgagor shall not be liable under the foregoing indemnification to the extent any such loss, liability, damage, claim, cost or expense resulting solely from Mortgagee's gross



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negligence or willful misconduct. Mortgagor's obligations under this Section 4.17 shall arise upon the discovery of the presence of any Hazardous Material or other violation of any Environmental Laws, whether or not the Environmental Protection Agency, any other federal agency or any state or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Materials, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment, and shall continue notwithstanding the repayment of the Loan or any transfer or sale of any right, title and interest in the Mortgaged Property (by foreclosure, deed in lieu of foreclosure or otherwise).

**(b) Mortgagee's Right to Protect Mortgaged Property.** If (1) any discharge of Hazardous Materials or the threat of a discharge of Hazardous Material affecting the Mortgaged Property occurs, whether originating or emanating from the Mortgaged Property or any contiguous real estate, and/or (2) Mortgagor fails to comply with any Environmental Laws or related regulations, Mortgagee may, at its election but without the obligation to do so, give such notices and/or cause such work to be performed at the Mortgaged Property and/or take any and all other actions as Mortgagee shall deem necessary or advisable in order to abate the discharge of any Hazardous Material, remove the Hazardous Material or cure Mortgagor's non-compliance.

**(c) No Waiver.** Notwithstanding any provision in this Section 4.17 or elsewhere in the Loan Documents, or any rights or remedies granted by the Loan Documents, Mortgagee does not waive and expressly reserves all rights and benefits now or hereafter accruing to Mortgagee under any "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Mortgagee pursuant to the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under any "security interest exception".

**Section 4.18 Additional Warranties, Representations and Covenants.** Mortgagor further warrants, represents and covenants to Mortgagee that:

**(a) Organization and Power.** Mortgagor is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Illinois. Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code. Mortgagor shall remain a single-asset entity throughout the term of the Loan.

**(b) Validity of Loan Documents.** Mortgagor has full and lawful authority and power to execute, acknowledge, deliver and perform this Mortgage and the other Loan Documents. The execution, delivery and performance by Mortgagor and each Mortgagor Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any lien, charge or encumbrance upon the assets of any such party, except as contemplated by the Loan Documents. Mortgagor and each Mortgagor Party intends that the Loan Documents constitute the legal, valid and binding obligations of Mortgagor and each Mortgagor Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights.



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**(c) Liabilities; Litigation; Other Secured Transactions.**

(1) The financial statements previously delivered by Mortgagor and each Mortgagor Party to Mortgagee are true and correct with no significant change since the date of preparation. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting the Mortgaged Property, Mortgagor or any Mortgagor Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to the knowledge of Mortgagor, threatened, against the Mortgaged Property, Mortgagor or any Mortgagor Party which if adversely determined could have a material adverse effect on such party, the Mortgaged Property or the Loan.

(2) Neither Mortgagor nor any Mortgagor Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Mortgagor nor any Mortgagor Party has knowledge of any Person contemplating the filing of any such petition against it.

(3) Mortgagor has not within the last five (5) years become bound (whether as a result of a merger or otherwise) as a debtor under a pledge or security agreement entered into by another Person, which has not heretofore been terminated.

**(d) Taxes and Assessments** Except for information otherwise provided by Mortgagor to Mortgagee, the Mortgaged Property is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Mortgagor's best knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Mortgaged Property, nor are there any contemplated improvements to the Mortgaged Property that may result in such special or other assessments.

**(e) Other Agreements; Defaults.** Neither Mortgagor nor any Mortgagor Party is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which might adversely affect the Mortgaged Property or the business, operations or condition (financial or otherwise) of Mortgagor or any Mortgagor Party. Neither Mortgagor nor any Mortgagor Party is in violation of any agreement, which violation would have an adverse effect on the Mortgaged Property, Mortgagor, or any Mortgagor Party, or Mortgagor's or any Mortgagor Party's business, properties, assets, operations or condition, financial or otherwise.

**(f) Compliance with Law.**

(1) To the extent required by applicable law, Mortgagor and each Mortgagor Party has all requisite licenses, permits, franchises, qualifications, certificates of occupancy or other governmental authorizations to own, lease and operate the Mortgaged Property and carry on its business. The Mortgaged Property is in compliance with all applicable zoning, subdivision, building and other legal requirements and is free of structural defects. All of the Mortgaged Property's building systems are in good working order, subject to ordinary

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wear and tear. The Mortgaged Property does not constitute, in whole or in part, a legally non-conforming use under applicable legal requirements;

(2) No condemnation has been commenced or, to Mortgagor's knowledge, is contemplated with respect to all or any portion of the Mortgaged Property or for the relocation of roadways providing access to the Mortgaged Property; and

(3) The Mortgaged Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Mortgaged Property are located in the public right-of-way abutting the Mortgaged Property, and all such utilities are connected so as to serve the Mortgaged Property without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting the Mortgaged Property. All roads necessary for the full utilization of the Mortgaged Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities.

(g) **Location of Mortgagor.** Mortgagor's principal place of business and chief executive office are located at c/o First American Properties, 1731 N. Marcey, #520, Chicago, Illinois 60614, and Mortgagor at all times has maintained its principal place of business and chief executive office at such location or at other locations within the same state.

(h) **ERISA.**

(1) As of the Closing Date and throughout the term of the Loan, (a) Mortgagor is not and will not be an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), which is subject to Title I of ERISA, and (b) the assets of Mortgagor do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; and

(2) As of the Closing Date and throughout the term of the Loan, (a) Mortgagor is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA, and (b) transactions by or with Mortgagor are not and will not be subject to state statutes applicable to Mortgagor regulating investments of and fiduciary obligations with respect to governmental plans.

(i) **Margin Stock.** No part of proceeds of the Loan will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(j) **Tax Filings.** Mortgagor and each Mortgagor Party has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Mortgagor and each Mortgagor Party, respectively.

(k) **Solvency.** Giving effect to the Loan, the fair saleable value of Mortgagor's assets exceeds and will, immediately following the making of the Loan, exceed Mortgagor's total liabilities, including, without limitation, subordinated, unliquidated, disputed

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and contingent liabilities. The fair saleable value of Mortgagor's assets is and will, immediately following the making of the Loan, be greater than Mortgagor's probable liabilities, including the maximum amount of its contingent liabilities on its Debt as such Debt becomes absolute and matures. Mortgagor's assets do not and, immediately following the making of the Loan, will not constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Mortgagor does not intend to, and does not believe that it will, incur Debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Mortgagor and the amounts to be payable on or in respect of obligations of Mortgagor). Except as expressly disclosed to Mortgagee in writing, no petition in bankruptcy has been filed by or against Mortgagor or any Mortgagor Party in the last seven (7) years, and neither Mortgagor nor any Mortgagor Party in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors.

**(l) Full and Accurate Disclosure.** No statement of fact made by or on behalf of Mortgagor or any Mortgagor Party in this Mortgage or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Mortgagor which has not been disclosed to Mortgagee which adversely affects, nor as far as Mortgagor can foresee might adversely affect, the Mortgaged Property or the business, operations or condition (financial or otherwise) of Mortgagor or any Mortgagor Party. All information supplied by Mortgagor regarding the Mortgaged Property is accurate and complete in all material respects.

**(m) Business Purpose.** The Loan is intended for commercial purposes, and Mortgagor and each Mortgagor Party represent that the Mortgaged Property is income producing property and not the personal residence of Mortgagor or any Mortgagor Party.

**(n) Single Purpose Entity.** Mortgagor is, and during the term of the Loan shall continue to be, organized solely for the purpose of (i) acquiring, developing, owning, managing or operating the Mortgaged Property, (ii) entering into this Mortgage and the documents related hereto, and (iii) engaging in any activity that is incidental, necessary or appropriate to accomplish the foregoing. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, Mortgagor shall not (a) engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property, and activities incidental thereto; (b) acquire or own any material assets other than the Mortgaged Property; (c) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure; (d) fail to maintain separate financial statements and accounting records, showing its assets and liabilities separate and apart from those of any other Person; (e) have its assets listed on the financial statement of any other entity; and (f) fail to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

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## Section 4.19 Financial Statements.

(a) **Mortgagor's Financials.** Within five (5) Business Days of Mortgagee's request thereof, Mortgagor shall furnish to Mortgagee financial information, including, but not limited to, a current balance sheet, a detailed operating statement including operating revenues, operating expenses, and net operating income for Mortgagor and the Mortgaged Property, and any tax returns filed for the most recent tax year. Each such tax return and financial statement shall be in scope and detail satisfactory to Mortgagee and certified as true, correct and complete by the chief financial representative of Mortgagor.

(b) **Accounting Principles.** All financial statements shall be prepared in accordance with cash basis accounting practices, consistently applied from year to year.

(c) **Other Information.** Mortgagor shall deliver to Mortgagee such additional information regarding Mortgagor, its subsidiaries, its business, any Mortgagor Party and/or the Mortgaged Property within thirty (30) days after Mortgagee's request therefor.

(d) **Audits.** Mortgagee shall have the right to choose and appoint a certified public accountant to perform such financial audits of Mortgagor's books and records as Mortgagee deems necessary, at Mortgagor's expense. Mortgagor shall permit Mortgagee to examine such records, books and papers of Mortgagor which reflect upon its financial condition and the income and expense relative to the Mortgaged Property. Mortgagor authorizes Mortgagee to communicate directly with Mortgagor's independent certified public accountants, and authorizes such accountants to disclose to Mortgagee any and all financial statements and other supporting financial documents and schedules including copies of any management letter, with respect to the business, financial condition and other affairs of Mortgagor.

**Section 4.20 Additional Covenants.** Mortgagor covenants and agrees with Mortgagee as follows:

(a) **Due on Sale and Encumbrance; Transfers of Interests.** Without the prior written consent of Mortgagee,

- (1) no Transfer shall occur;
- (2) neither Mortgagor nor any other Person having an ownership or beneficial interest in Mortgagor shall enter into any easement or other agreement granting rights in or restricting the use or development of the Mortgaged Property;
- (3) no Transfer shall occur or be permitted which would result in a new general partner or limited partner or member or controlling shareholder having the ability to control the affairs of Mortgagor, being admitted to or created in Mortgagor (or result in any existing general partner or controlling member or controlling limited partner or controlling shareholder withdrawing from Mortgagor); and
- (4) no Transfer of any interest in Mortgagor or any Mortgagor Party shall occur.



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**(b) Taxes; Charges.** Mortgagor shall pay, before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Mortgaged Property or become payable during the Loan Term (as defined in the Note), and will promptly furnish Mortgagee with evidence of such payment.

Mortgagor shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note, this Mortgage or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Mortgagee. If there shall be enacted any law (1) deducting the Loan from the value of the Mortgaged Property for the purpose of taxation, (2) affecting any Lien on the Mortgaged Property, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Mortgagor shall promptly pay to Mortgagee, on demand, all taxes, costs and charges for which Mortgagee is or may be liable as a result thereof; provided, however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Mortgagee may declare all amounts owing under the Loan Documents to be immediately due and payable. Mortgagor shall pay when due all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a Lien on the Mortgaged Property.

Notwithstanding anything to the contrary set forth herein, Mortgagor may contest the validity of any taxes, claims and demands described in this Section 4.20(b) so long as (1) Mortgagor notifies Mortgagee that it intends to contest such claim or demand, (2) Mortgagor provides Mortgagee with an indemnity, bond or other security satisfactory to Mortgagee assuring the discharge of Mortgagor's obligations for such taxes, claims and demands, including interest and penalties, and (3) Mortgagor is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the thirtieth (30th) day preceding the earlier to occur of (i) the Maturity Date or (ii) the date on which any portion of the Mortgaged Property is scheduled to be sold for non-payment.

**(c) Control; Management.** Without the prior written consent of Mortgagee, there shall be no change in the day-to-day control and management of Mortgagor or Mortgagor's principals, and no change in the respective organizational documents relating to control over Mortgagor, Mortgagor's principals and/or the Mortgaged Property. Mortgagor shall not terminate, replace or appoint any such property manager or terminate or amend the property management agreement approved by Mortgagee for the Mortgaged Property without Mortgagee's prior written approval. Any change in ownership or control of the property manager shall be cause for Mortgagee to re-approve such property manager and property management agreement. Each property manager shall hold and maintain all necessary licenses, certifications and permits required by law. Mortgagor shall fully perform all of its covenants, agreements and obligations under the property management agreement. Mortgagor covenants to deliver to Mortgagee a collateral assignment and subordination of management agreement from each property manager within ten (10) days after Mortgagee's request.

**(d) Operation; Maintenance; Inspection; Defense.** Mortgagor shall observe and comply with all legal requirements applicable to its existence and to the ownership, use and operation of the Mortgaged Property. Mortgagor shall maintain the Mortgaged Property in good

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condition and promptly repair any damage or casualty. Mortgagor shall not, without the prior written consent of Mortgagee, undertake any material alteration of the Mortgaged Property or permit any of the fixtures or personalty owned by Mortgagor to be removed at any time from the Mortgaged Property, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor and free and clear of any Liens except those in favor of Mortgagee. Mortgagor shall permit Mortgagee and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such Site Assessments and engineering studies as Mortgagee may require, provided such Site Assessments and studies do not materially interfere with the use and operation of the Mortgaged Property.

(e) **Legal Existence; Name, Etc.** Mortgagor and each Mortgagor Party shall preserve and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Mortgaged Property. Neither Mortgagor nor any Mortgagor Party shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of all or substantially all of its assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Mortgagor to do so. Without limiting the foregoing, Mortgagor shall not reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the Closing Date. Mortgagor and each Mortgagor Party shall conduct business only in its own name, and shall not change its name, identity, organizational structure, state of formation or the location of its chief executive office or principal place of business unless Mortgagor (1) shall have obtained the prior written consent of Mortgagee to such change, and (2) shall have taken all actions necessary or requested by Mortgagee to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents. Mortgagor and each Mortgagor Party shall maintain its separateness as an entity, including maintaining separate books, records and accounts and observing corporate, partnership or limited liability company formalities independent of any other entity, shall pay its obligations with its own funds, and shall not commingle funds or assets with those of any other entity. If Mortgagor does not have an organizational identification number and later obtains one, Mortgagor shall promptly notify Mortgagee of its organizational identification number.

(f) **Affiliate Transactions.** Without the prior written consent of Mortgagee, Mortgagor shall not engage in any transaction affecting the Mortgaged Property with an Affiliate of Mortgagor or of any Mortgagor Party.

(g) **Limitation on Other Debt.** Neither Mortgagor nor any Mortgagor Party shall, without the prior written consent of Mortgagee, incur any Debt other than the Loan and customary trade payables which are payable, and shall be paid, within thirty (30) days of when incurred. Neither Mortgagor nor any Mortgagor Party shall incur secondary financing of any kind on the Mortgaged Property without the prior written consent of Mortgagee.

(h) **Further Assurances.** Mortgagor and each Mortgagor Party shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and

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(2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Mortgagee may reasonably request to further evidence and more fully describe the Mortgaged Property, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents as may be necessary or appropriate in connection therewith.

(i) **Estoppel Certificates.** Mortgagor, within ten (10) days after Mortgagee's request, shall furnish to Mortgagee a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Mortgagee reasonably may request.

(j) **Notice of Certain Events.** Mortgagor shall promptly notify Mortgagee of (1) any Event of Default or Potential Default, together with a detailed statement of the steps being taken to cure such Event of Default or Potential Default; (2) any notice of default received by Mortgagor under other obligations relating to the Mortgaged Property or otherwise material to Mortgagor's business; (3) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Mortgagor and any governmental authority, affecting Mortgagor or the Mortgaged Property; and (4) any termination of a Lease affecting the Mortgaged Property prior to the expiration date of said Lease.

(k) **Indemnification.** Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs and disbursements (including reasonable fees and actual expenses of Mortgagee's counsel) of any kind or nature whatsoever, including those arising from the joint, concurrent or comparative negligence of Mortgagee, in connection with (1) any inspection, review or testing of or with respect to the Mortgaged Property, (2) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Mortgagee is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loan) in any way related to the execution, delivery or performance of any Loan Document or to the Mortgaged Property, (3) any proceeding instituted by any Person claiming a Lien, and (4) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan, the Mortgaged Property, or any of the transactions contemplated in the Loan Documents, except to the extent any of the foregoing is caused by Mortgagee's gross negligence or willful misconduct.

(l) **Application of Operating Revenues.** Mortgagor shall apply all Rents and other operating revenues to the payment of Debt Service and other payments due under the Loan Documents, taxes, assessments, water charges, sewer rents, and other governmental charges levied, assessed or imposed against the Mortgaged Property, insurance premiums, operations and maintenance charges relating to the Mortgaged Property, and other obligations of the lessor under leases of space at the Mortgaged Property, before using Rents and operating revenues for any other purpose.



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(m) **Collection of Rents.** Mortgagor shall not receive or collect any Rents from any of the Leases for a period of more than one (1) month in advance, except last month's rent or a security deposit.

(n) **Separate Tax Lots.** Mortgagor shall not suffer or permit the joint assessment of the Mortgaged Property with any other real property except as disclosed by Mortgagor to Mortgagee prior to the date hereof.

(o) **Lease Approval.** Mortgagor shall not enter into, modify, terminate, or take any other actions with respect to Leases affecting 10% or more of the net leasable floor area of the Mortgaged Property, and shall not agree to terminate or settle with a tenant under any Lease affecting the Mortgaged Property, without the consent of Mortgagee. Mortgagor shall furnish to Mortgagee proposed lease documentation, including, but not limited to, a copy of the proposed lease agreement or lease amendment (as applicable), current operating statements including operating revenues, operating expenses, and net operating income for Mortgagor and the Mortgaged Property, and a current rent roll for the Mortgaged Property (collectively, the "**Proposed Lease Documentation**"). Unless Mortgagee delivers written notice to Mortgagor of its disapproval of the proposed action evidenced by the Proposed Lease Documentation, the proposed action shall be deemed approved ten (10) Business Days after Mortgagee's receipt of the Proposed Lease Documentation.

## ARTICLE 5 ASSIGNMENT OF LEASES AND RENTS

**Section 5.1 Assignment.** Mortgagor does hereby absolutely, unconditionally and irrevocably sell, assign, transfer, set over and deliver unto Mortgagee all of Mortgagor's rights, interests and privileges as lessor under the Leases for the Mortgaged Property, together with the immediate and continuing right to collect and receive all of the Rents, income, receipt and revenues arising from each of the assigned Leases covering or affecting all or any part of the Mortgaged Property. Mortgagor hereby appoints Mortgagee as its irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment, subject to the terms hereof.

The assignment and security interest granted in this Section 5.1 applies to all Leases now or hereafter made covering the Mortgaged Property or any portion thereof, together with any extension or renewal of same, this assignment of other present and future leases and present and future rental agreements being effective without further or supplemental assignment.

**Section 5.2 License.** Until notice from Mortgagee, Mortgagor shall have the right under a license granted hereby to collect all Rents arising from or out of the Leases; provided, however, regardless of the existence of an Event of Default, any Rents comprised of a termination fee or other settlement amount paid to Mortgagor in connection with a Lease termination or settlement approved by Mortgagee, shall be paid over to Mortgagee to be held in an escrow reserve to be disbursed in connection with future tenant improvements and leasing commissions associated with new leases affecting the Mortgaged Property, in accordance with an escrow agreement in form acceptable to Mortgagee, in its sole discretion. Failure or discontinuance of Mortgagee at any time, or from time to time, to collect any such Rents shall not in any manner affect the subsequent enforcement by Mortgagee of the right, power and



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authority to collect the same. The collection of such Rents and the application of such Rents hereunder shall not cure or waive any Event of Default or invalidate any act done in response to such Event of Default. Notwithstanding the collection, receipt and application of any Rents by Mortgagee, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default.

**Section 5.3 Foreclosure.** Upon issuance of any deed(s) pursuant to any foreclosure of this Mortgage or deed(s) in lieu of foreclosure, all right, title and interest of Mortgagor in and to the Leases shall vest in and become the absolute property of the grantee or grantees of such deed(s) without any further act or assignment by Mortgagor.

**Section 5.4 No Merger of Estates.** So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee estate and the leasehold estate (if any) to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

## ARTICLE 6 SECURITY AGREEMENT

**Section 6.1 Security Interest.** This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents, Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

**Section 6.2 Financing Statements.** Mortgagor hereby authorizes Mortgagee to prepare such financing statements, including an all assets financing statement, and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

**Section 6.3 Fixture Filing.** This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Mortgagor (debtor) and Mortgagee (secured party) as set forth in Section 8.3 of this Mortgage.

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## ARTICLE 7 EVENT OF DEFAULT; REMEDIES

**Section 7.1 Event of Default.** Each of the following shall constitute an “*Event of Default*” under the Note, this Mortgage, and all Loan Documents:

- (a) **Payments.** Borrower’s failure to pay any regularly scheduled installment of principal, interest or other amount when due under the Note or any other Loan Document.
- (b) **Insurance.** Mortgagor’s failure to maintain insurance as required under Section 4.15 of this Mortgage or if, upon application by Mortgagee to two (2) or more fire insurance companies which are lawfully doing business in the state in which the Mortgaged Property is located and which are issuing policies of fire insurance upon buildings situated within the area wherein the Mortgaged Property is situated, such companies shall refuse to issue such policies.
- (c) **Change in taxation.** After thirty (30) days notice to Borrower, in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on the Mortgage or the Note.
- (d) **Transfer.** Any Transfer occurs in violation of Section 4.20(a) of this Mortgage.
- (e) **Covenants.** Borrower’s or any Mortgagor Party’s failure to perform, observe or comply with any of the agreements, covenants or provisions contained in this Mortgage or in any of the other Loan Documents (other than those agreements, covenants and provisions constituting an Event of Default referred to elsewhere in this Article 7), and the continuance of such failure for thirty (30) days after notice by Mortgagee to Borrower; provided, however, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents, Borrower shall have an additional thirty (30) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure is curable but cannot reasonably be cured within thirty (30) days; (3) Borrower is diligently undertaking to cure such default, and (4) Mortgagor has provided Mortgagee with security reasonably satisfactory to Mortgagee against any interruption of payment or impairment of the Mortgaged Property as a result of such continuing failure. The notice and cure provisions of this Section 7.1(e) do not apply to the other Events of Default described in this Article 7.
- (f) **Representations and Warranties.** Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.
- (g) **Other Encumbrances.** The occurrence of any default under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on the Mortgaged Property or any part thereof.

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(h) **Involuntary Bankruptcy or Other Proceeding.** Commencement of an involuntary case or other proceeding against Mortgagor, NAAOC, 10 Huntington, any Mortgagor Party or any other Person having an ownership in the Mortgaged Property (each, a "**Bankruptcy Party**") which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Bankruptcy Party shall be entered in any such case under the Federal Bankruptcy Code.

(i) **Voluntary Petitions, Etc.** Commencement by a Bankruptcy Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debt or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Bankruptcy Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Bankruptcy Party of a general assignment for the benefit of creditors, or the failure by a Bankruptcy Party, or the admission by a Bankruptcy Party in writing of its inability to pay its debts generally as they become due, or any action by a Bankruptcy Party to authorize or effect any of the foregoing.

(j) **Other Insolvency.** The occurrence of any of the following: (1) if Mortgagor, NAAOC or 10 Huntington become insolvent; (2) if Mortgagor, NAAOC or 10 Huntington generally do not pay their debts as they become due; (3) if Mortgagor, NAAOC or 10 Huntington makes an assignment for the benefit of creditors; (4) if Mortgagor, NAAOC, 10 Huntington or their agents contact any creditor to advise of Mortgagor's, NAAOC'S or 10 Huntington's inability to pay their debts as they become due; or (5) if Mortgagor, NAAOC or 10 Huntington call or cause to be called a meeting of creditors for the composition of debts.

(k) **Other Defaults.** The occurrence of any default by Borrower under any other document or instrument evidencing or securing any other loan from Mortgagee to Borrower.

(l) **Death of Principal of Borrower or any Mortgagor Party.** The death of any principal of Borrower or any Mortgagor Party, unless Mortgagee is provided with additional collateral or a replacement mortgagor or mortgagor party that is reasonably acceptable to Mortgagee within sixty (60) days after such death.

**Section 7.2 Remedies.** If an Event of Default (as defined in this Mortgage) exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses in accordance with applicable law:

(a) **Insolvency Events.** Upon the occurrence of any Event of Default described in Section 7.1(h), 7.1(i) or 7.1(j), the obligations of Mortgagee to advance additional amounts hereunder, if any, shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the

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maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Mortgagor; provided, however, if the Bankruptcy Party under Section 7.1(h) or 7.1(i) is other than Mortgagor, then all amounts due under the Loan Documents shall become immediately due and payable at Mortgagee's election, in Mortgagee's sole discretion.

**(b) Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

**(c) Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor.

**(d) Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 7.8.

**(e) Foreclosure and Sale.** Institute proceedings for the complete foreclosure or to enforce any covenants and agreements of this Mortgage, or institute an action on the Note and obtain judgment thereon, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels. At any such sale by virtue of any judicial proceedings or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar both at law and in equity against Mortgagor and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. To the extent allowed by law, Mortgagor hereby waives any and all redemption rights. Mortgagee may be a purchaser at such sale and if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash.

Mortgagee may sell any personal property pursuant to the UCC (as now in effect or as hereafter amended or succeeded) and with respect to any notice required or permitted under the UCC, Mortgagor agrees that ten (10) days prior written notice shall be deemed commercially reasonable. At any such sale, (i) it shall not be necessary for Mortgagee to be physically present, or to have constructive possession of any personal property, and the title to and right of possession of such personal property shall pass to the purchaser thereof as completely as if Mortgagee had been actually present and delivered to purchaser the personal property at such sale, (ii) any prerequisite to the validity of such sale shall be presumed to have been performed,



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(iii) the receipt of Mortgagee or the other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated regarding the application of such purchase money or be in any way answerable for any loss, misapplication or non-application thereof, and (iv) to the fullest extent permitted by law, Mortgagor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the personal property sold, and such sale shall be a perpetual bar both at law and in equity against Mortgagor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Mortgagor. Mortgagee may be a purchaser at such sale and, if Mortgagee is the highest bidder, may credit the portion of the purchase price that would be distributed to Mortgagee against the Indebtedness in lieu of paying cash. Notwithstanding anything contained herein to the contrary, in accordance with Section 9.604 of the UCC, Mortgagee may proceed under the UCC as to all personal property covered hereby or, at Mortgagee's election, Mortgagee may proceed as to both the real and personal property covered hereby in accordance with Mortgagee's rights and remedies in respect of the real property, in which case the provisions of the UCC (and this paragraph) shall not apply.

(f) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, enter into leases, borrow funds, maintain, and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 7.8. Mortgagor hereby waives any and all requirements for the posting of a bond in connection with a receiver.

(g) **Advances.** Terminate the obligation, if any, of Mortgagee to advance additional amounts under the Loan Documents.

(h) **Partition.** Cause the Mortgaged Property or any part thereof to be sold as follows:

(1) Mortgagee may proceed as if all of the Mortgaged Property were real property in accordance with Section 7.2(e) above, or Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Land without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with subsection (2) below, separate and apart from the foreclosure of real property, the remainder of the Mortgaged Property being treated as real property.

(2) Should Mortgagee elect to cause any of the Mortgaged Property (excluding Land and Improvements) to be disposed of as personal property as permitted by subsection (1) above, Mortgagee may exercise in respect of such Mortgaged Property, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not

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the UCC applies to the affected Mortgaged Property) and also may (i) require Mortgagor to, and Mortgagor hereby agrees that it will, at its expense and upon request of Mortgagee forthwith, assemble all or part of such Mortgaged Property as directed by Mortgagee and make it available to Mortgagee at a place to be designated by Mortgagee which is reasonably convenient to both parties and (ii) without notice except as specified below, sell such Mortgaged Property or any part thereof in one or more parcels at public or private sale, at any of Mortgagee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Mortgagee may deem commercially reasonable. Mortgagor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Mortgagor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Mortgagee shall not be obligated to make any sale of such Mortgaged Property regardless of notice of sale having been given. Mortgagee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(3) In the event of a sale or other disposition of the Mortgaged Property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

(4) The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient discharge to the grantee of all obligations to see the proper application of the consideration therefor as hereinafter provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental or lease contract or other agreement made in violation of any provision of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement, rental or lease contract or other agreement.

(5) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Section 7.2(h), Mortgagee or any officer of any court empowered to so do, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Solely for purposes of any such sale or sales, Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor in its name and stead to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property or any part thereof and the rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, with Mortgagor hereby ratifying and confirming all that their said attorney or any substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Mortgagor, if so requested by Mortgagee, shall ratify and confirm any such

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sale or sales by executing and delivering to Mortgagee or to such purchaser or purchasers all such instruments as may be advisable in the judgment of Mortgagee, for the purpose as may be designated in such request. Any such sale or sales made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, 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, subject to any rights of redemption provided by law, and shall be a perpetual bar, both at law and in equity, against Mortgagor and any and all persons claiming or who may claim the same or any part thereof from, through or under Mortgagor subject to any rights of redemption provided by law.

(6) Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.

(i) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity, including but not limited to, an action for specific performance of any covenant contained in the Loan Documents, or obtaining a judgment on the Note either before, during or after any proceeding to enforce this Mortgage, or other *In Rem* proceedings against Mortgagee brought in Cook County, Illinois or any federal court of competent jurisdiction in Illinois.

(j) **Rental Value.** Upon the occurrence of any Event of Default and pending the exercise by Mortgagee of its right to exclude Mortgagor from all or any part of the Mortgaged Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or any portion thereof which are in its possession for such period and, upon default of any such payment, will vacate and surrender possession of the Mortgaged Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of the Mortgaged Property for non-payment of rent, however designated.

**Section 7.3 Mortgagee's Right to Perform the Obligations.** If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Mortgagor, and without waiving or releasing any other right, remedy or recourse Mortgagee may have because of such Event of Default, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as it may deem necessary or appropriate. If Mortgagee shall elect to pay any sum due with reference to the Mortgaged Property, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate governmental authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Mortgagee shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all losses, liabilities, claims, damages, expenses,



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obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Mortgagee pursuant to the provisions of this Section 7.3, including those arising from the joint, concurrent, or comparative negligence of Mortgagee, except as a result of Mortgagee's gross negligence or willful misconduct. All sums paid by Mortgagee pursuant to this Section 7.3, and all other sums expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents, and shall be paid by Mortgagor to Mortgagee upon demand.

#### **Section 7.4 Remedies Cumulative, Concurrent and Nonexclusive.**

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

#### **Section 7.5 Release of and Resort to Collateral.**

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

#### **Section 7.6 Waiver of Redemption, Notice and Marshalling of Assets.**

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

#### **Section 7.7 Discontinuance of Proceedings.**

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



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right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 7.8 Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of, the Mortgaged Property, shall be applied by Mortgagee (or the receiver, if one is appointed) in the order set forth in the Note, unless otherwise required by applicable law.

**Section 7.9 Occupancy After Sale.** The purchaser at any judicial or foreclosure sale shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale, and shall deliver possession thereof immediately to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of forcible detainer in any justice court having jurisdiction over the Mortgaged Property. In the event that there is a judicial sale hereunder and if at the time of such sale Mortgagor, or its successor or assign, is occupying the Mortgaged Property or any part thereof so sold, each and all shall 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 tenant or landlord, at a rental per day based upon the value of the Mortgaged Property, such rental to be due daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of said Mortgaged Property and this agreement and the trustee's deed shall constitute a lease and agreement under which any such tenant's possession arose and continued.

**Section 7.10 Interest After Default.** If any payment due hereunder or under the Note or any other Loan Document is not paid when due, either at stated or accelerated maturity or pursuant to any of the terms hereof, then and in such event, Borrower shall pay interest thereon from and after the date on which such payment first becomes due at the interest rate provided for in the Note, and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. Nothing in this Section 7.10 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Indebtedness. After entry of a judgment on any of the Loan Documents or a judgment in mortgage foreclosure hereunder, interest shall continue to accrue under said judgment, the Note, and this Mortgage at the rates set forth in the Note. This Mortgage shall not, solely for purposes of determining interest payable under the Note, merge with any judgment on any Loan Document or a judgment in mortgage foreclosure under this Mortgage.

**Section 7.11 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 7.11, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of

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reimbursement, computed at the Default Rate (as defined in the Note), and all such sums, together with interest thereon, shall be secured by this Mortgage.

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

(c) This Mortgage secures the Indebtedness which includes, without limitation: (i) all advances made by Mortgagee with respect to any of the Mortgaged Property for the payment of taxes, maintenance charges, insurance premiums or costs incurred for the protection of any of the Mortgaged Property or the lien of this Mortgage, and (ii) all expenses incurred by Mortgagee by reason of an Event of Default hereunder. This Mortgage shall constitute a lien on Mortgagor's fee interest in the Mortgaged Property from the time this Mortgage is left of record (or, if this is a purchase money mortgage, from the time of delivery hereof to Mortgagee) for, among other things, all such advances and expenses, plus interest thereon, regardless of the time when such advances are made or such expenses are incurred.

**Section 7.12 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 7, the assignment of the Leases and Rents under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity, shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 7.13 Non-Merger.** Notwithstanding the recovery or entry of any foreclosure judgment or judgment against Mortgagor, all of the covenants, undertakings and agreements of Borrower, whether hereunder or under the Note or any other Loan Document, whether relating thereto or not, shall remain in full force and effect and shall be enforceable strictly in accordance with their terms as fully as though no such judgment had been entered or recovered, it being understood that this Mortgage and the other Loan Documents shall not (solely for the purpose of confirming the continuing validity of Mortgagor's covenants, indemnities and agreements) merge into any foreclosure judgment or judgment entered or recovered by Mortgagee against Borrower under any Loan Documents.

## ARTICLE 8 MISCELLANEOUS

**Section 8.1 Approvals; Third Parties; Conditions.** All rights retained or exercised by Mortgagee to review or approve leases, contracts, plans, studies and other matters, including Mortgagor's and any other Person's compliance with laws applicable to Mortgagor, the Mortgaged Property or any other Person, are solely to facilitate Mortgagee's credit underwriting, and shall not be deemed or construed as a determination that Mortgagee has passed on the adequacy thereof for any other purpose and may not be relied upon by Mortgagor or any other Person. This Mortgage is for the sole and exclusive use of Mortgagee and Borrower and

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may not be enforced, nor relied upon, by any Person other than Mortgagee and Borrower. All conditions of the obligations of Mortgagee hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Mortgagee, its successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Mortgagee will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived, in whole or in part, by Mortgagee at any time in Mortgagee's sole discretion.

**Section 8.2 Mortgagee Not in Control; No Partnership.** None of the covenants or other provisions contained in the Loan Documents shall, or shall be deemed to, give Mortgagee the right or power to exercise control over the affairs or management of Borrower, the power of Mortgagee being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and Mortgagee is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Mortgagee and Borrower, or to create an equity in the Mortgaged Property in Mortgagee. Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Mortgaged Property or the Loan, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (1) Mortgagee shall in no event be liable for any Debt, expenses or losses incurred or sustained by Borrower; and (2) Mortgagee shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or its stockholders, members or partners. Mortgagee and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Mortgagee and Borrower, or to create any equity in the Mortgaged Property in Mortgagee, or any sharing of liabilities, losses, costs or expenses.

**Section 8.3 Notices.** Any notice required or permitted to be given under any Loan Document shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided that for facsimile delivery, an identical notice is also sent simultaneously by mail, overnight courier or personal delivery as otherwise provided in this Section 8.3). All such notices shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below.

If to Mortgagor (debtor):

State & Harrison L.L.C.  
c/o First American Properties  
1731 N. Marcey, #520  
Chicago, Illinois 60614  
Facsimile: (312) 255-0405

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If to Mortgagee (secured party):

A10 Capital, LLC  
Attn: Jackie Cox  
950 W. Bannock Street, Suite 950  
Boise, Idaho 83702  
Facsimile: (208) 577-5050

With a copy to:

Hawley Troxell Ennis & Hawley LLP  
Attn: Stephen C. Hardesty  
877 W. Main Street, Suite 1000  
Boise, Idaho 83702  
Facsimile: (208) 954-5223

Any notice so addressed and sent by United States mail or overnight courier shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee. Any notice so delivered in person shall be deemed to be given when receipted for by, or actually received by Mortgagee or Mortgagor, as the case may be. If given by facsimile, a notice shall be deemed given and received when the facsimile is transmitted to the party's facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 8.3. Except for notices sent via facsimile as expressly described above, no notice hereunder shall be effective if sent or delivered by electronic means. Either party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

**Section 8.4 Amendments and Waivers; Reference.** No amendment or waiver of any provision of the Loan Documents shall be effective unless in writing and signed by the party against whom enforcement is sought. This Mortgage and the other Loan Documents shall not be executed, entered into, altered, amended or modified by electronic means. Any reference to a Loan Document, whether in this Mortgage or in any other Loan Document, shall be deemed to be a reference to such Loan Document as it may hereafter from time to time be amended, modified, supplemented and restated in accordance with the terms hereof.

**Section 8.5 Attorney-in-Fact.** Mortgagor hereby irrevocably appoints Mortgagee, and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments or assignments, conveyances or further assurances with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the



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grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; provided, however: (1) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (2) any sums advanced by Mortgagee in such performance shall be included in the Indebtedness and shall bear interest at the Default Rate; (3) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section. Mortgagee, as agent for Mortgagor under the powers of attorney, is not a fiduciary for Mortgagor. Mortgagee, in exercising any of its rights or powers pursuant to the powers of attorney, may do so for the sole benefit of Mortgagee and not for Mortgagor.

**Section 8.6 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

**Section 8.7 No Waiver.** Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 8.8 Declaration of No Set-Offs.** Within ten (10) days after requested by Mortgagee, Mortgagor shall certify to Mortgagee or to any proposed assignee of Mortgagee, in writing duly acknowledged, the amount of principal, interest and other charges then owing on the Indebtedness and other Obligations secured by this Mortgage and by any prior liens, if any, whether there are any set-offs or defenses against them, and whether any default has been asserted by any tenant of the Mortgaged Property.

**Section 8.9 Subrogation.** To the extent Mortgagee makes future advances which are used to extinguish, extend or renew the Indebtedness secured by the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived but are continued in full force and effect in favor of Mortgagee.

**Section 8.10 Note.** If any conflict or inconsistency exists between this Mortgage and the Note, the Note shall govern.

**Section 8.11 Release.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Mortgagee, at Mortgagor's expense, shall release the liens created by this Mortgage.

**Section 8.12 Waiver of Stay, Moratorium and Similar Rights.** Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or

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plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the Indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee, or any rights or remedies of Mortgagee.

**Section 8.13 Joint and Several.** If more than one person or entity has executed this Mortgage as "Mortgagor", the obligations of all such persons or entities hereunder shall be joint and several.

**Section 8.14 Post Closing Compliance.** Mortgagor and each Mortgagor Party agrees to execute, re-execute, cause any third parties involved in the Loan transaction to execute and/or re-execute, and to deliver to Mortgagee or its legal counsel, as may be deemed appropriate, any document or instrument signed in connection with the Loan which was incorrectly drafted and/or signed, as well as any document or instrument which should have been signed at or prior to the closing of the Loan but which was not so signed and delivered. Mortgagor and each Mortgagor Party agrees to comply with any written request by Mortgagee within ten (10) days after receipt by Mortgagor and each Mortgagor Party of such request. Failure by Mortgagor and each Mortgagor Party to so comply shall, at the option of Mortgagee, constitute an Event of Default hereunder.

**Section 8.15 Invalid Provisions.** If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

**Section 8.16 Governing Law.** This Mortgage and all other Loan Documents are being executed and delivered, and are intended to be performed, in the State of Idaho, and the laws of the State of Idaho shall govern the rights and duties of the parties hereto and the validity, construction, enforcement and interpretation of this Mortgage and the Loan Documents (without giving effect to principles of conflicts of law), except to the extent otherwise specified in this Mortgage or any of the Loan Documents; provided, however, that with respect to the creation, attachment, perfection, priority and enforcement of any liens created by this Mortgage or any of the Loan Documents, the laws of the state where the Mortgaged Property is located shall apply to those matters only.

**Section 8.17 Survival.** All of the representations, warranties and indemnities of Mortgagor hereunder and under the indemnification provisions of the other Loan Documents shall survive the repayment in full of the Loan and the release of the liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure, or otherwise) of any or all right, title and interest in and to the Mortgaged Property to any party, except with respect to the presence of Hazardous Materials which first became present at, on or under the Mortgaged Property after it was transferred to a third party.

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**Section 8.18 Titles of Articles, Sections and Subsections.** All titles or headings to articles, sections, subsections or other divisions of this Mortgage and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

**Section 8.19 Entire Agreement.** This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. Except with respect to the Note as stated in Section 8.10, if any conflict or inconsistency exists between this Mortgage and any of the other Loan Documents, the terms of this Mortgage shall control.

**Section 8.20 Singular and Plural.** Words used in this Mortgage and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Mortgage and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

**Section 8.21 Phrases.** When used in this Mortgage and the other Loan Documents, the phrase "including" shall mean "including, but not limited to," the phrase "satisfactory to Mortgagee" shall mean "in form and substance satisfactory to Mortgagee in all respects," the phrase "with Mortgagee's consent" or "with Mortgagee's approval" shall mean such consent or approval at Mortgagee's sole discretion, and the phrase "acceptable to Mortgagee" shall mean "acceptable to Mortgagee at Mortgagee's sole discretion."

**Section 8.22 Exhibits.** The exhibits attached to this Mortgage are incorporated herein and shall be considered a part of this Mortgage for the purposes stated herein.

**Section 8.23 Headings.** The article, section and subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such articles, sections or subsections.

**Section 8.24 Acknowledgement of Copy.** Mortgagor acknowledges receiving a true, correct and complete copy of this Mortgage for Mortgagor's records.

**Section 8.25 Conflicting Provisions.** In the event of any inconsistencies between the terms and conditions of the following paragraphs and the other terms and conditions of this Mortgage, the terms and conditions of the following paragraphs shall control and be binding:

(a) Illinois Mortgage Foreclosure Law. It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be

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accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "*Act*"), and with respect to such Act, Mortgagor agrees and covenants that:

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

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

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

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

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





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## EXHIBIT A

### Legal Description

#### **Parcel 1:**

That part of Lots 7, 12, 13, 18, 19 and 24 (except that part of said Lots taken for alley) all in C.L. and I. Harmon's Subdivision of Block 137 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, taken as a tract, lying below a horizontal plane having an elevation of + 34.13 feet above the Chicago City Datum and lying above a horizontal plane having an elevation of + 14.02 feet above the Chicago City Datum and lying within its horizontal boundary projected vertically and described as follows: commencing at a point in the east line of said Lot 7, said point being 3.50 feet South of the northeast corner thereof; thence South 00 degrees 00 minutes 00 seconds West, along the east line of said Lots, 134.26 feet to the Point of Beginning; thence South 89 degrees 58 minutes 54 seconds West, 6.62 feet; thence North 00 degrees 01 minutes 01 seconds East, 2.15 feet; thence South 89 degrees 58 minutes 54 seconds West, 3.50 feet; thence South 00 degrees 01 minutes 01 seconds West, 2.15 feet; thence South 89 degrees 58 minutes 54 seconds West, 8.25 feet; thence North 00 degrees 01 minutes 01 seconds East, 2.13 feet; thence South 89 degrees 58 minutes 54 seconds West, 3.45 feet; thence South 00 degrees 01 minutes 01 seconds West, 8.65 feet; thence South 89 degrees 58 minutes 54 seconds West, 4.50 feet; thence South 00 degrees 01 minutes 01 seconds West, 49.60 feet; thence South 89 degrees 58 minutes 54 seconds West, 5.30 feet; thence South 00 degrees 01 minutes 01 seconds West, 26.95 feet; thence North 89 degrees 58 minutes 54 seconds East, 4.55 feet; thence South 00 degrees 01 minutes 01 seconds West, 9.95 feet; thence South 89 degrees 58 minutes 54 seconds West, 25.85 feet; thence South 00 degrees 01 minutes 01 seconds West, 15.10 feet; thence North 89 degrees 58 minutes 54 seconds East, 2.55 feet; thence South 00 degrees 01 minutes 01 seconds West, 4.50 feet; thence North 89 degrees 58 minutes 54 seconds East, 50.81 feet to its point of intersection with the east line of said Lots; thence North 00 degrees 00 minutes 00 seconds East, along the east line of said Lots, 112.62 feet to the Point of Beginning, in Cook County, Illinois.

#### **Parcel 2:**

Non-exclusive easement for the benefit of Parcel 1 as created by a "Declaration of Condominium Ownership for Library Tower Condominium and Provisions Relating to Certain Non-Condominium Property" recorded May 8, 2008 as Document No. 0812949046, all as more fully set forth in Article Two of said document and as amended by Recharacterization Amendment No. 6 recorded October 17, 2008, as Document No. 0829118044.

Address of Property: 530 S. State Street  
Chicago, IL

Permanent Parcel Number(s): 17-16-247-066

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## EXHIBIT B

### Permitted Encumbrances

1. Terms and conditions contained in the Development and Maintenance Agreement recorded May 18, 2006 as Document No. 0613833128.
2. Terms and provisions contained in Covenant recorded July 28, 2006 as Document No. 0620931061, made by Library Tower L.L.C., concerning the maintenance, repair and replacement of the common sewer lines which serve the Library Tower Property. Re-recorded December 29, 2006 as Document Number 0636355079 to correct legal description.
3. Terms, provisions, covenants, conditions and options contained in and rights and easements established by the "Declaration of Condominium Ownership for Library Tower Condominium and Provisions Relating to Certain Non-Condominium Property" recorded May 8, 2008 as Document No. 0812949046, as amended by Recharacterization Amendment No. 6 recorded October 17, 2008, as Document No. 0829118044.
4. Developer's right to subject the Property to the Condominium Act and, in the event of such addition, to reallocate percentage interest in the common elements, which right expires on May 8, 2018.
5. Terms, provisions, conditions and easements as contained in the Encroachment Easement Agreement dated April 27, 2007 and recorded May 29, 2008, as Document No. 0815041083, made by and between the City of Chicago and Library Tower, L.L.C.